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SENATE

{ REPORT
110-295

THOMAS P. O'HARA PUBLIC LAND CAREER OPPORTUNITY ACT OF 2007

APRIL 10, 2008.—Ordered to be printed

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

R E P O R T

[To accompany S. 1433]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1433) to amend the Alaska National Interest Lands Conservation Act to provide competitive status to certain Federal employees in the State of Alaska, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Beginning on page 1, strike line 6 and all that follows through page 2, line 13, and insert the following:

“SEC. 2. COMPETITIVE STATUS FOR CERTAIN FEDERAL EMPLOYEES IN THE STATE OF ALASKA.

“Section 1308 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198) is amended by adding at the end the following:

“(e) COMPETITIVE STATUS.—

“(1) IN GENERAL.—Nothing in subsection (a) provides that any person hired pursuant to the program established under that subsection is not eligible for competitive status in the same manner as any other employee hired as part of the competitive service.

“(2) REDESIGNATION OF CERTAIN POSITIONS.—

“(A) PERSONS SERVING IN ORIGINAL POSITIONS.—Not later than 60 days after the date of enactment of this subsection, with respect to any person hired into a permanent position pursuant to the program established under subsection (a) who is

serving in that position as of the date of enactment of this subsection, the Secretary shall redesignate that position and the person serving in that position as having been part of the competitive service as of the date that the person was hired into that position.

“(B) PERSONS NO LONGER SERVING IN ORIGINAL POSITIONS.—With respect to any person who was hired pursuant to the program established under subsection (a) that is no longer serving in that position as of the date of enactment of this subsection—

“(i) the person may provide to the Secretary a request for redesignation of the service as part of the competitive service that includes evidence of the employment; and

“(ii) not later than 90 days of the submission of a request under clause (i), the Secretary shall redesignate the service of the person as being part of the competitive service.”.

PURPOSE

The purpose of S. 1433 is to amend the Alaska National Interest Lands Conservation Act to provide competitive status to certain Federal employees in the State of Alaska.

BACKGROUND AND NEED

Section 1308 of the Alaska National Interest Lands Conservation Act (ANILCA; Public Law 96–487) authorizes the Secretary of the Interior to hire Alaska residents on a non-competitive basis if the employee has special knowledge or expertise concerning the natural or cultural resources of public lands in Alaska by reason of having lived or worked in or near the lands.

According to the Department of the Interior, there are approximately 150 employees who have been hired pursuant to the local hire preference authority of ANILCA. Many of these employees have spent their entire career with the Department, with significant expertise and important job skills. However, because they were hired under a non-competitive authority, they are unable to compete for promotions or other Federal jobs and are prevented from moving within the Federal employment system like other Federal employees.

The bill is named in honor of Thomas P. O'Hara, a National Park Service pilot hired under the ANILCA local hire provisions who was killed in a plane crash in 2002, while working in the Alaska Peninsula National Wildlife Refuge.

LEGISLATIVE HISTORY

S. 1433 was introduced by Senator Murkowski on May 21, 2007. The Subcommittee on Public Lands and Forests held a hearing on the bill on September 20, 2007. (S. Hrg. 110–216.) Similar bills were introduced in the 109th (S. 2797) and 108th Congresses (S. 2768), but no further action was taken in either Congress. At its business meeting on January 30, 2008, the Committee on Energy

and Natural Resources ordered S. 1433 favorably reported with an amendment.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 1433.

COMMITTEE AMENDMENT

During consideration of S. 1433, the Committee adopted an amendment that incorporates recommendations provided by the National Park Service. Specifically, the amendment replaces section 2 of the bill. Rather than converting the local hire employees to a permanent position after two years of full-time service, the amendment makes clear that a person hired pursuant to the local hire program should be eligible for competitive status in the same manner as any other employee hired as part of the competitive service.

