

Calendar No. 581

109TH CONGRESS }
2d Session }

SENATE

{ REPORT
109-359 }

FEDERAL AND DISTRICT OF COLUMBIA
GOVERNMENT REAL PROPERTY ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1838

TO PROVIDE FOR THE SALE, ACQUISITION, CONVEYANCE, AND
EXCHANGE OF CERTAIN REAL PROPERTY IN THE DISTRICT OF
COLUMBIA TO FACILITATE THE UTILIZATION, DEVELOPMENT,
AND REDEVELOPMENT OF SUCH PROPERTY, AND FOR OTHER
PURPOSES



NOVEMBER 13, 2006.—Ordered to be printed

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FEDERAL AND DISTRICT OF COLUMBIA GOVERNMENT
REAL PROPERTY ACT OF 2005

NOVEMBER 13, 2006.—Ordered to be printed

Ms. COLLINS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1838]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1838), a bill to provide for the sale, acquisition, conveyance, and exchange of certain real property in the District of Columbia to facilitate the utilization, development, and redevelopment of such property, and for other purposes, reports favorably with amendments and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1838 authorizes the exchange of certain land parcels between the federal government and the District of Columbia (the District). The major properties to be conveyed to the District are contained in Poplar Point, Reservation 13, and several smaller properties along the Anacostia River. S. 1838 would also provide for the conveyance to the federal government of several District buildings and real property on the west campus of St. Elizabeths Hospital, along with several smaller properties.

II. BACKGROUND AND NEED FOR LEGISLATION

On July 15, 2005, the Bush Administration sent Congress a proposal that would authorize transfers of land between the federal government and the District of Columbia. S. 1838 would authorize the exchange of roughly 200 acres between the General Services Administration (GSA), the Secretary of the Interior, and the District of Columbia.

The Administration cites the special relationship the federal government has with the District, a “federal city,” and a desire to ensure that the Nation’s capital is one of the greatest cities in the world as justification for the transfers. In addition, the federal government found that the properties to be conveyed to the District are not currently providing substantial value to the federal government and are, in fact, an unnecessary burden and could be better utilized if ownership was transferred to the District. Moreover, the District has published an extensive development plan for the land along the Anacostia River called the Anacostia Waterfront Initiative, a public-private venture among 20 local and federal agencies that own or control land along the river.

The Committee held a hearing to review S. 1838, among other pieces of legislation, titled “Enhancing Educational and Economic Opportunity in the District of Columbia,” on February 28, 2006. During the hearing, District of Columbia Mayor Anthony A. Williams stated that the District would assume all costs associated with the environmental clean-up of the land received from the federal government. It is the Committee’s assumption that the District and the federal government will enter into a Memorandum of Understanding agreeing to such an arrangement. However, it is not the Committee’s intent to pre-empt existing environmental law, and nothing in S. 1838 should be interpreted to alleviate the federal government’s legal obligations under 42 U.S.C. 9620(h) to clean up the transferred land.

During the consideration of S. 1838, some members of the Committee had concerns regarding policy issues with prospective development on land transferred to the District by the Act. It is the Committee’s understanding that the development projects on this land will be undertaken on a competitive basis marked by fairness to all bidders and transparency of process.

III. LEGISLATIVE HISTORY

On October 6, 2005, S. 1838, the Federal and District of Columbia Government Real Property Act of 2005, was introduced by Senator Voinovich and cosponsored by Senator Collins, and was referred to the Committee on Homeland Security and Governmental Affairs. On January 27, 2006, the bill was referred to the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia. On February 28, 2006, the Subcommittee held a hearing on S. 1838. The Subcommittee favorably polled out S. 1838 to the full Committee on April 3, 2006 (with Senator Lautenberg recorded as No).

