105TH CONGRESS
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HOUSE OF REPRESENTATIVES

REPORT
105–398

KING COVE HEALTH AND SAFETY ACT OF 1997

NOVEMBER 8, 1997.—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

together with

DISSENTING VIEWS

[To accompany H.R. 2259]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2259) to provide for a transfer of land interests in order to facilitate surface transportation between the cities of Cold Bay, Alaska, and King Cove, Alaska, and for other purposes, 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. 2259 is to provide for a transfer of land interests in order to facilitate surface transportation between the cities of Cold Bay, Alaska, and King Cove, Alaska, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2259 is needed to improve the safety and reliability of transportation for the people of King Cove, a remote community on the end of the Alaska peninsula. The bill grants a 100-foot wide right-of-way for a one-lane, gravel public road from King Cove to Cold Bay, Alaska. The proposed road would link King Cove into an existing road system that extends into Izembek National Wildlife Refuge (NWR) from Cold Bay. A federal easement is necessary because seven miles of the right-of-way traverse designated wilder-

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ness in the 303,000 acre Izembek NWR, and other segments cross non-wilderness refuge land. The route also crosses private land owned by the King Cove Corporation, and state land. In exchange for the easement, the United States acquires property owned by the King Cove Corporation with high habitat value in the Izembek NWR. The bill explicitly ensures that reasonable terms and conditions for the unimproved road are to be developed by local and federal authorities to protect public land and resources in the refuge.

At present, there is no safe and reliable transportation for the residents of King Cove. The only access to the rest of Alaska for this community of 900 is through the City of Cold Bay. Cold Bay has a large, modern airport serving as the region's gateway to the outside world. However, to get to Cold Bay, people in King Cove must risk their lives on a treacherous flight from a dirt landing strip, or a three- to four-hour boat ride, through some of the most extreme weather conditions in North America. No year-round safe and reliable modes of transportation are available to the residents. The people of King Cove, the Aleutians East Borough, and local health care providers have long sought safer means of transportation to Cold Bay, and have petitioned this Committee for the easement.

One of the major reasons surface transportation is urgently needed is to secure safe and viable access to medical help since King Cove lacks a hospital. For people who need urgent medical attention, like the sick, injured, pregnant, or elderly, taking a boat or airplane is dangerous, difficult, and time-consuming. In one tragic case, an attempt to Medivac a gravely injured fisherman from King Cove resulted in a crash killing all four aboard, including the only nurse in town. If a road had been available, this would not have happened.

The proposed road has been under serious discussion for more than ten years. Previous studies all point to the need for improved transportation between the two communities, with the road generally regarded as affording the most safe and reliable mode of transportation.

The King Cove Corporation has made several requests to the Fish and Wildlife Service to grant the right-of-way through a land exchange agreement. The agency has rejected these offers, citing concern with the potential impact of the proposed road in the refuge.

During a hearing on H.R. 2259, the Administration indicated it would veto the bill because it is opposed to a right-of-way in a wilderness area. However, the Administration position reflects a disturbing double-standard. There are over 40 miles of roads in Cold Bay that extend into the 303,000 acre Izembek NWR, including wilderness areas similar to (or the same as) areas where the right-of-way authorized by H.R. 2259 is located yet now said by the Administration to be too sensitive to any traffic. Most of the existing road network dates back to World War II when the area was a military outpost. The U.S. Fish and Wildlife Service uses these roads, as do visitors from outside the region. Further, the Fish and Wildlife Service actually markets these roads in order to increase recreation in the refuge. A brochure distributed by this agency indicates how people can use the roads in both the wilderness and non-

wilderness areas of the refuge, and includes information on truck rentals.

So while the Administration permits and encourages use of roads in a wilderness area for visitors and Fish and Wildlife Service personnel, it denies 900 permanent residents a seven-mile extension even though lives will be saved.

Given the age and utilization of these roads, it is evident they have had no adverse impact while providing known benefits. By comparison, a seven-mile gravel road authorized under H.R. 2259 can be expected to have little or negligible adverse impact if carefully designed and constructed, but yield the highest known benefit possible—saving lives.

