

FOREST ROADS-COMMUNITY RIGHT-TO-KNOW ACT

MAY 3, 2000.—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. 1523]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1523) to establish mandatory procedures to be followed by the Forest Service and the Bureau of Land Management in advance of the permanent closure of any forest road so as to ensure local public participation in the decisionmaking process, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Forest Roads-Community Right-To-Know Act”.

SECTION 2. FOREST SERVICE AND BUREAU OF LAND MANAGEMENT PROCEDURES FOR PERMANENT CLOSURE OF FOREST ROADS.

(a) DEFINITIONS.—In this section:

(1) PERMANENT CLOSURE.—The term “permanent closure”, with respect to a forest road, means the closure of the road to vehicular traffic for a continuous period of more than one year. The term includes a road closure of one year or less, or of an unspecified duration, unless the Secretary concerned certifies at the time of the closure that the closure will not extend beyond one year.

(2) FOREST ROAD.—The term “forest road” means any road on Federal lands.

(3) FEDERAL LANDS.—The term “Federal lands” means—

- (A) lands administered by the Bureau of Land Management; and
- (B) lands within units of the National Forest System.

(4) STATE AND LOCAL GOVERNMENT OFFICIALS.—The term “State and local government officials” means elected officials of States and counties within which Federal lands are located.

(5) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) with respect to the Federal lands described in paragraph (3)(A), the Secretary of the Interior; and

(B) with respect to the Federal lands described in paragraph (3)(B), the Secretary of Agriculture.

(b) ADVANCE NOTICE OF PERMANENT ROAD CLOSURES TO STATE AND LOCAL GOVERNMENT OFFICIALS.—

(1) PURPOSE.—The purpose of this subsection is to ensure that the Secretary concerned involves State and local government officials in the process by which the Secretary concerned considers and plans for the potential permanent closure of forest roads on Federal lands.

(2) ANNUAL MEETINGS REQUIRED.—At least once each fiscal year, the Secretary concerned shall meet with appropriate State and local government officials to describe all agency plans or proposals that, within the next two fiscal years, will or may result in the permanent closure of forest roads on Federal lands. Such agency plans or proposals include project proposals, land management plan amendments or revisions, resource management plan amendments or revisions, and regional or subregional plans or proposals.

(3) ELEMENTS OF NOTICE.—At a meeting under paragraph (2), the Secretary concerned shall provide information, using maps and other means, that at a minimum—

(A) shows forest roads selected or proposed for permanent closure;

(B) shows traffic patterns and volumes on the roads over the previous five years; and

(C) explains how users of the roads will be adversely affected with longer travel times or adverse travel conditions by the permanent closure of the roads.

(4) SPECIAL RULE FOR FIRST MEETING.—At the first meeting conducted under paragraph (2) for a State or local government, the Secretary concerned shall also provide information on all forest roads that have been subject to permanent closure in that State during the previous five years. The information shall include a map showing the location of the forest roads and a description of the methods and costs of the permanent closure of the forest roads.

(c) PUBLIC NOTICE AND COMMENT REQUIREMENTS.—

(1) LOCAL NOTICE.—Before proceeding with the permanent closure of a forest road, the Secretary concerned shall publish an announcement describing the proposed closure in the local newspaper of record for the area likely to be affected by the permanent closure of the road. The announcement shall include a description and map of the forest road selected or proposed for permanent closure and a description of any comments generated regarding the closure in meetings with State and local government officials under subsection (b).

(2) COMMENT PERIOD.—The permanent closure of a forest road may not take effect until after the end of the 90-day period beginning on the date that the announcement under paragraph (1) was published regarding that road so as to permit the public to submit comments regarding the decision to select or propose the forest road for permanent closure.

(d) PROHIBITION ON PERMANENT ROAD CLOSURES.—The permanent closure of a forest road is prohibited unless—

(1) advance notice of the permanent closure of the road is provided to the appropriate State and local government officials in the manner provided in subsection (b); and

(2) the Secretary complies with the public notice and comment requirements under subsection (c).

