

Public Law 101-121
101st Congress

An Act

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1990, and for other purposes.

Oct. 23, 1989
[H.R. 2788]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending September 30, 1990, and for other purposes, namely:

TITLE I—DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For expenses necessary for protection, use, improvement, development, disposal, cadastral surveying, classification, and performance of other functions, including maintenance of facilities, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, including the general administration of the Bureau of Land Management, \$442,084,000, of which the following amounts shall remain available until expended: not to exceed \$1,200,000, to be derived from the special receipt account established by section 4 of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-6a(i)), and \$22,903,000 for the Automated Land and Mineral Record System Project: *Provided*, That appropriations herein made shall not be available for the destruction of healthy, unadopted, wild horses and burros in the care of the Bureau of Land Management or its contractors.

FIREFIGHTING

For necessary expenses for emergency rehabilitation, forest firefighting, fire suppression, and other emergency costs on Department of the Interior lands, \$311,500,000, to remain available until expended, of which \$193,761,000 is for the Bureau of Land Management, \$16,250,000 is for the United States Fish and Wildlife Service, \$34,464,000 is for the National Park Service, \$67,025,000 is for the Bureau of Indian Affairs: *Provided*, That such funds are to be available for repayment of advances to other appropriation accounts from which funds were previously transferred for such purposes.

CONSTRUCTION AND ACCESS

For acquisition of lands and interests therein, and construction of buildings, recreation facilities, roads, trails, and appurtenant facilities, \$5,961,000, to remain available until expended: *Provided*, That necessary procurement documents for construction of the Oregon

of the Department appropriated under this Act may be retained by the Secretary of Energy, to be available until expended, and used only for plant construction, operation, costs, and payments to cost-sharing entities as provided in appropriate cost-sharing contracts or agreements: *Provided further*, That the remainder of revenues after the making of such payments shall be covered into the Treasury as miscellaneous receipts: *Provided further*, That any contract, agreement, or provision thereof entered into by the Secretary pursuant to this authority shall not be executed prior to the expiration of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) from the receipt by the Speaker of the House of Representatives and the President of the Senate of a full comprehensive report on such project, including the facts and circumstances relied upon in support of the proposed project.

The Secretary of Energy may transfer to the Emergency Preparedness appropriation such funds as are necessary to meet any unforeseen emergency needs from any funds available to the Department of Energy from this Act.

Notwithstanding 31 U.S.C. 3302, funds derived from the sale of assets as a result of defaulted loans made under the Department of Energy Alcohol Fuels Loan Guarantee program, or any other funds received in connection with this program, shall hereafter be credited to the Biomass Energy Development account, and shall be available solely for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program for loans guaranteed prior to January 1, 1987.

Unobligated balances available in the "Alternative fuels production" account may hereafter be used for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program, subject to the determination by the Secretary of Energy that such unobligated funds are not needed for carrying out the purposes of the Alternative Fuels Production program: *Provided*, That the use of these unobligated funds for payment of defaulted loans and associated costs shall be available only for loans guaranteed prior to January 1, 1987: *Provided further*, That such funds shall be used only after the unobligated balance in the Department of Energy Alcohol Fuel Loan Guarantee reserve has been exhausted.

Annual appropriations made in this Act and previous Interior and Related Agencies Appropriations Acts shall be available for obligations in connection with contracts issued by the Department of Energy for supplies and services for periods not in excess of twelve months beginning at any time during the fiscal year.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For expenses necessary to carry out the Act of August 5, 1954 (68 Stat. 674), the Indian Self-Determination Act, the Indian Health Care Improvement Act, and titles III and XXV and sections 208 and 338G of the Public Health Service Act with respect to the Indian Health Service, including hire of passenger motor vehicles and