COMMITTEE ACTION

H.R. 2259 was introduced on July 24, 1997, by Congressman Don Young (R–AK). The bill was referred to the Committee on Resources. On September 10, 1997, the Committee held a hearing on H.R. 2259, where testimony was received from the United States Fish and Wildlife Service, representatives of the City of King Cove, Alaska, the King Cove Corporation, the local tribal council of King Cove, and from the Sierra Club (Alaska Chapter); the Administration testified in opposition to H.R. 2259. On October 1, 1997, the Committee met to mark up H.R. 2259. The bill was ordered favorably reported by voice vote (without amendment) to the House of Representatives.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X 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 H.R. 2259.

COST OF THE LEGISLATION

Clause 7(a) 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 H.R. 2259. However, clause 7(d) 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 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2259 does not contain

any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI 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 and Oversight on the subject of H.R. 2259.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI 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 H.R. 2259 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1997.

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. 2259, the King Cove Health and Safety Act of 1997.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2259—King Cove Health and Safety Act of 1997

CBO estimates that enacting this bill would have no significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2259 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments. The land exchange authorized in this bill would be voluntary on the part of the affected local and tribal governments.

H.R. 2259 provides that if the King Cove Corporation transfers to the United States certain lands within the boundaries of the Izembek National Wildlife Refuge in Alaska, then the Secretary of the Interior is directed to grant to the Aleutians East Borough a perpetual right-of-way 100 feet wide through the Izembek National Wildlife Refuge. The right-of-way would be used for utility-related fixtures and for a public road between the cities of Cold Bay, Alaska, and King Cove, Alaska. The bill provides that the land transferred to the United States be managed by the U.S. Fish and Wildlife Service as part of the Izembek National Wildlife Refuge. Based on information from the U.S. Fish and Wildlife Service, CBO estimates that enacting the bill could increase management costs for the refuge because it might result in additional traffic through the area, but any such additional costs would likely total less than $500,000 per year and would be subject to appropriation action.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 2259 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 2259 would make no changes in existing law.

DISSENTING VIEWS

The stated rationale for this bill is to improve public health and safety by facilitating a 30-mile public road between the Alaskan communities of King Cove and Cold Bay. Specifically, the legislation would require the Secretary of the Interior to grant a permanent right-of-way for a road and utility corridor across 10 miles of Izembek National Wildlife Refuge wetlands, including 7 miles of designated wilderness.

I oppose this legislation and urge my colleagues in the House to reject if for several important reasons.

First, this bill is fundamentally inconsistent with laws requiring that activities on refuges be compatible with the purposes for which the refuges were established, most notably the "National Wildlife Refuge System Improvement Act of 1997" which was just enacted by Congress [Public Law 105–57]. As the U.S. Fish and Wildlife Service stated in a September 30, 1997 letter opposing H.R. 2259, "[c]onstruction of a road through this pristine wilderness area would not be compatible with the purposes for which the Izembek National Wildlife Refuge was established." [Attachment A]

Second, it is not apparent that a road is the best or most cost-effective means of improving public safety for the community of King Cove. The State of Alaska is conducting a study of transportation alternatives, including enhancement of the marine ferry connections with Cold Bay, and other options such as use of hovercraft or emergency helicopters. In reporting this legislation prematurely without benefit of the State alternatives study,the Majority in essence seeks to stick the federal taxpayers with the costs of constructing the road, estimated to be $40 million (90 percent of which would come from federal highway funds) and the costs of maintaining the road, which are estimated to be $500,000 annually.

Third, construction of this road may have significant environmental impacts upon habitat which is vital for migratory waterfowl. According to the USF&WS, the world's populations of Pacific black brant and many other waterfowl species depend upon the lagoons in the narrow isthmus that would be bisected by the road. The potential impacts to critical waterfowl habitat in Alaska is therefore of direct concern to California and the other states and nations which comprise the Pacific Flyway.

Fourth, notwithstanding these serious concerns about the potential environmental impacts of the road, the bill provides for exemptions from the requirements of the national Environmental Policy Act, the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, and the National Historic Preservation Act. In the opinion of the USF&WS, "[s]uch exemptions undercut the applicability of the laws, undermine enforcement, possibly lead to serious environmental problems, and set a dangerous precedent by encouraging similar waivers." The exemptions cer-

tainly do not provide any comfort that the bill would lead to an environmentally responsible project on the affected refuge wilderness lands.

