

SKI AREA RECREATIONAL OPPORTUNITY ENHANCEMENT
ACT OF 2010

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JULY 13, 2010.—Ordered to be printed
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Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 2476]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2476) to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that are subject to ski area permits, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ski Area Recreational Opportunity Enhancement Act of 2010”.

SEC. 2. PURPOSE.

The purpose of this Act is to amend the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b)—

(1) to enable snow-sports (in addition to nordic and alpine skiing) to be permitted on National Forest System land, subject to ski area permits issued by the Secretary of Agriculture under section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b); and

(2) to clarify the authority of the Secretary to permit appropriate additional seasonal or year-round recreational activities and facilities on National Forest System land, subject to ski area permits issued by the Secretary under section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

SEC. 3. SKI AREA PERMITS.

Section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) is amended—

(1) in subsection (a), by striking “nordic and alpine ski areas and facilities” and inserting “ski areas and associated facilities”;

(2) in subsection (b), in the matter preceding paragraph (1), by striking “nordic and alpine skiing operations and purposes” and inserting “skiing and other

snow-sports and such other seasonal or year-round recreational activities associated with mountain resorts as the Secretary may authorize pursuant to subsection (c)”;

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(4) by inserting after subsection (b) the following:

“(c) OTHER RECREATIONAL USES.—

“(1) AUTHORITY OF SECRETARY.—Subject to paragraphs (2) and (3), the Secretary may authorize the holder of a ski area permit issued pursuant to subsection (b) to provide on National Forest System land subject to the ski area permit such other seasonal or year-round natural resource-based recreational activities and associated infrastructure (in addition to skiing and other snow-sports) as the Secretary determines to be appropriate.

“(2) REQUIREMENTS.—Any activity or infrastructure authorized by the Secretary under paragraph (1) shall—

“(A) encourage outdoor recreation and enjoyment of nature;

“(B) to the extent practicable, harmonize with the natural environment of the National Forest System land on which the activity or infrastructure is located;

“(C) to the extent practicable, be located within the portions of the ski permit area that are developed to support skiing and other snow sports;

“(D) be consistent with the applicable forest management plan and all other applicable laws; and

“(E) be subject to such terms and conditions as the Secretary determines to be appropriate.

“(3) NO CHANGE IN PURPOSE.—

“(A) IN GENERAL.—The Secretary may not authorize an activity or infrastructure under paragraph (1) if the Secretary determines that the authorization of the activity or infrastructure would result in the primary recreational purpose of the National Forest System land that is subject to a ski area permit to be a purpose other than skiing or any other snow-sport.

“(B) REVENUE TEST.—In applying the primary recreational purpose requirement, the Secretary may only authorize an activity or infrastructure under paragraph (1) to the extent that the skiing and snow-sport season component of the rental charge under the ski area permit, as determined under section 701 of division I of the Omnibus Parks and Public Lands Management Act 1996 (16 U.S.C. 497c), remains greater than the portion of the rental charge that would be generated outside the skiing and snow-sport season.

“(4) BOUNDARY CHANGES.—When determining the boundary of a ski area permit under subsection (b)(3), the Secretary shall not consider the need for activities other than skiing and other snow-sports.

“(5) EFFECT ON EXISTING ACTIVITIES AND FACILITIES.—Nothing in this subsection affects any activity or facility approved or permitted by the Secretary on or before the date of enactment of this subsection.”; and

(5) in subsection (d) (as redesignated by paragraph (3))—

(A) by striking “Within one year after the date of enactment of this Act, the” and inserting “Not later than 1 year after the date of enactment of the Ski Area Recreational Opportunity Enhancement Act of 2010, the”; and

(B) by striking “within 3 years of the date of enactment of this Act”.

SEC. 4. EFFECT.

Nothing in this Act (including the amendments made by this Act) affects—

(1) any authority of the Secretary of Agriculture (including the authority of the Secretary with respect to recreational activities or infrastructure located on National Forest System land) under any Federal law (including regulations) other than the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b); and

(2) any duty of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

PURPOSE OF THE BILL

The purpose of H.R. 2476 is to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that are subject to ski area permits, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The National Forest Ski Permit Act of 1986 outlines the terms and conditions under which the U.S. Forest Service may permit the development of alpine and Nordic ski areas on National Forest lands. However, the Act does not provide the Secretary with the discretion to determine if winter sports beyond skiing or summer outdoor recreational activities should be allowed on Forest Service lands governed by a ski area permit.