aircraft; purchase of reprints; purchase and erection of portable buildings, payments for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; \$1,185,910,000, including \$16,000,000 for conversion of tribal contracts and agreements to a calendar year basis as authorized by section 204(d)(1) of Public Law 100-472 (100 Stat. 2291), together with payments received during the fiscal year pursuant to 42 U.S.C. 300cc-2 for services furnished by the Indian Health Service: *Provided*, That notwithstanding any other law or regulation, funds transferred from the Department of Housing and Urban Development to the Indian Health Service shall be administered under Public Law 86-121 (the Indian Sanitation Facilities Act): *Provided further*, That funds made available to tribes and tribal organizations through grants and contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450) shall remain available until expended: *Provided further*, That \$17,000,000 shall remain available until expended, for the Indian Catastrophic Health Emergency Fund and contract medical care: *Provided further*, That of the funds provided, \$3,000,000 shall be used to carry out a loan repayment program under which Federal, State, and commercial-type educational loans for physicians and other health professionals will be repaid at a rate not to exceed \$25,000 per year of obligated service in return for full-time clinical service: *Provided further*, That funds provided in this Act may be used for one-year contracts and grants which are to be performed in two fiscal years, so long as the total obligation is recorded in the year for which the funds are appropriated: *Provided further*, That the amounts collected by the Secretary of Health and Human Services under the authority of title IV of the Indian Health Care Improvement Act shall be available for two fiscal years after the fiscal year in which they were collected, for the purpose of achieving compliance with the applicable conditions and requirements of titles XVIII and XIX of the Social Security Act (exclusive of planning, design, construction of new facilities, or major renovation of existing Indian Health Service facilities): *Provided further*, That of the funds provided, \$2,500,000 shall remain available until expended, for the Indian Self-Determination Fund, which shall be available for the transitional costs of initial or expended tribal contracts, grants or cooperative agreements with the Indian Health Service or provisions of the Indian Self-Determination Act: *Provided further*, That funding contained herein, and in any earlier appropriations Acts for scholarship programs under section 103 of the Indian Health Care Improvement Act and section 338G of the Public Health Service Act with respect to the Indian Health Service shall remain available for expenditure until September 30, 1991: *Provided further*, That amounts received by tribes and tribal organizations under title IV of the Indian Health Care Improvement Act and Public Law 100-713 shall be reported and accounted for and available to the receiving tribes and tribal organizations until expended.

INDIAN HEALTH FACILITIES

For construction, major repair, improvement, and equipment of health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites, purchase and erection of portable buildings, and purchases of trailers; and for provision of domestic and community sanitation

the proposed final rule, and such request has been included in an appropriations Act and enacted into law.

DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

INDIAN EDUCATION

For necessary expenses to carry out, to the extent not otherwise provided, the Indian Education Act of 1988, \$74,149,000 of which \$55,041,000 shall be for subpart 1 and \$16,361,000 shall be for subparts 2 and 3: *Provided*, That \$1,600,000 available pursuant to section 5323 of the Act shall remain available for obligations until September 30, 1991: *Provided further*, That appropriations for subpart 2 remaining unobligated at the end of fiscal year 1989, which would otherwise be returned to the general fund of the Treasury, shall be merged with and made a part of the fiscal year 1990 Indian Education appropriation and shall remain available for obligation until September 30, 1990.

OTHER RELATED AGENCIES

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Navajo and Hopi Indian Relocation as authorized by Public Law 93-531, \$36,818,000, to remain available until expended: *Provided*, That none of the funds contained in this or any other Act may be used to evict any single Navajo or Navajo family who, as of November 30, 1985, was physically domiciled on the lands partitioned to the Hopi Tribe unless a new or replacement home is provided for such household: *Provided further*, That no relocatee will be provided with more than one new or replacement home: *Provided further*, That the Office shall relocate any certified eligible relocatees who have selected and received an approved homestead on the Navajo reservation or selected a replacement residence off the Navajo reservation or on the land acquired pursuant to 25 U.S.C. 6404-10: *Provided further*, That unexpended balances of amounts previously appropriated for this purpose under the heading "Salaries and expenses, Navajo and Hopi Indian Relocation Commission" may be transferred to and merged with this appropriation and accounted for as one appropriation for the same time period as originally enacted.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

PAYMENT TO THE INSTITUTE

For payment to the Institute of American Indian and Alaska Native Culture and Arts Development, as authorized by Public Law 99-498, as amended (20 U.S.C. 56, part A), \$4,350,000, of which not to exceed \$350,000 for Federal matching contributions, to remain available until expended, shall be paid to the Institute endowment fund, of which \$100,000 shall be transferred immediately from the Institute endowment fund to the Institute for use in Institute oper-

facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination Act and the Indian Health Care Improvement Act, \$70,996,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, funds appropriated for the planning, design, construction or renovation of health facilities for the benefit of an Indian tribe or tribes may be used to purchase land for sites to construct, improve, or enlarge health or related facilities.