GEORGE MILLER.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 30, 1997.

Hon. DON YOUNG,
Chairman, Resources Committee,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On Wednesday, October 1, the Resources Committee is scheduled to mark-up H.R. 2259, the King Cove Health and Safety Act of 1997. The Department strongly opposes H.R. 2259 and, if presented to the President in its current form, the Secretary will recommend that the President veto the legislation.

Although the Department understands and supports the desire to ensure safe transportation between the King Cove and Cold Bay communities, H.R. 2259 would result in a perpetual right-of-way through the lands and waters of Izembek National Wildlife Refuge and Izembek Wilderness. This right-of-way would be for the purpose of constructing a public road, and constructing, operating, and maintaining utility related fixtures between two rural communities located near the tip of the southern Alaska Peninsula. The proposed corridor would bisect a narrow isthmus between Izembek and Kinzarof Lagoons while traversing 10 miles of Refuge lands, including 7 miles of designated wilderness.

The Department is sympathetic to safe and economical transportation for remote communities in the State of Alaska. At the same time, we, as an agency, must also safeguard the resources of the National Wildlife Refuge System. The Izembek Lagoon complex is vital habitat to hundreds of thousands of waterfowl, including the world's population of the regal emperor goose and the Pacific black brant. These waterfowl species descend on Izembek and Kinzarof Lagoons during spring and fall migrations.

Construction and the use of the proposed road as outlined in H.R. 2259 would disturb internationally unique waterfowl populations. Construction through this fragile tundra environment also would result in increased silt loads and alter drainage patterns into Kinzarof Lagoon. Increased siltation will affect the health of the eelgrass beds upon which these waterfowl species depend.

The proposed road also would parallel the Joshua Green River system, a key brown bear denning area, and bisect an important wintering and primary migration corridor of the southern Alaska Peninsula Caribou Herd. Vehicular traffic and increased human presence will affect adversely seasonal distributions and migration routes for this important specie.

Construction of a road through this pristine wilderness area would not be compatible with the purposes for which the Izembek National Wildlife Refuge was established. We believe, however,

that viable alternatives to a proposed road exist and warrant further evaluation.

The Alaska Department of Transportation and Public Facilities (ADOT/PF) is currently evaluating transportation alternatives. Some of these alternatives have the potential to provide safe, highly reliable, and environmentally compatible travel between the Cold Bay and King Cove communities. We urge further consideration of these alternatives.

The communities of King Cove and Cold Bay are separated by approximately 20 miles of marine waters that have provided passage between the communities for over 50 years. Enhancing the marine transportation and shipping facilities would provide improved safe travel to the entire region. Regularly scheduled ferry service between King Cove and Cold Bay would provide safe and reliable travel with fewer environmental impacts than a road. The development of routine marine service would entail improving the docking facility at Cold Bay and providing a vessel equipped with state of the art navigational aids to travel between the two communities. In addition, improvements to air travel would also benefit the King Cove and Cold Bay communities. Relocating or upgrading the current air facility could greatly improve air access.

The Department is working cooperatively with the state in the consideration and planning of alternatives to meet the transportation needs of King Cove and the surrounding communities. The Department does not see the goals of safety for Alaskan citizens and conserving vital fish and wildlife populations and habitat of the Izembek National Wildlife Refuge as mutually exclusive. We support working within the framework of existing public processes to reach a solution that provides safe and reliable transportation for the citizens of Alaska, without compromising the ecological integrity of this pristine wildland area.

In addition to the above concerns, the Administration strongly objects to language in Sections 4 (c) and (e) that exempts the land exchange from requirements of the National Environmental Policy Act, 49 U.S.C. 303(c), the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act and the National Historic Preservation Act. Such exemptions undercut the applicability of the laws, undermine enforcement, possibly lead to serious environmental problems, and set a dangerous precedent by encouraging similar waivers.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM L. LEARY,
Acting Assistant Secretary for
Fish and Wildlife and Parks.

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