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106TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 106–75

PROVIDING FOR THE COLLECTION OF FEES FOR THE MAKING OF MOTION PICTURES, TELEVISION PRODUCTIONS, AND SOUND TRACKS IN NATIONAL PARK SYSTEM AND NATIONAL WILDLIFE REFUGE SYSTEM UNITS

MARCH 23, 1999.—Committed to the Committee of the Whole 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

[To accompany H.R. 154]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 154) to provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FEE AUTHORITY AND REPEAL OF PROHIBITION.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Interior (in this section referred to as the "Secretary") may permit, under terms and conditions considered necessary by the Secretary, the use of lands and facilities administered by the Secretary for the making of any motion picture, television production, soundtrack, or similar project, if the Secretary determines that such use is appropriate and will neither impair the values and resources of the lands and facilities nor result in a significant disruption of normal visitor uses.

(2) FEES.—(A) Any permit under this section shall require the payment of fees to the Secretary in an amount determined to be appropriate by the Secretary sufficient to provide a fair return to the government in accordance with subparagraph (B), except as provided in subparagraph (C). The amount of the fee shall be not less than the direct and indirect costs to the Government for processing the application for the permit and the use of lands and facilities under the permit, including any necessary costs of cleanup and restoration, except as provided in subparagraph (C).

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(B) The authority of the Secretary to establish fees under this paragraph shall include, but not be limited to, authority to issue regulations that establish a schedule of rates for fees under this paragraph based on such factors as—

(i) the number of people on site under a permit;

(ii) the duration of activities under a permit;

(iii) the conduct of activities under a permit in areas designated by statute or regulations as special use areas, including wilderness and research natural areas; and

(iv) surface disturbances authorized under a permit.

(C) The Secretary may, under the terms of the regulations promulgated under paragraph (4), charge a fee below the amount referred to in subparagraph (A) if the activity for which the fee is charged provides clear educational or interpretive benefits for the Department of the Interior.

(3) BONDING AND INSURANCE.—The Secretary may require a bond, insurance, or such other means as may be necessary to protect the interests of the United States in activities arising under such a permit.

(4) REGULATIONS.—(A) The Secretary shall issue regulations implementing this subsection by not later than 180 days after the date of the enactment of this Act.

(B) Within 3 years after the date of enactment of this Act, the Secretary shall review and, as appropriate, revise regulations issued under this paragraph. After that time, the Secretary shall periodically review the regulations and make necessary changes.

(b) COLLECTION OF FEES.—Fees shall be collected under subsection (a) whenever the proposed filming, videotaping, sound recording, or still photography involves product or service advertisements, or the use of models, actors, sets, or props, or when such filming, videotaping, sound recording, or still photography could result in damage to resources or significant disruption of normal visitor uses. Filming, videotaping, sound recording or still photography, including bona fide newsreel or news television film gathering, which does not involve the activities or impacts identified herein, shall be permitted without fee.

(c) EXISTING REGULATIONS.—The prohibition on fees set forth in paragraph (1) of section 5.1(b) of title 43, Code of Federal Regulations, shall cease to apply upon the effective date of regulations under subsection (a). Nothing in this section shall be construed to affect the regulations set forth in part 5 of such title, other than paragraph (1) thereof.

(d) PROCEEDS.—Amounts collected as fees under this section shall be available for expenditure without further appropriation and shall be distributed and used, without fiscal year limitation, in accordance with the formula and purposes established for the Recreational Fee Demonstration Program under section 315 of Public Law 104–134.

(e) PENALTY.—A person convicted of violating any regulation issued under subsection (a) shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 6 months, or both, and shall be ordered to pay all costs of the proceedings.

(f) EFFECTIVE DATE.—This section and the regulations issued under this section shall become effective 180 days after the date of the enactment of this Act, except that this subsection and the authority of the Secretary to issue regulations under this section shall be effective on the date of the enactment of this Act.

PURPOSE OF THE BILL

The purpose of H.R. 154 is to provide for the collection of fees for motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units.

BACKGROUND AND NEED FOR LEGISLATION

America's public lands have been serving as the backdrop for many of Hollywood's most famous and profitable productions for decades. Popular park units such as Arches National Park, Yosemite National Park, and the National Capital Region have served as the setting of numerous films which have grossed, in total, hundreds of millions of dollars. At the present time, however, the National Park Service and the U.S. Fish and Wildlife Service are prohibited by regulation from establishing fair and reasonable fees

from commercial film companies for the use of the resources they manage for the enjoyment of the American people. These agencies can charge a user fee for actual personnel expenses, but not a so-called location or land-use fee.