ADMINISTRATIVE PROVISIONS, INDIAN HEALTH SERVICE

Appropriations in this Act to the Indian Health Service, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates not to exceed the per diem equivalent to the rate for GS-18, and for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901-5902), and for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities: *Provided*, That none of the funds appropriated under this Act to the Indian Health Service shall be available for the initial lease of permanent structures without advance provision therefor in appropriations Acts: *Provided further*, That non-Indian patients may be extended health care at all tribally administered or Indian Health Service facilities, if such care can be extended without impairing the ability of the facility to fulfill its responsibility to provide health care to Indians served by such facilities and subject to such reasonable charges as the Secretary of Health and Human Services shall prescribe, the proceeds of which, together with funds recovered under the Federal Medical Care Recovery Act (42 U.S.C. 2651-53), shall be deposited in the fund established by sections 401 and 402 of the Indian Health Care Improvement Act or in the case of tribally administered facilities, shall be retained by the tribal organization without fiscal year limitation: *Provided further*, That funds appropriated to the Indian Health Service in this Act, except those used for administrative and program direction purposes, shall not be subject to limitations directed at curtailing Federal travel and transportation: *Provided further*, That with the exception of Indian Health Service units which currently have a billing policy, the Indian Health Service shall not initiate any further action to bill Indians in order to collect from third-party payers nor to charge those Indians who may have the economic means to pay unless and until such time as Congress has agreed upon a specific policy to do so and has directed the Indian Health Service to implement such a policy: *Provided further*, That personnel ceilings may not be imposed on the Indian Health Service nor may any action be taken to reduce the full-time equivalent level of the Indian Health Service by the elimination of temporary employees by reduction in force, hiring freeze or any other means without the review and approval of the Committees on Appropriations: *Provided further*, That none of the funds made available to the Indian Health Service in this Act shall be used to implement the final rule published in the Federal Register on September 16, 1987, by the Department of Health and Human Services, relating to eligibility for the health care services of the Indian Health Service until the Indian Health Service has submitted a budget request reflecting the increased costs associated with

any redeeming literary, scholarly, cultural, or artistic value.

(D) That a commission be established to review the National Endowment for the Arts grant making procedures, including those of its panel system, to determine whether there should be standards for grant making other than "substantial artistic and cultural significance, giving emphasis to American creativity and cultural diversity and the maintenance and encouragement of professional excellence" (20 U.S.C. 954(c)(1)) and if so, then what other standards. The criteria to be considered by the commission shall include but not be limited to possible standards where (a) applying contemporary community standards would find that the work taken as a whole appeals to a prurient interest; (b) the work depicts or describes in a patently offensive way, sexual conduct; and (c) the work, taken as a whole, lacks serious artistic and cultural value.

(c)(1) There is hereby established a temporary Independent Commission for the purpose of—

(A) reviewing the National Endowment for the Arts grant making procedures, including those of its panel system; and
 (B) considering whether the standard for publicly funded art should be different than the standard for privately funded art.

(2) The Commission shall be composed of twelve members as follows:

- (A) four members appointed by the President;
- (B) four members appointed by the President upon the recommendation of the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives;
- (C) four members appointed by the President upon the recommendation of the President pro tempore of the Senate in consultation with the minority leader of the Senate;
- (D) the chairman shall be designated by vote of the Commission members; and
- (E) a quorum for the purposes of conducting meetings shall be seven.

(3) Members of the Commission shall serve without pay. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under 5 U.S.C. 5703.

(4) The Commission may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(5) The Commission shall issue a report to the Speaker of the House of Representatives and the President of the Senate no later than 180 days after the date of enactment of this Act.

(6) The Commission shall expire on September 30, 1990.

(7) Expenses of the Commission not to exceed \$250,000, including administrative support, shall be furnished by the National Endowment for the Arts.

Sec. 305. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 306. None of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of such department or agency except as otherwise provided by law.

Sec. 307. None of the funds provided in this Act shall be used to evaluate, consider, process, or award oil, gas, or geothermal leases on Federal lands in the Mount Baker-Snoqualmie National Forest, State of Washington, within the hydrographic boundaries of the Cedar River municipal watershed upstream of river mile 21.6, the Green River municipal watershed upstream of river mile 61.0, the North Fork of the Tolt River proposed municipal watershed upstream of river mile 11.7, and the South Fork Tolt River municipal watershed upstream of river mile 8.4.

Sec. 308. No assessments may be levied against any program, budget activity, subactivity, or project funded by this Act unless such assessments and the basis therefor are presented to the Committees on Appropriations and are approved by such Committees.

Sec. 309. Employment funded by this Act shall not be subject to any personnel ceiling or other personnel restriction for permanent or other than permanent employment except as provided by law.

Sec. 310. Notwithstanding any other provision of law, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Smithsonian Institution are authorized to enter into contracts with State and local governmental entities, including local fire districts, for procurement of services in the suppression, detection, and suppression of fires on any units within their jurisdiction.

Sec. 311. None of the funds provided by this Act to the United States Fish and Wildlife Service may be obligated or expended to plan for, conduct, or supervise deer hunting on the Loxahatchee National Wildlife Refuge.

