

115TH CONGRESS
2D SESSION

S. 3550

To modify the procedures for issuing special recreation permits for certain public land units, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2018

Mr. HEINRICH (for himself and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To modify the procedures for issuing special recreation permits for certain public land units, 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.**

4 This Act may be cited as the “Public Land Rec-
5 reational Opportunities Improvement Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ASSOCIATED AGENCY.—The term “associ-
9 ated agency” means the Federal land management
10 agency, other than the lead agency, that manages a

1 public land unit that is the subject of a single joint
2 special recreation permit under section 7(a).

3 (2) FEDERAL LAND MANAGEMENT AGENCY.—

4 The term “Federal land management agency” has
5 the meaning given the term in section 802 of the
6 Federal Lands Recreation Enhancement Act (16
7 U.S.C. 6801).

8 (3) LEAD AGENCY.—With respect to a single
9 joint special recreation permit application submitted
10 under section 7(a), the term “lead agency” means
11 the Federal land management agency designated to
12 administer the single joint special recreation permit
13 under section 7(a)(2).

14 (4) MULTIJURISDICTIONAL TRIP.—The term
15 “multijurisdictional trip” means a trip that—

16 (A) uses 2 or more public land units; and

17 (B) is under the jurisdiction of 2 or more
18 Federal land management agencies.

19 (5) PUBLIC LAND UNIT.—The term “public
20 land unit” means—

21 (A) a unit of the National Forest System;

22 (B) a unit of the National Park System;

23 (C) a unit of the National Wildlife Refuge
24 System;

1 (D) a district of the Bureau of Land Man-
2 agement; and

3 (E) a project of the Bureau of Reclama-
4 tion.

5 (6) SECRETARY CONCERNED.—The term “Sec-
6 retary concerned” means—

7 (A) the Secretary of Agriculture, with re-
8 spect to a public land unit described in para-
9 graph (5)(A); and

10 (B) the Secretary of the Interior, with re-
11 spect to a public land unit described in sub-
12 paragraph (B), (C), (D), or (E) of paragraph
13 (5).

14 (7) SPECIAL RECREATION PERMIT.—The term
15 “special recreation permit” has the meaning given
16 the term in section 802 of the Federal Lands Recre-
17 ation Enhancement Act (16 U.S.C. 6801).

18 **SEC. 3. SPECIAL RECREATION PERMIT AND FEE.**

19 (a) DEFINITIONS.—Section 802 of the Federal Lands
20 Recreation Enhancement Act (16 U.S.C. 6801) is amend-
21 ed—

22 (1) in paragraph (1), by striking “section 3(f)”
23 and inserting “803(f)”;

24 (2) in paragraph (2), by striking “section 3(g)”
25 and inserting “section 803(g)”;

1 (3) in paragraph (6), by striking “section 5”
2 and inserting “section 805”;

3 (4) in paragraph (9), by striking “section 5”
4 and inserting “section 805”;

5 (5) in paragraph (12), by striking “section 7”
6 and inserting “section 807”;

7 (6) in paragraph (13), by striking “section
8 3(h)” and inserting “section 803(h)”;

9 (7) by redesignating paragraphs (1), (3), (4),
10 (5), (6), (7), (8), (9) and (13) as paragraphs (15),
11 (1), (3), (4), (5), (6), (7), (8), and (14), respectively,
12 and moving the paragraphs so as to appear in nu-
13 merical order;

14 (8) by inserting after paragraph (8) (as so re-
15 designated) the following:

16 “(9) RECREATION SERVICES PROVIDER.—The
17 term ‘recreation services provider’ means an indi-
18 vidual or entity that—

19 “(A) provides outfitting, guiding, or other
20 recreation services; or

21 “(B) conducts recreational or competitive
22 events, including incidental sales.”; and

23 (9) by inserting after paragraph (12) the fol-
24 lowing:

1 “(13) SPECIAL RECREATION PERMIT.—The
2 term ‘special recreation permit’ means—

3 “(A) with respect to the Forest Service, an
4 outfitting and guiding special use permit;

5 “(B) with respect to the National Park
6 Service, a commercial use authorization for out-
7 fitting and guiding;

8 “(C) with respect to the United States
9 Fish and Wildlife Service, a special use permit
10 for recreational, sport fishing, or hunting guid-
11 ing;

12 “(D) with respect to the Bureau of Land
13 Management, a special recreation permit for
14 commercial outfitting; and

15 “(E) with respect to the Bureau of Rec-
16 lamation, a use authorization for guiding, out-
17 fitting, or other recreational services.”.