(e) APPLICATION OF REQUIREMENTS.—The requirements of this section shall take effect on the date of the enactment of this Act, except that the prohibition contained in subsection (d)(1) shall not apply to prohibit the permanent closure of any forest road implemented during the fiscal year in which this section is enacted.

(f) EFFECT ON VALID AND EXISTING RIGHTS.—Nothing in this section shall invalidate rights-of-way designated under section 2477 of the Revised Statutes of 1878 (43 U.S.C. 932) or other valid and existing rights, including rights of ingress and egress.

(g) COMPLIANCE WITH STATE LAWS.—In carrying out this section with respect to a forest road, the Secretary concerned shall comply with the applicable laws of the State in which the forest road is located.

SEC. 3. EMERGENCIES.

(a) **EMERGENCY ROAD CLOSURES.**—Subject to subsection (b), the requirements of section 2 shall not apply to emergency road closures where life or property would be endangered or threatened in the absence of the road closure.

(b) **LENGTH OF CLOSURE.**—If an emergency road closure will extend beyond one year, the Secretary concerned shall comply with the requirements of section 2 within three months after the date on which the emergency road closure commenced.

PURPOSE OF THE BILL

The purpose of H.R. 1523 is to establish mandatory procedures to be followed by the Forest Service and the Bureau of Land Management in advance of the permanent closure of any forest road so as to ensure local public participation in the decisionmaking process.

BACKGROUND AND NEED FOR LEGISLATION

In the last few years, three times more roads have been obliterated in national forests than have been constructed. These actions profoundly influence the ability of the public to access national forests and of the government to manage them. Sometimes these decisions are made through modifications of a national forest's travel plan, but often, decisions to close and obliterate roads are done administratively without public input. This has a tremendous effect on the lives of rural people who depend on existing forest roads for work and leisure.

The Administration's fiscal year 2000 budget request provides for decommissioning of 3,300 miles of forest roads. The Chief of the U.S. Forest Service's decision indicates that the agency intends to proceed with road closures at a greatly increased rate, without the opportunities for public involvement that are required by law and that the Chief himself has promised to provide.

H.R. 1523 provides that permanent road closures, including road decommissioning, will no longer be done by the Forest Service or Bureau of Land Management without adequate public notice and local government and public involvement. It specifically allows short term closures that the agencies may deem necessary. Finally, the bill does not affect valid and existing rights.

COMMITTEE ACTION

H.R. 1523 was introduced on April 22, 1999, by Mrs. Chenoweth-Hage. The bill was referred primarily to the Committee on Resources and in addition to the Committee on Agriculture. Within the Committee on Resources it was referred to the Subcommittee on Forests and Forest Health and to the Subcommittee on National Parks and Public Lands. On April 22, 1999, the Subcommittee on Forests and Forest Health held a hearing on public participation in road closures and on a draft version of H.R. 1523. On April 27, 1999, the Subcommittee on Forests and Forest Health met to mark up the bill. No amendments were offered and the bill was ordered reported to the Full Committee by a roll call vote of 8 to 5, as follows:

**Subcommittee on Forests and Forest Health
106th Congress
RECORDED VOTES**

Date: April 27, 1999 Time: 2:35p.m.

