

# Committee on Natural Resources

Rob Bishop, Chairman  
Markup Memorandum

January 29, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff, Terry Camp  
Subcommittee on Federal Lands (x6-7736)

Markup: Markup on H.R. 3620 (Rep. Tom Marino, R-PA), To amend the Delaware Water Gap National Recreation Area Improvement Act to provide access to certain vehicles serving residents of municipalities adjacent to the Delaware Water Gap National Recreation Area, and for other purposes.  
February 2-3, 2016 1324 Longworth HOB

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**H.R. 3620 (Rep. Tom Marino, R-PA), To amend the Delaware Water Gap National Recreation Area Improvement Act to provide access to certain vehicles serving residents of municipalities adjacent to the Delaware Water Gap National Recreation Area, and for other purposes**

## **Bill Summary**

H.R. 3620, introduced by Representative Tom Marino (R-PA-10), amends the Delaware Water Gap National Recreation Area Improvement Act with respect to the prohibition against the use of Highway 209, a federally owned road within the boundaries of the Delaware Water Gap Recreation Area in Pennsylvania, by certain commercial vehicles except as they serve businesses physically located in towns adjacent to Highway 209. The bill also requires the Department of the Interior to establish a fee and permit program for the use of Highway 209 by commercial vehicles, including an annual fee of up to \$200 per vehicle.

## **Bill Co-sponsors**

Rep. Matt Cartwright (D-PA-17)

## **Background**

The Delaware Water Gap National Recreation Area in Pennsylvania and New Jersey preserves 70,000 acres on both sides of the Delaware River. Highway 209 spans 21 miles through the middle of the National Recreation Area and served as a major truck route for many years. In 1981, Highway 209 was transferred from the Commonwealth of Pennsylvania to the National Park Service (NPS).

Two years later, a provision of Public Law 98-63, the Fiscal Year 1983 Supplemental Appropriations Act, closed the Park segment of Highway 209 to commercial traffic and authorized the NPS to collect and retain fees from commercial use of the road. A 10-year

transition period was established to accommodate impacts on the surrounding communities, especially the 13 trucking companies that were in existence in towns adjacent to the park at that time. This portion of federal roadway was a heavily travelled commercial vehicle route between Interstates 80 and 84. The Federal Government ensured that I-287 in New Jersey and I-380 in Pennsylvania were built to provide an alternate route between I-80 and I-84; and the Commonwealth of Pennsylvania was tasked with the improvement of State Road 2001 to absorb the remaining traffic.

In 1996, the 104th Congress passed Public Law 104–333, which extended permitting for commercial vehicle traffic until September 30, 2005. In 2005, the 109th Congress passed Public Law 109-156, the Delaware Water Gap Improvement Act, which extended permitting for commercial vehicle traffic until September 30, 2015. This extension was passed to provide more time for the Commonwealth of Pennsylvania to complete upgrades to SR 2001, including a land exchange.

As the third extension permitting commercial vehicle use of Highway 209 neared expiration on September 30, 2015, local elected officials requested that Congress enact legislation directed at permitting access for smaller class commercial vehicles for businesses physically located in towns adjacent to Highway 209, for a period of five years.

### **Administration Position**

The Administration has not made an official statement, but likely supports the bill.

### **Cost**

The Congressional Budget Office has not completed a cost estimate of this bill.

**Effect on Current Law (Ramseyer)**

**Showing Current Law as Amended by H.R. 3620**

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

**Public Law 109-156, the Delaware Water Gap National Recreation Area Improvement Act**

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Delaware Water Gap National Recreation Area Improvement Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) Adjacent Municipalities.--The term "adjacent municipalities" means Delaware Township, Dingman Township, Lehman Township, Matamoras Borough, Middle Smithfield Township, Milford Borough, Milford Township, Smithfield Township and Westfall Township, in Pennsylvania.

