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HOUSE OF REPRESENTATIVES
REPT. 113–335
Part 1

AMENDING PUBLIC LAW 106–206 TO DIRECT THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF AGRICULTURE TO REQUIRE ANNUAL PERMITS AND ASSESS ANNUAL FEES FOR COMMERCIAL FILMING ACTIVITIES ON FEDERAL LAND FOR FILM CREWS OF 5 PERSONS OR FEWER

JANUARY 29, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2798]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2798) to amend Public Law 106–206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer, 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. 2798 is to amend Public Law 106–206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer.

BACKGROUND AND NEED FOR LEGISLATION

Public Law 106–206 was enacted on May 26, 2000, and required the Secretary of the Interior and the Secretary of Agriculture to establish a permit and fee system for commercial filming activities on federal lands under their jurisdiction. The law required that the fees provide a fair return to the U.S. and be based on: the number

of days of filming; the size of the film crew; and the amount and type of equipment present. It also allowed the Secretaries to include other factors deemed necessary when determining the fee.

The law also allowed the Secretaries to recover costs as a result of the filming in addition to the fee, including but not limited to administrative and personnel costs. The Secretaries were not authorized to charge a fee for still photography if it was conducted in public areas. However, a fee could be charged if the still photography occurred in nonpublic areas or if additional administrative costs were likely, or if props or models not part of the site's natural or cultural resources or administrative facilities are used.

The Secretaries were required to establish a process to ensure the timely processing of a permit application. They were also prohibited from issuing a permit if the filming or still photography was likely to damage resources, create unreasonable disruption of public use or enjoyment of the site, or the activity posed a health or safety risk to the public.

On December 14, 2000, the National Park Service issued a notice in the Federal Register requesting comments on a proposed land-use fee system for commercial filming and still photography for all of its units. Comments on the proposal included: 1) a fee for each person was confusing; 2) the proposed fees were too high; 3) charge less for still photography than commercial filming; and 4) charge only one fee per day, regardless of how many sites were used, rather than a fee per day per location. After the comment period ended, the Department of the Interior decided to create a fee schedule for still photography and commercial filming for all of its agencies. The Department created a task force to develop the fee structure.

The Administration did not issue a proposed rule to implement Public Law 106–206 until August 20, 2007. The Committee on Resources held an oversight hearing on "New Fees for Filming and Photography on Public Lands" on December 12, 2007. Witnesses at the hearing testified that portions of the proposed rule appeared to be contrary to the law it was implementing. In particular, the proposed rule would apply fees to still photography and potentially impede news activities through fees and permit requirements. Other testimony stated the current fee structure is inequitable and inherently unfair because it doesn't distinguish between the size of a film crew—an individual's fee is the same as the fee applied to a film crew of 30. The Department of the Interior testified it was working to reconcile the requirements of the law and the complexity of the diverse missions of its various agencies and bureaus.

The Administration issued a final rule proposing the new fee structure on August 22, 2013. Fees for 1 to 3 people with a tripod and camera only for commercial filming and still photography would be $10 per day or $250 per month. In addition, the fee for 1 to 5 people with more than a camera and tripod for commercial filming would be $75 per day and for still photography $50 per day. Concerns have been raised regarding the rule's proposed fee structure and are similar to those heard at the December 2007 hearing: namely, media activities could be impeded; and, while the rule distinguishes fees between 1 and 30 people, the fees could be prohibitive and could push potential film production activities outside the United States.

H.R. 2798 would amend Public Law 106–206 to establish a special rule for film crews of 5 persons or less. The bill would require the Secretaries to assess an annual permit fee of $200 for commercial filming activities or similar projects on federal lands and waterways administered by the Secretaries. The permit would be valid for commercial filming activities or similar projects that occur in public use areas during open hours on all federal lands and waterways for a 12–month period beginning on the date the permit is issued. The bill would prohibit the Secretaries from charging additional fees for commercial filming activities or similar projects in public use areas during open hours for the effective period of the permit. The bill also would not allow the Secretaries to prohibit the use of cameras or related equipment used for commercial filming or other projects, subject to these provisions, on federal lands or waterways.

COMMITTEE ACTION

H.R. 2798 was introduced on July 23, 2013, by Congressman Robert E. Latta (R–OH). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Fisheries, Wildlife, Oceans and Insular Affairs and Public Lands and Environmental Regulation. In addition, the bill was referred to the Committee on Agriculture. On August 2, 2013, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs held a hearing on the bill. On November 14, 2013, the Natural Resources Committee met to consider the bill. The Subcommittees on Fisheries, Wildlife, Oceans and Insular Affairs and Public Lands and Environmental Regulation were discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 19 to 15, as follows:

Committee on Natural Resources
U.S. House of Representatives
113th Congress

Date: November 14, 2013 Recorded Vote #: 3

Meeting on / Amendment on: H.R. 2798 - To adopt and favorably report the bill to the House by a vote of 19 yeas and 15 nays.

