**Calendar No. 631**

105TH CONGRESS, 2d Session | SENATE | REPORT 105–402

# LAW ENFORCEMENT AGREEMENT

OCTOBER 9 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

## REPORT

[To accompany S. 2248]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2248) to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE MEASURE

The purpose of S. 2248 is to amend section 10 of the Act of August 18, 1970 to provide express authority for the National Park Service to enter into mutual aid agreements with adjacent law enforcement agencies.

### BACKGROUND AND NEED

S. 2248 will provide express authority for the National Park Service to enter into mutual aid agreements with adjacent law enforcement agencies. The United States Park Police has maintained memoranda of understanding with local law enforcement agencies in Maryland, Virginia, San Francisco, and in and around New York City. The Park Rangers maintain memorandums of understanding with local law enforcement agencies surrounding individual park units. These agreements specify the circumstances under which these agencies will assist the Park Police and Park Rangers, and circumstances in which the Park Police and Park Rangers will assist other Law Enforcement Agencies. Both require, in law enforcement agreements, that each party must agree to indemnify and

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hold harmless the assisting agency from all claims by third parties for property damage or personal injury, which may arise out of the assisting agency's activities outside its respective jurisdiction.

The Comptroller General issued a decision on August 16, 1991, which stated that such indemnification clauses violate the Anti-deficiency Act (31 U.S.C. 1341(a)). The Comptroller General stated:

> Open-ended indemnification agreements should not be entered into regardless of the existence of language of limitations except with express congressional acquiescence * * * Thus we recommend that the Park Police obtain congressional approval for this type of arrangement.

Although the opinions of the Comptroller General are not binding on Executive Branch Departments, they often provide useful guidance on appropriations matters and related issues. The Comptroller General's opinion raises questions as to Department of the Interior's indemnification authority, which may impeded the Department's efforts to maintain intergovernmental cooperation in law enforcement activities in units of the National Park System.

## LEGISLATIVE HISTORY

S. 2248 was introduced June 26, 1998 by Senator Murkowski at the request of the administration, and referred to the Committee on Energy and Natural Resources. The Subcommittee on National Parks, Historic Preservation, and Recreation held a hearing on S. 2248 on September 17, 1998.

At its business meeting on September 24, 1998, the Committee on Energy and Natural Resources ordered S. 2248, favorably reported.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 24, 1998, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2248, as described herein.

## SUMMARY OF S. 2248

S. 2248 amends Public Law 91–383 adding a new section c(3), which will provide express statutory authority for the National Park Service to use indemnification clauses in their mutual aid agreements with a state or political subdivision for law enforcement purposes, when required by state law.

In addition, S. 2248 re-numbers paragraphs and makes minor technical corrections to Public Law 93–383.

## COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, October 1, 1998.*

Hon. FRANK H. MURKOWSKI,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2248, a bill to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a state or political subdivision, when required by state law, and for other purposes.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 2248—A bill to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a state or political subdivision, when required by state law*

S. 2248 would authorize the Secretary of the Interior to waive all claims against state or local governments that enter into mutual law enforcement agreements with the National Park Service (NPS). Subject to the availability of appropriated funds, the NPS also would be authorized to indemnify these governments against third-party claims that may arise from actions taken by state or local police when assisting the NPS.

According to information provided by the NPS, the agency has, since the early 1990s, executed agreements that contain mutual waivers and indemnification clauses with local law enforcement agencies in at least two states, Virginia and Maryland. Because S. 2248 would codify a practice that has already been in use by the NPS for several years, CBO expects that enacting S. 2248 would have no effect on the federal budget.

S. 2248 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill 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 Deborah Reis. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2248. The bill is not a regulatory measure in the sense of imposing Government-established standards of significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from enactment of S. 2248, as ordered reported.

## EXECUTIVE COMMUNICATIONS

S. 2248 was introduced at the request of the Administration. On March 18, 1998, the Department of the Interior transmitted a letter to the Energy and Natural Resources Committee requesting that the bill be introduced and passed. A copy of the letter, and the testimony of the National Park Service follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
*Washington, DC, March 18, 1998.*

Hon. ALBERT GORE, Jr.,
*President of the Senate,*
*Washington, DC.*

DEAR MR. PRESIDENT: Enclosed is a draft bill, "To allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a state or political subdivision, when required by state law, and for other purposes."

We recommend the bill be introduced, referred to the appropriate committee for consideration, and enacted.

