Calendar No. 296

117TH CONGRESS } SENATE { REPORT
2d Session } { 117–89

HIGHLANDS CONSERVATION REAUTHORIZATION

MARCH 2, 2022.—Ordered to be printed

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

R E P O R T

[To accompany S. 753]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 753), to reauthorize the Highlands Conservation Act, to authorize States to use funds from that Act for administrative purposes, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

On page 4, line 5, strike "Highlands State," and insert "Highlands State, with the concurrence of the municipality,".

PURPOSE

The purpose of S. 753 is to amend the Highlands Conservation Act (Public Law 108–42), to authorize Federal matching funds through fiscal year 2028, and to update and clarify other provisions of the Act.

BACKGROUND AND NEED

Congress enacted the Highlands Conservation Act in 2004 to recognize the importance of the water, forest, agricultural, wildlife, recreational, and cultural resources of the Highlands region, which extends from Connecticut through New Jersey, New York, and Pennsylvania. Under the Act, the Secretary of the Interior (through

29–010

the U.S. Fish and Wildlife Service) is authorized to provide matching funds to help fund land conservation partnership projects.

Grants are typically awarded to state agencies, but the project must identify a non-federal entity that will own, hold, or manage the land (or easement) to be acquired. The project must be in an area of the Highlands region identified as having high conservation value and must describe the management objectives that will ensure permanent protection and appropriate use of the land.

The funding authorization under the Highlands Conservation Act expired at the end of fiscal year 2014, although additional funds have continued to be appropriated. The Act authorized $10 million in Federal funds each year; S. 753 would increase that authorization to $20 million annually. To date over $56 million has been appropriated for the program.

LEGISLATIVE HISTORY

Senators Murphy, Gillibrand, Blumenthal, and Casey introduced S. 753 on March 16, 2021. Senator Booker also joined as a cosponsor. The Subcommittee on Natural Parks held a hearing on the bill on June 23, 2021. Senator Gillibrand introduced similar legislation in the 115th Congress, although no action was taken on the bill. An identical bill, H.R. 2793, was introduced in the House by Representative Maloney, along with 18 original cosponsors, on April 22, 2021. Five additional cosponsors also later joined. The House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a hearing on the bill on July 29, 2021. The bill was ordered to be reported by the House Committee on Natural Resources with an amendment by unanimous consent on January 19, 2022.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 18, 2021, by a majority voice vote of a quorum present, recommends that the Senate pass S. 753, if amended as described herein. Senator Lee asked to be recorded as voting no.

COMMITTEE AMENDMENT

During its consideration of S. 753, the Committee adopted a clarifying amendment to the bill that requires the consent of a municipality before it can be included in the Highlands Region.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides the short title, the "Highlands Conservation Reauthorization Act of 2021."

Section 2. Reauthorization of the Highlands Conservation Act

Section 2 amends section 3 of the Highlands Conservation Act (Public Law 108–421) to update the map of the Highlands Region. The section reauthorizes the Highlands Conservation Act through fiscal year 2028 and changes the annual appropriations ceiling from $10 million to $20 million.

As ordered reported, the section authorizes the Fish and Wildlife Service to add a municipality to the Highlands region upon the request of a Highlands state, and with the consent of the municipality. The section adds a provision limiting the amount of funds the Department of the Interior can use on administrative purposes to not more than $300,000. Highlands States are limited to using not more than 5 percent of appropriated funds.

The section amends section 6 of the Act to authorize a State to petition the Secretary to use alternative land appraisal methodologies where there is a conflict between federal appraisal standards and state law.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office.

[Abstract], Highlands Conservation Reauthorization Act of 2021
As [Manager] on November 18, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	69	147

Statutory pay-as-you-go procedures apply?	No	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between zero and $500,000.

S. 753 would authorize the appropriation of $20 million annually over the 2022–2028 period for the U.S. Fish and Wildlife Service (USFWS) to award grants to Connecticut, New Jersey, New York, and Pennsylvania for the acquisition and conservation of land within the Highlands Region. The bill also would authorize the appropriation of $1 million annually over the 2022–2028 period for the Forest Service to assist those states with conservation of farms and forests on private land.

For this estimate, CBO assumes that the bill will be enacted late in fiscal year 2022 and that the authorized amounts will be provided each year. Using information from USFWS and based on historical spending patterns for similar activities, CBO estimates that implementing S. 753 would cost $69 million over the 2022–2026 period and $78 million after 2026.

In 2021, USFWS allocated $10 million from the Land and Water Conservation Fund for grants to states for acquisition and conservation of land in the Highlands Region. (Amounts in the fund are available to USFWS and other land management agencies without further appropriation.) CBO estimates that if the bill was enacted, amounts authorized to be provided in subsequent appropriation acts would be additional to amounts allocated from the fund; thus, enacting S. 753 would have no effect on that direct spending.