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman	X			**Mr. Duncan of SC**	X		
Mr. Defazio, OR, Ranking		X		*Mr. Cardenas, CA*		X	
Mr. Young, AK				**Mr. Tipton, CO**	X		
Mr. Faleomavaega, AS				*Mr. Horsford, NV*		X	
Mr. Gohmert, TX				**Mr. Gosar, AZ**	X		
Mr. Pallone, NJ				*Mr. Huffman, CA*			
Mr. Bishop, UT	X			**Mr. Labrador, ID**	X		
Mrs. Napolitano, CA		X		*Mr. Ruiz, CA*		X	
Mr. Lamborn, CO	X			**Mr. Southerland, FL**	X		
Mr. Holt, NJ		X		*Ms. Shea-Porter, NH*		X	
Mr. Wittman, VA				**Mr. Flores, TX**	X		
Mr. Grijalva, AZ		X		*Mr. Lowenthal, CA*		X	
Mr. Broun, GA	X			**Mr. Runyan, NJ**			
Ms. Bordallo, GU		X		*Mr. Garcia, FL*			
Mr. Fleming, LA	X			**Mr. Amodei, NV**			
Mr. Costa, CA				*Mr. Cartwright, PA*		X	
Mr. McClintock, CA	X			**Mr. Mullin, OK**	X		
Mr. Sablan, CNMI		X		**Mr. Stewart, UT**	X		
Mr. Thompson, PA	X			**Mr. Daines, MT**	X		
Ms. Tsongas, MA		X		**Mr. Cramer, ND**			
Ms. Lummis, WY	X			**Mr. LaMalfa, CA**	X		
Mr. Pierluisi, PR		X		**Mr. Smith, MO**	X		
Mr. Benishek, MI				*Vacancy*			
Ms. Hanabusa, HI		X					
				TOTALS	19	15	

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.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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. 2798—A bill to amend Public Law 106–206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on federal land for film crews of five persons or fewer

H.R. 2798 would require the Secretaries of the Interior and Agriculture to charge an annual permit fee for small crews that conduct commercial filming activities on certain federal lands. Based on information provided by the affected agencies, CBO estimates that implementing the bill would have no significant impact on discretionary spending. CBO estimates that enacting H.R. 2798 would affect offsetting receipts, which are treated as reductions in direct spending, and associated direct spending; therefore, pay-as-you-go procedures apply. However, we estimate that the net effect of those changes would be minimal. Enacting the bill would not affect revenues.

The bill would require the Secretaries to charge a permit fee of $200 a year for crews of five persons or fewer that conduct commercial filming activities on certain federal lands. Under current law, some of the affected agencies collect fees for those activities and additional amounts to recover any costs the agencies incur in administering such activities. Those agencies are authorized to spend those amounts without further appropriation. CBO expects that, under the bill, certain film crews would pay less than the amounts required under current law and others would pay more. However, because the affected agencies would have the authority to spend any proceeds from fees established under the bill, we estimate that enacting H.R. 2798 would have a negligible net impact on direct spending.

H.R. 2798 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

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

2. Section 308(a) of 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, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the affected agencies, CBO estimates that implementing the bill would have no significant impact on discretionary spending. CBO estimates that enacting H.R. 2798 would affect offsetting receipts, which are treated as reductions in direct spending, and associated direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect of those changes would be minimal.

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 Public Law 106–206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

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):

PUBLIC LAW 106–206

AN ACT To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes.

SECTION 1. COMMERCIAL FILMING.

(a) COMMERCIAL FILMING FEE.—[The Secretary of the Interior] *(1) IN GENERAL.—Except as provided by paragraph (3), the Secretary of the Interior* and the Secretary of Agriculture (hereafter individually referred to as the "Secretary" with respect to lands under their respective jurisdiction) shall require a permit and shall establish a reasonable fee for commercial filming activities or similar projects on Federal lands administered by the Secretary. Such fee shall provide a fair return to the United States and shall be based upon the following criteria:

[(1)] *(A)* The number of days the filming activity or similar project takes place on Federal land under the Secretary's jurisdiction.

[(2)] *(B)* The size of the film crew present on Federal land under the Secretary's jurisdiction.

[(3)] *(C)* The amount and type of equipment present.

(2) OTHER CONSIDERATIONS.—The Secretary may include other factors in determining an appropriate fee as the Secretary deems necessary.

(3) SPECIAL RULES FOR FILM CREWS OF 5 PERSONS OR FEWER.—

(A) For any film crew of 5 persons or fewer, the Secretary shall require a permit and assess an annual fee of $200 for commercial filming activities or similar projects on Federal lands and waterways administered by the Secretary. The permit shall be valid for commercial filming activities or similar projects that occur in areas designated for public use during public hours on all Federal lands waterways administered by the Secretary for a 12-month period beginning on the date of issuance of the permit.

(B) For persons holding a permit described in this paragraph, the Secretary shall not assess, during the effective period of the permit, any additional fee for commercial filming activities and similar projects that occur in areas designated for public use during public hours on Federal lands and waterways administered by the Secretary.

(C) In this paragraph, the term "film crew" includes all persons present on Federal land under the Secretary's jurisdiction who are associated with the production of a certain film.

