

115TH CONGRESS
2D SESSION

S. 2335

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.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2018

Mr. ROUNDS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINI-**
4 **TIONS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Guides and Outfitters Act” or the “GO Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 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.

1 (c) DEFINITIONS.—In this Act:

2 (1) SECRETARY.—The term “Secretary”
 3 means—

4 (A) the Secretary of the Interior, with re-
 5 spect to a Federal land management agency
 6 (other than the Forest Service); and

7 (B) the Secretary of Agriculture, with re-
 8 spect to the Forest Service.

9 (2) SECRETARIES.—The term “Secretaries”
 10 means the Secretary of the Interior and the Sec-
 11 retary of Agriculture acting jointly.

12 **SEC. 2. SPECIAL RECREATION PERMIT AND FEE.**

13 Subsection (h) of section 803 of the Federal Lands
 14 Recreation Enhancement Act (16 U.S.C. 6802) is amend-
 15 ed to read as follows:

16 “(h) SPECIAL RECREATION PERMIT AND FEE.—

17 “(1) IN GENERAL.—The Secretary may—

18 “(A) issue a special recreation permit for
 19 Federal recreational lands and waters; and

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

3 “(2) SPECIAL RECREATION PERMITS.—The
4 Secretary may issue special recreation permits in the
5 following circumstances:

6 “(A) For specialized individual and group
7 use of Federal facilities and Federal rec-
8 reational lands and waters, such as, but not
9 limited to, use of special areas or areas where
10 use is allocated, motorized recreational vehicle
11 use, and group activities or events.

12 “(B) To recreation service providers who
13 conduct outfitting, guiding, and other recre-
14 ation services on Federal recreational lands and
15 waters managed by the Forest Service, Bureau
16 of Land Management, Bureau of Reclamation,
17 or the United States Fish and Wildlife Service.

18 “(C) To recreation service providers who
19 conduct recreation or competitive events, which
20 may involve incidental sales on Federal rec-
21 reational lands and waters managed by the For-
22 est Service, Bureau of Land Management, Bu-
23 reau of Reclamation, or the United States Fish
24 and Wildlife Service.

1 “(3) REDUCTION IN FEDERAL COSTS AND DU-
2 PLICATION OF ANALYSIS.—

3 “(A) IN GENERAL.—The issuance of a new
4 special recreation permit for activities under
5 paragraph (2) shall be categorically excluded
6 from further analysis and documentation under
7 the National Environmental Policy Act of 1969
8 (42 U.S.C. 4321 et seq.), if the proposed use is
9 the same as or similar to a previously author-
10 ized use and the Secretary determines that such
11 issuance does not have significant environ-
12 mental effects based upon application of the ex-
13 traordinary circumstances procedures estab-
14 lished by the Secretary under the National En-
15 vironmental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 “(B) DEFINITION.—For the purposes of
18 this paragraph, the term ‘similar’ means—

19 “(i) substantially similar in type, na-
20 ture, and scope; and

21 “(ii) will not result in significant new
22 impacts.

23 “(4) RELATION TO FEES FOR USE OF HIGH-
24 WAYS OR ROADS.—An entity that pays a special
25 recreation permit fee shall not be subject to a road

1 cost-sharing fee or a fee for the use of highways or
2 roads that are open to private, noncommercial use
3 within the boundaries of any Federal recreational
4 lands or waters, as authorized under section 6 of
5 Public Law 88–657 (16 U.S.C. 537).”.

6 **SEC. 3. PERMIT ACROSS MULTIPLE JURISDICTIONS.**

7 (a) IN GENERAL.—In the case of an activity requir-
8 ing permits pursuant to subsection (h) of section 803 of
9 the Federal Lands Recreation Enhancement Act (16
10 U.S.C. 6802) for use of lands managed by both the Forest
11 Service and the Bureau of Land Management—

12 (1) the Secretaries may issue a joint permit
13 based upon a single application to both agencies
14 when issuance of a joint permit based upon a single
15 application will lower processing and other adminis-
16 tration costs for the permittee, provided that the
17 permit applicant shall have the option to apply for
18 separate permits rather than a joint permit; and

19 (2) the permit application required under para-
20 graph (1) shall be—

21 (A) the application required by the lead
22 agency; and

23 (B) submitted to the lead agency.