The costs of the legislation, detailed in Table 1, fall within budget function 300 (natural resources and environment).

	By fiscal year, millions of dollars—											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022–2026	2022–2031
INCREASES IN SPENDING SUBJECT TO APPROPRIATION												
U.S. Fish and Wildlife Service:												
Authorization	20	20	20	20	20	20	20	0	0	0	100	140
Estimated Outlays	*	10	15	20	20	20	20	15	15	5	65	140
Forest Service:												
Authorization	1	1	1	1	1	1	1	0	0	0	5	7
Estimated Outlays	*	1	1	1	1	1	1	1	0	0	4	7
Total Changes:												
Authorization	21	21	21	21	21	21	21	0	0	0	105	147
Estimated Outlays	*	11	16	21	21	21	21	16	15	5	69	147

* = between zero and $500,000.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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. 753. 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. 753, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 753, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the June 23, 2021, hearing on S. 753 follows:

STATEMENT OF MR. MICHAEL CALDWELL, ACTING ASSOCIATE DIRECTOR, PARK PLANNING, FACILITIES, AND LANDS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR

The Department of the Interior (Department) appreciates the opportunity to provide its views on S. 753, the Highlands Conservation Reauthorization Act of 2021, which would reauthorize the Highlands Conservation Act (HCA). The Department supports this legislation.

Overview of the Highlands Conservation Act

The HCA (P.L. 108–421) authorizes a grant program to the Highlands states of Connecticut, New Jersey, New York and Pennsylvania to acquire land and protect natural resources in the Highlands Region. The Highlands Region is 3.4 million acres of biologically diverse landscape distinguished by Appalachian ridges, hills, and plateaus that provide nature-oriented recreational opportunities for millions of people living in or visiting the Northeast.

The U.S. Fish and Wildlife Service (Service) is the lead agency for administering the HCA Grant Program, in coordination with the U.S. Forest Service, and provides administration and oversight of the program. The Service works closely with the four Highlands states to identify priority areas for state land acquisition to meet state and Federal conservation goals. The FY 2022 President's Budget includes $10 million for the HCA grant program.

Since passage of the HCA in 2004, almost $70 million in HCA funding has been awarded to the states to acquire 11,000 acres of land in the Highlands Region. Under the Service's coordination, the HCA Grant Program has leveraged non-Federal funds at a 2:1 ratio, doubling the minimum 1:1 amount required by law. Projects support key conservation objectives outlined in the law such as clean drinking water, healthy forests, thriving wildlife populations, productive agriculture, and abundant recreational opportunities.

The HCA grant program is conserving outdoor recreational areas to encourage a connection between people and the outdoors. One in nine Americans lives within a two-hour drive of the outdoor recreational opportunities provided by the Highlands Region. The HCA Grant Program is protecting strategically important natural areas that sustain a diversity of fish and wildlife species. The Service's priority at-risk species benefiting from HCA land conservation include many species such as the bog turtle, northern long-eared bat, brook floater mussel, and New England cottontail.

Examples of important lands acquired with HCA funds include the following:

- The State of New York Office of Parks, Recreation, and Historic Preservation (NY Parks) completed the purchase of 116 acres to expand the 19,293-acre Sterling Forest, a state park described by NY Parks as a "nearly pristine natural refuge amidst one of the nation's most densely populated areas, a remarkable piece of woodland, a watershed for millions, and a tremendous outdoor recreation area." This acquisition creates new public access to Sterling Forest and protects habitat for the timber rattlesnake, a state listed threatened species, as well as potential habitat for the Federally listed northern long-eared bat.
- The Connecticut Department of Energy and Environmental Protection acquired a conservation easement on 107 acres that includes the northern ridge

and northwestern face of Coltsfoot Mountain and over 800 linear feet of Furnace Brook, an important tributary of the Housatonic River. The property shares almost a mile of common boundary with Wyantenock State Forest and abuts Cornwall Conservation Trust conservation land. The headwaters land is in a large unbroken forest block of over 4,000 acres in the Connecticut-Massachusetts-New York region of western New England, with habitat that can support Federally listed northern long-eared bat and small whorled pogonia. The property will provide a new access point to the regional Mohawk Trail.

