Calendar No. 395

104TH CONGRESS
2d Session

SENATE

REPORT
104–261

REVISED STATUTES 2477 RIGHTS-OF-WAY SETTLEMENT ACT

MAY 9, 1996.—Ordered to be printed

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

REPORT

[To accompany S. 1425]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1425) to recognize the validity of rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

> No final rule or regulation of any agency of the federal government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this Act.

PURPOSE OF THE MEASURE

As ordered reported, S. 1425 states that no final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to a R.S. 2477 rights-of-way shall take effect unless expressly authorized by an Act of Congress enacted subsequent to the date of enactment of this Act. All Federal agencies are required to abide by the rules and regulations in effect on the date of enactment of this Act. The Committee expects that once the current moratorium expires,

the Department of the Interior will continue to develop the proposed final regulations.

BACKGROUND AND NEED

Section 8 of the Mining Act of 1866 stated that "the right of way for the construction of highways over public lands, not reserved for public uses is hereby granted." The section was codified as section 2477 of the Revised Statutes, and has been referred to since then as "R.S. 2477." The section was included in the 1866 Mining law primarily to facilitate access across public lands. In 1976, section 706 of FLPMA repealed R.S. 2477, but recognized valid rights-of-way existing before the date of enactment of FLPMA. The repeal did not provide any time limitation on filing claims for pre-1976 rights-of-way.

Although the 1976 repeal of R.S. 2477 did not generate much interest or controversy at that time, the issue has become very contentious in recent years. The issue has become especially controversial in Alaska and Utah, where the States have claimed that access across large amounts of public lands is a necessary component of the State infrastructure. Large numbers of potential R.S. 2477 rights-of-way claims may exist across Federal lands in these States.

In August 1994, the Department of the Interior proposed new regulations for processing R.S. 2477 claims. The proposed regulations would change existing regulations, and for the first time require R.S. 2477 claimants to file a claim with the Department within two years, even if the right-of-way had been formally recognized. The Secretary (acting through the authorized officer in the BLM, Park Service, or Fish and Wildlife Service) would make a determination as to the validity of the claim. If the claim was denied, the claimant could appeal or the claimant could pursue a right-of-way application under other Federal laws (e.g. title V of FLPMA or title XI of ANILCA). If the claim was determined to be valid, the agency would manage the right-of-way under existing Federal laws.

The original 90-day comment period was extended on two occasions by the Secretary following Congressional requests, with the comment period finally expiring one year after the proposed regulations were originally published. Subsequently, an amendment was included in the Highway bill which prohibited the Department from expending any funds on the promulgation of the proposed regulations through September 30, 1996.

Resolution of R.S. 2477 rights-of-way claims has been a very complex and contentious process. S. 1425, as ordered reported by the Committee, will allow the Department to proceed with the development of new regulations, while prohibiting their implementation until expressly approved by an Act of Congress. It is the Committee's hope that in reviewing and analyzing the extensive number of comments received after the publication of the draft regulations, the Department will be in a better position to propose final regulations that address and hopefully more completely resolve the many competing concerns raised during this process.

LEGISLATIVE HISTORY

S. 1425, was introduced in the Senate by Mr. Murkowski, Mr. Hatch, Mr. Stevens, and Mr. Bennett on Monday, November 1, 1995. The Senate Committee on Energy and Natural Resources held a hearing on the bill March 14, 1996.

At the business meeting on Wednesday, May 1, 1996, the Committee on Energy and Natural Resources ordered S. 1425, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on May 1, 1996, by voice vote of a majority of a quorum present, recommends that the Senate pass S. 1425, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1425, the Committee adopted an amendment in the nature of a substitute. The amendment provides that no final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to R.S. 2477 rights-of-way shall take effect unless expressly authorized by an Act of Congress enacted subsequent to the date of enactment of this Act.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1425, a bill to recognize the validity of rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on May 1, 1996. S. 1425 would prohibit any federal agency from carrying out a final rule or regulation pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) unless authorized by an act of Congress.

R.S. 2477, first enacted in 1866, granted rights-of-way to construct highways over public lands not reserved for public uses. R.S. 2477 was repealed in 1976, but valid existing rights-of-way were preserved. The Department of the Interior (DOI) issued proposed regulations on July 29, 1994, to clarify the administrative process for settling rights-of-way claims made under R.S. 2477. However, the National Highway System Designation Act of 1995 (Public Law 104–59), enacted in November 1995, imposed a moratorium—through September 30, 1996—on any federal expenditures to pro-

mulgate regulations to implement the proposed new process. Enacting S. 1425 would effectively extend that moratorium indefinitely.

Enacting the bill could affect discretionary spending for resolving claims related to R.S. 2477. Under current law, DOI might expend funds after September 30, 1996, to promulgate and implement final regulations on R.S. 2477. Under both current law and this bill, the government could incur costs resulting from litigation or from administrative actions to resolve individual claims. CBO cannot project precisely how the costs of resolving claims under S. 1425 would differ from those under current law, but we do not expect that enacting this bill would have a significant effect on discretionary spending in the near term.

CBO estimates that enacting S. 1425 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

S. 1425 contains no intergovernmental mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments. The bill could reduce some costs to states because it would prevent implementation of proposed regulations that would impose costs on some state and local governments. Those regulations would require state and local governments to obtain an administrative determination as to the validity and scope of all right-of-way claims under R.S. 2477 within two years, even if a claim has already been validated by the courts. In the absence of these regulations, state and local governments may still face costs, however, because they would have to rely on the courts if they want to validate these claims.

This bill would impose no new private sector mandates as defined in Public Law 104–4.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria V. Heid and, for the state and local impact, Marjorie Miller.

Sincerely,

JUNE E. O'NEILL, *Director.*

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. 1425. 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. 1425, as ordered reported.

EXECUTIVE COMMUNICATIONS

On, March 4, 1996, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the Department of Agriculture, and the Office of Management and Budget of setting forth Executive agency recommendations on S. 1425. These reports had not been received at the time the report on S. 1425 was filed. When the reports become available,

the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

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 S. 1425, as ordered reported.

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