

NATIONAL MONUMENT FAIRNESS ACT OF 1997

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JULY 21, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1127]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1127) to amend the Antiquities Act to require an Act of Congress and the concurrence of the Governor and State legislature for the establishment by the President of national monuments in excess of 5,000 acres, having considered the same, reports favorably thereon with amendment and recommend that the bill as amended do pass.

The amendments are 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 “National Monument Fairness Act of 1997”.

**SEC. 2. CONSULTATION WITH THE GOVERNOR AND STATE LEGISLATURE.**

Section 2 of the Act of June 8, 1906, commonly referred to as the “Antiquities Act” (34 Stat. 225; 16 U.S.C. 431) is amended by adding the following at the end thereof: “A proclamation under this section issued by the President to declare any area in excess of 50,000 acres in a single State in a single calendar year, to be a national monument shall not be final and effective unless and until the Secretary of the Interior submits the Presidential proclamation to Congress as a proposal and the proposal is passed as a law pursuant to the procedures set forth in Article 1 of the United States Constitution. Prior to the submission of the proposed proclamation to Congress, the Secretary of the Interior shall consult with and obtain the written comments of the Governor of the State in which the area is located. The Governor shall have 90 days to respond to the consultation concerning the area’s proposed

monument status. The proposed proclamation shall be submitted to Congress 90 days after receipt of the Governor's written comments or 180 days from the date of the consultation if no comments were received."

Amend the title so as to read:

A bill to amend the Antiquities Act to require an Act of Congress and the concurrence of the Governor and State legislature for the establishment by the President of national monuments in excess of 50,000 acres.

#### PURPOSE OF THE BILL

The purpose of H.R. 1127 is to limit the ability of the President to abuse the Antiquities Act of 1906 by requiring an Act of Congress and the comments of the Governor for the establishment by the President of national monuments in excess of 50,000 acres.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1906 President Roosevelt signed the Antiquities Act which was designed to respond to a national movement to stop the vandalism and looting that was occurring on landmarks of prehistoric, historic or scientific interest and value. Since it was felt that legislative action was often too slow to respond to such threats to important areas, the Act allowed designation of National Monuments through Presidential proclamation. Congress, understanding the potential for abuse of such a power, included language within the Act specifically limiting monument designations to the smallest amount of land necessary to protect such areas.

During the early 1900s there were very few mechanisms for setting aside or protecting large portions of land. Presidents during these years sometimes used their monument proclamation power under the Antiquities Act to protect huge areas of land. Some good examples of this include the Grand Canyon, proclaimed as a national monument in 1908, and what is now Utah's Zion National Park, originally proclaimed as a national monument in 1909. Realizing that conservation-minded presidents, like Theodore Roosevelt, were doing the best they could to serve the public good with a system that gave them almost no other land conservation options, these designations made sense, given the limited ability to protect lands at the time.

During the next several decades, public concern for conservation became more widespread and Congress responded by passing very powerful laws to serve the cause of conservation more fully. Since 1906 Congress created the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, National Historic Preservation Act, Wild and Scenic Rivers System, the Archaeological Resources Protection Act, the Federal Land Policy and Management Act, the National Environmental Policy Act, and other conservation authorities. The cumulative effect of these laws made it much easier to preserve large portions of land. Almost all of the large monuments designated during the years immediately following the passage of the Antiquities Act became National Parks or were otherwise incorporated into the new systems established as a result of these new laws. The point is that, while it may have been a good idea in 1906 to allow the President to use the Antiquities Act to designate large monuments, it isn't necessary or desirable today.

On September 18, 1996, President Clinton, claiming authority under the 1906 Antiquities Act, proclaimed the Grand Staircase-Escalante National Monument in Utah. The monument measures 1.7 million acres, and includes approximately 200,000 acres of state and private lands. This action was taken unilaterally by the President without informing or consulting with any of Utah's elected representatives. According to testimony and documents received by the Subcommittee on National Parks and Public Lands, this was purely a political action designed to appease the environmental community and timed according to the November election. Documents reviewed by the Committee make it clear that this action had very little to do with protection of lands but was instead focused on political advantage.

H.R. 1127 amends the Antiquities Act of 1906 to prevent the President from unilaterally creating large national monuments. The bill originally contained language requiring that any monuments larger than 5,000 acres would require the President to consult with the Governor of the affected state, and would require an Act of Congress. In Committee the acreage threshold was increased to 50,000 acres.

In response to concerns that Presidents might still abuse the Antiquities Act by stringing several small monuments together to cover any amount of acreage, the committee adopted an amendment to prevent the President from creating through Presidential proclamation more than one monument in any one state during any single calendar year.