Furthermore, section 2, as amended, states that, not later than 60 days after enactment, the Secretary shall redesignate any position, and persons in such positions, as part of competitive service if any person was hired into a permanent position pursuant to the local hire program and is serving in the position as of date of enactment. With respect to any person hired pursuant to the local hire program who is no longer serving in the position, the amendment provides that the person may request redesignation of the service as part of the competitive service and submit evidence of employment. The amendment further states that not later than 90 days after the request, the Secretary shall redesignate the service of the person.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 amends section 1308 of the Alaska National Interest Lands Conservation Act by adding a new subsection regarding competitive status. This provision makes it clear that persons hired pursuant to the local hire program are eligible for competitive status in the same manner as any other employee hired as part of the competitive service. Furthermore, section 2 states that, not later than 60 days after enactment, the Secretary shall redesignate any position, and persons in such positions, as part of the competitive service if such persons were hired into permanent positions pursuant to the local hire program and are serving in the positions as of the date of enactment. In addition, with respect to any person hired pursuant to the local hire program who is no longer serving in the position, this section provides that the person may request redesignation of the service as part of the competitive service and submit evidence of employment. Finally, this section states that, not later than 90 days after the request, the Secretary shall redesignate the service of the person.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1433—Thomas P. O'Hara Public Land Career Opportunity Act of 2007

S. 1433 would amend existing law governing the local-hire programs of the federal land management agencies that operate in Alaska. CBO estimates that implementing this bill would have no effect on the federal budget. Enacting S. 1433 would not affect revenues or direct spending.

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

S. 1433 would amend the Alaska National Interest Lands Conservation Act to clarify that local residents hired by the Forest Service and the Department of the Interior may be eligible for competitive status as federal employees. The bill would ensure that certain federal employees in Alaska are eligible for promotions but would not affect their current payor benefits.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Theresa Gullo, Deputy Assistant Director for 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. 1433. 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. 1433, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1433, as 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

STATEMENT OF MICHAEL NEDD, ASSISTANT DIRECTOR, MINERAL, REALTY & RESOURCE PROTECTION BUREAU OF LAND MANAGEMENT

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on S. 1433, a bill to amend the Alaska National Interest Lands Conservation Act to provide competitive status to certain federal employees in Alaska.

S. 1433 is named after Thomas P. O'Hara, a National Park Service employee who was a pilot at Katmai National

Park and Preserve. Tom and an employee of the U.S. Fish and Wildlife Service were on a mission in the Alaska Peninsula National Wildlife Refuge on December 19, 2002, when their plane went down. Unfortunately, Tom did not survive the crash.

Tom O'Hara was an experienced pilot with thousands of hours of service, whose skills benefited the residents of Bristol Bay communities—an area where Tom grew up and lived. Tom was hired because of a special local hire program for conservation units in Alaska, which was authorized by Section 1308 of the Alaska National Interest Lands Conservation Act (ANILCA). This program allows bureaus in the Department of the Interior and the Forest Service in the Department of Agriculture to hire “any individual who, by reason of having lived or worked in or near a conservation system unit, has special knowledge or expertise concerning the natural or cultural resources of such unit. . . .” These local individuals may be selected without regard to normal civil service rules requiring formal training or experience.

The program has been used with great success across Alaska. The Departments have been administering this program as an excepted service program meaning that local hire employees are at a disadvantage when applying for other jobs within Alaska or elsewhere in the country. Some employees have overcome this disadvantage because of additional formal education, training or experience. But for others, particularly in small, remote locations, this transition to competitive status is difficult.

In discussing this program with the Office of Personnel Management during the course of the review of S. 1433, the Departments learned that local hire employees have been mistakenly classified as being outside of the competitive service. Because ANILCA specifically provides that veterans preference applies to these positions the positions are by their nature competitive and local hire employees should have been classified as being eligible for competitive status.

S. 1433 provides that local hire employees, after two years of satisfactory service, will be converted to competitive status. There are many excepted services and positions within the Federal government. The Office of Personnel Management is rightly concerned about providing a group of excepted status employees with this benefit which many others have sought and been denied. However, in this case, it appears these local hire employees were mistakenly placed into excepted service status. Therefore we suggest that S. 1433 be amended to direct the Secretary of the Interior and the Secretary of Agriculture to reclassify as part of the competitive service those employees hired into permanent positions pursuant to the local hire provisions of ANILCA and currently serving in those positions. In addition, provisions should be made for former local hire employees who were competitively hired and who

served the requisite amount of time in their positions to apply to the Secretary for competitive status.