- The Pennsylvania Department of Conservation and Natural Resources, with help from the Natural Lands Trust, acquired the 103-acre Seidel Hill as an addition to the William Penn State Forest. Allegheny Creek winds around the western base of Seidel Hill as it makes its way to the Schuylkill River. Seidel Creek flows to the eastern base of Seidel Hill. Both waterways are popular fishing destinations. Pennsylvania identified the property as a priority for conservation because of interior forest habitat critical for migrating and nesting neo-tropical songbirds.
- The New Jersey Highlands Council conserved 115 acres in Mansfield Township, Warren County, with a conservation easement, keeping the land in private ownership while protecting natural resources in perpetuity. The conserved property, with meadows, upland forest, a stream and a pond, is mapped as critical wildlife habitat for eleven New Jersey listed species: eight birds, one mammal and two turtles. The land lies along the ridgetop of Pohatcong Mountain. When combined with surrounding, previously conserved parcels, the property creates a total protected wildlife corridor of 621 acres.

S. 753, Highlands Conservation Reauthorization Act of 2021

The Department supports reauthorization of the HCA to continue the land acquisition goals of the program. S. 753 includes provisions to update and modernize the HCA, including the use of the latest scientific and geographic information systems to identify priority lands for acquisition. The bill would also limit the Service to no more than $300,000 for the administration of the program. The Service receives authorization for administrative expenses through the appropriations process and appreciates the certainty provided by this provision in the legislation. In addition, the Department supports the provision to allow the Highland states to expend up to 5 percent of awarded HCA funds to administer the program. The Department looks forward to working with Congress on this important program.

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. 753, 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):

Public Law 108–421

AN ACT To assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Highlands Conservation Act".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to recognize the importance of the water, forest, agricultural, wildlife, recreational, and cultural resources of the Highlands region, and the national significance of the Highlands region to the United States;

(2) to authorize the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States to preserve and protect high priority conservation land in the Highlands region; and

(3) to continue the ongoing Forest Service programs in the Highlands region to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

SEC. 3. DEFINITIONS.

In this Act:

⟦(1) HIGHLANDS REGION.—The term "Highlands region" means the area depicted on the map entitled "The Highlands Region", dated June 2004, including the list of municipalities included in the Highlands region and maintained in the headquarters of the Forest Service in Washington, District of Columbia.⟧

(1) HIGHLANDS REGION.—The term "Highlands region" means—

(A) the area depicted on the map entitled "The Highlands Region", dated June 2004, updated after the date of enactment of the Highlands Conservation Reauthorization Act of 2021 to comprise each municipality included on the list of municipalities included in the Highlands region as of that date of enactment, and maintained in the headquarters of the Forest Service in Washington, District of Columbia; and

(B) a municipality approved by the Director of the United States Fish and Wildlife Service under section 4(e).

(2) HIGHLANDS STATE.—The term "Highlands State" means—

(A) the State of Connecticut;

(B) the State of New Jersey;
(C) the State of New York; and
(D) the State of Pennsylvania.

(3) LAND CONSERVATION PARTNERSHIP PROJECT.—The term "land conservation partnership project" means a land conservation project—

(A) located in the Highlands region;

(B) [identified by the Forest Service in the Study, the Update, or any subsequent Pennsylvania and Connecticut Update as having high conservation value; and] *identified by a Highlands State as having high conservation value using the best available science and geographic information systems; and*

(C) in which a non-Federal entity acquires land or an interest in land from a willing seller to permanently protect, conserve, or preserve the land through a partnership with the Federal Government.

(4) NON-FEDERAL ENTITY.—The term "non-Federal entity" means—

(A) any Highlands State [;or], *including a political subdivision thereof;*

(B) any agency or department of any Highlands State with authority to own and manage land for conservation purposes, including the Palisades Interstate Park Commission.

[(5) STUDY.—The term "Study" means the New York-New Jersey Highlands Regional Study conducted by the Forest Service in 1990.]

[(6) UPDATE.—The term "Update" means the New York-New Jersey Highlands Regional Study: 2002 Update conducted by the Forest Service.]

[(7) PENNSYLVANIA AND CONNECTICUT UPDATE.—The term "Pennsylvania and Connecticut Update" means a report to be completed by the Forest Service that identifies areas having high conservation values in the States of Connecticut and Pennsylvania in a manner similar to that utilized in the Study and Update.]

SEC. 4. LAND CONSERVATION PARTNERSHIP PROJECTS IN THE HIGHLANDS REGION.

(a) SUBMISSION OF PROPOSED PROJECTS.—Each year, the governors of the Highlands States, with input from pertinent units of local government and the public, may—

(1) jointly identify land conservation partnership projects in the Highlands region from land identified as having high conservation values using the best available science and geographic information systems; and [in the Study, the Update, or the Pennsylvania and Connecticut Update that shall be proposed for Federal financial assistance; and] *using the best available science and geographic information systems; and*

(2) submit a list of those projects to the Secretary of the Interior.

(b) CONSIDERATION OF PROJECTS.—Each year, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall submit to Congress a list of the land conservation partnership projects submitted under subsection (a)(2) that are eligible to receive financial assistance under this section.