18 (b) SPECIAL RECREATION PERMIT AND FEE.—Sec-
19 tion 803 of the Federal Lands Recreation Enhancement
20 Act (16 U.S.C. 6802) is amended—

21 (1) in subsection (b)(5), by striking “section
22 4(d)” and inserting “section 804(d)”; and

23 (2) by striking subsection (h) and inserting the
24 following:

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

1 “(1) SPECIAL RECREATION PERMIT.—The Sec-
2 retary may issue a special recreation permit for spe-
3 cialized individual or group use of a Federal facility
4 or Federal recreational lands and waters to a recre-
5 ation services provider for an activity at a Federal
6 facility or on Federal recreational lands and waters,
7 including—

8 “(A) the use of—

9 “(i) a special area; or

10 “(ii) an area in which use is allocated;

11 “(B) motorized recreational vehicle use;

12 and

13 “(C) a group activity or event.

14 “(2) SPECIAL RECREATION PERMIT FEE.—

15 “(A) IN GENERAL.—The Secretary may
16 charge a special recreation permit fee in con-
17 nection with the issuance of a special recreation
18 permit under paragraph (1).

19 “(B) AMOUNT OF FEE.—A special recre-
20 ation permit fee shall not exceed the difference
21 between—

22 “(i) the sum of—

23 “(I) 3 percent of the annual
24 gross revenue of the recreation serv-

1 ices provider for all activities author-
2 ized by special recreation permits; and

3 “(II) any applicable revenue ad-
4 dition; and

5 “(ii) any applicable revenue exclusion
6 or similar per-person fee.

7 “(C) DISCLOSURE OF FEES.—A special
8 recreation permit holder may inform customers
9 of any fee charged by the Secretary under this
10 paragraph.

11 “(3) REPORTS.—The Secretary shall make
12 available to holders of special recreation permits
13 under paragraph (1) and the public an annual re-
14 port describing the use of fees collected by the Sec-
15 retary under paragraph (2).”.

16 (c) USE OF SPECIAL RECREATION PERMIT REV-
17 ENUE.—Section 808 of the Federal Lands Recreation En-
18 hancement Act (16 U.S.C. 6807) is amended—

19 (1) in subsection (a)(3)(F), by striking “section
20 6(a)” and inserting “section 806(a)”;

21 (2) in subsection (d), by striking “section 5”
22 each place it appears and inserting “section 805”;

23 (3) by redesignating subsections (b) through (d)
24 as subsections (c) through (e), respectively; and

1 (4) by inserting after subsection (a) the fol-
2 lowing:

3 “(b) USE OF SPECIAL RECREATION PERMIT FEE
4 REVENUE.—Revenue from a special recreation permit fee
5 may be used for—

6 “(1) the purposes described in subsection (a);
7 and

8 “(2) expenses—

9 “(A) associated with processing applica-
10 tions for special recreation permits; and

11 “(B) incurred in the improvement of the
12 operation of the special recreation permit sys-
13 tem.”.

14 (d) PERMANENT AUTHORIZATION.—Section 810 of
15 the Federal Lands Recreation Enhancement Act (16
16 U.S.C. 6809) is amended—

17 (1) by striking “The authority” and inserting
18 the following:

19 “(a) IN GENERAL.—Except as provided in subsection
20 (b), the authority”; and

21 (2) by adding at the end the following:

22 “(b) APPLICABILITY.—Subsection (a) shall not apply
23 to—

24 “(1) section 803(h); or

25 “(2) section 808(b).”.

1 **SEC. 4. PERMITTING PROCESS IMPROVEMENTS.**

2 (a) IN GENERAL.—To improve the process of the
3 issuance and renewal of special recreation permits and re-
4 duce the cost of administering special recreation permits,
5 the Secretary concerned shall—

6 (1) evaluate the special recreation permitting
7 process;

8 (2) identify opportunities—

9 (A) to eliminate duplicative processes;

10 (B) to reduce costs; and

11 (C) to decrease processing times; and

12 (3) implement the improvements identified
13 under paragraph (2).

