

## Calendar No. 373

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SENATE

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### GOOD SAMARITAN SEARCH AND RECOVERY ACT

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APRIL 11, 2018.—Ordered to be printed

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Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 1181]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1181) to direct the Secretary of the Interior and Secretary of Agriculture to expedite access to certain Federal land under the administrative jurisdiction of each Secretary for good Samaritan search-and-recovery missions, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

#### AMENDMENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Good Samaritan Search and Recovery Act”.

#### SEC. 2. EXPEDITED ACCESS TO CERTAIN FEDERAL LAND.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE.—The term “eligible”, with respect to an organization or individual, means that the organization or individual, respectively, is—

(A) acting in a not-for-profit capacity; and

(B) composed entirely of members who, at the time of the good Samaritan search-and-recovery mission, have attained the age of majority under the law of the State where the mission takes place.

(2) GOOD SAMARITAN SEARCH-AND-RECOVERY MISSION.—The term “good Samaritan search-and recovery mission” means a search conducted by an eligible organization or individual for 1 or more missing individuals believed to be deceased at the time that the search is initiated.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior or the Secretary of Agriculture, as applicable.

## (b) PROCESS.—

(1) IN GENERAL.—Each Secretary shall develop and implement a process to expedite access to Federal land under the administrative jurisdiction of the Secretary for eligible organizations and individuals to request access to Federal land to conduct good Samaritan search-and-recovery missions.

(2) INCLUSIONS.—The process developed and implemented under this subsection shall include provisions to clarify that—

(A) an eligible organization or individual granted access under this section—

(i) shall be acting for private purposes; and

(ii) shall not be considered to be a Federal volunteer;

(B) an eligible organization or individual conducting a good Samaritan search-and-recovery mission under this section shall not be considered to be a volunteer under section 102301(c) of title 54, United States Code;

(C) chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”), shall not apply to an eligible organization or individual carrying out a privately requested good Samaritan search-and-recovery mission under this section; and

(D) chapter 81 of title 5, United States Code (commonly known as the “Federal Employees Compensation Act”), shall not apply to an eligible organization or individual conducting a good Samaritan search-and-recovery mission under this section, and the conduct of the good Samaritan search-and-recovery mission shall not constitute civilian employment.

(c) RELEASE OF FEDERAL GOVERNMENT FROM LIABILITY.—The Secretary shall not require an eligible organization or individual to have liability insurance as a condition of accessing Federal land under this section, if the eligible organization or individual—

(1) acknowledges and consents, in writing, to the provisions described in subparagraphs (A) through (D) of subsection (b)(2); and

(2) signs a waiver releasing the Federal Government from all liability relating to the access granted under this section and agrees to indemnify and hold harmless the United States from any claims or lawsuits arising from any conduct by the eligible organization or individual on Federal land.

## (d) APPROVAL AND DENIAL OF REQUESTS.—

(1) IN GENERAL.—The Secretary shall notify an eligible organization or individual of the approval or denial of a request by the eligible organization or individual to carry out a good Samaritan search and-recovery mission under this section by not later than 48 hours after the request is made.

(2) DENIALS.—If the Secretary denies a request from an eligible organization or individual to carry out a good Samaritan search-and-recovery mission under this section, the Secretary shall notify the eligible organization or individual of—

(A) the reason for the denial of the request; and

(B) any actions that the eligible organization or individual can take to meet the requirements for the request to be approved.

(e) PARTNERSHIPS.—Each Secretary shall develop search-and-recovery-focused partnerships with search-and recovery organizations—

(1) to coordinate good Samaritan search-and recovery missions on Federal land under the administrative jurisdiction of the Secretary; and

(2) to expedite and accelerate good Samaritan search-and-recovery mission efforts for missing individuals on Federal land under the administrative jurisdiction of the Secretary.

(f) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretaries shall submit to Congress a joint report describing—

(1) plans to develop partnerships described in subsection (e)(1); and

(2) efforts carried out to expedite and accelerate good Samaritan search-and-recovery mission efforts for missing individuals on Federal land under the administrative jurisdiction of each Secretary pursuant to subsection (e)(2).

## PURPOSE

The purpose of S. 1181 is to direct the Secretary of the Interior and Secretary of Agriculture to expedite access to certain Federal land under the administrative jurisdiction of each Secretary for good Samaritan search-and-recovery missions.

## BACKGROUND AND NEED

Volunteer good Samaritan search-and-recovery teams must currently apply for and receive a Federal permit and meet liability insurance requirements before they are allowed to search for missing persons on Federal land. S. 1181 was introduced in response to the tragic stories of Mr. Keith Goldberg and Air Force Staff Sergeant Antonio Tucker. Both of these individuals were missing for over a year in the Lake Mead National Recreation Area, administered by the National Park Service, before volunteer good Samaritan search-and-recovery teams received government authorization to begin search operations. In both cases, the teams had to wait to access the public lands to conduct the searches due to difficulties navigating existing federal permitting and liability insurance requirements for such operations. Once access was granted, these missing persons were recovered almost immediately.