(D) The Secretary shall not prohibit, as a motorized vehicle or under any other purposes, use of cameras or related equipment used for the purpose of commercial filming activities or similar projects in accordance with this paragraph on Federal lands and waterways administered by the Secretary.

(b) RECOVERY OF COSTS.—The Secretary shall also [collect any costs] *recover any costs* incurred as a result of filming activities or [similar project] *similar projects*, including but not limited to ad-

ministrative and personnel costs. All costs recovered shall be in addition to the fee assessed in subsection (a).

* * * * * * *

DISSENTING VIEWS

H.R. 2798 seeks to establish a blanket $200 fee for commercial film crews of five persons or less to shoot on public lands under the management of the Secretaries of Interior and Agriculture. We oppose this legislation, because it creates a loophole that would allow motorized vehicles in wilderness areas, creates uncertainty over which agency would issue the permit and to which lands it would allow access, and preempts the fee schedule for public lands filming that the agencies recently finalized.

Pursuant to P.L. 106–206, the U.S. Forest Service, National Park Service, Bureau of Land Management, and U.S. Fish and Wildlife Service have recently proposed a fee schedule for filming on public lands. The public comment period on the final rule closed September 23, 2013, and the fee schedule is expected to go into effect by the end of the year. The proposed fee schedule is not burdensome, with rates of $10 per day for film crews of one to three people. The rule will allow agencies to "provide a fair return to the United States" as required in the law, and will allow them to adjust the fees annually for inflation. By contrast, the blanket fee envisioned by H.R. 2798 is not pegged to inflation, and therefore would provide a lower return over time.

Further, H.R. 2798 does not specify whether one blanket permit would cover all public lands, or just those managed by the issuing agency. However, it is clear the bill would provide unlimited use of publicly-accessible lands covered under the permit by film crews.

Finally, section 2(a) of the bill would insert a new subsection (3)(D) into the current statute creating a loophole which would allow the use of motorized vehicles on any federal land or waterway, including in designated wilderness, as long as those vehicles are "equipment used for the purposes of commercial filming activities or similar projects." Such a sweeping change to the management of all federal lands and waters is unacceptable.

As a result of these concerns, the U.S. Fish and Wildlife Service testified in opposition to H.R. 2798 at a subcommittee hearing on August 2, 2013, and we oppose the bill as well.

PETER DEFAZIO,
Ranking Member, Committee on Natural Resources.
GREGORIO KILILI CAMACHO SABLAN.

EXCHANGE OF LETTERS

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RICHARD HUDSON, NORTH CAROLINA
RODNEY DAVIS, ILLINOIS
CHRIS COLLINS, NEW YORK
TED S. YOHO, FLORIDA

U.S. House of Representatives
Committee on Agriculture
Room 1301, Longworth House Office Building
Washington, DC 20515–6001

(202) 225-2171
(202) 225-0917 FAX

COLLIN C. PETERSON, MINNESOTA
RANKING MINORITY MEMBER
MIKE McINTYRE, NORTH CAROLINA
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NICOLE SCOTT,
STAFF DIRECTOR
KEVIN J. KRAMP,
CHIEF COUNSEL
ROBERT L. LAREW,
MINORITY STAFF DIRECTOR

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
1324 Longworth HOB
Washington, D. C. 20515

Dear Chairman Hastings:

Thank you for the opportunity to review the relevant provisions of the text of H.R. 2798, to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer.

As you are aware, the bill was primarily referred to the Committee on Natural Resources, while the Agriculture Committee received an additional referral.

I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I agree to discharge H.R. 2798 from further consideration by the Committee on Agriculture. I do so with the understanding that by discharging the bill, the Committee on Agriculture does not waive any future jurisdictional claim on this or similar matters. Further, the Committee on Agriculture reserves the right to seek the appointment of conferees, if it should become necessary.

I ask that you insert a copy of our exchange of letters into the Congressional Record during consideration of this measure on the House floor.

Thank you for your courtesy in this matter and I look forward to continued cooperation between our respective committees.

Sincerely,

Frank D. Lucas

Frank D. Lucas
Chairman

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TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

PETER A. DeFAZIO, OR
RANKING DEMOCRATIC MEMBER
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PENNY DODGE
DEMOCRATIC STAFF DIRECTOR

January 23, 2014

The Honorable Frank D. Lucas
Chairman
Committee on Agriculture
1301 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding H.R. 2798, to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer. As you know, the Committee on Natural Resources ordered reported the bill, without amendment, on November 14, 2013. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on Agriculture will forego action on the bill.

The Committee on Natural Resources concurs with the mutual understanding that by foregoing consideration of H.R. 2798 at this time, the Committee on Agriculture does not waive any jurisdiction over the subject matter contained in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Agriculture represented on the conference committee. Finally, I would be pleased to include your letter and this response in the bill report filed by the Committee on Natural Resources, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your cooperation.

Sincerely,

Doc Hastings
Chairman

cc: The Honorable John A. Boehner, Speaker
The Honorable Peter DeFazio
The Honorable Collin C. Peterson
Mr. Thomas J. Wickham, Parliamentarian