(c) ELIGIBILITY CONDITIONS.—To be eligible for financial assistance under this section for a land conservation partnership project, a non-Federal entity shall enter into an agreement with the Secretary of the Interior that—

(1) identifies the non-Federal entity that shall own or hold and manage the land or interest in land;

(2) identifies the source of funds to provide the non-Federal share under subsection (d);

(3) describes the management objectives for the land that will ensure permanent protection and use of the land for the purpose for which the assistance will be provided;

(4) provides that, if the non-Federal entity converts, uses, or disposes of the land conservation partnership project for a purpose inconsistent with the purpose for which the assistance was provided, as determined by the Secretary of the Interior, the United States—

(A) may seek specific performance of the conditions of financial assistance in accordance with paragraph (3) in Federal court; and

(B) shall be entitled to reimbursement from the non-Federal entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

(i) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

(ii) the amount by which the financial assistance increased the value of the land or interest in land; and

(5) *provides that land conservation partnership projects will be consistent with areas identified as having high conservation value in accordance with the purposes described in section 2 in the Highlands region.* [provides that land conservation partnership projects will be consistent with areas identified as having high conservation value in—

(A) the Important Areas portion of the Study;

(B) the Conservation Focal Areas portion of the Update;

(C) the Conservation Priorities portion of the Update;

(D) land identified as having higher or highest resource value in the Conservation Values Assessment portion of the Update; and

(E) land identified as having high conservation value in the Pennsylvania and Connecticut Update.]

(d) NON-FEDERAL SHARE REQUIREMENT.—The Federal share of the cost of carrying out a land conservation partnership project under this section shall not exceed 50 percent of the total cost of the land conservation partnership project.

(e) REQUEST FOR INCLUSION OF ADDITIONAL MUNICIPALITY.—The Director of the United States Fish and Wildlife Service may, at the request of a Highlands State, approve the inclusion of a municipality within the State as part of the Highlands region.

(f) LIMITATION ON ADMINISTRATIVE EXPENSES.—

(1) FEDERAL ADMINISTRATION.—The Secretary of the Interior may not expend more than $300,000 for the administration of this Act in each fiscal year.

(2) STATE ADMINISTRATION.—A State that receives funds under this section for a land conservation partnership project may not use more than 5 percent of the funds to administer the land conservation partnership project.

⟦(e)⟧*(g)* AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior ⟦$10,000,000 for each of fiscal years 2005 through 2021⟧ *$20,000,000 for each of fiscal years 2022 through 2028,* to remain available until expended.

SEC. 5. FOREST SERVICE AND USDA PROGRAMS IN THE HIGHLANDS REGION.

(a) IN GENERAL.—To meet the land resource goals of, and the scientific and conservation challenges identified in, ⟦the Study, Update, and any future study that the Forest Service may undertake in⟧ the Highlands region, the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the National Resources Conservation Service, shall continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

(b) DUTIES.—The Forest Service shall—

(1) in consultation with the Highlands States, undertake other studies and research in the Highlands region consistent with the purposes of this Act ⟦, including a Pennsylvania and Connecticut Update⟧;

(2) communicate ⟦the findings of the Study and Update and maintain a public dialogue regarding implementation of the Study and Update; and⟧ *with stakeholders regarding implementation of the program; and*

(3) assist the Highland States, local units of government, individual landowners, and private organizations in identifying and using Forest Service and other technical and financial assistance programs of the Department of Agriculture.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture to carry out this section $1,000,000 for each of fiscal years ⟦2005 through 2014⟧ *2022 through 2028.*

SEC. 6. PRIVATE PROPERTY PROTECTION AND LACK OF REGULATORY EFFECT.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires a private property owner to permit public access (including Federal, State, or local government access) to private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to, or use of, private land.

(b) LIABILITY.—Nothing in this Act creates any liability, or has any effect on liability under any other law, of a private property owner with respect to any persons injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies any authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS.—Nothing in this Act requires the owner of any private property located in the Highlands region to participate in the land conservation, financial, or technical assistance or any other programs established under this Act.

(e) PURCHASE OF LAND OR INTERESTS IN LAND FROM WILLING SELLERS ONLY.—Funds appropriated to carry out this Act shall be used to purchase land or interests in land only from willing sellers.

(f) APPRAISAL METHODOLOGY.—

(1) IN GENERAL.—With respect to an appraisal related to a land acquisition carried out under this Act, a Highlands State may use an appraisal methodology approved by the Secretary of the Interior.

(2) ALTERNATIVE APPRAISAL METHODOLOGY.—A Highlands State may petition the Secretary of the Interior to consider an alternative appraisal methodology when there is a conflict, in any Highlands State, between—

(A) an appraisal methodology approved by the Secretary of the Interior under paragraph (1); and

(B) applicable State law.

○