H.R. 2476 authorizes the Secretary to expand the scope of ski area permits to allow for additional snow sports and seasonal activities that may be suitable on National Forest System lands such as snow boarding, zip lines, and climbing walls. These activities would only be authorized if they encouraged outdoor recreation and, to the extent practicable, harmonized with the natural environment, including blending the color of any new infrastructure with its surroundings.

H.R. 2476 specifically prohibits the terms of a ski permit from authorizing recreational uses on Forest Service lands wherein the primary purpose is not skiing or other snow sports.

COMMITTEE ACTION

H.R. 2476 was introduced on May 19, 2009, by Representative Diana DeGette (D-CO). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands. The bill was also referred to the Committee on Agriculture. On November 5, 2009, the Subcommittee on National Parks, Forests, and Public Lands held a hearing on the bill, during which a representative of the U.S. Forest Service testified in support of the legislation and proposed technical amendments.

On December 16, 2009, the Subcommittee was discharged from further consideration of H.R. 2476 and the full Natural Resources Committee met to consider the bill. Representative DeGette offered an amendment in the nature of a substitute to make technical changes to ensure an appropriate natural resource-based experience for visitors to the National Forests while protecting the natural environment. The amendment in the nature of a substitute was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this bill may be cited as the “Ski Area Recreational Opportunity Enhancement Act of 2009”.

Section 2. Purpose

Section 2 defines the purpose of this Act as amending the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) to allow for snow sports, in addition to nordic and alpine skiing, to be permitted on National Forest System land. The Secretary of Agriculture’s authority to permit year-round recreational activities on lands subject to ski area permits is clarified.

Section 3. Ski area permits

Section 3 amends the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) in several ways. First, it strikes “nordic and alpine ski areas and facilities” in subsection (a) and replaces it with “ski areas and associated facilities”. Next, it strikes in subsection (b) “nordic and alpine skiing operations and purposes” and inserts “skiing and other snow-sports and such other seasonal or year round recreational activities associated with mountain resorts as the Secretary may authorize pursuant to subsection (c)”. These amendments to the Act are intended to clarify the types of recreational activities allowed on lands subject to ski area permits.

Section 3 also adds a new subsection “(c) OTHER RECREATIONAL USES” to the National Forest Ski Area Permit Act of 1986, which outlines the conditions necessary for the Secretary to authorize seasonal or year-round natural resource-based recreational activities on lands subject to ski area permits. There are five subsections to the new subsection (c).

The new subsection (c)(1) gives the Secretary the authority to authorize year-round natural resource-based activities.

The new subsection (c)(2) requires that year-round activities shall encourage outdoor recreation and enjoyment of nature; shall harmonize with the natural environment; shall be located within the portions of the ski permit area that are developed to support skiing and other snow sports; shall be consistent with the forest management plan; and shall be subject to the terms and conditions the Secretary determines to be appropriate.

The new subsection (c)(3) states that the Secretary may not authorize an activity that would change the primary recreational purpose of the land subject to the ski area permit to be a purpose other than skiing and snow-sports. The Secretary may only authorize an activity if the rental charge revenue under the ski area permit remains greater than the rental charge generated outside the skiing and snow-sport season.

The new subsection (c)(4) states that the Secretary shall not consider the need for activities other than skiing and other snow sports when determining the boundaries of a ski area permit.

Lastly, the new subsection (c)(5) allows any activity approved or permitted before the date of enactment of this subsection to continue.

Section 4. Effect

Section 4 states that nothing in this Act affects any authority or duty of the Secretary of Agriculture under any federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4312 et seq.), other than the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

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 Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, section 3 of the Constitution of the United States grants 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, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System Land that are subject to ski area permits, and for other purposes.

