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H. R. 289

IN THE SENATE OF THE UNITED STATES

October 3, 2017

Received; read twice and referred to the Committee on Energy and
Natural Resources

AN ACT

To authorize the Secretary of the Interior and the Secretary of
Agriculture to issue permits for recreation services on lands managed
by Federal agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) Short Title.--This Act may be cited as the "Guides and Outfitters Act" or the "GO Act".

(b) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents; definitions.

Sec. 2. Special recreation permit and fee.

Sec. 3. Permit across multiple jurisdictions.

Sec. 4. Guidelines and permit fee calculation.

Sec. 5. Use of permit fees for permit administration.

Sec. 6. Adjustment to permit use reviews.

Sec. 7. Authorization of temporary permits for new uses for the Forest Service and BLM.

Sec. 8. Indemnification requirements.

Sec. 9. Streamlining of permitting process.

Sec. 10. Cost recovery reform.

Sec. 11. Extension of Forest Service recreation priority use permits.

(c) Definitions.--In this Act:

(1) Secretary.--The term "Secretary" means--

(A) the Secretary of the Interior, with respect to a Federal land management agency (other than the Forest Service); and

(B) the Secretary of Agriculture, with respect to

the Forest Service.

(2) Secretaries.--The term ``Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture acting jointly.

SEC. 2. SPECIAL RECREATION PERMIT AND FEE.

Subsection (h) of section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) is amended to read as follows:

``(h) Special Recreation Permit and Fee.--

``(1) In general.--The Secretary may--

``(A) issue a special recreation permit for Federal recreational lands and waters; and

``(B) charge a special recreation permit fee in connection with the issuance of the permit.

``(2) Special recreation permits.--The Secretary may issue special recreation permits in the following circumstances:

``(A) For specialized individual and group use of Federal facilities and Federal recreational lands and waters, such as, but not limited to, use of special areas or areas where use is allocated, motorized recreational vehicle use, and group activities or events.

``(B) To recreation service providers who conduct outfitting, guiding, and other recreation services on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.

``(C) To recreation service providers who conduct recreation or competitive events, which may involve incidental sales on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.

``(3) Reduction in federal costs and duplication of analysis.--

``(A) In general.--The issuance of a new special recreation permit for activities under paragraph (2) shall be categorically excluded from further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the proposed use is the same as or similar to a previously authorized use and the Secretary determines that such issuance does not have significant environmental effects based upon application of the extraordinary circumstances procedures established by the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

``(B) Definition.--For the purposes of this paragraph, the term 'similar' means--

``(i) substantially similar in type,

nature, and scope; and

``(ii) will not result in significant new impacts.

``(4) Relation to fees for use of highways or roads.--An entity that pays a special recreation permit fee shall not be subject to a road cost-sharing fee or a fee for the use of

highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88-657 (16 U.S.C. 537).".

SEC. 3. PERMIT ACROSS MULTIPLE JURISDICTIONS.

(a) In General.--In the case of an activity requiring permits pursuant to subsection (h) of section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) for use of lands managed by both the Forest Service and the Bureau of Land Management--

(1) the Secretaries may issue a joint permit based upon a single application to both agencies when issuance of a joint permit based upon a single application will lower processing and other administration costs for the permittee, provided that the permit applicant shall have the option to apply for separate permits rather than a joint permit; and

(2) the permit application required under paragraph (1) shall be--

(A) the application required by the lead agency;

and

(B) submitted to the lead agency.

(b) Requirements of the Lead Agency.--The lead agency for a permit under subsection (a) shall--

(1) coordinate with the associated agencies, consistent with the authority of the Secretaries under section 330 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (43 U.S.C. 1703), to develop and issue the single, joint permit that covers the entirety of the trip;

(2) in processing the joint permit application, incorporate the findings, interests, and needs of the associated agencies, provided that such coordination shall not be subject to cost recovery; and

(3) complete the permitting process within a reasonable time after receiving the permit application.

(c) Effect on Regulations.--Nothing in this section shall alter, expand, or limit the applicability of any Federal law (including regulations) to lands administered by the relevant Federal agencies.

(d) Definitions.--In this section:

(1) Associated agency.--The term ``associated agency'' means an agency that manages the land on which the trip of the special recreation permit applicant will enter after leaving the land managed by the lead agency.

(2) Lead agency.--The term ``lead agency'' means the agency that manages the land on which the trip of the special recreation permit applicant will begin.

SEC. 4. GUIDELINES AND PERMIT FEE CALCULATION.