S. 1181 expedites access to public lands for qualified and trained good Samaritan search-and-recovery organizations to help bring closure to families of missing persons as quickly as possible. It requires that permits for accessing public lands for search-and-recovery missions be issued or denied to eligible organizations or individuals within 48 hours of application. The bill provides that eligible organizations or individuals do not have to obtain an insurance policy if they waive Federal government liability. S. 1181 further enables the Federal government to develop long-term partnerships with such search-and-recovery organizations thereby conserving government resources and possibly saving lives.

## LEGISLATIVE HISTORY

Senators Heller and Warner introduced S. 1181 on May 18, 2017. Similar legislation is also included as section 6107 of S. 1460, the Energy and Natural Resources Act of 2017 (Cal. 162).

On September 1, 2017, Representatives Duncan, Scott, and Wittman introduced similar legislation in the House of Representatives as title X of H.R. 3668, the Sportsmen's Heritage and Recreational Enhancement Act. The bill was primarily referred to the Committee on Natural Resources, in addition to the Committees on Agriculture, the Judiciary, Energy and Commerce, Transportation and Infrastructure, and Ways and Means. The Natural Resources Committee ordered the bill favorably reported, as amended, on September 13, 2017 (H. Rept. 115-134, Part I). On September 18, 2018, the bill was discharged from the Committees on Agriculture, the Judiciary, Energy and Commerce, Transportation, and Ways and Means, and placed on the Calendar (Cal. 224).

In the 114th Congress, similar legislation, S. 160, was introduced by Senator Heller on January 13, 2015, and referred to the Committee on Energy and Natural Resources. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 160 on May 21, 2015 (S. Hrg. 114-380). S. 160 was also included as section 10007 of S. 2012, the Energy Policy Modernization Act of 2015.

In the 114th Congress, H.R. 373 was introduced in the House of Representatives by Representative Heck on January 14, 2015. The bill was primarily referred to the Committee on Natural Resources, in addition to the Committee on Agriculture. The bill was ordered reported by the Natural Resources Committee on March 25, 2015,

and was discharged from the Agriculture Committee on April 15, 2015. H.R. 373 passed the House under suspension of the rules, as amended, by a vote of 413–0 on April 28, 2015. The bill was received in the Senate and referred to the Committee on Energy and Natural Resources. The bill was considered at a hearing by the Subcommittee on Public Lands, Forests, and Mining on May 21, 2015 (S. Hrg. 114–380). On November 19, 2015, the Committee on Energy and Natural Resources met in open business session and ordered H.R. 373 favorably reported without amendment (S. Rept. 114–193).

In the 113th Congress, Senator Heller introduced a similar bill, S. 1049, on May 23, 2013. The Subcommittee on Public Lands, Forests, and Mining held a hearing on the bill on July 30, 2014 (S. Hrg. 113–433). In the House of Representatives, Representatives Heck and Amodei introduced an identical companion bill, H.R. 2166, on May 23, 2013. H.R. 2166 was referred to the Committees on Natural Resources and Agriculture. The Natural Resources' Subcommittee on Public Lands and Environmental Regulation considered the bill at a hearing on June 6, 2013. The Natural Resources Committee favorably ordered the bill reported by voice vote on June 12, 2013 (H. Rept. 113–331, Part I). The House of Representatives passed H.R. 2166 by a vote of 394–0 on January 27, 2014.

On March 8, 2018, the Committee on Energy and Natural Resources met in open business session and ordered S. 1181 favorably reported, as amended.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 8, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 1181, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 1181, the Committee adopted an amendment in the nature of a substitute. The amendment amends the definition of the term “eligible” in order to strike the requirement that an eligible organization or individual must have a certificate that meets or exceed the standards established by the American Society for Testing and Materials. Instead, the amendment requires that individuals participating in a search-and-recovery mission must be a legal adult in the state where the search-and-recovery mission takes place. It also clarifies that a search-and-recovery mission must be conducted by an eligible individual or organization, as defined in this Act.

The amendment further specifies that in addition to releasing the Federal government from all liability relating to access granted for a search-and-recovery mission, an eligible individual or organization must agree to indemnify and hold harmless the Federal government from any claims or lawsuits that arise from conduct on Federal land during a search-and-recovery mission.

The substitute amendment is identical to the language included in section 6107 of S. 1460, the Energy and Natural Resources Act of 2017.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 provides the short title.

*Section 2. Expedited access to certain Federal land*

Subsection (a) provides definitions.