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:

H.R. 2476—Ski Area Recreational Opportunity Enhancement Act of 2009

H.R. 2476 would clarify the authority of the Forest Service to allow ski concessioners to offer additional recreational services on public lands. Based on information provided by the agency, CBO estimates that enacting the bill would have no significant effect on the federal budget. The Forest Service already has authority to allow its concessioners to provide off-season and other recreational services at ski resorts. Clarifying that authority could facilitate the agency's collection of offsetting receipts from ski concessioners (currently about \$30 million a year), but CBO estimates that any increase, which would be deposited in the U.S. Treasury, would total less than \$500,000 a year.

The bill 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.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 2476 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as 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):

NATIONAL FOREST SKI AREA PERMIT ACT OF 1986

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SEC. 3. SKI AREA PERMITS.

(a) **LAW APPLICABLE TO PERMITS.**—The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of [nordic and alpine ski areas and facilities] *ski areas and associated facilities* on National Forest System lands shall henceforth be governed by this Act and other applicable law.

(b) **AUTHORITY.**—The Secretary of Agriculture (hereinafter referred to as “the Secretary”) is authorized to issue permits (hereinafter referred to as “ski area permits”) for the use and occupancy of suitable lands within the National Forest System for [nordic and alpine skiing operations and purposes] *skiing and other snow-sports and such other seasonal or year-round recreational activities associated with mountain resorts as the Secretary may authorize pursuant to subsection (c)*. A ski area permit—

(1) * * *

* * * * *

(c) **OTHER RECREATIONAL USES.**—

(1) **AUTHORITY OF SECRETARY.**—*Subject to paragraphs (2) and (3), the Secretary may authorize the holder of a ski area permit issued pursuant to subsection (b) to provide on National Forest System land subject to the ski area permit such other seasonal or year-round natural resource-based recreational activities and associated infrastructure (in addition to skiing and other snow-sports) as the Secretary determines to be appropriate.*

(2) **REQUIREMENTS.**—*Any activity or infrastructure authorized by the Secretary under paragraph (1) shall—*

(A) *encourage outdoor recreation and enjoyment of nature;*

(B) *to the extent practicable, harmonize with the natural environment of the National Forest System land on which the activity or infrastructure is located;*

(C) to the extent practicable, be located within the portions of the ski permit area that are developed to support skiing and other snow sports;

(D) be consistent with the applicable forest management plan and all other applicable laws; and

(E) be subject to such terms and conditions as the Secretary determines to be appropriate.

(3) *NO CHANGE IN PURPOSE.*—

(A) *IN GENERAL.*—The Secretary may not authorize an activity or infrastructure under paragraph (1) if the Secretary determines that the authorization of the activity or infrastructure would result in the primary recreational purpose of the National Forest System land that is subject to a ski area permit to be a purpose other than skiing or any other snow-sport.

(B) *REVENUE TEST.*—In applying the primary recreational purpose requirement, the Secretary may only authorize an activity or infrastructure under paragraph (1) to the extent that the skiing and snow-sport season component of the rental charge under the ski area permit, as determined under section 701 of division I of the Omnibus Parks and Public Lands Management Act 1996 (16 U.S.C. 497c), remains greater than the portion of the rental charge that would be generated outside the skiing and snow-sport season.

(4) *BOUNDARY CHANGES.*—When determining the boundary of a ski area permit under subsection (b)(3), the Secretary shall not consider the need for activities other than skiing and other snow-sports.

(5) *EFFECT ON EXISTING ACTIVITIES AND FACILITIES.*—Nothing in this subsection affects any activity or facility approved or permitted by the Secretary on or before the date of enactment of this subsection.

[(c)] (d) RULES AND REGULATIONS.—**[Within one year after the date of enactment of this Act, the]** *Not later than 1 year after the date of enactment of the Ski Area Recreational Opportunity Enhancement Act of 2010,* the Secretary shall promulgate rules and regulations to implement the provisions of this Act, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National Forest System lands into ski area permits which conform to the provisions of this Act **[within 3 years of the date of enactment of this Act].**

[(d)] (e) Nothing in this Act shall be deemed to amend, modify or otherwise affect the Secretary's duties under the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act, including his duties to involve the public in his decision-making and planning for the national forests.

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