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SENATE

{ REPORT
{ 107-276

NATIONAL TRAILS SYSTEM WILLING SELLER ACT

SEPTEMBER 12, 2002.—Ordered to be printed

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

R E P O R T

[To accompany S. 1069]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1069) to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for the majority of the trails in the System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 13, strike “area.” and insert “area, including the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail.”.

2. On page 2, line 14, strike “these nine trails” and insert “the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail”.

3. Beginning on page 3, line 15 strike all that follows through the end of the bill and insert the following:

“(a) LIMITED ACQUISITION AUTHORITY.—

“(1) NORTH COUNTRY NATIONAL SCENIC TRAIL.—Section 5(a)(8) of the National Trails System Act (16 U.S.C. 1244(a)(8)) is amended by adding at the end: “No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal government for the trail except with the consent of the owner thereof.”.

“(2) ICE AGE NATIONAL SCENIC TRAIL.—Section 5(a)(10) of the National Trails System Act (16 U.S.C. 1244(a)(10)) is amended by adding at the end: “No lands or interests therein outside the exterior bound-

aries of any federally administered area may be acquired by the Federal government for the trail except with the consent of the owner thereof.”

“(3) POTOMAC HERITAGE NATIONAL SCENIC TRAIL.—Section 5(a)(11) of the National Trails System Act (16 U.S.C. 1244(a)(11)) is amended by adding at the end: “No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal government for the trail except with the consent of the owner thereof.”

“(b) CONFORMING AMENDMENT.—Section 10(c)(1) of the National Trails System Act (16 U.S.C. 1249(c)(1)) is amended by striking “the North Country National Scenic Trail, The Ice Age National Scenic Trail.”

PURPOSE

The purpose of S. 1069, as ordered reported, is to amend the National Trails System Act to provide Federal land acquisition authority from willing sellers for the North Country, Ice Age and Potomac Heritage National Scenic Trails.

BACKGROUND AND NEED

Congress enacted the National Trails System Act in 1968 to provide for the increasing outdoor recreation needs and to promote the preservation of outdoor areas and historic resources of the Nation by instituting a national system of recreation, scenic and historic trails.

Most of the 22 national and scenic trails in the system provide for Federal acquisition authority to complete the trails, in many cases from willing sellers only. There is no existing Federal acquisition authority, however, for nine of the trails.

During the late 1970’s and early 1980’s, proposed new national historic and national scenic trails were seen as primarily commemorative with no need for acquisition authority. In addition, some supporters of the trails did not believe their Federal partners would need acquisition authority to complete their proposed trails.

As a result, amendments to the National Trails System Act between 1978 and 1983 banned the use of federal funds for any trail corridor outside Federal boundaries for nine trails.

In the absence of willing seller acquisition authority, federal trail managers are unable to purchase lands or easements to protect trails when development threatens important links in the landscapes of the national scenic or historic trails. In some cases, sections of the trails can be moved from roads and critical historic sites can be preserved through willing seller authority.

As ordered reported, S. 1069 would enable the Federal Government to acquire lands from willing sellers for three of the affected trails in the System: the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail.

LEGISLATIVE HISTORY

S. 1069 was introduced by Senators Levin, Kohl, Feingold, Schumer, Johnson, and Stabenow on June 20, 2001. Companion legisla-

tion, H.R. 834, was introduced by Representatives McInnis on March 1, 2001 and passed the House of Representatives by a vote of 409–3 on March 13, 2001. The Subcommittee on National Parks held a hearing on S. 1069 and H.R. 834 on March 7, 2002. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources ordered S. 1069, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 1069, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1069, the Committee adopted three amendments. As introduced, the bill would have provided Federal acquisition authority, on a willing seller basis, for all nine trails lacking such authority. Amendment #3 limits the acquisition authority to three of the nine trails: the North County National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail. Amendments #1 and #2 make conforming changes.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “National Trails System Willing Seller Act.”

Section 2 contains congressional findings.

Section 3 is a Sense of the Congress stating that the Secretary with jurisdiction over a national scenic or historic trail should cooperate with appropriate State and local officials and private persons, and should have sufficient authority to purchase lands and interests therein from willing sellers.