(2) [(1)] Corporation.--The term ``Corporation'' means the Columbia Gas Transmission Corporation.

(3) [(2)] Pipeline.--The term ``pipeline'' means that portion of the pipeline of the Corporation numbered 1278 that is--

(A) located in the Recreation Area; and

(B) situated on 2 tracts designated by the

Corporation as ROW No. 16405 and No. 16413.

(4) [(3)] Recreation area.--The term ``Recreation Area'' means the Delaware Water Gap National Recreation Area in the Commonwealth of Pennsylvania.

(5) [(4)] Secretary.--The term ``Secretary'' means the Secretary of the Interior.

(6) [(5)] Superintendent.--The term ``Superintendent'' means the Superintendent of the Recreation Area.

SEC. 3. EASEMENT FOR EXPANDED NATURAL GAS PIPELINE.

(a) In General.--The Secretary may enter into an agreement with the Corporation to grant to the Corporation an easement to enlarge the diameter of the pipeline from 14 inches to not more than 20 inches.

(b) Terms and Conditions.--The easement authorized under subsection (a) shall--

(1) be consistent with--

(A) the recreational values of the Recreation Area;

and

(B) protection of the resources of the Recreation Area;

(2) include provisions for the protection of resources in the Recreation Area that ensure that only the minimum and necessary amount of disturbance, as determined by the Secretary, shall occur during the construction or maintenance of the enlarged pipeline;

(3) be consistent with the laws (including regulations) and

policies applicable to units of the National Park System; and  
(4) be subject to any other terms and conditions that the Secretary determines to be necessary;

(c) Permits.--

(1) In general.--The Superintendent may issue a permit to the Corporation for the use of the Recreation Area in accordance with subsection (b) for the temporary construction and staging areas required for the construction of the enlarged pipeline.

(2) Prior to issuance.--The easement authorized under subsection (a) and the permit authorized under paragraph (1) shall require that before the Superintendent issues a permit for any clearing or construction, the Corporation shall--

(A) consult with the Superintendent;

(B) identify natural and cultural resources of the Recreation Area that may be damaged or lost because of the clearing or construction; and

(C) submit to the Superintendent for approval a restoration and mitigation plan that--

(i) describes how the land subject to the easement will be maintained; and

(ii) includes a schedule for, and description of, the specific activities to be carried out by the Corporation to mitigate the damages or losses to, or restore, the natural and cultural resources of the Recreation Area identified under subparagraph (B).

(d) Pipeline Replacement Requirements.--The enlargement of the pipeline authorized under subsection (a) shall be considered to meet the pipeline replacement requirements required by the Research and Special Programs Administration of the Department of Transportation (CPF No. 1-2002-1004-H).

(e) FERC Consultation.--The <<NOTE: Certification.>> Corporation shall comply with all other requirements for certification by the Federal Energy Regulatory Commission that are necessary to permit the increase in pipeline size.

(f) Limitation.--The Secretary shall not grant any additional increases in the diameter of, or easements for, the pipeline within the boundary of the Recreation Area after the date of enactment of this Act.

(g) Effect on Right-of-Way Easement.--Nothing in this Act increases the 50-foot right-of-way easement for the pipeline.

(h) Penalties.--On request of the Secretary, the Attorney General may bring a civil action against the Corporation in United States district court to recover damages and response costs under Public Law 101-337 (16 U.S.C. 19jj et seq.) or any other applicable law if--

(1) the Corporation--

(A) violates a provision of--

(i) an easement authorized under subsection (a); or

(ii) a permit issued under subsection (c); or

(B) fails to submit or timely implement a restoration and mitigation plan approved under subsection (c) (2) (C); and

(2) the violation or failure destroys, results in the loss of, or injures any park system resource (as defined in section 1

of Public Law 101-337 (16 U.S.C. 19jj)).