The U.S. Forest Service already has in place a regulatory policy to collect commercial filming fees. The Forest Service has a detailed and accepted policy, consisting of negotiated contracts involving a set fee schedule based on personnel involved, length of time on location, special effects required, and other factors. Similarly, this bill would standardize the collection of commercial film fees by agencies within the Department of Interior.

H.R. 154 repeals the existing regulatory prohibition on collecting fees for commercial film productions on lands administered by the Department of the Interior, including units of the National Park System and National Wildlife Refuge Areas. In addition, H.R. 154 authorizes the Secretary to establish a fee schedule using a number of relevant factors, such as the number of people on site, the use of lands with special designations, and the duration of the filming activities. The bill would not affect newsreel or television news activities. Proceeds from these location fees would remain in the unit where the filming occurs as per Public Law 104–134.

An amendment was offered by Congressman Joel Hefley at Full Committee markup which clarifies language in section 1(a)(1) of H.R. 154. The amendment further clarified the intent as to when it is appropriate to use lands for activities authorized by H.R. 154. In essence, the amendment gives the Secretary of the Interior the added discretion to consider whether the activity results in a significant disruption of normal visitor uses when issuing a permit. However, it is the clear intent of the Committee that "significant disruption" means that the activity must be a major interference or excessive disturbance of regular visitor uses. This standard is meant to have a high threshold. It is the intention of the Committee that minor and temporary inconveniences for park visitors caused by activities authorized by H.R. 154 shall not be considered a "significant disruption" insofar as obtaining a permit for such activities.

Furthermore, the Committee is aware that the term "appropriate" as used in section 1(a)(1) has caused some concern. The Committee wants to make it perfectly clear and emphasizes without ambiguity that the term "appropriate" is not to be construed or used in any manner as an authorization by the Secretary for script approval. Rather, the Committee's intent of the term "appropriate" should be viewed by the Secretary in the context of the impairment of the values and resources which are to be protected on federal lands where these activities occur.

Because commercial advertising photographers and film production companies frequently need permits to be approved quickly, it is the intent of the Committee that the Secretary take into consideration the particular timeliness of a production in processing the applications and should approve permits authorized in H.R. 154 in the shortest time period possible and appropriate.

COMMITTEE ACTION

H.R. 154 was introduced on January 6, 1999, by Congressman Joel Hefley (R–CO). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks and Public Lands and the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On February 4, 1999, the National Parks Subcommittee held a hearing on H.R. 154 where Stephen Saunders, Deputy Assistant Secretary for Fish, Wildlife, and Parks for the Department of the Interior, testified in favor the bill. On February 25, 1999, the Subcommittee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the Full Resource Committee by voice vote. On March 3, 1999, the Full Resource Committee met to consider H.R. 154. An amendment was offered by Congressman Hefley as described earlier which was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

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. Enactment of H.R. 154 could affect the federal budget by changing collections of offsetting receipts and the use of these receipts. According to the Congressional Budget Office, any change in offsetting receipts would be matched by an equal change in spending, resulting in no net change in direct spending.

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, March 19, 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. 154, a bill to provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units.

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

Sincerely,

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

Enclosure.

H.R. 154—A bill to provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units

Summary: H.R. 154 would direct the Secretary of the Interior to establish fees for commercial filming and similar activities conducted on public lands, and would authorize agencies within the Department of the Interior (DOI) to retain and spend without further appropriation any resulting receipts. The Secretary would develop regulations to establish a schedule of rates, which would be based on factors such as the number of persons on site and the duration of filming. The bill would authorize the Secretary to reduce fees if the activity provides clear educational benefits for the department and would exempt from any fees newsreels, television news productions, and some commercial photography.

CBO expects that enacting H.R. 154 could affect the federal budget by changing collections of offsetting receipts and the use of such receipts; therefore, pay-as-you-go procedures would apply. Any change in offsetting receipts would be matched by an equal change in spending, though not necessarily in the same fiscal year, resulting in no net impact on direct spending in the long term. CBO estimates that any increases or decreases in offsetting receipts would probably be at most a few million dollars a year. The bill contains no intergovernmental or private-sector mandates as defined in Unfunded Mandates Reform Act (UMRA) and would not affect the budget of state, local, or tribal governments.

Commercial Filming on Public Lands Under Current Law: Under current law, the Forest Service (which is in the Department of Agriculture) and most land management agencies within DOI already allow commercial filming and similar activities on lands they ad-

minister. The vast majority of films made on these lands are commercials or other short-duration projects, such as still photography; only a handful made each year are full-length feature films. All of the federal land management agencies are allowed to charge some fees for filming on public lands, but the rates they are allowed to charge, the basis of those charges, and the rules governing spending of the resulting proceeds vary widely.

