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UDALL PARK LAND EXCHANGE COMPLETION ACT

JULY 23, 2018.—Ordered to be printed

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

R E P O R T

[To accompany S. 612]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 612) to provide for the unencumbering of title to non-Federal land owned by the city of Tucson, Arizona, for purposes of economic development by conveyance of the Federal reversionary interest to the City, having considered the same, reports favorably thereon without amendment and recommends that the bill, do pass.

PURPOSE

The purpose of S. 612 is to provide for the unencumbering of title to non-Federal land owned by the city of Tucson, Arizona, for purposes of economic development by conveyance of the Federal reversionary interest to the City.

BACKGROUND AND NEED

In 1980, the City of Tucson, Arizona entered into a long-term lease from the Bureau of Land Management (BLM) for a 172.8 acre parcel of land that was improved for public use by the city and named “Udall Park,” after Rep. Morris K. Udall, who represented the Tucson area in the House of Representatives from 1961 until 1991. Title to Udall Park was later conveyed to the City of Tucson in 1989 by the BLM under the authority of the Recreation and Public Purposes Act (RPPA). Both the lease and title conveyance (patent) included a reversionary clause prohibiting certain commercial uses of the property.

At the time of conveyance of the Udall Park property to the City in 1989, the BLM Arizona State Office and the City were negotiating a multi-part land exchange with the approval of the Mayor and City Council of Tucson.

Under the proposal, the City would acquire permanent rights and full use of Udall Park, and the BLM would receive 297 acres from the City and the City would help resolve a long-standing sand and gravel trespass that was under litigation. The City also paid \$135,000 to move a United States Geologic Survey facility from Udall Park to nearby Federal lands.

At the time, the City expected that BLM would support legislative efforts to eliminate the reverter clause in the patent. Documents from the period indicate that time constraints in the ongoing litigation required use of an RPPA patent rather than a transfer of fee title to the City.

The then-BLM State Director recommended support for future legislative efforts to eliminate the reverter clause. However, legislation was never introduced and the City has managed Udall Park since that time under the RPPA lease.

The City has testified that it will continue to manage Udall Park as a public park. However, the City's attempts to permit a farmer's market at the park and to allow for the installation of a communications tower at Udall Park were denied by the BLM and raised questions about the City's authority to manage the park.

The bill resolves this uncertainty by conveying the Federal reversionary interests to the City.

LEGISLATIVE HISTORY

S. 612 was introduced by Senators Flake and McCain on March 13, 2017.

Companion legislation, H.R. 1547, was introduced in the House of Representatives by Representative McSally on March 15, 2017, and referred to the Committee on Natural Resources. H.R. 1547 was reported by the Committee on Natural Resources on August 29, 2017 (H. Rept. 115-280), and passed the House of Representatives by a vote of 401-0 on October 2, 2017.

The Subcommittee on Public Lands, Forests, and Mining conducted a hearing on S. 612 and H.R. 1547 on February 7, 2018.

In the 114th Congress, Senators Flake and McCain introduced similar legislation, S. 2379, on December 9, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 2379 on April 21, 2016. In the House of Representatives, Representative McSally introduced similar legislation, H.R. 5520, on June 6, 2016.

The Committee on Energy and Natural Resources met in open business session on May 17, 2018, and ordered S. 612 and H.R. 1547 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 2018, by a majority voice vote of a quorum present recommends that the Senate pass S. 612.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 contains the short title.

Section 2. Definitions

Section 2 contains key definitions.

Section 3. Conveyance of Federal reversionary interest in land located in Tucson, Arizona

Section 3(a) authorizes the Secretary of the Interior (Secretary) to convey to the City of Tucson, Arizona, without consideration, the reversionary interests of the United States in and to the non-Federal land for the purpose of unencumbering the title to the non-Federal land to enable economic development of the non-Federal land.

Subsection (b) directs the Secretary to determine, in a manner satisfactory to the Secretary, exact legal descriptions of the non-Federal land as soon as practicable after the date of enactment of this Act.

Subsection (c) authorizes the Secretary to require additional terms and conditions to the authorized conveyance, consistent with subsection (a), as the Secretary considers appropriate to protect the interests of the United States.

Subsection (d) requires the City of Tucson, Arizona to pay all costs associated with the authorized conveyance, consistent with subsection (a), including the costs of any surveys, recording costs, and other reasonable costs.

COST AND BUDGETARY CONSIDERATIONS

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

S. 612 would require the Secretary of the Interior to convey the reversionary interest of the United States in 173 acres of land to the city of Tucson, Arizona. Under current law, the city holds title to those lands and will retain title as long as the lands are used for public purposes. If the city stops using the lands for such purposes, the title would revert back to the federal government.

