

House measure would expand Homeland Security powers, waive environmental laws

HELENA — A controversial bill that would give the Department of Homeland Security unprecedented authority over federal lands within 100 miles of the United States' border is making its way through Congress.

The proposed measure, called the "National Security and Federal Lands Protection Act," would let Homeland Security waive 36 major federal environmental protection laws in order to facilitate border patrol activities on public lands.

Supporters of the bill say it would give U.S. Customs and Border Protection agents more control in securing the nation's borders. Opponents argue that the measure is overly broad and would give Homeland Security unchecked authority to disregard major environmental laws on public lands, including wilderness areas, national parks and wildlife refuges among others.

Congressman Denny Rehberg, one of the 49 Republican co-sponsors of the measure, said the bill is aimed at giving border patrol agents the tools they need to secure the border.

"This bill is about ending a dangerous turf war being waged between various federal government agencies — and it's a turf war that is threatening America's national security," Rehberg said. "The simple idea of the bill is to provide the border patrol with the same access on federal land that it currently has on state and private land. There is nothing about this bill that creates any new authority to intrude into the lives of Americans."

Critics, including Democratic Sen. Jon Tester, say House Resolution 1505 is on par with the Patriot Act and REAL ID, in terms of granting the federal government unprecedented and overreaching powers.

"It's a federal land grab at its worst," Tester said. "I just can't see how any lawmaker would think it's a good idea to allow the Department of Homeland Security to make sweeping decisions about our land and ignore our rights without any public accountability."

The bill would give the secretary of homeland security total operational authority over all federal lands within 100 miles of the U.S. international and maritime borders. Under the proposed law, DHS would have immediate access to, and control over, any public land managed by the federal government for "purposes of conducting activities that assist in securing the border (including access to maintain and construct roads, construct a fence, use vehicles to patrol and set up monitoring equipment)."

In Montana, the law would impact nearly the entire northern third of the state, including Glacier National Park; portions of the Kootenai and Flathead national forests; The Flathead, Blackfoot,

Rocky Boy's, Fort Belknap and Fort Peck Indian reservations, the Upper Missouri River Breaks National Monument, the Charles M. Russell National Wildlife Refuge, and tens of thousands of acres of Bureau of Land Management lands.

The measure also waives 36 major environmental laws, including the National Environmental Policy Act, the Endangered Species Act, the National Park Service Organic Act, the Federal Water Pollution Control Act, the National Historic Preservation Act and the Clean Air Act.

Homeland Security spokesman Matt Chandler said the agency does not comment on the specifics of pending legislation.

Kim Thorsen, deputy assistant secretary for law enforcement, security and emergency management at the U.S. Department of Interior, testified to the House Subcommittee on National Parks, Forests and Public Lands that the Obama administration opposes the measure.

"We recognize the significant ecological and cultural values of the extensive lands Interior agencies manage near the borders, and we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people," Thorsen said in written testimony to the committee. "We also believe that these two objectives — securing our borders and conserving our federal lands — are not mutually exclusive; we are not faced with a choice between the two, instead, we can — and should — do both."

According to Thorsen, HR 1505 would have a significant impact on the Interior Department's ability to carry out its mission to protect natural and cultural resources on federally managed and trust lands.

"As drafted, this bill could impact approximately 54 units of the national park system, 228 national wildlife refuges, 122 units of the National Wilderness Preservation System managed by Interior, and 87 units of BLM's National Landscape Conservation System, resulting in unintended damage to sensitive natural and cultural resources, including endangered species and wilderness," Thorsen wrote.

John Leshy, a University of California - Hastings, law professor and a former committee staffer, told the committee that compared with other legislation he has seen, HR 1505 is "the most breathtakingly extreme legislative proposal of its kind."

"I have grave concerns, not only about its wisdom as a matter of policy, but also its constitutionality as a matter of law," Hastings told the committee.

He also said that under the bill, Homeland Security's actions would be immune from court review, except for constitutional claims.

Supporters of the measure say that's exactly the point.

Zack Taylor, vice chairman of the National Association of Former Border Patrol Officers, said the foundational components of border security are national security and public safety. He said

no other laws — including environmental protection laws — should ever supersede those foundational principles.

"What has happened is the importance on the environment has come to rule everything else," Taylor said in an interview last week. "In our view, the people are more important than the porcupine or the wolverine or the wolf or the grizzly bear."

Jane Danowitz, director of U.S. Public Lands for the Pew Environment Group, said the measure is part of a "disturbing trend" in Congress to undo environmental regulations in the name of public safety or national security.

"Anti-environmental bills that would never pass under their own merits are now being recast as solutions to some of the country's most pressing problems," Danowitz said. "We all care about national security and protecting our borders, but waiving core conservation measures is not the way to do it."

Supporters say the criticisms of the bill are overblown.

"HR 1505 isn't about creating new enforcement authority. Rather, it's about making existing laws actually work as intended by alleviating the regulatory burden of certain environmental laws," Rehberg said.

Rehberg said the bill is not just about preventing terrorists from entering this country, it also is about stemming the flow of illegal immigrants, drug smuggling and the abuse of public lands by criminals and drug cartels.

"At the end of the day, I never want to have to tell a Montana family that their loved one was killed by someone on drugs that got into our state because some federal bureaucrats couldn't work together to control the border," Rehberg said.

Tester said the bill has far greater implications than its supporters acknowledge.

"This is a whole lot worse than just granting agents access to certain federal lands. It gives one federal department the ability to run roughshod over the rights of law-abiding Americans and seize vast swaths of land we all own and use — with no public accountability," Tester said. "This nation is very capable of fighting terrorism without turning into a government police state, but that's exactly what this unpopular plan would do."

According to the bill's sponsor, Utah Republican Rep. Rob Bishop, the measure could see a mark-up before the end of the year.