(a) Guidelines and Exclusion of Certain Revenues.--The Secretary shall--

(1) publish guidelines in the Federal Register for establishing recreation permit fees; and

(2) provide appropriate deductions from gross revenues used as the basis for the fees established under paragraph (1) for--

(A) revenue from goods, services, and activities provided by a recreation service provider outside Federal recreational lands and waters, such as costs

for transportation, lodging, and other services before or after a trip; and

(B) fees to be paid by permit holder under applicable law to provide services on other Federal lands, if separate permits are issued to that permit holder for a single event or trip.

(b) Fee Conditions.--The fee charged by the Secretary for a permit issued under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)) shall not exceed 3 percent of the recreational service provider's annual gross revenue for activities authorized by the permit on Federal lands, plus applicable revenue additions, minus applicable revenue exclusions or a similar flat per person fee.

(c) Disclosure of Fees.--A holder of a special recreation permit may inform its customers of the various fees charged by the Secretary under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)).

SEC. 5. USE OF PERMIT FEES FOR PERMIT ADMINISTRATION.

(a) Deposits.--Subject to subsection (b), revenues from special recreation permits issued to recreation service providers under subparagraphs (B) and (C) of section 803(h)(2) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)(2)) shall be held in special accounts established for each specific unit or area for which such revenues are collected, and shall remain available for expenditure, without further appropriation, until expended.

(b) Use of Permit Fees.--Revenues from special recreation permits issued to recreation service providers under subparagraphs (B) and (C) of section 803(h)(2) of the Federal Lands Recreation Enhancement Act

(16 U.S.C. 6802(h)(2)) shall be used only--

- (1) to partially offset the Secretary's direct cost of administering the permits;
- (2) to improve and streamline the permitting process; and
- (3) for related recreation infrastructure and other purposes specifically to support recreation activities at the specific site for which use is authorized under the permit, after obtaining input from any related permittees; provided, however, that the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to any advisory committee or other group established to carry out this paragraph.

(c) Limitation on Use of Fees.--The Secretary may not use any permit fees for biological monitoring on Federal recreational lands and waters under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for listed or candidate species.

SEC. 6. ADJUSTMENT TO PERMIT USE REVIEWS.

(a) In General.--To the extent that the Secretary utilizes permit use reviews, in reviewing and adjusting allocations of use for permits for special uses of Federal recreational lands and waters managed by the Forest Service, and in renewing such permits, the Secretary of Agriculture shall allocate to a permit holder a level of use that is no less than the highest amount of actual annual use over the reviewed period plus 25 percent, capped at the amount of use allocated when the permit was issued unless additional capacity is available. The Secretary may assign any use remaining after adjusting allocations on a temporary basis to qualified permit holders.

(b) Waiver.--Use reviews under subsection (a) may be waived for

periods in which circumstances that prevented use of assigned capacity, such as weather, fire, natural disasters, wildlife displacement, business interruptions, insufficient availability of hunting and fishing licenses, or when allocations on permits include significant shoulder seasons. The authorizing office may approve non-use without reducing the number of service days assigned to the permit in such circumstances at the request of the permit holder. Approved non-use may be temporarily assigned to other qualified permit holders when conditions warrant.

SEC. 7. AUTHORIZATION OF TEMPORARY PERMITS FOR NEW USES FOR THE FOREST SERVICE AND BLM.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior shall establish and implement a program to authorize temporary permits for new recreational uses of Federal recreational lands and waters managed by the Forest Service or the Bureau of Land Management, respectively, and to provide for the conversions of such temporary permits to long-term permits after 2 years of satisfactory operation. The issuance and conversion of such permits shall be subject to subsection (h)(3) of section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802).

SEC. 8. INDEMNIFICATION REQUIREMENTS.

(a) Indemnification.--A permit holder that is prohibited by the State from providing indemnification to the Federal Government shall be considered to be in compliance with indemnification requirements of the

Department of the Interior and the Department of Agriculture if the permit holder carries the required minimum amount of liability insurance coverage or is self-insured for the same minimum amount.

(b) Exculpatory Agreements.--The Secretary shall not implement, administer or enforce any regulation or policy prohibiting the use of exculpatory agreements between recreation service providers and their customers for services provided under a special recreation permit.

SEC. 9. STREAMLINING OF PERMITTING PROCESS.