#### COMMITTEE ACTION

H.R. 1127 was introduced on March 19, 1997, by Congressman James V. Hansen (R-UT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks and Public Lands. On April 29, 1997, the Subcommittee held a hearing on H.R. 1127, where the Subcommittee received testimony from State and local officials from Utah about President Clinton's failure to consult with them before proclaiming the new Grand Staircase-Escalante National Monument. These State and local officials gave H.R. 1127 their full support. Secretary of Interior Bruce Babbitt, while testifying about his role in the monument's creation, indicated that the Administration did not support the bill. On May 8, 1997, the Subcommittee met to mark up H.R. 1127. No amendments were offered and the bill was ordered favorably reported to the Full Committee by voice vote. On May 21, 1997, the Full Resources Committee met to consider H.R. 1127. An amendment to increase the acreage threshold from 5,000 to 50,000 was offered by Congressman Joel Hefley (R-CO), and adopted by voice vote. Congressman Eni F.H. Faleomavaega (D-AS) offered an amendment in the nature of a substitute which directed the President to consult with the Governor of the State and others 60 days before declaring a monument, unless the delay would jeopardize the values for which the monument is declared. The amendment failed on a voice vote. Congressman Jim Hansen then offered and withdrew an amendment which placed a one-year time limit on any proclamation issued by the President under the Antiquities Act. Congresswoman Helen Chenoweth then offered

and withdrew an amendment to strike the size threshold for Congressional action under the bill. Congresswoman Chenoweth then offered an amendment to exempt the State of Idaho from activities under the Antiquities Act. Congressman Jim Gibbons then offered an amendment to the Chenoweth amendment which exempted Nevada. The Gibbons amendment failed on a voice vote. The meeting was adjourned before final action on the bill could be taken. On June 25, 1997, the Full Resources Committee met again to consider H.R. 1127. Chairman Don Young made a unanimous consent motion to vacate the actions of the Committee on the bill up to the point immediately after the adoption of the Hefley amendment. The motion was agreed to. An amendment to prevent the President from creating by proclamation more than one national monument in any one state in any one calendar year was offered by Congresswoman Helen Chenoweth. The amendment passed by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X 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 H.R. 1127.

#### COST OF THE LEGISLATION

Clause 7(a) 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 H.R. 1127. However, clause 7(d) 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 403 of the Congressional Budget Act of 1974.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1127 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI 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 and Oversight on the subject of H.R. 1127.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI 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 H.R. 1127 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 18, 1997.*

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. 1127, the National Monument Fairness Act of 1997.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 1127—National Monument Fairness Act of 1997*

H.R. 1127 would amend the Antiquities Act to restrict the President's authority to declare certain areas as national monuments. The President would retain the right to designate federal lands as national monuments, but proclamations involving more than 50,000 acres in a single state in a single calendar year would not become effective until the Congress enacted specific legislation to approve the proposed designation. Before submitting the proposal to the Congress, the President would have to obtain written comments from the governor of the affected state.

CBO estimates that enacting H.R. 1127 would not result in additional costs to the federal government and might result in some savings. We have no basis, however, for predicting the amount of such savings. The effect of H.R. 1127 on the responsibilities and budgets of federal land management agencies is uncertain because it would depend on what monuments the executive branch might create in the future under existing powers and on how its interpretation of the bill might affect such actions. If enactment of the bill would result in the creation of fewer or smaller national monuments, the National Park Service (NPS) or other agencies might spend less because it is usually less expensive to administer federal land as national forest or rangeland, for example, than as a monument. In most cases, such savings would be small and would be realized only if they were reflected in lower annual appropriations. It also is possible that enacting the bill could reduce losses on income-producing acreage that might otherwise be withdrawn through the declaration of a new monument, but there is no basis for predicting whether this would happen or the amount of offsetting receipts that might be affected. The bill contains no private-sector or intergovernmental mandates as defined in the Unfunded

Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

The CBO staff contact is Deborah Reis. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 1127 contains no unfunded mandates.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### **SECTION 2 OF THE ACT OF JUNE 8, 1906**

#### **(POPULARLY KNOWN AS THE ANTIQUITIES ACT)**

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States. *A proclamation under this section issued by the President to declare any area in excess of 50,000 acres in a single State in a single calendar year, to be a national monument shall not be final and effective unless and until the Secretary of the Interior submits the Presidential proclamation to Congress as a proposal and the proposal is passed as a law pursuant to the procedures set forth in Article 1 of the United States Constitution. Prior to the submission of the proposed proclamation to Congress, the Secretary of the Interior shall consult with and obtain the written comments of the Governor of the State in which the area is located. The Governor shall have 90 days to respond to the consultation concerning the area's proposed monument status. The proposed proclamation shall be submitted to Congress 90 days after receipt of the Governor's written comments or 180 days from the date of the consultation if no comments were received.*

## ADDITIONAL VIEWS OF MRS. CHENOWETH

Like so many of our federal programs, the 1906 Antiquities Act was created with the best intentions. Its authors envisioned a legal mechanism by which cultural, aesthetic and historically important sites could be quickly protected. But with time, the intended use of the Antiquities Act has been lost, as the politics of the moment have skewed and distorted the Act.