Using information provided by the city of Tucson, CBO expects that, under current law, the city will continue to use the affected lands for public purposes and will hold title to those lands over the next 10 years. Furthermore, under the bill, any administrative costs associated with conveying the reversionary interest in those lands would be paid by the city; therefore, CBO estimates that implementing the bill would have no effect on the federal budget.

Because enacting S. 612 would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 612 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 612 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On August 18, 2017, CBO transmitted a cost estimate for H.R. 1547, the Udall Park Land Exchange Completion Act, as ordered reported by the House Committee on Natural Resources on July 26,

2017. The two pieces of legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was reviewed by H. Samuel Papenfuss, 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. 612. 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. 612, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 612, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the February 7, 2018, hearing on S. 612 follows:

STATEMENT OF BRIAN STEED, DEPUTY DIRECTOR FOR POLICY & PROGRAMS BUREAU OF LAND MANAGEMENT U.S. DEPARTMENT OF THE INTERIOR

Thank you for inviting the Department of the Interior (Department) to testify on S. 612, the Udall Park Land Exchange Completion Act. The bill provides for the conveyance of the Federal government's reversionary interest in a 173-acre parcel of land known as Udall Park located in the City of Tucson, Arizona.

Under the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) is authorized to convey a reversionary interest upon payment of fair market value determined by an appraisal. The Department supports the goal of conveying the reversionary interest to the City of Tucson and could support S. 612 if amended to ensure payment of fair market value for the reversionary interest.

We are mindful that legislated transfers of land and interests in land often promote varied public interest considerations that may not lend themselves readily to the standard appraisal process or to equal value exchanges in all cases. In these instances, the balancing of important public policy considerations, including ensuring a fair return for the American taxpayer, ultimately rests with Congress.

Background

The BLM regularly transfers public land to local governments and nonprofits for a variety of public purposes. These transfers are typically accomplished under the provisions of the Recreation and Public Purposes (R&PP) Act or through direction supplied through specific Acts of Congress. The R&PP Act is a statute frequently used by the BLM to help States, local communities, and nonprofit organizations obtain lands—at no or low cost—for important public purposes such as parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities, and public works. Because these public purpose lands are conveyed at far below market value, R&PP Act conveyances and many similar legislated conveyances include a reversionary clause requiring that lands be used for public purposes or revert to the Federal government. Over the years, the BLM has consistently required the payment of fair market value for the reversionary interest, in accordance with FLPMA's requirements for disposal of lands or interests in land.

Udall Park is a popular, heavily used urban recreation park located in the eastern part of the City of Tucson (City). The 173-acre park was established in 1980, when the City entered into an R&PP Act lease with the BLM. Udall Park then was transferred to the City in 1989, under an R&PP Act patent. Both the lease and patent transferring title to the City included a clause requiring that the lands be used for public purposes.

Prior to the issuance of the 1989 R&PP Act patent, the City had expressed interest in acquiring the parcel through sale or exchange. Extensive discussions with the BLM about a potential exchange followed, although no appraisals of either the parcel or the land proposed for exchange were conducted at the time. The City elected to receive the parcel under an R&PP Act patent rather than as part of a land exchange. The City conveyed land to the BLM; however, no appraisal was conducted. The Department notes that the City's conveyance to the BLM and the BLM's issuance of an R&PP Act patent to the City, when taken together, do not constitute a land exchange. A land exchange would have required appraisals of the properties and equalization of values. The R&PP Act patent to the City contains the reversionary clause requiring that the lands be used for public purposes.

The BLM has authority under FLPMA to convey a reversionary interest retained by the Federal government under the R&PP Act at fair market value in accordance with uniform appraisal standards. In the Udall Park case, the BLM and the City have explored the possible conveyance of the reversionary interest at fair market value, enabling the City to allow commercial uses of the land such as the installation of a cellular tower.

S. 612

S. 612 would transfer the Federal reversionary interest in the Udall Park parcel to the City to facilitate economic development. All administrative costs associated with the conveyance would be the responsibility of the City.

FLPMA, which is the authority under which BLM generally disposes of public land or interests without limit, requires receipt of fair market value for public lands or interests transferred out of public ownership. This serves to ensure that taxpayers are fairly compensated for the removal of public lands or interests from Federal ownership. The Department supports the goal of conveying the reversionary interest outlined in this section. As with previous such proposals, we recommend amending S. 612 to ensure the payment of fair market value for the reversionary interest. However, the Department recognizes that there may be circumstances, as determined by Congress, in which the public benefits of a proposed transfer outweigh financial considerations.

Conclusion

Thank you for the opportunity to testify. We look forward to working with the sponsor and the Subcommittee to address the needs of the City of Tucson.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