14 (b) ENVIRONMENTAL REVIEWS.—In issuing and re-
15 newing a special recreation permit, the Secretary con-
16 cerned may, in accordance with the National Environ-
17 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)—

18 (1) use a programmatic environmental review;
19 and

20 (2) adopt or incorporate material from a pre-
21 vious environmental impact statement or environ-
22 mental assessment.

23 (c) CATEGORICAL EXCLUSIONS.—

24 (1) IN GENERAL.—Not later than 1 year after
25 the date of enactment of this Act, the Secretary con-
26 cerned shall—

1 (A) evaluate whether 1 or more categorical
2 exclusions developed in compliance with the Na-
3 tional Environmental Policy Act of 1969 (42
4 U.S.C. 4321 et seq.) would reduce processing
5 times or costs for the issuance and renewal of
6 special recreation permits without significantly
7 affecting the human environment; and

8 (B) if the Secretary concerned determines
9 under subparagraph (A) that a categorical ex-
10 clusion would reduce processing times or costs
11 for the issuance and renewal of special recre-
12 ation permits without significantly affecting the
13 human environment, establish that categorical
14 exclusion in compliance with the National Envi-
15 ronmental Policy Act of 1969 (42 U.S.C. 4321
16 et seq.).

17 (2) ADMINISTRATION.—

18 (A) IN GENERAL.—In administering a cat-
19 egorical exclusion established under paragraph
20 (1)(B), the Secretary concerned shall comply
21 with the National Environmental Policy Act of
22 1969 (42 U.S.C. 4321 et seq.) (including regu-
23 lations promulgated pursuant to that Act).

24 (B) EXTRAORDINARY CIRCUMSTANCES.—

25 In determining whether to use a categorical ex-

1 clusion established under paragraph (1)(B), the
2 Secretary concerned shall apply the extraor-
3 dinary circumstances procedures described in—

4 (i) section 1508.4 of title 40, Code of
5 Federal Regulations (or a successor regula-
6 tion); and

7 (ii) as applicable—

8 (I) section 220.6 of title 36, Code
9 of Federal Regulations (or a successor
10 regulation); or

11 (II) section 46.215 of title 43,
12 Code of Federal Regulations (or a
13 successor regulation).

14 (d) **NEEDS ASSESSMENTS.**—Except as required
15 under section 4(c) of the Wilderness Act (16 U.S.C.
16 1133(c)), the Secretary concerned shall not conduct a
17 needs assessment as a condition of issuing a special recre-
18 ation permit for a public land unit under this Act.

19 **SEC. 5. PERMIT FLEXIBILITY.**

20 (a) **SIMILAR ACTIVITIES.**—The Secretary concerned
21 shall establish a permit administration protocol that au-
22 thorizes, to the maximum extent practicable, a permittee
23 issued a special recreation permit for a public land unit
24 under section 803(h) of the Federal Lands Recreation En-
25 hancement Act (16 U.S.C. 6802(h)) to engage in a rec-

1 reational activity that is substantially similar to the spe-
 2 cific activity authorized under the special recreation per-
 3 mit, if the substantially similar recreational activity does
 4 not—

5 (1) result in a greater impact on natural and
 6 cultural resources than the authorized activity; and

7 (2) adversely affect any other permittee issued
 8 a special recreation permit for a public land unit
 9 under that subsection.

10 (b) VOLUNTARY RETURN OF SURPLUS SERVICE
 11 DAYS.—

12 (1) IN GENERAL.—The Secretary concerned
 13 shall establish a pilot program to allow a permittee
 14 issued a special recreation permit for a public land
 15 unit to voluntarily and temporarily return to the
 16 Secretary concerned 1 or more surplus service days,
 17 to be made available to any other existing or poten-
 18 tial permittee.