**[SEC. 4. USE OF CERTAIN ROADS WITHIN DELAWARE WATER GAP.]**

Section 702 of Division I of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333; 110 Stat. 4185) is amended--

(1) in subsection (a), by striking ``at noon on September 30, 2005'' and inserting ``on the earlier of the date on which a feasible alternative is available or noon of September 30, 2015''; and

(2) in subsection (c)--

(A) in paragraph (1), by striking ``September 30, 2005'' and inserting ``on the earlier of the date on which a feasible alternative is available or September 30, 2015''; and

(B) in paragraph (2)--

(i) by striking ``noon on September 30, 2005'' and inserting ``the earlier of the date on which a feasible alternative is available or noon of September 30, 2015''; and

(ii) by striking ``not exceed \$25 per trip'' and inserting the following: ``be established at a rate that would cover the cost of collection of the commercial use fee, but not to exceed \$40 per trip''.]

**SEC. 4. USE OF CERTAIN ROADS WITHIN THE RECREATION AREA.**

(a) In General- Except as otherwise provided in this section, Highway 209, a federally owned road within the boundaries of the Recreation Area, shall be closed to all commercial vehicles.

(b) Exception for Local Business Use- Until September 30, 2020, subsection (a) shall not apply with respect to the use of commercial vehicles that have four or fewer axles and are--

(1) owned and operated by a business physically located in--

(A) the Recreation Area; or

(B) one or more adjacent municipalities; or

(2) necessary to provide services to businesses or persons located in--

(A) the Recreation Area; or

(B) one of more adjacent municipalities.

(c) Fee- The Secretary shall establish a fee and permit program for the use by commercial vehicles of Highway 209 under subsection (b). The program shall include an annual fee not to exceed \$200 per vehicle. All fees received under the program shall be set aside in a special account and be available, without further appropriation, to the Secretary for the administration and enforcement of the program, including registering vehicles, issuing permits and vehicle identification stickers, and personnel costs.

(d) Exceptions- The following vehicles may use Highway 209 and shall not be subject to a fee or permit requirement under subsection (c):

(1) Local school buses.

(2) Fire, ambulance, and other safety and emergency vehicles.

(3) Commercial vehicles using Federal Road Route 209, from--

(A) Milford to the Delaware River Bridge leading to U.S. Route 206 in New Jersey; and

(B) mile 0 of Federal Road Route 209 to Pennsylvania State Route 2001.

SEC. 5. TERMINATION OF NATIONAL PARK SYSTEM ADVISORY BOARD.

Effective on January 1, 2006, section 3(f) of the Act of August 21, 1935 (16 U.S.C. 463(f)) is amended in the first sentence by striking ``2006'' and inserting ``2007''.

**Public Law 104-333, Omnibus Parks and Public Lands Management Act of 1996**

[SEC. 702. DELAWARE WATER GAP.]

a) In General.--Effective on the earlier of the date on which a feasible alternative is available or noon of September 30, 2015, the use of Highway 209 within Delaware Water Gap National Recreation Area by commercial vehicles, when such use is not connected with the operation of the recreation area, is prohibited, except as provided in subsection (b).

(b) Local Business Use Protected.--Subsection (a) does not apply with respect to the use of commercial vehicles to serve businesses located within or in the vicinity of the recreation area, as determined by the Secretary.

(c) Conforming Provisions.--

(1) Paragraphs (1) through (3) of the third undesignated paragraph under the heading ``ADMINISTRATIVE PROVISIONS'' in chapter VII of title I of Public Law 98-63 (97 Stat. 329) are repealed, effective on the earlier of the date on which a feasible alternative is available or September 30, 2015.

(2) Prior to the earlier of the date on which a feasible alternative is available or noon of September 30, 2015, the Secretary shall collect and utilize a commercial use fee from commercial vehicles in accordance with paragraphs (1) through (3) of such third undesignated paragraph. Such fee shall be established at a rate that would cover the cost of collection of the commercial use fee, but not to exceed \$40 per trip.]