Subsection (b) directs each Secretary to develop and implement a process to provide eligible organizations and individuals expedited access to Federal lands to conduct good Samaritan search-and-recovery operations. The process should make it clear that eligible organizations and individuals are acting for private purposes, that they will not be considered Federal volunteers or staff, and that the Federal Tort Claims Act and the Federal Employees Compensation Act do not apply to such organizations and individuals while conducting the good Samaritan search-and-recovery mission.

Subsection (c) directs the applicable Secretary to waive liability insurance requirements if the eligible organization or individual agrees to certain conditions and signs a waiver releasing the Federal government from all liability associated with their search-and-recovery mission.

Subsection (d) requires the applicable Secretary to approve or deny a request made by an eligible organization or individual to carry out good Samaritan search-and-recovery missions within 48 hours after a request is made. If an organization does not receive approval, the Secretary is required to tell the organization why they were denied and what they can do to meet the requirements for approval.

Subsection (e) directs each Secretary to develop search-and-recovery-focused partnerships with appropriate organizations to coordinate good Samaritan search-and-recovery missions on Federal land and to expedite mission efforts for missing individuals.

Subsection (f) directs the Secretaries to submit a report within 180 days following enactment of the Act outlining their plans to develop partnerships and their efforts to streamline good Samaritan search-and-recovery efforts.

## COST AND BUDGETARY CONSIDERATIONS

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

S. 1181 would require the Secretary of the Interior and the Secretary of Agriculture to expedite access to federal lands for search and recovery missions conducted by certain people or organizations. Under the bill, entities conducting such missions would not be considered federal employees or volunteers, and the federal government would not be liable for their actions.

Using information provided by the Department of the Interior and the Forest Service, CBO expects that the costs of expediting access to federal lands for search and recovery missions would be minimal and we estimate that implementing the legislation would have no significant effect on the federal budget.

Enacting S. 1181 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1181 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, 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. 1181. 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. 1181, as ordered reported.

#### CONGRESSIONAL DIRECTED SPENDING

S. 1181, 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

Because S. 1181 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The testimony provided by the U.S. Forest Service at the hearing before the Subcommittee on Public Lands, Forests and Mining on May 21, 2015, follows:

STATEMENT OF LESLIE WELDON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING, UNITED STATES SENATE, CONCERNING S. 160, "TO DIRECT THE SECRETARY OF THE INTERIOR AND SECRETARY OF AGRICULTURE TO EXPEDITE ACCESS TO CERTAIN FEDERAL LAND . . . FOR GOOD SAMARITAN SEARCH-AND-RECOVERY MISSIONS"

S. 160 would direct the Secretary of Agriculture to develop and implement a process to expedite access to National Forest System lands for eligible organizations and individuals to conduct Good Samaritan search-and-recovery missions for missing individuals presumed to be deceased at the time the search is initiated. S. 160 would provide that an eligible organization or individual may not be required to have liability insurance if the organization or individual agrees to release the United States from all liability. The bill also would require that the process include provisions clarifying that an eligible organization or

individual would not be considered to be a Federal volunteer when carrying out a Good Samaritan search-and-recovery mission, and that the Federal Torts Claims Act and the Federal Employee Compensation Act would not apply to a Good Samaritan search-and-recovery mission.

Additionally, it would require the Secretary to provide notification of the approval or denial of a request to carry out a mission not more than 48 hours after the request is made. If a request is denied, the agency would be required to provide a reason and describe actions needed to meet the requirements for approval. The bill would also require the Secretary to develop partnerships with search and recovery organizations to help coordinate, expedite, and accelerate mission efforts. A report is also required to Congress no later than 180 days after the date of enactment on plans to develop partnerships, as well as efforts to expedite and accelerate Good Samaritan search-and-recovery mission efforts for missing individuals on Federal land.

The Department supports S. 160 with technical corrections and amendments. The provisions specified in S. 160 and the desired intent of the Act, to allow expedited access to Federal lands for search and recovery missions, are substantially consistent with current Forest Service policies and guidelines governing these types of activities and access. The provisions requiring the development and implementation of a process to expedite access would be unnecessary and redundant in most search and recovery cases on National Forest System lands.

The Forest Service currently has very few access restrictions to Federal lands under its jurisdiction for the type of activities described in the Act. Notable exceptions would include some restrictions to areas designated as Wilderness, and special area closures for events such as fire or avalanche.

The provisions requiring the development and implementation of a process to expedite access would be unnecessary in most search and recovery cases on National Forest System lands. In most areas, the County Sheriff has the primary responsibility for search, recovery, and recovery operations on National Forest System lands and can act without a permit issued by the Forest Service. The Forest Service currently has cooperative agreements with County Sheriffs, which could address procedures for them to conduct search and recovery missions on National Forest System lands.

Mr. Chairman, regardless of the ultimate outcome of the congressional consideration of S. 160, the Forest Service is committed to working with all organizations and the dedicated men and women who volunteer their time and expertise to assist in the search and recovery of those missing.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