Section 4(a) amends section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) to authorize the Secretary of the Interior or the Secretary of Agriculture, as appropriate, to acquire lands on a willing seller basis for the North County National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail.

Subsection (b) makes a conforming amendment to section 10(c)(1) of the National Trails System Act (16 U.S.C. 1249(c)(1)).

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 15, 2002.

Hon. JEFF BINGAMAN,
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. 1069, the National Trails System Willing Seller Act.

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

Sincerely,

ROBERT A. SUNSHINE
(For Dan L. Crippen, Director).

Enclosure.

S. 1069—National Trails System Willing Seller Act

S. 1069 would amend the National Trails System Act to allow the federal government to purchase land from willing sellers for three national trails. Under current law, the National Park Service (NPS) generally is not authorized to spend federal funds to acquire land for these trails that is outside of existing federal areas such as national parks.

The costs of implementing S. 1069 are uncertain because the NPS has not completed land protection plans for the three trails cited in the bill. CBO expects that relatively little land along the nearly 5,000 miles composing the three trails would be acquired because most land can probably be protected in other ways, as it is for other trails in the system. Nevertheless, acquisition costs for at least one trail—the 3,200-mile North Country National Scenic Trail—could exceed \$100 million, assuming appropriation of the necessary amounts. For the two shorter trails, the Ice Age National Scenic Trail and the Potomac Heritage National Scenic Trail, CBO expects that costs would be much lower. In any case, all acquisition funding would be subject to the appropriation of the necessary amounts and would probably be spent over a period of several years. This estimate is based on information provided by the National Park Service.

S. 1069 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 for this estimate is Deborah Reis. The estimate was approved by Peter H. Fontaine, Deputy 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. 1069. The bill is not a regulatory measure in the sense of imposing Government-established standards or 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 the enactment of S. 1069, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1069 is set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 29, 2002.

Hon. JEFF BINGAMAN,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington DC.*

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 1069 and H.R. 834, identical bills, both of which would amend the National Trails System Act to clarify federal authority relating to land acquisition from willing sellers for the majority of the trails in the System.

The Department supports S. 1069 and H.R. 834 with four technical amendments to the National Trails System Act included at the end of this letter. These bills would amend the National Trails System Act to make the act's land protection authorities more uniform. It would be impossible to estimate funding requirements at this time, as the number of willing sellers is unknown and the cost of the land segments for each trail would vary due to geographic location. The Administration will identify the costs to acquire and maintain the land segments to each trail on a case by case basis.

The National Trails Systems Act was developed by Congress principally to offer Federal assistance and support for protecting the land base of the Appalachian National Scenic Trail. When the act was passed in 1968, both the previously existing Appalachian and Pacific Crest National Scenic Trails were established as the two initial components of the National Trails System and 14 more trails were proposed for study as potential additions to the National Trail System. The core authorities of the act addressed how to establish nationally significant trails.

Supporters of some of the subsequent trails, such as the North Country National Scenic Trail, did not feel that their Federal partners would need acquisition authority to complete their proposed trails. In addition, national historic trails being proposed at that time were seen as primarily commemorative with no need for acquisition authority. As a result, amendments were added to the National Trails System Act between 1978 and 1983 to ban the use of Federal funds for any trail corridor outside Federal boundaries for nine of the next trails established. This meant that none of these trails, including both scenic and historic trails, could complete trail authorizations.

Since 1983, most of the trails established under the National Trails System Act have had language similar to the following clause: "No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the United States for the Pony Express National Historic Trail except

with the consent of the owner thereof.” This “willing seller authority” provides a workable middle ground between the full land acquisition authority used to protect the Appalachian and Pacific Crest National Scenic Trails and the complete ban on acquiring lands for the next nine trails added to the system.

S. 1069 and H.R. 834 would create consistent land protection powers, to the degree possible for most of the component trails of the National Trails System. These bills are supported by a broad coalition of trail organizations across America.