24 (b) REQUIREMENTS OF THE LEAD AGENCY.—The
25 lead agency for a permit under subsection (a) shall—

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

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

11 (3) complete the permitting process within a
12 reasonable time after receiving the permit applica-
13 tion.

14 (c) EFFECT ON REGULATIONS.—Nothing in this sec-
15 tion shall alter, expand, or limit the applicability of any
16 Federal law (including regulations) to lands administered
17 by the relevant Federal agencies.

18 (d) DEFINITIONS.—In this section:

19 (1) ASSOCIATED AGENCY.—The term “associ-
20 ated agency” means an agency that manages the
21 land on which the trip of the special recreation per-
22 mit applicant will enter after leaving the land man-
23 aged by the lead agency.

24 (2) LEAD AGENCY.—The term “lead agency”
25 means the agency that manages the land on which

1 the trip of the special recreation permit applicant
2 will begin.

3 **SEC. 4. GUIDELINES AND PERMIT FEE CALCULATION.**

4 (a) **GUIDELINES AND EXCLUSION OF CERTAIN REV-**
5 **ENUES.**—The Secretary shall—

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

8 (2) provide appropriate deductions from gross
9 revenues used as the basis for the fees established
10 under paragraph (1) for—

11 (A) revenue from goods, services, and ac-
12 tivities provided by a recreation service provider
13 outside Federal recreational lands and waters,
14 such as costs for transportation, lodging, and
15 other services before or after a trip; and

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

20 (b) **FEE CONDITIONS.**—The fee charged by the Sec-
21 retary for a permit issued under section 803(h) of the
22 Federal Lands Recreation Enhancement Act (16 U.S.C.
23 6802(h)) shall not exceed 3 percent of the recreational
24 service provider's annual gross revenue for activities au-
25 thorized by the permit on Federal lands, plus applicable

1 revenue additions, minus applicable revenue exclusions or
2 a similar flat per person fee.

3 (c) DISCLOSURE OF FEES.—A holder of a special
4 recreation permit may inform its customers of the various
5 fees charged by the Secretary under section 803(h) of the
6 Federal Lands Recreation Enhancement Act (16 U.S.C.
7 6802(h)).

8 **SEC. 5. USE OF PERMIT FEES FOR PERMIT ADMINISTRA-**
9 **TION.**

10 (a) DEPOSITS.—Subject to subsection (b), revenues
11 from special recreation permits issued to recreation service
12 providers under subparagraphs (B) and (C) of section
13 803(h)(2) of the Federal Lands Recreation Enhancement
14 Act (16 U.S.C. 6802(h)(2)) shall be held in special ac-
15 counts established for each specific unit or area for which
16 such revenues are collected, and shall remain available for
17 expenditure, without further appropriation, until ex-
18 pended.

19 (b) USE OF PERMIT FEES.—Revenues from special
20 recreation permits issued to recreation service providers
21 under subparagraphs (B) and (C) of section 803(h)(2) of
22 the Federal Lands Recreation Enhancement Act (16
23 U.S.C. 6802(h)(2)) shall be used only—

24 (1) to partially offset the Secretary's direct cost
25 of administering the permits;

1 (2) to improve and streamline the permitting
2 process; and

3 (3) for related recreation infrastructure and
4 other purposes specifically to support recreation ac-
5 tivities at the specific site or unit where use is au-
6 thorized under the permit, after obtaining input
7 from any related permittees; provided, however, that
8 the Federal Advisory Committee Act (5 U.S.C. App.
9 1 et seq.) shall not apply to any advisory committee
10 or other group established to carry out this para-
11 graph.

12 (c) LIMITATION ON USE OF FEES.—The Secretary
13 may not use any permit fees for biological monitoring on
14 Federal recreational lands and waters under the Endan-
15 gered Species Act of 1973 (16 U.S.C. 1531 et seq.) for
16 listed or candidate species.