In explaining this phenomenon, Richard Nixon wrote:

I consider myself an environmentalist. No rational person can quarrel with Churchill's observation "I see little glory in an empire which can rule the waves and be unable to flush its sewers." When we established the EPA, our goal was to find a rational balance between the imperative of protecting the environment and the imperative of economic growth. . . . But as so often happens with government programs, the pendulum has swung too far. Measures designed to protect endangered species such as bears, wolves, and the bald eagle are now being used to force Idaho farmers off their land for the sake of the thumbnailsized Bruneau Hot Springs snail. . . . Similarly the public has been bombarded so relentlessly by apocalyptic warnings from EPA bureaucrats and private organizations about global warming and the depletion of the ozone layer that few people realize that many respected authorities believe these concerns lack any scientific foundation. . . . One reason for such excesses is that as new departments and offices "mature," if that is the right word, they look for new domains to conquer. . . . (Richard Nixon, *Beyond Peace*, 1994)

So, too, has the Antiquities Act been twisted. The Grand Staircase-Escalante National Monument in Utah is but one example.

When President Clinton designated 1.7 million acres in Utah as a National Monument, he did so without the input of the local people who would be impacted, without notification of Utah's congressional delegation, and without the consent of Utah's governor. Although the designation locked up five billion dollars in clean coal, cost Utah's school children one billion dollars, and took high paying jobs out of the local economy, the current status of the law allowed the President to do this with the mere stroke of a pen. It is my view that this should never happen again.

H.R. 1127 is a giant step in the right direction. As a representative from Utah, the author of the bill, Chairman Jim Hansen, has experienced first hand the very serious impacts the misuse of the Antiquities Act can have on a state, and I very much appreciate all of his hard work on this issue. Although I wholeheartedly support

the intended goals of the legislation, I question whether it goes far enough.

Within hours of President Clinton's designation of the Grand Staircase-Escalante National Monument, Senator Craig and I introduced joint legislation to protect Idaho. Other measures for other states were also introduced. I went further and introduced legislation to protect all of the United States from any designation of any size. My bills were simple, Congress must be involved in any designation of a land monument no matter the size. However, H.R. 1127 requires Congressional authorization only for designations of more than 50,000 acres. Given the Act's history, I am concerned that this high threshold may still allow future abuses.

In addition to congressional involvement, it is my view that the President must be required to seek the consent of the governor of the state in which the proposed designation is sited. It is not unreasonable nor unconstitutional for Congress to craft a law requiring the executive to obtain the consent of the highest ranking elected official in a state before locking up the resources of that state. I intend to offer an amendment to H.R. 1127 to insert a Governor consent provision.

Nowhere in the legislative history does it suggest that the Act was to be used without local input, congressional notification or public comment. H.R. 1127 goes a long way toward restoring the Antiquities Act to its original intent. Reducing the threshold for Congressional involvement from 50,000 acres to zero and requiring a Governor's consent will take us even further toward the 1906 Antiquities Act's original intent.

HELEN CHENOWETH.

## DISSENTING VIEWS ON H.R. 1127

We join with the Administration and a broad coalition of conservation and historic preservation organizations in opposing H.R. 1127. The bill would severely diminish the ability to use the Antiquities Act of 1906 to protect important natural, historic, and scientific resources located on our public lands.

The impetus for H.R. 1127 evolves around concerns expressed by bill proponents regarding the President's designation of the Grand Staircase-Escalante National Monument in Utah. H.R. 1127 is their response to those concerns. We believe this response goes too far. The delays and ambiguities caused by the review and consultation requirements of the bill would undermine an important law that has been used to protect significant aspects of our national heritage. In addition, the language added by the Committee to limit designation of a monument to a single state in a single calendar year, trivialized an important issue.

The use of the Antiquities Act to designate national monuments is not unique. In the last 90 years, 102 national monuments have been designated pursuant to the Antiquities Act. A significant number of these national monuments were later upgraded to national park status. In fact, in Utah alone, Arches, Zion, Bryce Canyon, and Capital Reefs National Parks were originally established by presidential proclamation as national monuments. In addition, Timpanogos Cave, Rainbow Bridge, Natural Bridge, and Cedar Breaks National Monuments, all in Utah, were established by presidential proclamation. No reasonable person would suggest that these designations were not in the national interest.

Instead of undertaking a substantial and controversial modification of the Antiquities Act, the Committee would have been better off adopting the amendment offered by Mr. Faleomavaega to address the concerns raised regarding consultation while at the same time providing the needed flexibility to address important resource issues. The majority rejected that approach and instead has embarked on a policy proposal that ties the President's hands in dealing with threats to significant natural, historic and scientific resources found on our public lands.

Contrary to the assertions that have been made, the Antiquities Act is not an unfettered grant of authority to the President. In addition, we would note that there is nothing in either current law or the Constitution that limits the Congress' authority, once the President has acted, to pass legislation to amend, modify, or repeal the designation of a national monument. If there are problems with an individual designation that is the process that can and should be used.

We believe that H.R. 1127 would hinder the protection of important public resource values and we urge our colleagues to oppose the bill.

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GEORGE MILLER.  
MAURICE HINCHEY.  
ENI FALEOMAVAEGA.  
BRUCE VENTO.