From its beginning, the National Trails System was premised on the establishment, operation, and maintenance of national trails as a collaborative partnership effort. For land protection, specifically, state governments and nonprofit partners are encouraged to protect what they can of the national trails, with the Federal government embarking on land acquisition only as a last resort. Many states assume national trail protection to be considered a Federal effort. Further, trail nonprofit partners have been encouraged to develop land trusts to acquire critical lands, but there has been limited success.

For example, in Wisconsin, an arrangement was set up for the Ice Age National Scenic Trail under which the State of Wisconsin took the lead in acquiring trail lands, with support from the Ice Age Park and Trail Foundation and coordination by the National Park Service. However, this process has been cumbersome and slow while land values have escalated quickly near urban areas. Along historic trails, the major means of protecting the trail corridor has been through a voluntary certification process. These five-year renewable agreements between the Federal trail agency and the landowner have enabled trail sites and segments to remain in private ownership and use with some degree of public access. Such arrangements tend to be short term in nature and offer no long-term protection for significant sites.

No national trails other than the Appalachian and Pacific Crest National Scenic Trails have land protection plans or pre-acquisition services (surveys, tract maps, inventories, priority lists) because the prohibition on using funds to acquire lands also meant that funds could not be expended for these activities. This has meant that when landowners wished to donate lands for these trails to the Federal government, such transactions could not occur.

There is not a statistical inventory of trail sites and properties that have not been protected because of the lack of Federal funds for land protection. However, there are instances where lack of funding has meant that properties were sold to those uninterested in the trail, causing relocations, threatening the integrity and continuity of the trail, and in the instance of historic trails, threatening the loss of irreplaceable resources. Without the ownership mapping and other pre-acquisition information in hand, Federal agencies and nonprofit partners have been unable to accept donations of lands and easements.

If S. 1069 or H.R. 834 is passed, there will be at least five significant benefits for nearby residents and visitors to national trail corridors:

1. More uniform resource protection and protection authorities among all the national trails.

2. A more complete “tool kit” for Federal agencies and partners to help protect, as Congress intended, the significant cultural resources and natural areas associated with America’s national trails.

3. Full market value available to landowners who wish to sell lands for inclusion in national trails if neither state agencies nor nonprofit partners are able to acquire the land.

4. Increased likelihood of moving dangerous on-road sections of national trails to safer, more appropriate off-road locations.

5. Increased protection for historically significant sites and segments of national trails.

The National Park Service has found that administering trails with the current limitations on types of land protection and with limited means to negotiate directly with landowners has meant that many of these trails are little more than “paper trails.” If the National Trails System is to operate as a system, certain authorities within the act should be applied with consistency. The two national trail designations established in 1968 and all of the trails established since 1983 have had authority to spend Federal funds on lands with the consent of the owner. S. 1069 and H.R. 834 strive to apply that same principle to the trails established between 1978 and 1983.

The existing funding mechanisms for trail corridor protection of national trails are not enough to ensure that the trails will ever be completed or fully operational. Passage of willing seller authority will help establish parity among the trails and enable Federal trail administrators to use all the available authorities to complete the trails and trail corridors as they were originally designated.

We recommend four technical amendments to the National Trails System Act, which correct a few spelling and other grammatical errors. These amendments are attached to this letter.

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,

CRAIG MANSON.

Assistant Secretary for Fish and Wildlife and Parks.

TECHNICAL AMENDMENTS TO H.R. 834 AND/OR S. 1069

On page 7, after 2, add the following new section:

SEC. 6. TECHNICAL AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT.

The National Trails System Act (16 U.S.C. 1241) is amended as follows:

(1) In Section 5(c)(19) by striking “Kissimme” and inserting “Kissimmee”;

(2) In Section 5(c)(40)(D) by striking “later that” and inserting “later than”;

(3) In the first sentence of Section 5(d) by striking “establishment.”; and

(4) In Section 10(c)(1) by striking “The Ice Age” and inserting “the Ice Age”.

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. 1069, 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):

A. NATIONAL TRAILS SYSTEM ACT

(Public Law 90–543; Approved October 2, 1968)

AN ACT To establish a national trails system, and for other purposes.

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

SHORT TITLE

SECTION 1. This Act may be cited as the “National Trails System Act”.