On July 27, 2006, by voice vote, the Committee on Homeland Security and Governmental Affairs ordered S. 1838 reported favorably with an amendment offered by Senators Voinovich and Akaka (with Senator Coburn recorded as No). The amendment included

nine changes submitted by the Department of the Interior. All of these changes are supported by the District of Columbia and the Administration. The amendment would also require the District to report annually to Congress on how the land is being used and would require a bi-annual Government Accountability Office (GAO) report on the land development, provisions that will sunset after 10 years. Additionally, the amendment includes a new parcel of land located where the new baseball stadium will be built and includes several technical changes dealing with land associated with the American Veterans Disabled for Life Memorial. Finally, the amendment would allow the United States and the District to enter into a contract(s) for environmental liability costs and would require compliance with environmental law. Senators present: Collins, Coburn, Bennett, Lieberman, Akaka, Carper, Dayton, and Pryor.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the bill may be referred to as the “Federal and District of Columbia Government Real Property Act of 2005.”

Section 2. Congressional reports and reversion

This section requires the District to report annually to Congress on how the land is being used and also requires a bi-annual GAO report on the land development. This section will sunset after 10 years.

The Committee expects the reports to include: (1) how much of the land has been developed, (2) the purpose for which it is being used, (3) how, if at all, the development deviates from the Anacostia Waterfront Framework Plan, (4) a description of the process through which development of the transferred land was bid, and (5) names of the organizations involved in the development.

TITLE I—REAL PROPERTY CONVEYANCES BETWEEN THE GENERAL SERVICES ADMINISTRATION AND THE DISTRICT OF COLUMBIA

Section 101. Exchange of title over Reservation 13 and certain other properties

This section requires GSA to convey Reservation 13 and the Old Naval Hospital to the District. The conveyance of Reservation 13 is subject to existing matters of record, including a reservation of title for a national commemorative work and for the extension of Massachusetts Avenue. The conveyance also stipulates that the Court Services and Offender Supervision Agency for the District of Columbia, a federal agency, has the right to remain on the site. Finally, this section requires the District to convey to GSA five buildings on the West Campus of St. Elizabeths Hospital.

Section 102. Termination of claims

This section is intended to supersede pending claims against the United States and certain agencies of the United States for performance or reimbursement as described below. The section provides that neither the United States nor any of its agencies, officers, or employees are obligated to the District to perform, or to reimburse the cost of: (1) repairs or renovations pursuant to the St.

Elizabeths Hospital and District of Columbia Mental Health Services Act (24 U.S.C. 225 et seq.); (2) preservation, maintenance, or repair pursuant to a use permit under which the Department of Health and Human Services granted permission to the District to occupy portions of the West Campus of St. Elizabeths; or (3) mental health diagnostic and treatment services for referrals as described in the St. Elizabeths Hospital and District of Columbia Mental Health Services Act, up to and including the effective date of this Act, but not subsequent to that date.

TITLE II—STREAMLINING MANAGEMENT OF PROPERTIES LOCATED IN
THE DISTRICT OF COLUMBIA

Section 201. Transfer of administrative jurisdiction over certain properties

On the date of enactment, administrative jurisdiction of nine specified properties owned by the United States will be transferred from the District of Columbia to the Secretary of the Interior for administration by the National Park Service (NPS).

Also on the day of enactment, administrative jurisdiction of several specified properties owned by the United States will be transferred to the District.

Section 202. Exchange of title over certain properties

This section requires the Secretary of the Interior, on the date on which the District conveys to the Secretary all right, title, and interest in two specified properties, to convey to the District all right, title, and interest in six specified properties.

Section 203. Conveyance of United States Reservation 174

This section requires the Secretary of the Interior to convey U.S. Reservation 174 (a parcel situated on the site of the Old Convention Center) to the District of Columbia. This conveyance is to occur upon the completion by the District of a final plan for the Old Convention Center site that is developed through a public planning process. During the planning process, the District must consider an alternative that will maintain the open space on U.S. Reservation 174. This alternative can involve building space constructed underneath U.S. Reservation 174. The final plan must include open space totaling one and one quarter acres.

TITLE III—POPLAR POINT

Section 301. Conveyance of Poplar Point to District of Columbia

Upon completion of the land-use plan described in Section 302, the District is required to transmit to the Secretary of the Interior a copy of the plan along with all the information necessary to certify the plan. This section requires the Secretary of the Interior, upon receipt from the District of written acceptance of specified terms and conditions, to convey all right, title and interest in Poplar Point to the District.