Sec. 312. The Forest Service and Bureau of Land Management are to continue to complete as expeditiously as possible development of their respective Forest Land and Resource Management Plans to meet all applicable statutory requirements. Notwithstanding the date in section 6(c) of the NFMA (16 U.S.C. 1600), the Forest Service, and the Bureau of Land Management under separate authority, may continue the management of lands within their jurisdiction under existing land and resource management plans pending the completion of new plans. Nothing shall limit judicial review of particular activities on these lands: *Provided, however*, That there shall be no challenges to any existing plan on the sole basis that the plan in its entirety is outdated, or in the case of the Bureau of Land Management, solely on the basis that the plan does not incorporate information available subsequent to the completion of the existing plan: *Provided further*, That any and all particular activities to be carried out under existing plans may nevertheless be challenged.

Sec. 313. None of the funds in this Act may be used to plan, prepare, or offer for sale timber from trees classified as giant sequoia (*sequoiadendron giganteum*) which are located on National Forest System or Bureau of Land Management lands until an environmental assessment has been completed and the giant sequoia management implementation plan is approved. In any event, timber harvest within the identified groves will be done only to enhance and perpetuate giant sequoia. There will be no harvesting

Employment
and
unemployment.

Contracts,
State and local
governments,
Disaster
assistance.

16 USC 1604
note.

Forests and
forest products

logically significant old growth forest stands. "Old growth forest stands" are defined as those stands meeting the criteria according to Forest Service Research Publication Numbered PNW-447. In those instances where the Forest Service, after consultation with the advisory boards established pursuant to subsection (c) of this section, determines that the definition in Forest Service Research Publication Numbered PNW-447 is not fully applicable in national forests known to contain northern spotted owls, the Forest Service shall use old-growth definitions contained in its Pacific Northwest Regional Guide.

(2) To the extent that fragmentation of ecologically significant old growth forest stands is necessary to meet the timber sale levels directed by subsection (a)(1) of this section, the Forest Service shall minimize such fragmentation in the ecologically significant old growth forest stands on a national forest-by-national forest basis based on the Forest Service's discretion in determining the ecologically significant stands after considering input from the advisory boards created pursuant to subsection (c) of this section. The habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas (SOHAs) described in subsection (b)(3) of this section shall be considered an important factor in the identification of ecologically significant old growth forest stands.

(3) No timber sales offered pursuant to this section from the thirteen national forests in Oregon and Washington known to contain northern spotted owls may occur within SOHAs identified pursuant to the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 as adjusted by this subsection:

- (A) For the Olympic Peninsula Province, which includes the Olympic National Forest, SOHA size is to be 3,200 acres;
- (B) For the Washington Cascades Province, which includes the Mt. Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford-Pinchot National Forests, SOHA size is to be 2,600 acres;
- (C) For the Oregon Cascades Province, which includes the Mt. Hood, Willamette, Rogue River, Deschutes, Winema, and Umpqua National Forests, SOHA size is to be 1,875 acres;
- (D) For the Oregon Coast Range Province, which includes the Siuslaw National Forest, SOHA size is to be 2,500 acres; and
- (E) For the Klamath Mountain Province, which includes the Siskiyou National Forest, SOHA size is to be 1,250 acres.

(F) All other standards and guidelines contained in the Chief's Record of Decision are adopted.

(4) In planning for the preparation and offer of timber sales authorized in subsection (a)(1) of this section, the Forest Service, to the extent possible in areas proximate to SOHA sites identified in subsection (b)(3) of this section, should exercise discretion in selecting sites and/or silvicultural prescriptions in order to retain spotted owl habitat characteristics in such areas. The Forest Service should consider the relative location and quality of such areas contiguous to the SOHAs and should give higher priority to preparing and offering sales in areas of lower quality and less important location than to areas of greater quality and more important location relative to the SOHAs.

(5) No timber sales offered pursuant to this section on Bureau of Land Management lands in western Oregon known to contain

northern spotted owls shall occur within the 110 areas identified in the December 22, 1987 agreement, except sales identified in said agreement, between the Bureau of Land Management and the Oregon Department of Fish and Wildlife. Not later than thirty days after enactment of this Act, the Bureau of Land Management, after consulting with the Oregon Department of Fish and Wildlife and the United States Fish and Wildlife Service to identify high priority spotted owl area sites, shall select an additional twelve spotted owl habitat areas. No timber sales may be offered in the areas identified pursuant to this subsection during fiscal year 1990.