17 **SEC. 6. ADJUSTMENT TO PERMIT USE REVIEWS.**

18 (a) IN GENERAL.—To the extent that the Secretary
19 utilizes permit use reviews, in reviewing and adjusting al-
20 locations of use for permits for special uses of Federal rec-
21 reational lands and waters managed by the Forest Service,
22 and in renewing such permits, the Secretary of Agriculture
23 shall allocate to a permit holder a level of use that is no
24 less than the highest amount of actual annual use over
25 the reviewed period plus 25 percent, capped at the amount

1 of use allocated when the permit was issued unless addi-
2 tional capacity is available. The Secretary may assign any
3 use remaining after adjusting allocations on a temporary
4 basis to qualified permit holders.

5 (b) WAIVER.—Use reviews under subsection (a) may
6 be waived for periods in which circumstances that pre-
7 vented use of assigned capacity, such as weather, fire, nat-
8 ural disasters, wildlife displacement, business interrup-
9 tions, insufficient availability of hunting and fishing li-
10 censes, or when allocations on permits include significant
11 shoulder seasons. The authorizing office may approve non-
12 use without reducing the number of service days assigned
13 to the permit in such circumstances at the request of the
14 permit holder. Approved non-use may be temporarily as-
15 signed to other qualified permit holders when conditions
16 warrant.

17 **SEC. 7. AUTHORIZATION OF TEMPORARY PERMITS FOR**
18 **NEW USES FOR THE FOREST SERVICE AND**
19 **BLM.**

20 Not later than 180 days after the date of the enact-
21 ment of this Act, the Secretary of Agriculture and the Sec-
22 retary of the Interior shall establish and implement a pro-
23 gram to authorize temporary permits for new recreational
24 uses of Federal recreational lands and waters managed by
25 the Forest Service or the Bureau of Land Management,

1 respectively, and to provide for the conversions of such
2 temporary permits to long-term permits after 2 years of
3 satisfactory operation where appropriate. The issuance
4 and conversion of such permits shall be subject to sub-
5 section (h)(3) of section 803 of the Federal Lands Recre-
6 ation Enhancement Act (16 U.S.C. 6802).

7 **SEC. 8. INDEMNIFICATION REQUIREMENTS.**

8 (a) INDEMNIFICATION.—A permit holder that is pro-
9 hibited by the State from providing indemnification to the
10 Federal Government shall be considered to be in compli-
11 ance with indemnification requirements of the Department
12 of the Interior and the Department of Agriculture if the
13 permit holder carries the required minimum amount of li-
14 ability insurance coverage or is self-insured for the same
15 minimum amount.

16 (b) EXCULPATORY AGREEMENTS.—The Secretary
17 shall not implement, administer or enforce any regulation
18 or policy prohibiting the use of exculpatory agreements be-
19 tween recreation service providers and their customers for
20 services provided under a special recreation permit.

21 **SEC. 9. STREAMLINING OF PERMITTING PROCESS.**

22 (a) REGULATIONS.—Not later than 180 days after
23 the date of the enactment of this Act, the Secretary of
24 Agriculture shall revise part 251, subpart B, of title 36
25 Code of Federal Regulations, and the Secretary of the In-

1 terior shall revise subpart 2932, of title 43, Code of Fed-
2 eral Regulations, to streamline the processes for the
3 issuance and renewal of outfitter and guide special use
4 permits. Such amended regulations shall—

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

7 (2) provide for the use of programmatic envi-
8 ronmental assessments and categorical exclusions for
9 environmental reviews under the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
11 for the issuance or renewal of outfitter and guide
12 and similar recreation special use permits when the
13 Secretary determines that such compliance is re-
14 quired, to the maximum extent allowable under ap-
15 plicable law, including, but not limited to, use of a
16 categorical exclusion as provided under section
17 803(h)(3) of the Federal Lands Recreation En-
18 hancement Act (16 U.S.C. 6802(h)(3)).

19 (b) **ONLINE APPLICATIONS.**—To the maximum ex-
20 tent practicable, where feasible and efficient, the Secretary
21 shall make special recreation permit applications available
22 to be filled out and submitted online.

23 **SEC. 10. COST RECOVERY REFORM.**

24 (a) **REGULATORY PROCESS.**—Not later than 180
25 days after the date of enactment of this Act, the Secretary

1 of Agriculture shall revise section 251.58 of title 36, Code
2 of Federal Regulations, and the Secretary of the Interior
3 shall revise section 2932.31(e) and (f) of title 43, Code
4 of Federal Regulations, to reduce costs and minimize the
5 burden of cost recovery on small businesses and adverse
6 impacts of cost recovery on jobs in the outfitting and guid-
7 ing industry and on rural economies provided, however,
8 that nothing in the revised regulations shall further limit
9 the Secretary's authority to issue or renew recreation spe-
10 cial use permits.

