

## Calendar No. 227

110TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
110-97

### DWIGHT D. EISENHOWER MEMORIAL COMMISSION

JUNE 26, 2007.—Ordered to be printed

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

### R E P O R T

[To accompany S. 890]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 890) to provide for certain administrative and support services for the Dwight D. Eisenhower Memorial Commission, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 3, line 7, strike the semicolon and insert a period.
2. On page 3, strike lines 13 through 20 and insert the following:

“(3) FEDERAL COOPERATION.—At the request of the Commission, a Federal department or agency may provide any information or other assistance to the Commission that the head of the Federal department or agency determines to be appropriate.
3. On page 6, strike lines 5 through 7 and insert the following:

“(3) STAFF OF FEDERAL AGENCIES.—On request of the Commission, the
4. On page 6, line 9, strike “, on a nonreimbursable basis.”.
5. Beginning on page 7, strike line 23 and all that follows through page 8, line 10, and insert the following:

“(C) LIABILITY.—  
“(i) IN GENERAL.—Subject to clause (ii), a volunteer described in subparagraph (A) shall

be considered to be a volunteer for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

“(ii) EXCEPTION.—Section 4(d) of the Volunteer Protection Act of 1997 (42 U.S.C. 14503(d)) shall not apply for purposes of a claim against a volunteer described in subparagraph (A).”.

#### PURPOSE OF THE MEASURE

The purpose of S. 890 is to amend the enabling legislation for the Dwight D. Eisenhower Memorial Commission to provide for certain administrative and support services for the commission.

#### BACKGROUND AND NEED

The Dwight D. Eisenhower Memorial Commission is a congressional commission established by section 8162 of Public Law 106–79 on October 25, 1999. S. 890 would amend section 8162 to update the powers of the Commission and provide additional staff and support services to assist the Commission in performing its duties and responsibilities. The bill would require the General Services Administration to provide administrative services on a reimbursable basis. It also would allow the Commission to use all contracts, schedules, and acquisition vehicles allowed to external clients through the GSA.

In January 2002, the Commission’s authorization was amended by Public Law 107–117 to require that the memorial to Dwight D. Eisenhower be established pursuant to the provisions of the Commemorative Works Act. Public Law 109–220, enacted in May 2006, authorized the memorial to be constructed on a site within Area I (the monumental core area) as a work of “preeminent historical and lasting significance to the Nation,” the standard set forth in the Commemorative Works Act. As a result of a study completed in 2006, the National Park Service, the Commission of Fine Arts and the National Capital Planning Commission have all approved a site south of Independence Avenue near its intersection with Maryland Avenue, which was identified in the Memorials and Museums Master Plan as a prime candidate site suitable for a presidential memorial. The next step is for the Commission to select a design concept in accordance with guidance contained in the site approval and to submit it for review by the Secretary of the Interior, the Commission of Fine Arts and the National Capital Planning Commission.

According to the Commission, its staff organization and administrative authority need to be adjusted in order to address the design and construction needs of the memorial. Currently the Commission utilizes contracted specialists and part-time employees. S. 890 will allow the Commission to hire temporary Federal employees to help it carry out its mission.

#### LEGISLATIVE HISTORY

S. 890 was introduced by Senators Inouye, Stevens, Roberts, and Hagel on March 15, 2007. The Subcommittee on National Parks held a hearing on the bill on April 26, 2007. At its business meet-

ing on May 23, the Committee on Energy and Natural Resources ordered S. 890 to be reported with amendments.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on May 27, 2007, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 890, if amended as described herein.

#### COMMITTEE AMENDMENTS

During its consideration of S. 890, the Committee adopted several clarifying and conforming amendments. Amendments #1 and #2 clarify that the head of Federal departments or agencies retain discretion to provide assistance to the Commission that the head of the department or agency determines to be appropriate.

Amendments #3 and #4 provide that upon request of the Commission, Federal departments or agencies may detail personnel to the Commission. As introduced, S. 890 required that the personnel be detailed on a non-reimbursable basis; the amendment will allow the Commission and the department or agency to address this issue on a case-by-case basis.