Section 302. Requirements for Poplar Point land-use plan

This section requires the District to complete a land-use plan for Poplar Point that: (a) identifies a minimum of 70 acres, including wetlands, to be maintained in perpetuity for park purpose; (b) is

consistent, where possible, with the Anacostia Waterfront Framework Plan; (c) sets aside at least two sites, within the areas designated for park purposes, for potential memorials; and (d) includes a commitment by the District to convey back the sites designated for potential memorials to the NPS at the appropriate time, as determined by the Secretary of the Interior.

The deed conveying Poplar Point must reserve to the United States all right, title, and interest, at no cost, in existing federally owned facilities at Poplar Point and all necessary easements for access and utilities. The United States, acting by and through the NPS, is to continue to own, control, and access the existing facilities until the District provides replacement facilities and the NPS has relocated to the replacement facilities. Upon completion of the relocation of the NPS to the replacement facilities, the Secretary of the Interior must convey to the District, in a separate deed, all right, title, and interest in the existing facilities and all necessary easements for access that were reserved to the United States.

Section 303. Conveyance of replacement facilities and properties for National Park Service

No construction, other than construction related to the provision of replacement facilities, can commence on Poplar Point until the District and the Secretary of the Interior agree, in writing, on suitable replacement facilities. The agreement must specify the location of the replacement facilities and a timetable by which the District will complete the relocation of the NPS to the replacement facilities.

The District must provide to the Secretary of the Interior, at no cost, suitable replacement facilities and relocate the NPS to those facilities.

The NPS may move any fixtures or equipment from the existing facilities for use at the replacement facilities.

Section 304. Poplar Point defined

This section defines the boundaries of Poplar Point.

TITLE IV—GENERAL PROVISIONS

Section 401. Definitions

This section defines certain terms used in this Act.

Section 402. Limitation on costs

This section states that the United States shall not be responsible for paying any costs and expenses, other than costs and expenses related to or associated with environmental liabilities or cleanup actions provided under law, which are incurred by the District of Columbia or any other parties at any time in connection with effecting the provisions of this Act or any amendment made by this Act.

Section 403. Authorization of parties to enter into contracts

This section authorizes the United States and the District of Columbia to enter into contracts with each other for payment of costs or expenses related to environmental clean-up of any properties

conveyed under quitclaim deed under this Act or any amendment made by this Act.

Section 404. No effect on compliance with environmental laws

This section states that nothing in this Act may be construed to affect or limit the application of or obligation to comply with any environmental law, including section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

NOVEMBER 2, 2006.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1838, the Federal and District of Columbia Government Real Property Act of 2005.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 1838—Federal and District of Columbia Government Real Property Act of 2005

Summary: CBO estimates that enacting S. 1838 would not significantly affect the federal budget. S. 1838 would authorize the exchange of 29 parcels of land between the federal government and the District of Columbia. The transfer of federal properties would probably involve expenses to remediate environmental contamination at these sites. Although the degree of contamination present at these sites is unknown, CBO expects that the cost to correct it would not be significant because many federal properties previously transferred to the District of Columbia have required minor expenditures to correct contamination problems.

Enacting S. 1838 could result in savings to the federal government because, under the bill, the District of Columbia would release all of its current claims against the federal government regarding St. Elizabeth's Hospital. Those claims have not been adjudicated, and CBO cannot estimate the value of such savings, if any.

S. 1838 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would terminate certain claims of the District of Columbia against the United States. CBO estimates that the cost of this mandate might approach, but probably would not exceed the threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation). The land exchanges authorized by this bill generally would benefit the District, and any costs it would incur to fulfill the conditions of those exchanges would be incurred voluntarily. The bill would impose no other costs on any state, local, or tribal governments. S. 1838 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: Under the bill, the District of Columbia would receive title to eight National Park Service (NPS) and two General Services Administration (GSA) properties, including 66 acres around the site of the former D.C. General Hospital, Poplar Point (approximately 100 acres on the east side of the Anacostia River adjacent to the 11th Street Bridge), and four other small Potomac Avenue parcels (to permit development of the proposed baseball stadium in southeast Washington). The District of Columbia also would gain administrative jurisdiction (which includes administration and maintenance, but not title) over seven smaller NPS properties.