The Forest Service (which is authorized to set market-value rates for filming in national forests) charges up to $600 per day for the 1,500 to 2,000 permits it issues annually. The Forest Service collected an average of about $400,000 annually over the last three years from such fees, which it returned to the general fund of the Treasury. The agency also may charge a $200 application fee and may recover other direct costs, if any. The Bureau of Land Management (BLM) has authority similar to that of the Forest Service and charges between$100 and $750 per day as a land rental fee. Receipts from rentals are returned to the Treasury, but the agency is allowed to retain and spend additional fees collected for processing applications and for cost reimbursement. In the few instances where the agency imposes such additional fees, they range from $200 to $1,000 per application. BLM issues between 300 and 400 applications annually, which CBO estimates earn the federal government less than $100,000 a year in total.

The National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS) are more limited in their authority to charge fees because they may not impose fees that are greater than the amounts necessary to cover the cost of processing of applications and the direct costs of activities attributable to the filming, such as on-site monitoring. After the Forest Service, the NPS issues the most filming permits—over 900 for each of the last three years. On average over this period, the NPS earned $1 million or less per year, or about $1,000 per film, which includes application fees and cost reimbursements as well as small donations (about $50 per film). All of these amounts were retained and spent by the agency. The USFWS, which currently issues fewer than 100 permits per year, imposes no charge for processing applications or cost recovery.

Estimated cost to the Federal Government: CBO cannot estimate the amount of offsetting receipts that would be earned under the new authorities contained in H.R. 154. Nevertheless, because the bill also would allow the agencies to spend whatever new receipts are earned, we estimate that enacting the bill would have no significant net impact on the federal budget over the next several years.

The major potential budgetary impact of the bill would be on the NPS. But the bill's effect would depend on many behavioral factors that cannot be predicted with confidence, and it is therefore difficult to estimate how much the NPS would earn and spend under H.R. 154.

Based on information provided by that agency, we expect that it would most likely follow the fee structure used by the Forest Service. It is not clear whether adopting this structure would result in any additional receipts. In fact, based on the limited information available, it appears that the NPS already earns more on commer-

cial filming than the Forest Service—on fewer permits. The most likely reason for this is the relatively high amounts collected by the NPS as cost recovery, probably because filming on NPS sites generally requires more monitoring and agency resources. (In contrast, the Forest Service seldom provides much on-site assistance.) It is also possible that longer, more personnel-intensive films are shot at NPS sites or that the agency waives fees less often than Forest Service does for educational films.

The NPS might earn additional fee receipts under H.R. 154 because the new authority to charge rates that exceed actual costs, and the incentive provided by allowing more money to be spent without appropriation, may induce the agency to promote filming on its lands. In addition, adopting the Forest Service fee schedule would probably result in higher fees on some films because the NPS could add up to $600 per day to the amounts it already charges for processing applications and recovering other direct costs. It is also possible, however, that the agency would lose some collections if it raises its fees because the number of films made in part units could drop in response. In either case, CBO does not expect the impact on receipts to be great. The most the agency could lose is the $1 million that it now collects each year. Potential gains could be more, but we estimate that they would total no more than a few million dollars a year.

It is possible that the bill would have little or no impact on NPS filming activities, particularly if other, nonmonetary factors do not change. For example, the film industry has indicated that an important factor in its choice of filming sites is agency cooperation. As a result, many film makers use Forest Service or nonfederal lands rather than NPS sites because applications are processed more quickly and their presence is more readily accepted. Thus, the industry may continue to use lands administered by the Forest Service (whose rates could be considerably lower than those of the NPS under the bill) or owned by private parties or other governmental entities (some of whom presently charge more than any federal agency).

CBO expects that the bill would have little effect on the budget of the USFWS because that agency, which would be very likely to charge fees once it has the authority to do so, would probably not promote more filming on its lands for environmental reasons. We also expect that the bill would have little impact on BLM, which would be allowed to retain receipts from land rentals that currently are returned to the Treasury. BLM already charges fees that are close to those that the Forest Service now charges or that the NPS would charge under the bill. BLM would be unlikely to increase its rates under the bill because higher fees would be uncompetitive. Spending the portion of the $100,000 a year it now returns to the Treasury would not have any significant impact. Finally, H.R. 154 would have no effect on the Forest Service, which is excluded from the bill's provisions.

This estimate is based on information obtained from the Association of Independent Commercial Producers, the Motion Picture Association, and federal agencies, including DOI, the Forest Service, the NPS, BLM, and USFWS.

Pay-as-you-go considerations: The Balances Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 154 would probably affect direct spending but CBO cannot estimate the amount of new offsetting receipts and spending that would result from enacting this bill. CBO estimates that the net impact on direct spending would be neglible over the next several years.

Intergovernmental and private-sector impact: H.R. 154 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Deborah Reis.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

CHANGES IN EXISTING LAW

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

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