Amendment #5 incorporates volunteer liability language recommended to the Committee by the Department of Justice.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* amends section 8162 of Public Law 106–79, the Department of Defense Appropriations Act, 2000, to amend the authority for the Dwight D. Eisenhower Memorial Commission.

The section amends subsection (j) of section 8162 to expand the Commission's powers. The Commission would be authorized to enter into contracts for specialized or professional services, as necessary. The Commission would also be authorized to obtain information or other assistance from Federal departments or agencies, at the discretion of the head of the department or agency. The revised subsection also authorizes the Commission to appoint an architect as an agent of the Commission and to perform other duties as designated by the Chairman of the Commission.

The section adds a new subsection (o) to section 8162, pertaining to staff and support services. The Commission is authorized to appoint an Executive Director and to hire staff without regard to Federal Civil Service laws. The Commission would also be authorized to have personnel detailed from Federal departments or agencies. The subsection also authorizes the Commission to obtain administrative and support services from the General Services Administration and to enter into cooperative agreements with appropriate governmental and private entities. Finally, the subsection authorizes the Commission to utilize volunteers and clarifies that the provisions of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.) shall generally apply for purposes of tort liability.

#### COST AND BUDGETARY CONSIDERATIONS

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

JUNE 14, 2007.

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for S. 890, a bill to provide for certain administrative and support services for the Dwight D. Eisenhower Memorial Commission. Our previous estimate for S. 890, dated June 6, 2007, inadvertently stated that implementing the bill would cost \$10 million annually over the next five years rather than \$10 million (in total) over the next five years.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

PETER R. ORSZAG.

Enclosure.

*S. 890—A bill to provide for certain administrative and support services for the Dwight D. Eisenhower Memorial Commission*

Summary: S. 890 would expand the authorities of the Dwight D. Eisenhower Memorial Commission and would authorize the appropriation of whatever amounts are necessary to carry out its mission. The Commission was established in 1999 to develop a plan for a memorial to Dwight D. Eisenhower.

Assuming appropriation of the necessary amounts, CBO estimates that the Commission would spend about \$2 million a year the next five years to carry out its responsibilities. This amount would be used primarily to hire and compensate administrative staff, who would manage the design of the memorial. Enacting S. 890 would not affect direct spending or revenues.

S. 890 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 890 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level .....	2	2	2	2	2
Estimated Outlays .....	2	2	2	2	2

Basis of estimate: The new authorities provided by S. 890 would allow the commission to directly hire administrative staff to manage the design process of the memorial over the next several years. At present, the commission staff consists of four full-time contractors hired by GSA and funded with periodic grants from the Department of Defense. (The most recent of these, for \$1.7 million, was appropriated for 2006.) Under S. 890, the existing staff would be expanded and would become temporary federal employees rather than GSA contractors. Based on information provided by the commission and assuming appropriation of the necessary amounts,

CBO estimates that this entity would spend about \$2 million annually over the next five years for staff compensation, commissioner expenses, and other operating costs. S. 890 does not address the design and construction of the memorial, and the bill's enactment would not affect these activities. Under existing law, expenses for those purposes will be paid from amounts deposited to the memorial fund created by Public Law 107-117, which also authorized construction of the memorial on federal land.

Intergovernmental and private-sector impact: S. 890 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On June 6, 2007, CBO transmitted a cost estimate for S. 890 as ordered reported by the Senate Committee on Energy and Natural Resources on May 23, 2007. That estimate inadvertently stated that implementing the bill would cost \$10 million annually over the next five years rather than \$10 million in total over that period.

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, 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. 890. 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. 890, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the National Park Service at the April 26, 2007 hearing of the Subcommittee on National Parks on S. 890 follows:

##### STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 890, a bill to provide for certain administrative and support services for the Dwight D. Eisenhower Memorial Commission.