* * * * *

NATIONAL SCENIC AND NATIONAL HISTORICAL TRAILS

SEC. 5. (a) National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

(1) * * *

* * * * *

(8)¹ The North Country National Scenic Trail, a trail of approximately thirty-two hundred miles, extending from eastern New York State to the vicinity of Lake Sakakawea in North Dakota, following the approximate route depicted on the map identified as “Proposed North Country Trail-Vicinity Map” in the Department of the Interior “North Country Trail Report”, dated June 1975. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior. *No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal government for the trail except with the consent of the owner thereof.*

(9) * * *

(10) The Ice Age National Scenic Trail, a trail of approximately one thousand miles, extending from Door County, Wisconsin, to Interstate Park in Saint Croix County, Wisconsin, generally following the route described in “On the Trail of the Ice Age—A Hiker’s and Biker’s Guide to Wisconsin’s Ice Age National Scientific Reserve and Trail”, by Henry S. Reuss, Member of Congress, dated

¹Paragraph (8) was added by section 101(b) of Public Law 96–199 (94 Stat. 67). However, Public Law 96–199 did not directly amend the National Trails System Act, but instead amended section 551(9) of the National Parks and Recreation Act of 1978 (Public Law 95–625; 92 Stat. 3512), which had earlier amended the National Trails System Act by adding new paragraphs (3) through (7). Although this amendment technique is unorthodox, the amendment was executed without comment by the Law Revision Counsel of the House of Representatives and various commercial publications.

1980. The guide and maps shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. Overall administration of the trail shall be the responsibility of the Secretary of the Interior pursuant to section 5(d) of this Act. The State of Wisconsin, in consultation with the Secretary of the Interior, may, subject to the approval of the Secretary, prepare a plan for the management of the trail which shall be deemed to meet the requirements of section 5(e) of this Act. Notwithstanding the provisions of section 7(c), snowmobile use may be permitted on segments of the Ice Age National Scenic Trail where deemed appropriate by the Secretary and the managing authority responsible for the segment. *No lands or interest therein outside the exterior boundaries of any federally administered area may be acquired by the Federal government for the trail except with the consent of the owner thereof.*

(11) The Potomac Heritage National Scenic Trail, a corridor of approximately seven hundred and four miles following the route a generally depicted on the map identified as "National Trails System, Proposed Potomac Heritage Trail" as "The Potomac Heritage Trail", a report prepared by the Department of the Interior and dated December 1974, except that no designation of the trail shall be made in the State of West Virginia. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall initially consist of only those segments of the corridor located within the exterior boundaries of federally administered areas. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Potomac Heritage Trail. The Secretary of the Interior may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expenses to the United States. The trail shall be administered by the Secretary of the Interior. *No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal government for the trail except with the consent of the owner thereof.*

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AUTHORIZATION OF APPROPRIATIONS

SEC. 10. (a)(1) * * *

* * * * *

(c)¹(1) There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this Act relating to the trails designated by paragraphs 5(a) (3), (4), (5), (6), (7), (8), (9), and (10): *Provided*, That no such funds are authorized to be appropriated prior to October 1, 1978: *And provided further*,

¹Subsection (c) was amended to read as follows by section 101(b)(4) of Public Law 96-199 (94 Stat. 68). However, Public Law 96-199 did not directly amend the National Trails System Act, but instead amended section 551(23) of the National Parks and Recreation Act of 1978 (Public Law 95-625; 92 Stat. 3517), which had earlier amended the National Trails System Act by adding this subsection. Although this amendment technique is unorthodox, the amendment was executed without comment by the Law Revision Counsel of the House of Representatives and various commercial publications.

That notwithstanding any other provisions of this Act or any other provisions of law, no funds may be expended by Federal agencies for the acquisition of lands or interests in lands outside the exterior boundaries of existing Federal areas for the Continental Divide National Scenic Trail, [the North Country National Scenic Trail, The² Ice Age National Scenic Trail,] the Oregon National Historic Trail, the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail, except that funds may be expended for the acquisition of lands or interests therein for the purpose of providing for one trail interpretation site, as described in section 7(c), along with such trail in each State crossed by the trail.

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²In paragraph (1), the word “The” before “Ice Age National Scenic Trail” should be lower case.]