This legislation will provide a lasting memorial to the excellent work of Tom O'Hara and other employees who serve the public with their expertise and knowledge of Alaska and help preserve our public lands for others to enjoy. We would be happy to work with the Committee on bill language that would accomplish our suggested amendments.

Thank you for the opportunity to testify in support of S. 1433. I will be happy to answer any questions.

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. 1433 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 96-487 (94 Stat. 2371, 16 USC 3101)

AN ACT To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, 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. This Act may be cited as the "Alaska National Interest Lands Conservation Act".

* * * * *

LOCAL HIRE

SEC. 1308. (a) PROGRAM.—After consultation with the Office of Personnel Management, the Secretary shall establish a program under which any individual who, by reason of having lived or worked in or near public lands, has special knowledge or expertise concerning the natural or cultural resources of public lands and the management thereof (as determined by the Secretary) shall be considered for selection for any position within public lands without regard to—

(1) any provision of the civil service laws or regulations thereunder which require minimum periods of formal training or experience,

(2) any such provision which provides an employment preference to any other class of applicant is such selection, and

(3) any numerical limitation on personnel otherwise applicable. Individuals appointed under this subsection shall not be taken into account in applying any personnel limitation described in paragraph (3).

(b) PREFERENCE ELIGIBLES WITHIN LOCAL HIRE.—Notwithstanding the provisions of subsection (a) of this section, any individual who is eligible to be selected for a position under the provisions of subsection (a) of this section and is a preference eligible as defined in section 2108(3) of title 5 shall be given an employment pref-

erence, consistent with the preference in the competitive service as defined in section 2102 of such title for which such person is eligible under subchapter I of chapter 33 of such title, in selection to such position.

(c) PAYMENT OF EXPENSES AFTER DEATH OF AN EMPLOYEE.—

(1) DEFINITION OF IMMEDIATE FAMILY MEMBER.—In this subsection, the term “immediate family member” means a person related to a deceased employee that was a member of the household of the deceased employee at the time of death.

(2) PAYMENTS.—If an employee appointed under the program established by subsection (a) of this section dies in the performance of any assigned duties on or after October 1, 2002, the Secretary may—

(A) pay or reimburse reasonable expenses, regardless of when those expenses are incurred, for the preparation and transportation of the remains of the deceased employee to a location in the State of Alaska which is selected by the surviving head of household of the deceased employee;

(B) pay or reimburse reasonable expenses, regardless of when those expenses are incurred, for transporting immediate family members and the baggage and household goods of the deceased employee and immediate family members to a community in the State of Alaska which is selected by the surviving head of household of the deceased employee.

(d) REPORTS.—The Secretary shall from time to time prepare and submit to the Congress reports indicating the actions taken in carrying out the provisions of subsection (a) of this section together with any recommendations for legislation in furtherance of the purposes of this section.

(e) COMPETITIVE STATUS.—

(1) IN GENERAL.—*Nothing in subsection (a) provides that any person hired pursuant to the program established under that subsection is not eligible for competitive status in the same manner as any other employee hired as part of the competitive service.*

(2) REDESIGNATION OF CERTAIN POSITIONS.—

(A) PERSONS SERVING IN ORIGINAL POSITIONS.—*Not later than 60 days after the date of enactment of this subsection, with respect to any person hired into a permanent position pursuant to the program established under subsection (a) who is serving in that position as of the date of enactment of this subsection, the Secretary shall redesignate that position and the person serving in that position as having been part of the competitive service as of the date that the person was hired into that position.*

(B) PERSONS NO LONGER SERVING IN ORIGINAL POSITIONS.—*With respect to any person who was hired pursuant to the program established under subsection (a) that is no longer serving in that position as of the date of enactment of this subsection—*

(i) the person may provide to the Secretary a request for redesignation of the service as part of the competitive service that includes evidence of the employment; and

(ii) not later than 90 days of the submission of a request under clause (i), the Secretary shall redesignate the service of the person as being part of the competitive service.

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