The Department has no position on S. 890 as it involves providing administrative and support services for an established congressional commission by the General Services Administration (GSA) rather than the Department of the Interior. We understand that the Department of Justice may have concerns with certain provisions on volunteer

services in S. 890 that could significantly expand the potential for Federal tort liability and will advise the Committee of those concerns in the near future.

The Dwight D. Eisenhower Memorial Commission (Commission) is a congressional commission established by Section 8162 of Public Law 106–79 on October 25, 1999. S. 890 would amend Section 8162 to update the powers of the Commission and provide additional staff and support services to assist the Commission in performing its duties and responsibilities. The bill would require the GSA to provide administrative services on a reimbursable basis. It also would allow the Commission to use all contracts, schedules, and acquisition vehicles allowed to external clients through the GSA.

In January 2002, the Commission's authorization was amended by Public Law 107–117 to require that the memorial to Dwight D. Eisenhower be established pursuant to the provisions of the Commemorative Works Act. Public Law 109–220, enacted in May 2006, authorized the memorial to be constructed on a site within Area I as Dwight D. Eisenhower is deemed to be of "preeminent historical and lasting significance to the Nation." As a result of an alternative site study completed in 2006, the National Park Service, the Commission of Fine Arts and the National Capital Planning Commission have all approved a site south of Independence Avenue near its intersection with Maryland Avenue, which was identified in the Memorials and Museums Master Plan as Prime Candidate Site suitable for a presidential memorial. The next step is for the Commission to select a design concept in accordance with guidance contained in the site approval and to submit it for review by the Secretary of the Interior, the Commission of Fine Arts and the National Capital Planning Commission.

During his term, President Eisenhower created the National Interstate Highway System, which remains a critical component of U.S. infrastructure today. Eisenhower also is credited with proposing and signing into law the Civil Rights Acts of 1957 and 1960, and striving to make the District of Columbia a model for the nation in racially integrating public schools. He created the precedent for the proposed National Parks Centennial Initiative by initiating a comprehensive ten-year program, Mission 66, to restore and improve National Parks to meet the needs of a public increasingly interested in the great outdoors.

The Department supports the work of the Commission and is willing to assist them throughout the process of establishing an appropriate permanent memorial to Dwight D. Eisenhower, the 34th President of the United States.

That concludes my testimony, I would be glad to answer any questions that you or other members of the subcommittee may have.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 890, as ordered reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT Making appropriations for the Department of Defense for the fiscal year ending September 30, 2000, and for other purposes

(Public Law 106–79—Approved October 25, 1999)

\* \* \* \* \*

**SEC. 8162. DWIGHT D. EISENHOWER MEMORIAL.**

(a) FINDINGS.—Congress finds that—

(1) the people of the United States feel a deep debt of gratitude to Dwight D. Eisenhower, who served as Supreme Commander of the Allied Forces in Europe in World War II and subsequently as 34th President of the United States; and

(2) an appropriate permanent memorial to Dwight D. Eisenhower should be created to perpetuate his memory and his contributions to the United States.

\* \* \* \* \*

[(j) POWERS.—The Commission may—

(1) make such expenditures for services and materials for the purpose of carrying out this section as the Commission considers advisable from funds appropriated or received as gifts for that purpose;

(2) solicit and accept contributions to be used in carrying out this section or to be used in connection with the construction or other expenses of the memorial; and

(3) hold hearings, enter into contracts for personal services and otherwise, and do such other things as are necessary to carry out this section. ]

(j) POWERS OF THE COMMISSION.—

(1) IN GENERAL.—

(A) POWERS.—*The Commission may—*

*(i) make such expenditures for services and materials for the purpose of carrying out this section as the Commission considers advisable from funds appropriated or received as gifts for that purpose;*

*(ii) solicit and accept contributions to be used in carrying out this section or to be used in connection with the construction or other expenses of the memorial;*

*(iii) hold hearings and enter into contracts;*

*(iv) enter into contracts for specialized or professional services as necessary to carry out this section; and*

*(v) take such actions as are necessary to carry out this section.*

(B) SPECIALIZED OR PROFESSIONAL SERVICES.—*Services under subparagraph (A)(iv) may be—*

(i) obtained without regard to the provisions of title 5, United States Code, including section 3109 of that title; and

(ii) may be paid without regard to the provisions of title 5, United States Code, including chapter 51 and subchapter III of chapter 53 of that title;

(2) GIFTS OF PROPERTY.—The Commission may accept gifts of real or personal property to be used in carrying out this section, including to be used in connection with the construction or other expenses of the memorial.