19 (2) LIMITATIONS.—A voluntary return of 1 or
 20 more surplus service days under paragraph (1)—

21 (A) shall—

22 (i) be for a period of not more than—

23 (I) 1 season beginning on the
 24 date on which the permittee makes

1 the return and ending on a date de-
2 termined by the Secretary; or

3 (II) 1 calendar year beginning on
4 the date on which the permittee
5 makes the return; and

6 (ii) be without prejudice or penalty to
7 the permittee who makes the return; and

8 (B) shall not be used to reduce any future
9 allocation of service days to the permittee who
10 makes the return.

11 (c) FOREST SERVICE TEMPORARY PERMITS.—Not
12 later than 180 days after the date of enactment of this
13 Act, the Secretary of Agriculture shall establish and imple-
14 ment a program—

15 (1) to authorize the issuance of temporary spe-
16 cial recreation permits that are issued to permittees
17 for a period of not more than 2 years; and

18 (2) to provide for the conversion of a temporary
19 special recreation permit issued under paragraph (1)
20 to a long-term special recreation permit beginning
21 on the date on which the Secretary of Agriculture
22 has determined that the permittee has completed 2
23 years of satisfactory operation under the temporary
24 special recreation permit.

1 **SEC. 6. PERMIT ADMINISTRATION.**

2 (a) PERMIT AVAILABILITY.—

3 (1) NOTIFICATION OF PERMIT AVAILABILITY.—

4 If the Secretary concerned has determined that spe-
5 cial recreation permits are available on a public land
6 unit, the Secretary concerned shall publish that in-
7 formation on the website of the Department of Agri-
8 culture or the Department of the Interior, as appli-
9 cable.

10 (2) UPDATES.—The Secretary concerned shall
11 ensure that information published on the website
12 under this subsection is consistently updated to pro-
13 vide current and correct information to the public.

14 (3) ELECTRONIC MAIL NOTIFICATION.—The
15 Secretary concerned shall—

16 (A) establish a system by which potential
17 special recreation permit applicants may sub-
18 scribe to receive notification of the availability
19 of special recreation permits by electronic mail;
20 and

21 (B) direct employees of the Department of
22 Agriculture or the Department of the Interior,
23 as applicable, to use that system to notify the
24 public of the availability of special recreation
25 permits.

1 (b) PERMIT APPLICATION ACKNOWLEDGMENT.—Not
2 later than 60 days after the date on which the Secretary
3 concerned receives an application for a special recreation
4 permit for a public land unit, the Secretary concerned
5 shall—

6 (1) provide to the applicant notice acknowl-
7 edging receipt of the application; and

8 (2)(A) issue a final decision with respect to the
9 application; or

10 (B) provide to the applicant notice of a pro-
11 jected date for a final decision on the application.

12 **SEC. 7. PERMITS FOR MULTIJURISDICTIONAL TRIPS.**

13 (a) SINGLE JOINT SPECIAL RECREATION PER-
14 MITS.—

15 (1) IN GENERAL.—In the case of a multijuris-
16 dictional trip, the Federal land management agen-
17 cies with jurisdiction over the multijurisdictional trip
18 may offer to the applicant a single joint special
19 recreation permit that authorizes the use of each
20 public land unit under the jurisdiction of those Fed-
21 eral land management agencies.

22 (2) LEAD AGENCY.—In offering a single joint
23 special recreation permit under paragraph (1), the
24 applicable Federal land management agencies shall
25 designate a lead agency for administering the single

1 joint special recreation permit based on the following
2 considerations:

3 (A) The length of the multijurisdictional
4 trip and the relative portions of the multijuris-
5 dictional trip on each public land unit.

6 (B) The congressional or administrative
7 designations that apply to the areas to be used
8 during the multijurisdictional trip and the de-
9 gree to which those designations impose limita-
10 tions on recreational use.

11 (C) The relative ability of the Federal land
12 management agencies with jurisdiction over the
13 multijurisdictional trip to respond to the single
14 joint special recreation permit application in a
15 timely manner.

16 (D) Other relevant administrative consider-
17 ations.

18 (3) APPLICATION.—An applicant desiring to be
19 offered a single joint special recreation permit under
20 paragraph (1) shall submit to the lead agency an ap-
21 plication, as required by the lead agency.