(6)(A) Without passing on the legal and factual adequacy of the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl Guidelines and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 or the December 22, 1987 agreement between the Bureau of Land Management and the Oregon Department of Fish and Wildlife for management of the spotted owl, the Congress hereby determines and directs that management of areas according to subsections (b)(3) and (b)(5) of this section on the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases captioned Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160 and Washington Contract Loggers Assoc. et al., v. F. Dale Robertson, Civil No. 89-99 (order granting preliminary injunction) and the case Portland Audubon Society et al., v. Manuel Lujan, Jr., Civil No. 87-1160-FR. The guidelines adopted by subsections (b)(3) and (b)(5) of this section shall not be subject to judicial review by any court of the United States.

(B) The Forest Service is directed to review and revise as appropriate the decision adopted in the December 1988 Record of Decision referenced in subsection (b)(6)(A) of this section and shall consider any new information gathered subsequent to the issuance of the Record of Decision, including the interagency guidelines for conservation of northern spotted owls developed by the Interagency Scientific Committee to address conservation of the northern spotted owl. This review, and any resulting changes to the December 1988 decision determined to be necessary by the Forest Service are to be completed and in effect not later than September 30, 1990.

(C)(1) The Secretaries of Agriculture and the Interior shall name advisory boards on a national forest-by-national forest and Bureau of Land Management district-by-district basis which shall be comprised of not more than seven individuals who, in the appropriate Secretary's judgment, represent a diversity of views. In the process of selecting individuals to serve on the advisory boards, the Secretaries shall make every effort to recognize the diversity of views and perspectives and allow parties which represent a cross-section of those views to participate in making recommendations in the selection of board members, provided, that every effort will be made to ensure the advisory boards are comprised of an equal number of representatives of environmental and business concerns. The advisory boards shall be named not later than thirty days after enactment of this Act. The advisory boards shall provide recommendations to the Forest Service and the Bureau of Land Management in reviewing prospective timber sales which shall meet the timber sale levels directed by this section prior to their offer.

The advisory boards shall present their advice within fifteen or forty-five days after receipt of the necessary review documents. The fifteen-day period applies to single sales and the forty-five-day period applies to multiple sales. The members of the advisory boards authorized by this section shall serve without compensation or reimbursement of expenses. The Forest Service and the Bureau of Land Management are authorized to use available funds for the services of professional, independent facilitators to assist in the work of the advisory boards.

(2) The Forest Service and Bureau of Land Management shall consider the recommendations of the advisory boards once such boards are established pursuant to this section, including any suggested modifications of individual sales. The Forest Service and Bureau of Land Management shall also consider recommendations made by the United States Fish and Wildlife Service on those timber sales conferred upon under section 7(a)(4) or, if the spotted owl is listed as a threatened or endangered species, consult under section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(a)(2) and (a)(4)) prior to the offer of any subsequent timber sale in fiscal year 1990. These recommendations shall be considered regardless of whether the agreement provided in subsection (f)(1) of this section has been reached, entered into, and accepted by the relevant court. Adoption or rejection of such recommended modifications shall not require preparation of additional environmental documents, notwithstanding any other provision of law.

(d) Notwithstanding any other provision of law, there shall be not more than one level of administrative appeal of any decision by the Forest Service or the Bureau of Land Management to undertake any activity directed by this section for timber sales to be prepared, advertised, offered, and awarded during fiscal year 1990 from the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls. If an administrative stay is granted in any such appeal the Regional Forester or the Interior Board of Land Appeals shall issue a final decision on the merits within forty-five days of the date of issuance of such stay. Notwithstanding any other provision of law, any party seeking to challenge a decision made after the date of enactment of this Act to prepare, advertise, offer, or award a timber sale in fiscal year 1990 from the thirteen national forests and Bureau of Land Management lands in western Oregon known to contain northern spotted owls need not exhaust their administrative remedies prior to filing suit. Nothing in this subsection shall alter the administrative appeal requirements of the Forest Service or Bureau of Land Management.

(e) Nothing in this section shall affect interagency cooperation among the Forest Service, the Bureau of Land Management, and the United States Fish and Wildlife Service under sections 7(a)(2) and 7(a)(4) of the Endangered Species Act and its regulations.

(f)(1) Not later than two days after enactment of this Act, the Forest Service shall submit to plaintiffs in the captioned case Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160, a list of sales which had been prepared for offer in fiscal year 1989 and which contain at least 40 acres of suitable spotted owl habitat. Not later than fourteen days after receipt of such list, plaintiffs to the suit referenced in this subsection may enter into an agreement with the Forest Service releasing for sale not less than one billion one hundred million board feet of net merchantable timber. Such sales

must be available for advertisement not later than fourteen days after the agreement required by this subsection is reached. Such timber sales selected shall not be subject to further judicial review by any court of the United States.

(2) If the agreement specified in subsection (f)(1) of this section is reached, then those timber sales described in the list submitted to plaintiffs pursuant to subsection (f)(1) of this section but not contained in the agreement authorized by subsection (f)(1) of this section shall not be offered for sale in fiscal year 1990.