(3) FEDERAL COOPERATION.—At the request of the Commission, a Federal department or agency may provide any information or other assistance to the Commission that the head of the Federal department or agency determines to be appropriate.

(4) POWERS OF MEMBERS AND AGENTS.—

(A) IN GENERAL.—If authorized by the Commission, any member or agent of the Commission may take any action that the Commission is authorized to take under this section.

(B) ARCHITECT.—The Commission may appoint an architect as an agent of the Commission to—(i) represent the Commission on various governmental source selection and planning boards on the selection of the firms that will design and construct the memorial; and

(ii) perform other duties as designated by the Chairperson of the Commission.

(C) TREATMENT.—An authorized member or agent of the Commission (including an individual appointed under subparagraph (B)) providing services to the Commission shall be considered an employee of the Federal Government in the performance of those services for the purposes of chapter 171 of title 28, United States Code, relating to tort claims.

(5) TRAVEL.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

\* \* \* \* \*

[(o)] (q) AUTHORITY TO ESTABLISH MEMORIAL.—

\* \* \* \* \*

(o) STAFF AND SUPPORT SERVICES.—

(1) EXECUTIVE DIRECTOR.—There shall be an Executive Director appointed by the Commission to be paid at a rate not to exceed the maximum rate of basic pay for level IV of the Executive Schedule.

(2) STAFF.—

(A) IN GENERAL.—The staff of the Commission may be appointed and terminated without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title, relating to classification and General Schedule pay rates, except that an individual appointed

under this paragraph may not receive pay in excess of the maximum rate of basic pay for GS-15 of the General Schedule.

(B) SENIOR STAFF.—Notwithstanding subparagraph (A), not more than 3 staff employees of the Commission (in addition to the Executive Director) may be paid at a rate not to exceed the maximum rate of basic pay for level IV of the Executive Schedule.

(3) STAFF OF FEDERAL AGENCIES.—On request of the Commission, the head of any Federal department or agency may detail any of the personnel of the department or agency to carry out its duties under this section.

(4) FEDERAL SUPPORT.—The Commission shall obtain administrative and support services from the General Services Administration on a reimbursable basis. The Commission may use all contracts, schedules, and acquisition vehicles allowed to external clients through the General Services Administration.

(5) COOPERATIVE AGREEMENTS.—The Commission may enter into cooperative agreements with Federal agencies, State, local, tribal and international governments, and private interests and organizations which will further the goals and purposes of this section.

(6) TEMPORARY, INTERMITTENT, AND PART-TIME SERVICES.—

(A) IN GENERAL.—The Commission may obtain temporary, intermittent, and part-time services under section 3109 of title 5, United States Code, at rates not to exceed the maximum annual rate of basic pay payable under section 5376 of that title.

(B) NON-APPLICABILITY TO CERTAIN SERVICES.—This paragraph shall not apply to services under subsection (j)(1)(A)(iv).

(7) VOLUNTEER SERVICES.—

(A) IN GENERAL.—Notwithstanding section 1342 of title 31, United States Code, the Commission may accept and utilize the services of volunteers serving without compensation.

(B) REIMBURSEMENT.—The Commission may reimburse such volunteers for local travel and office supplies, and for other travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(C) LIABILITY.—

(i) IN GENERAL.—Subject to clause (ii), a volunteer described in subparagraph (A) shall be considered to be a volunteer for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

(ii) EXCEPTION.—Section 4(d) of the Volunteer Protection Act of 1997 (42 U.S.C. 14503(d)) shall not apply for purposes of a claim against a volunteer described in subparagraph (A).

(p) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out this section.