22 (4) OPTION TO APPLY FOR SEPARATE PER-
23 MITS.—An applicant for a special recreation permit
24 for a multijurisdictional trip may apply to each ap-
25 plicable Federal land management agency for a sep-

1 arate permit for the portion of the multijuris-
2 dictional trip on the public land unit managed by
3 each applicable Federal land management agency.

4 (b) REQUIREMENTS.—In issuing a single joint special
5 recreation permit under subsection (a), the lead agency
6 shall—

7 (1) coordinate with the associated agency, con-
8 sistent with the authority of the Secretary concerned
9 under section 330 of the Department of the Interior
10 and Related Agencies Appropriations Act, 2001 (43
11 U.S.C. 1703), to develop and issue 1 joint permit
12 that covers the entirety of the multijurisdictional
13 trip;

14 (2) in processing the joint recreation permit ap-
15 plication, incorporate the findings, interests, and
16 needs of the associated agency; and

17 (3) complete the permitting process within a
18 reasonable timeframe.

19 (c) COST RECOVERY.—The coordination with the as-
20 sociated agency under subsection (b) shall not be subject
21 to cost recovery.

22 (d) EFFECT OF SECTION.—Nothing in this section
23 modifies, expands, or limits the applicability of any Fed-
24 eral law (including regulations) to land managed by the
25 Secretary concerned.

1 **SEC. 8. PERMIT FEE CALCULATION.**

2 (a) **EXCLUSION OF CERTAIN REVENUE AND PAY-**
3 **MENTS.**—In calculating fees for a special recreation per-
4 mit, the Secretary concerned shall—

5 (1) exclude revenue from goods, services, sou-
6 venirs, merchandise, gear, food, and activities pro-
7 vided or sold by a permit holder outside of the public
8 land unit covered by the permit, including transpor-
9 tation costs, lodging, and any other service provided
10 before or after a trip; and

11 (2) provide for a deduction in the amount equal
12 to any fee to be paid by the special recreation permit
13 holder under applicable law for a special recreation
14 permit for an activity on a public land unit for which
15 a separate permit is issued.

16 **SEC. 9. FOREST SERVICE PERMIT USE REVIEWS.**

17 (a) **IN GENERAL.**—In carrying out a use review, a
18 renewal, or an adjustment of allocations of use with re-
19 spect to a special recreation permit for use of a public
20 land unit managed by the Forest Service, the Secretary
21 of Agriculture (referred to in this section as the “Sec-
22 retary”) shall—

23 (1) allocate the highest level of actual annual
24 use during the period under review plus 25 percent
25 of that use, not to exceed the level allocated to the
26 permit holder on the date on which the permit was

1 issued, if the Secretary determines that a special
2 recreation permit holder has received a satisfactory
3 performance review; and

4 (2)(A) recognize that recreation demand can
5 vary considerably as a result of seasonal variations
6 and during off-peak periods; and

7 (B) take that variability into account in deter-
8 mining whether an allocation to a special recreation
9 permit holder should be adjusted.

10 (b) WAIVER.—The Secretary may waive a special
11 recreation permit use review for any period during which
12 use of the assigned capacity has been prevented by a cir-
13 cumstance beyond the control of the permit holder such
14 as—

15 (1) unfavorable weather;

16 (2) fire;

17 (3) natural disaster;

18 (4) wildlife displacement; or

19 (5) business interruption.

20 **SEC. 10. LIABILITY.**

21 (a) INDEMNIFICATION BY GOVERNMENT ENTI-
22 TIES.—The Secretary concerned may not require an orga-
23 nization to indemnify the United States as a condition for
24 issuing a special recreation permit for a public land unit
25 under this Act if—

1 (1) the organization is prohibited by State or
2 local law from providing indemnification to the
3 United States; and

4 (2) the organization carries adequate liability
5 insurance coverage, or is adequately self-insured, for
6 activities conducted under the special recreation per-
7 mit.

8 (b) EXCULPATORY AGREEMENTS.—The Secretary
9 shall not implement, administer, or enforce any regulation
10 or policy prohibiting the use of an exculpatory agreement
11 between a recreation service provider and a customer of
12 the recreation service provider for services provided under
13 a special recreation permit.

○