(3) If the agreement authorized under subsection (f)(1) of this section is not implemented within the timeframes prescribed in subsection (f)(1) of this section, one billion one hundred million board feet of net merchantable timber from such sales submitted to plaintiffs pursuant to subsection (f)(1) of this section shall be selected and modified as appropriate by the Forest Service in accordance with the provisions of this section. Selected sales shall be prepared, advertised, offered, awarded and operated notwithstanding any provision of law that is a basis for any stay, injunction or order issued in the proceeding identified in subsection (f)(1) of this section: *Provided*, That nothing in this subsection shall affect rights available under the Contract Disputes Act (41 U.S.C. 601 et seq.).

(4) The Forest Service shall, for each respective timber sale, lift its own stay or apply to the appropriate court for the lifting of the restraining order or injunction whose basis has been withdrawn by this section.

(5) Timber sales selection pursuant to subsections (f)(1) or (f)(3) of this section shall be based on the following criteria: (1) proportional distribution between Oregon and Washington national forests known to contain northern spotted owls based on the average sale volumes for fiscal years 1986 through 1988; (2) proportional distribution to the extent possible among the thirteen national forests known to contain northern spotted owls in Oregon and Washington based on the average sale volumes for fiscal years 1986 through 1988; and (3) to the extent possible, selection of sales outside the habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas described in subsection (b)(3) of this section.

(g)(1) No restraining order or preliminary injunction shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a timber sale or timber sales in fiscal year 1990 from the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls. The provisions of section 705 of title 5, United States Code, shall not apply to any challenge to such a timber sale: *Provided*, That the courts shall have authority to enjoin permanently, order modification of, or void an individual sale if it has been determined by a trial on the merits that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary, capricious or otherwise not in accordance with law: *Provided further*, That any challenge to a timber sale must be filed in Federal District Court within fifteen days of the date of initial advertisement of the challenged timber sale: *Provided further*, That for forty-five days after the date of filing of a challenge to a timber sale the affected agency shall take no action to award a challenged timber sale. Civil actions filed under this section shall be assigned for hearing at the earliest possible date and shall take precedence over all other matters pending on the docket of the court at that time except for criminal cases: *Provided further*, That the

court shall render its final decision relative to any challenge within forty-five days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

(2) Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(3) In order to reach a decision within forty-five days, the Federal District Court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

(h) The Forest Service, the Bureau of Land Management, and the United States Fish and Wildlife Service shall submit reports updating their findings and progress as determined by the process recognized under subsection (e) of this section on a monthly basis to the President of the Senate and the Speaker of the House of Representatives for appropriate referral. Such reports shall also include information on the extent to which recommendations of the advisory boards established pursuant to subsection (c) of this section were integrated into timber sale decisions as well as reasons for modifying or not adopting recommendations made by the advisory boards. Such reports shall be submitted as directed beginning on December 1, 1989, and ending on September 30, 1990.

(i) Except for provisions of subsection (a)(1) of this section, the provisions of this section apply solely to the thirteen national forests in Oregon and Washington and Bureau of Land Management districts in western Oregon known to contain northern spotted owls. Nothing contained in this section shall be construed to require the Forest Service or Bureau of Land Management to develop similar policies on any other forest or district in Oregon or Washington.

(j) The advisory boards established under this section shall not be subject to the Federal Advisory Committee Act (86 Stat. 770).

(k) Timber sales offered to meet the requirements of subsection (a) of this section shall be subject to the terms and conditions of this section for the duration of those sale contracts. All other provisions of this section shall remain in effect until September 30, 1990.

Sec. 319. (a)(1) Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions

"(a)(1) None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in paragraph (2) of this subsection.

"(2) The prohibition in paragraph (1) of this subsection applies with respect to the following Federal actions:

- "(A) The awarding of any Federal contract.
- "(B) The making of any Federal grant.
- "(C) The making of any Federal loan.
- "(D) The entering into of any cooperative agreement.

"(E) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"(b)(1) Each person who requests or receives a Federal contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency, in accordance with paragraph (4) of this subsection—

"(A) a written declaration described in paragraph (2) or (3) of this subsection, as the case may be; and

"(B) copies of all declarations received by such person under paragraph (5).