Bill Number/Subject Matter: H.R. 1523

Amendment Number _____ Offered By: _____

Roll Call: Passed: X Defeated: _____

Voice Vote: Passed: _____ Defeated: _____

<i>TOTAL VOTES</i>	
<i>YEAS</i>	<i>NAYS</i>
8	5

<i>REPUBLICANS</i>	<i>YEA</i>	<i>NAY</i>	<i>PRESENT</i>	<i>DEMOCRATS</i>	<i>YEA</i>	<i>NAY</i>	<i>PRESENT</i>
Chenoweth	X			Smith		X	
Duncan	X			Kildee		X	
Doolittle	X			Pickett			
Gilchrest				Kind			
Peterson	X			Napolitano		X	
Hill	X			Tom Udall		X	
Schaffer	X			Mark Udall		X	
Sherwood	X			Crowley			
Hayes	X						
<i>Total Republicans</i>	8			<i>Total Democrats</i>		5	

On May 5, 1999, the Full Committee on Resources met to consider the bill. The Subcommittee on National Parks and Public Lands was discharged from further consideration of the bill by unanimous consent. Chairman Young offered an amendment to allow immediate emergency closures of roads in cases where safety or property was threatened, with public disclosure to follow in cases where the closure was expected to last more than 1 year. The amendment was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 22 to 16, as follows:

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 5-5-99Roll No. 1Bill No. H.R. 1523 Short Title Forest Roads - Community Right-To-Know Act.Amendment or matter voted on: Final Passage

Member	Yea	Nay	Pres	Member	Yea	Nay	Pres
Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Tauzin				Mr. Rahall			
Mr. Hansen	X			Mr. Vento		X	
Mr. Saxton	X			Mr. Kildee		X	
Mr. Gallegly				Mr. DeFazio			
Mr. Duncan	X			Mr. Faleomavaega		X	
Mr. Hefley				Mr. Abercrombie			
Mr. Doolittle	X			Mr. Ortiz		X	
Mr. Gilchrest	X			Mr. Pickett	X		
Mr. Calvert	X			Mr. Pallone			
Mr. Pombo	X			Mr. Dooley		X	
Mrs. Cubin	X			Mr. Romero-Barcelo		X	
Mrs. Chenoweth	X			Mr. Underwood		X	
Mr. Radanovich	X			Mr. Kennedy			
Mr. Jones	X			Mr. Smith		X	
Mr. Thornberry	X			Mr. John			
Mr. Cannon				Mrs. Christensen		X	
Mr. Brady				Mr. Kind		X	
Mr. Peterson	X			Mr. Inslee		X	
Mr. Hill	X			Mrs. Napolitano		X	
Mr. Schaffer				Mr. Tom Udall		X	
Mr. Gibbons	X			Mr. Mark Udall		X	
Mr. Souder	X			Mr. Crowley		X	
Mr. Walden	X						
Mr. Sherwood	X						
Mr. Hayes	X						
Mr. Simpson							
Mr. Tancredo	X			TOTAL	22	16	

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 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 this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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)(3)(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.

2. 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, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of Rule XIII 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 on this bill.

4. Congressional Budget Office Cost Estimate. 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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 26, 1999.

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. 1523, the Forest Roads-Community Right To-Know Act.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1523—Forest Roads-Community Right-To-Know Act

H.R. 1523 would require the Secretaries of Agriculture and the Interior to notify the public in advance about proposals to permanently close forest roads on federal land. The bill would apply to any road on federal land within the National Forest System or administered by the Bureau of Land Management (BLM). The bill would prohibit closing a road for more than a year (except for emergency road closures) unless the agencies provide advance notice according to the process specified in the bill. Such notice would have to include information on traffic patterns and volumes for the previous five years on the roads proposed for closure. According to the Forest Service (FS) and BLM, information on road usage is collected only for major roads on federal land. Therefore, enacting H.R. 1523 would effectively prohibit most permanent road closures for five years while the agencies collect such data.

The delay of most permanent road closures would save decommissioning costs during the period when roads would remain in use or be closed only temporarily. At the same time, the FS and BLM would incur additional costs for maintaining roads that otherwise would be closed under current law and for collecting data on use of the roads that are proposed for permanent closure. Based on information from the two agencies, CBO estimates that implementing H.R. 1523 would have no significant net impact on outlays over the next five years because funds intended for road decommissioning could be used to cover maintenance and data collection. That is, we expect that the likely savings and costs of the bill would be approximately equal over the next five years. However, over the long term, collecting data on road usage entail additional costs relative to current law.