In exchange, the NPS would gain administrative jurisdiction over nine properties owned by the District of Columbia and title to two others. Also, GSA would gain title to five buildings on the west campus of St. Elizabeth's Hospital in southeast Washington. Finally, as part of the exchange, the United States would gain release from all current claims by the District regarding St. Elizabeth's Hospital, and the District would cover all costs associated with the relocation of federal facilities currently located at Poplar Point (headquarters of the National Capital Parks—East) and at the U.S. Park Police Anacostia Operations and Helicopter Facility.

CBO estimates that conveying those federal properties to the District would not affect offsetting receipts from surplus property sales because the NPS and GSA have no plans for declaring the affected properties excess to their needs and selling them. Moreover, the properties generate no significant receipts that would be lost as a result of the exchange.

Title IV would authorize the District of Columbia or a federal agency to enter into contracts for the payment of costs related to the land conveyances, including environmental cleanup or liability. This title would authorize the District—a nonfederal entity—to obligate federal funds to remediate any environmental contamination on the properties to be transferred. The federal government may be responsible for such costs under current law, but obligations for this purpose would be subject to Congressional appropriation actions. Allowing nonfederal entities to incur obligations for cleanup and restoration costs outside the federal budget process could increase or accelerate federal costs for this work.

The extent of contamination on any of the properties to be exchanged under the bill is unknown, and CBO has no basis for estimating the future cost of cleanup or restoration. Reports by the Government Accountability Office (GAO) and the Environmental Protection Agency indicate that the costs of previous environmental cleanups of federal properties in the District of Columbia have ranged widely from more than \$100 million at the Spring Valley site of a World War I era U.S. Army chemical weapons research facility, to \$30 million for environmental remediation and demolition activities at the Southeast Federal Center site, to tens of thousands of dollars for most of the formerly used defense sites located throughout the District.

Based on information from NPS, GSA, and the Office of Management and Budget, CBO expects that the federal government and the District of Columbia would each use its existing authorities to enter into contracts for the cleanup and restoration of their respec-

tive properties after transfer, subject to the appropriation of the necessary amounts.

S. 1838 also would require GAO to provide a report to Congress every two years for 10 years on the use and development of the conveyed property. CBO estimates that the report would cost less than \$500,000 annually.

Estimated impact on State, Local, and Tribal Governments: S. 1838 contains an intergovernmental mandate as defined in UMRA because it would terminate certain claims of the District of Columbia against the United States. CBO estimates that the cost of this mandate might approach, but probably would not exceed the threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation). The land exchanges authorized by this bill generally would benefit the District, and any costs it would incur to fulfill the conditions of those exchanges would be incurred voluntarily. The bill would impose no other costs on any state, local, or tribal governments.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimates: On December 27, 2005, CBO transmitted a cost estimate for H.R. 3699, the Federal and District of Columbia Real Property Act of 2005, as ordered reported by the House Committee on Energy and Commerce on December 15, 2005. On December 12, 2005, CBO transmitted a cost estimate for H.R. 3699 as ordered reported by the House Committee on Transportation and Infrastructure on December 7, 2005. On October 12, 2005, CBO transmitted a cost estimate for H.R. 3699 as ordered reported by the House Committee on Government Reform on September 29, 2005. The three versions of the legislation are similar to S. 1838, as are the CBO cost estimates. The Senate bill contains some additional contract authorities not included in H.R. 3699. In addition, S. 1838 would require a report by GAO and would convey somewhat different parcels of land.

Estimate prepared by: Federal costs: Matthew Pickford and Deborah Reis. Impact on State, Local and Tribal Governments: Marjorie Miller. Impact on the private sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that enactment of this legislation would have no regulatory impact.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, there are no changes to existing law made by the bill as reported.