11 (b) DE MINIMIS EXEMPTION.—

12 (1) COST RECOVERY LIMITATION.—Any regula-
13 tions issued by the Secretary of the Interior or the
14 Secretary of Agriculture to establish fees to recover
15 processing costs for recreation special use applica-
16 tions and monitoring costs for recreation special use
17 authorizations shall include an exemption providing
18 that at least the first 50 hours of work necessary in
19 any one year to process or monitor such an applica-
20 tion shall not be subject to cost recovery. The appli-
21 cation of a 50-hour credit per permit shall also apply
22 to any monitoring fees on a per annum basis during
23 the term of each permit.

24 (2) APPLICATION OF EXEMPTION.—An exemp-
25 tion under paragraph (1) shall apply to the proc-

1 essing of each recreation special use permit applica-
2 tion and monitoring of each recreation special use
3 authorization for which cost recovery is required, in-
4 cluding any application or authorization requiring
5 more than 50 hours (or such other greater number
6 of hours specified for exemption) to process or mon-
7 itor. In the event that the amount of work required
8 to process such an application or monitor such an
9 authorization exceeds the specified exemption, the
10 amount of work for which cost recovery is required
11 shall be reduced by the amount of the exemption.

12 (3) MULTIPLE APPLICATIONS.—In situations
13 involving multiple recreation special use applications
14 for similar services in the same unit or area that re-
15 quire more than 50 hours (or such other greater
16 number of hours specified for exemption) in the ag-
17 gregate to process, the Secretary shall, regardless of
18 whether the applications are solicited or unsolicited
19 and whether there is competitive interest—

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

23 (B) for each application, apply a separate
24 exemption of up to 50 hours (or such other

1 greater number of hours specified for exemp-
2 tion) to the share allocated to such application.

3 (4) COST REDUCTION.—The agency processing
4 a recreation special use application shall utilize ex-
5 isting studies and analysis to the greatest extent
6 practicable in order to reduce the amount of work
7 and cost necessary to process the application.

8 (5) LIMITATION.—The Secretary of the Interior
9 and the Secretary of Agriculture may not recover as
10 processing costs for recreation special use applica-
11 tions and monitoring costs for recreation special use
12 authorizations any costs for consultations conducted
13 under section 7 of the Endangered Species Act of
14 1973 (16 U.S.C. 1536) or for biological monitoring
15 on Federal recreational lands and waters under such
16 Act for listed, proposed, or candidate species.

17 (6) WAIVER OF COST RECOVERY.—The Sec-
18 retary of the Interior and the Secretary of Agri-
19 culture may waive the recovery of costs for proc-
20 essing recreation special use permit applications and
21 renewals, on a categorical or case-by-case basis as
22 appropriate, if the Secretary determines that—

23 (A) such costs would impose a significant
24 economic burden on any small business or cat-
25 egory of small businesses;

1 (B) such cost recovery could threaten the
2 ability of an applicant or permittee to provide,
3 in a particular area, a particular outdoor rec-
4 reational activity that is consistent with the
5 public interest and with applicable resource
6 management plans; or

7 (C) prevailing economic conditions are un-
8 favorable, such as during economic recessions,
9 or when drought, fire, or other natural disasters
10 have depressed economic activity in the area of
11 operation.

12 **SEC. 11. EXTENSION OF FOREST SERVICE RECREATION**
13 **PRIORITY USE PERMITS.**

14 Where the holder of a special use permit for outfitting
15 and guiding that authorizes priority use has submitted a
16 request for renewal of such permit in accordance with ap-
17 plicable laws and regulations, the Secretary of Agriculture
18 shall have the authority to grant the holder one or more
19 extensions of the existing permit for additional items not
20 to exceed 5 years in the aggregate, as necessary to allow
21 the Secretary to complete the renewal process and to avoid
22 the interruption of services under such permit. Before
23 granting an extension under this section, the Secretary
24 shall take all reasonable and appropriate steps to complete

- 1 the renewal process before the expiration of the special
- 2 use permit.

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