Because H.R. 1523 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 1523 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 contact for this estimate is Victoria Heid Hall. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

H.R. 1523 mandates additional procedures the Forest Service and the Bureau of Land Management (BLM) must follow when closing roads on national forests and public lands for more than one year. This bill defies logic by defining “permanent closure” to mean more than one year. Even road closures planned for less than one year qualify as “permanent,” unless the Secretary certifies the closures will not extend beyond 12 months. The newly mandated procedural hoops include giving advance notice to public officials of “all” agency plans over the next two fiscal years that “will or may” result in the “permanent” closure of roads on public lands. Even road closures pursuant to an emergency must go through these hurdles after a three-month stay.

A hearing was held on April 22, 1999 *before* the bill was even introduced; the Department of the Interior—an affected agency—never testified on the bill for that reason. Ironically, on a bill that purports to increase public involvement, there was little notice, involvement, or input. While public involvement and consultation in government decision-making is both desirable and critical, H.R. 1523 mandates procedures for road closings that do not apply to road-building or timber sales, thus selectively choosing when public involvement is important. Opposed by the Forest Service and the Bureau of Land Management, this legislation is onerous, costly, and unnecessary for several reasons.

First, the bill inappropriately addresses a local issue through national legislation. The impetus for the legislation came from road closures on the Targhee National Forest in Idaho as part of a 1998 travel management plan draft Environmental Impact Statement. According to the Forest Service, the plan addressed several concerns: (1) reducing road maintenance needs; (2) restoring soils and water quality; (3) enhancing grizzly bear habitat and recovery in accordance with U.S. Fish and Wildlife recommendations; (4) restoring cutthroat trout habitat to prevent its Endangered Species Act listing; (5) allowing access in certain areas where compatible with timber harvesting; and (6) reducing hunting pressure on elk populations to meet State of Idaho Department of Fish and Game population goals. The real issue troubling the Majority is the *decisions*—not the process surrounding the decision—to close forest roads on the Targhee National Forest in Idaho.

Second, as the Forest Service testified, ample opportunity for public comment exists as mandated by NEPA and other legislation as well as agency policy. The sponsor herself admits that county commissioners received notice—“a whole stack” of letters, in her words—about the Targhee road closures, but takes umbrage on the commissioners’ behalf at the salutation of “Concerned Citizen.” Moreover, the Forest Service has reiterated its policies of encour-

aging public notice and outreach on road management, further undercutting any need for legislation. (Letter attached).

Third, there are several drafting problems. "Permanent" is defined so broadly that anything that may be closed longer than a year is deemed a closure, which is precluded without advance notice to local governments and 90-day public comment. The amendment addressing emergency closures merely imposes a three-month stay on the procedural requirements the agency must meet, thereby restricting agency discretion to keep roads closed in case of floods or landslides, or lack of funding. "Closure" is not defined, so that roads designed to be temporary may be required to stay open. "Road" is defined overly broadly so that the agency could be precluded from closing illegal and unauthorized roads created by off-road vehicle use.

Finally, the bill reverses existing statutory and policy direction regarding road management. Section 8 of the National Forest Management Act requires the Forest Service to close and obliterate roads unless they are designated permanent in the agency's transportation management plans (16 U.S.C. 1608 (b)). H.R. 1523, on the other hand, would require that all the roads remain open unless the agency complies with these burdensome procedures. With an authorized road system of over 380,000 miles, an estimated 60,000 miles of unauthorized roads, and a \$8.5 billion backlog in repair and maintenance in the National Forest System, and an additional 78,000 miles of road under BLM's jurisdiction, the last thing Congress should be doing is making it more difficult and cumbersome for agencies to close roads for safety or environmental reasons. The Forest Service is looking to minimize new road construction and reduce the resource damage from its current road network. Yet H.R. 1523's data collection requirements of traffic patterns over five-year periods are so onerous as to effectively impose at least a five-year moratorium on road closures. While less than 20 percent of the current Forest Service road system for passenger vehicles is being maintained to the design safety standards, Congress only appropriates a fraction of what it would take to address the backlog of repairs. This legislation offers nothing in the way of addressing these serious problems and instead would serve to obstruct closure of unnecessary and environmentally destructive portions of the vast system of roads on public lands and national forests.