"(2) A declaration filed by a person pursuant to paragraph (1)(A) of this subsection in connection with a Federal contract, grant, loan, or cooperative agreement shall contain—

"(A) a statement setting forth whether such person—

"(i) has made any payment with respect to that Federal contract, grant, loan, or cooperative agreement, using funds other than appropriated funds, which would be prohibited by subsection (a) of this section if the payment were paid for with appropriated funds; or

"(ii) has agreed to make any such payment;

"(B) with respect to each such payment (if any) and each such agreement (if any)—

"(i) the name and address of each person paid, to be paid, or reasonably expected to be paid;

"(ii) the name and address of each individual performing the services for which such payment is made, to be made, or reasonably expected to be made;

"(iii) the amount paid, to be paid, or reasonably expected to be paid;

"(iv) how the person was paid, is to be paid, or is reasonably expected to be paid; and

"(v) the activity for which the person was paid, is to be paid, or is reasonably expected to be paid; and

"(C) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).

"(3) A declaration filed by a person pursuant to paragraph (1)(A) of this subsection in connection with a commitment providing for the United States to insure or guarantee a loan shall contain—

"(A) a statement setting forth whether such person—

"(i) has made any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guaranty; or

"(ii) has agreed to make any such payment; and

"(B) with respect to each such payment (if any) and each such agreement (if any), the information described in paragraph (2)(B) of this subsection.

"(4) A person referred to in paragraph (1)(A) of this subsection shall file a declaration referred to in that paragraph—

"(A) with each submission by such person that initiates agency consideration of such person for award of a Federal contract, grant, loan, or cooperative agreement, or for grant of a

commitment providing for the United States to insure or guarantee a loan;

"(B) upon receipt by such person of a Federal contract, grant, loan, or cooperative agreement or of a commitment providing for the United States to insure or guarantee a loan, unless such person previously filed a declaration with respect to such contract, grant, loan, cooperative agreement or commitment pursuant to clause (A); and

"(C) at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration previously filed by such person in connection with such Federal contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guaranty commitment.

"(5) Any person who requests or receives from a person referred to in paragraph (1) of this subsection a subcontract under a Federal contract, a subgrant or contract under a Federal grant, a contract or subcontract to carry out any purpose for which a particular Federal loan is made, or a contract under a Federal cooperative agreement shall be required to file with the person referred to in such paragraph a written declaration referred to in clause (A) of such paragraph.

"(6)(A) The head of each agency shall collect and compile the information contained, pursuant to paragraphs (2)(B) and (3)(B) of this subsection, in the statements filed under this subsection and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained, pursuant to such paragraphs, in the statements received during the six-month period ending on March 31 or September 30, respectively, of that year. The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

"(B) Notwithstanding subparagraph (A)—

"(i) information referred to in subparagraph (A) that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees;

"(ii) information referred to in subparagraph (A) that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, is classified in accordance with such order, and is available only by special access shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees; and

"(iii) information reported in accordance with this subparagraph shall not be available for public inspection.

"(7) The Director of the Office of Management and Budget, after consulting with the Secretary of the Senate and the Clerk of the House of Representatives, shall issue guidance for agency implementation of, and compliance with, the requirements of this section.

"(C)(1) Any person who makes an expenditure prohibited by subsection (a) of this section shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

"(2)(A) Any person who fails to file or amend a declaration required to be filed or amended under subsection (b) of this section shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

"(B) A filing of a declaration of a declaration amendment on or after the date on which an administrative action for the imposition of a civil penalty under this subsection is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. For the purposes of this subparagraph, an administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

"(3) Sections 3803 (except for subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812 of this title shall be applied, consistent with the requirements of this section, to the imposition and collection of civil penalties under this subsection.

"(4) An imposition of a civil penalty under this subsection does not prevent the United States from seeking any other remedy that the United States may have for the same conduct that is the basis for the imposition of such civil penalty.

"(d)(1) The official of each agency referred to in paragraph (3) of this subsection shall submit to Congress each year an evaluation of the compliance of that agency with, and the effectiveness of, the requirements imposed by this section on the agency, persons requesting or receiving Federal contracts, grants, loans, or cooperative agreements from that agency, and persons requesting or receiving from that agency commitments providing for the United States to insure or guarantee loans. The report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

"(2) The report of an agency under paragraph (1) of this subsection shall include the following:

"(A) All alleged violations of the requirements of subsections (a) and (b) of this section, relating to the agency's Federal actions referred to in such subsections, during the year covered by the report.

"(B) The actions taken by the head of the agency in such year with respect to those alleged violations and any alleged violations of subsections (a) and (b) of this section that occurred before such year, including the amounts of civil penalties imposed by the head of such agency in such year, if any.

"(3) The Inspector General of an agency shall prepare and submit the annual report of the agency required by paragraph (1) of this subsection. In the case of an agency that does not have an inspector general, the agency official comparable to an inspector general shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit such annual report.

Reports.

Law enforcement and crime.