(a) Regulations.--Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall revise part 251, subpart B, of title 36 Code of Federal Regulations, and the Secretary of the Interior shall revise subpart 2932, of title 43, Code of Federal Regulations, to streamline the processes for the issuance and renewal of outfitter and guide special use permits. Such amended regulations shall--

(1) shorten application processing times and minimize application and administration costs; and

(2) provide for the use of programmatic environmental assessments and categorical exclusions for environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the issuance or renewal of outfitter and guide and similar recreation special use permits when the Secretary determines that such compliance is required, to the maximum extent allowable under applicable law, including, but not limited to, use of a categorical exclusion as provided under section 803(h)(3) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)(3)).

(b) Online Applications.--To the maximum extent practicable, where feasible and efficient, the Secretary shall make special recreation permit applications available to be filled out and submitted online.

SEC. 10. COST RECOVERY REFORM.

(a) Regulatory Process.--Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall revise section 251.58 of title 36, Code of Federal Regulations, and the Secretary of the Interior shall revise section 2932.31(e) and (f) of title 43, Code of Federal Regulations, to reduce costs and minimize the burden of cost recovery on small businesses and adverse impacts of cost recovery on jobs in the outfitting and guiding industry and on rural economies provided, however, that nothing in the revised regulations shall further limit the Secretary's authority to issue or renew recreation special use permits.

(b) De Minimis Exemption.--

(1) Cost recovery limitation.--Any regulations issued by the Secretary of the Interior or the Secretary of Agriculture to establish fees to recover processing costs for recreation special use applications and monitoring costs for recreation special use authorizations shall include an exemption providing that at least the first 50 hours of work necessary in any one year to process and/or monitor such an application shall not be subject to cost recovery. The application of a 50-hour credit per permit shall also apply to any monitoring fees on a per annum basis during the term of each permit.

(2) Application of exemption.--An exemption under paragraph

(1) shall apply to the processing of each recreation special

use permit application and monitoring of each recreation special use authorization for which cost recovery is required, including any application or authorization requiring more than 50 hours (or such other greater number of hours specified for exemption) to process or monitor. In the event that the amount of work required to process such an application or monitor such an authorization exceeds the specified exemption, the amount of work for which cost recovery is required shall be reduced by the amount of the exemption.

(3) Multiple applications.--In situations involving multiple recreation special use applications for similar services in the same unit or area that require more than 50 hours (or such other greater number of hours specified for exemption) in the aggregate to process, the Secretary shall, regardless of whether the applications are solicited or unsolicited and whether there is competitive interest--

(A) determine the share of the aggregate amount to be allocated to each application, on an equal or prorated basis, as appropriate; and

(B) for each application, apply a separate exemption of up to 50 hours (or such other greater number of hours specified for exemption) to the share allocated to such application.

(4) Cost reduction.--The agency processing a recreation special use application shall utilize existing studies and analysis to the greatest extent practicable in order to reduce the amount of work and cost necessary to process the application.

(5) Limitation.--The Secretary of the Interior and the

Secretary of Agriculture may not recover as processing costs for recreation special use applications and monitoring costs for recreation special use authorizations any costs for consultations conducted under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) or for biological monitoring on Federal recreational lands and waters under such Act for listed, proposed, or candidate species.

(6) Waiver of cost recovery.--The Secretary of the Interior and the Secretary of Agriculture may waive the recovery of costs for processing recreation special use permit applications and renewals, on a categorical or case-by-case basis as appropriate, if the Secretary determines that--

(A) such costs would impose a significant economic burden on any small business or category of small businesses;

(B) such cost recovery could threaten the ability of an applicant or permittee to provide, in a particular area, a particular outdoor recreational activity that is consistent with the public interest and with applicable resource management plans; or

(C) prevailing economic conditions are unfavorable, such as during economic recessions, or when drought, fire, or other natural disasters have depressed economic activity in the area of operation.

SEC. 11. EXTENSION OF FOREST SERVICE RECREATION PRIORITY USE PERMITS.

Where the holder of a special use permit for outfitting and guiding that authorizes priority use has submitted a request for renewal of

such permit in accordance with applicable laws and regulations, the Secretary of Agriculture shall have the authority to grant the holder one or more extensions of the existing permit for additional items not to exceed 5 years in the aggregate, as necessary to allow the Secretary to complete the renewal process and to avoid the interruption of services under such permit. Before granting an extension under this section, the Secretary shall take all reasonable and appropriate steps to complete the renewal process before the expiration of the special use permit.

Passed the House of Representatives October 2, 2017.

Attest:

KAREN L. HAAS,