GEORGE MILLER.

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, DC, May 4, 1999.

File Code: 7700/1950.

Route To:

Subject: Involving Local Public Officials in Planning of Road Decommissioning.

To: Regional Foresters and Washington Office Staff Directors.

Management of the forest road system is one of the four key focus areas of the Forest Service Natural Resource Agenda. There are few issues that have been more controversial for the Forest Service than forest roads. While roads are vital for public, commercial and administrative access to the national forests and grasslands, we also find that roads can be great contributors to environmental damage to our lands. In order to address this difficult issue, we are in the midst of developing a new national roads policy and rewriting the national forest planning regulations.

It is important that you recognize the public interest and potential controversy that surrounds projects and ensure that adequate information specifically addressing the planning of road decommissioning is given in your quarterly schedule of proposed actions, to more accurately describe the issues involved. For instance, when road decommissioning is planned as part of a timber sale, decommissioning should be identified as part of that sale in the quarterly notices, during scoping, and during the public comment period.

It has long been Forest Service policy that local elected officials are valuable partners whom we advise and consult regarding management decisions in the national forests. Building and maintaining positive relationships with these officials is good business. More often than not, they are key to identification of win-win approaches to our land management problems. Their help means going forth with synergy instead of confrontation.

I expect Forest Service line officers periodically to meet with State and local officials and other concerned citizens on potentially controversial issues and projects. Road decommissioning projects and transportation planning in general, are examples where I expect you to involve and coordinate with your State and local officials. There is nothing the Forest Service does on the ground that should be done without involvement with interested officials. Decommissioning roads and transportation planning is no exception.

Maintaining an open and collaborative process with our local communities and other communities of interest will move us all forward in a positive way and one that we can all feel good about. Thank you for your attention to this concern.

GLORIA MANNING,
Acting Deputy Chief, National Forest System.

A P P E N D I X

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, June 1, 1999.

Hon. DON YOUNG,
Chairman, Committee on Resources,
Washington, DC.

DEAR MR. CHAIRMAN: On May 5, 1999 the Committee on Resources ordered to be reported H.R. 1523, the "Forest Roads-Community-Right-To-Know Act." As you are aware, the Committee on Agriculture was granted an additional referral of this legislation on those provisions of H.R. 1523 that fall within the jurisdiction of this Committee.

Knowing of your interest in expediting this legislation and in maintaining the continued consultation between our Committees on these matters, I agree to discharge H.R. 1523 from 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 over this or similar measures. In addition, in the event a conference with the Senate is requested on this matter, the Committee on Agriculture reserves the right to seek appointment of conferees from this Committee to be represented in such conference.

Thank you very much for your courtesy in this matter and I look forward to continued cooperation between our Committees as we deal with these issues in the future.

Sincerely,

LARRY COMBEST,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, May 28, 1999.

Hon. LARRY COMBEST,
Chairman, Committee on Agriculture,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 1523, the Forest Roads Community Right-to-Know Act. I appreciate your cooperation in not insisting on your additional referral of the bill.

I will of course support your request to have the Committee on Agriculture named to any conference on H.R. 1523 if one should become necessary, and copies of our correspondence will be made part of the committee bill report.

Thank you again for your cooperation and that of Lance Kotschwar, Greg Zerzan and Dave Tenny of your staff. I look forward to seeing H.R. 1523 debated on the House Floor soon.

Sincerely,

DON YOUNG,
Chairman.

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