"(e)(1)(A) Subsection (a)(1) of this section does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement to the extent that the payment is for agency and legislative liaison activities not directly related to a Federal action referred to in subsection (a)(2) of this section.

"(B) Subsection (a)(1) of this section does not prohibit any reasonable payment to a person in connection with, or any payment of reasonable compensation to an officer or employee of a person requesting or receiving, a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

"(C) Nothing in this paragraph shall be construed as permitting the use of appropriated funds for making any payment prohibited in or pursuant to any other provision of law.

"(2) The reporting requirement in subsection (b) of this section shall not apply to any person with respect to—

"(A) payments of reasonable compensation made to regularly employed officers or employees of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan;

"(B) a request for or receipt of a contract (other than a contract referred to in clause (C)), grant, cooperative agreement, subcontract (other than a subcontract referred to in clause (C)), or subgrant that does not exceed \$100,000; and

"(C) a request for or receipt of a loan, or a commitment providing for the United States to insure or guarantee a loan, that does not exceed \$150,000, including a contract or subcontract to carry out any purpose for which such a loan is made.

"(f) The Secretary of Defense may exempt a Federal action described in subsection (a)(2) from the prohibition in subsection (a)(1) whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such determination.

"(g) The head of each Federal agency shall take such actions as are necessary to ensure that the provisions of this section are vigorously implemented and enforced in such agency.

"(h) As used in this section:

"(1) The term 'recipient', with respect to funds received in connection with a Federal contract, grant, loan, or cooperative agreement—

"(A) includes the contractors, subcontractors, or subgrantees (as the case may be) of the recipient; but

"(B) does not include an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency but only with respect to expenditures that are by

such tribe or organization for purposes specified in subsection (a) and are permitted by other Federal law.

"(2) The term 'agency' has the same meaning provided for such term in section 552(f) of title 5, and includes a Government corporation, as defined in section 9101(1) of this title.

"(3) The term 'person'—

"(A) includes an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit; but

"(B) does not include an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency but only with respect to expenditures by such tribe or organization that are made for purposes specified in subsection (a) and are permitted by other Federal law.

"(4) The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

"(5) The term 'local government' means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, the following entities:

"(A) A local public authority.

"(B) A special district.

"(C) An intrastate district.

"(D) A council of governments.

"(E) A sponsor group representative organization.

"(F) Any other instrumentality of a local government.

"(6)(A) The terms 'Federal contract', 'Federal grant', 'Federal cooperative agreement' mean, respectively—

"(i) a contract awarded by an agency;

"(ii) a grant made by an agency or a direct appropriation made by law to any person; and

"(iii) a cooperative agreement entered into by an agency.

"(B) Such terms do not include—

"(i) direct United States cash assistance to an individual;

"(ii) a loan;

"(iii) loan insurance; or

"(iv) a loan guaranty.

"(7) The term 'Federal loan' means a loan made by an agency. Such term does not include loan insurance or a loan guaranty.

"(8) The term 'reasonable payment' means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"(9) The term 'reasonable compensation' means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"(10) The term 'regularly employed', with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commit-

ment providing for the United States to insure or guarantee a loan, means an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guaranty commitment.

"(11) The terms 'Indian tribe' and 'tribal organization' have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)."

(2) The table of sections for subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end the following new item:

"1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

Reports.

31 USC 1352
note.

31 USC 1352
note.

Effective date.
31 USC 1352
note.

(b) The first report submitted under subsection (b)(6) of section 1352 of title 31, United States Code (as added by subsection (a)), shall be submitted on May 31, 1990, and shall contain a compilation relating to the statements received under subsection (b) of such section during the six-month period beginning on October 1, 1989.

(c) The Director of the Office of Management and Budget shall notify the head of each agency that section 1352 of title 31, United States Code (as added by subsection (a)), is to be complied with commencing 60 days after the date of the enactment of this Act. Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall issue the guidance required by subsection (b)(7) of such section.

(d) Section 1352 of title 31, United States Code (as added by subsection (a)), shall take effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guaranty commitments that are entered into or made more than 60 days after the date of the enactment of this Act.

Approved October 23, 1989.

LEGISLATIVE HISTORY—H.R. 2788:

HOUSE REPORTS: No. 101-129 (Comm. on Appropriations) and No. 101-264 (Comm. of Conference).

SENATE REPORTS: No. 101-85 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 135 (1989):

July 12, considered and passed House.

July 26, considered and passed Senate.

Oct. 3, House agreed to conference report, amended.

Senate amendments, in others with amendments, concurred in certain.

Oct. 7, Senate agreed to conference report, concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 25 (1989):

Oct. 23, Presidential statement.