This amendment would provide express authority for the National Park Service to enter into mutual aid agreements with adjacent law enforcement agencies. Pursuant to statutory authorities, the Park Police have maintained memoranda of understandings with local law enforcement agencies in Maryland and Virginia. These agreements specify the circumstances under which these agencies will assist the Park Police. Both Maryland and Virginia laws require that each party must agree to indemnify and hold harmless the assisting agency from all claims by third parties for property damage or personal injury, which may arise out of the assisting agency's activities outside its respective jurisdiction.

The Comptroller General issued a decision on August 16, 1991, which stated that such indemnification clauses violate the Anti-deficiency Act (31 U.S.C. 1341(a)). The Comptroller General stated:

"[O]pen-ended indemnification agreements should not be entered into regardless of the existence of language of limitations except with express congressional acquiescence. * * * Thus we recommend that the Park Police obtain congressional approval for this type of arrangement."

The Comptroller General further recognized the importance of memoranda of understandings between the Park Police and local authorities for effective law enforcement, and stated, "* * * we will not object to the Park Police temporarily entering into revised agreements with the required indemnification clauses while congressional approval is being sought.

Although the opinions of the Comptroller General are not binding on Executive Branch departments, they often provide useful guidance on appropriations matters and related issues. Because it raises questions as to Interior's indemnification authority, the Comptroller General's opinion may impede Interior's efforts to

maintain intergovernmental cooperation in the policing of national parks. The amendment that we have proposed would eliminate this potential impediment.

The Office of Management and Budget has advised that there is no objection to the enactment of the enclosed draft legislation from the standpoint of the Administration's program.

Sincerely,

DONALD BARRY,
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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STATEMENT OF DESTRY JARVIS, ASSISTANT DIRECTOR, EXTERNAL AFFAIRS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the Department's views on S. 2248, a bill to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes.

The Administration submitted a proposal to Congress on March 18, 1998, to address this issue. Sen. Murkowski introduced the legislation as S. 2248 on June 26, 1998. The language is identical to our proposal, and we strongly support it.

S. 2248 would amend 16 U.S.C. § 1a–6(c) to implement the recommendations contained in a 1991 decision of the Comptroller General. This decision addresses indemnification clauses in memoranda of understandings between the United States Park Police and local law enforcement agencies in Maryland and Virginia. The Comptroller General suggested that congressional approval be obtained for this type of arrangement.

This bill would provide express authority for the United States Park Police to enter into mutual aid agreements with adjacent law enforcement agencies in Maryland and Virginia. Pursuant to statutory authorities, the Park Police have maintained memoranda of understandings with these law enforcement agencies. These agreements specify the circumstances under which these agencies will assist the Park Police. Both Maryland and Virginia laws require that each party must agree to indemnify and hold harmless the assisting agency from all claims by third parties for property damage or personal injury, which may arise out of the assisting agency's activities outside its respective jurisdiction.

The Comptroller General issued a decision on August 16, 1991, which stated that such indemnification clauses violate the Anti-Deficiency Act. The Comptroller General further recognized the importance of such memoranda for effective law enforcement. As such, he did not object to "temporarily entering into revised agreements with the re-

quired indemnification clauses" while the Park Service sought congressional approval.

Five years have passed since the Comptroller General's decision. Although the opinions of the Comptroller General are not binding on Executive Branch departments, they often provide useful guidance. Because the Comptroller General's opinion raises questions as to Interior's indemnification authority, it may impede Interior's efforts to maintain intergovernmental cooperation in the policing of national parks. We strongly support S. 2248, since it would eliminate this potential problem, and we urge the committee to act favorably on this matter.

This concludes my remarks. I would be happy to answer any questions you may have.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2248, as ordered 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):

(Public Law 91–383, August 18, 1970)

(c) The Secretary of the Interior is hereby authorized to—

* * * * * * *

(2) cooperate, within the National Park System, with any State or political subdivision thereof in the enforcement of supervision of the laws or ordinances of that State or subdivision; [and]

*(3) waive, in any agreement pursuant to paragraph (1) and (2) of this subsection with any state or political subdivision thereof where state law requires such waiver and indemnification, any and all claims against all the other parties thereto and, subject to available appropriations, indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personnel injury, which may arise out of the state or political subdivision's activities outside their respective jurisdiction under such agreement; and*

[(3)] *(4)* provide limited reimbursement, to a State or its political subdivisions, in accordance with such regulations as he may prescribe, where the State has ceded concurrent legislative jurisdiction over the affected area of the system, for expenditures incurred in connection with its activities within that system which were rendered pursuant to paragraph (1) of this subsection.

[(5) the] *The* authorities provided by this subsection shall supplement the law enforcement responsibilities of the National Park Service, and shall not authorize the delegation of

law enforcement responsibilities of the agency to State and local governments.

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