

KINGMAN AND HERITAGE ISLANDS ACT OF 2009

SEPTEMBER 29, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TOWNS, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 2092]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2092) to amend the National Children’s Island Act of 1995 to expand allowable uses for Kingman and Heritage Islands by the District of Columbia, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 3, strike lines 12 through 14 and insert the following:

(b) MODIFICATION OF REVERSIONARY INTEREST.—Paragraph (1) of section 3(d) of the National Children’s Island Act of 1995 (sec. 10–1402(d)(1), D.C. Official Code) is amended by striking “The transfer under subsection (a)” and all that follows and inserting the following: “Title in the property transferred under subsection (a) and the easements granted under subsection (b) shall revert to the United States upon the expiration of the 60-day period which begins on the date on which the Secretary provides written notice to the District that the Secretary has determined that the District is not using the property for recreational, environmental, or educational purposes in accordance with National Children’s Island, the Anacostia Waterfront Framework Plan, or for another recreational, environmental, or educational purpose, except that the reversionary interest of the United States under this paragraph shall expire upon the expiration of the 30-year period which begins on the date of the enactment of the Kingman and Heritage Islands Act of 2009. Such notice shall be made in accordance with chapter 5 of title 5, United States Code (relating to administrative procedures).”.

#### PURPOSE AND SUMMARY

H.R. 2092 was introduced by Congresswoman Eleanor Holmes Norton on April 23, 2009. The National Children’s Island Act of 1995<sup>1</sup> (Children’s Island Act) required the federal government to transfer title in the Kingman and Heritage Islands to the District of Columbia (District), for use as a children’s recreational park. H.R. 2092 would expand the allowable uses for these properties to include recreational, environmental, and educational uses. This would allow the District to use the islands in a productive manner.

#### BACKGROUND AND NEED FOR LEGISLATION

Kingman and Heritage Islands (islands) were created in the Anacostia River from sediment dredged by the Army Corps of Engineers in 1916. The islands were managed by the National Park Service (NPS) of the Department of the Interior through 1996. Signed into law in July 1996, the Children’s Island Act required the federal government, specifically the Secretary of the Interior, to transfer title in the islands to the District for use as a children’s recreational park. In the ensuing years, a variety of problems, including litigation, prevented full implementation of the original goal.

In 2003, the District developed the Anacostia Waterfront Framework Plan (Waterfront Plan) to redevelop and revitalize the Anacostia waterfront, pursuant to a memorandum of understanding between the District and several federal agencies, including the NPS. The Waterfront Plan envisions the use of the islands for nature-themed exhibitions and educational uses, including a memorial tree grove dedicated to District schoolchildren who were victims of the September 11, 2001 terrorist attacks. The District has taken steps

<sup>1</sup> Pub. L. No. 104–163 (1996).

toward implementing the Plan by using the islands for environmental education programs. H.R. 2092 would clarify that these activities are permissible uses under the law. The bill would amend the Children's Island Act to expand the allowable uses for the islands to include recreational, environmental, and educational uses, consistent with the Waterfront Plan and the District's Comprehensive Plan, a general policy document that provides overall guidance for future planning and development of the District.

The Children's Island Act included language that allows title in the islands to revert back to the United States if the land is not used in a manner consistent with the purposes of the Act. The Secretary of the Interior, through the NPS, has not taken any steps to exercise this reversionary interest under the procedures outlined in the Children's Island Act. An amendment adopted by the Committee would retain a reversionary interest for the federal government for 30 years from the date of enactment of H.R. 2092. This provision retains a role for the federal government in ensuring that islands are used for the purposes stated in the Children's Island Act, as amended by H.R. 2092.

#### LEGISLATIVE HISTORY

H.R. 2092 was introduced by Congresswoman Eleanor Holmes Norton on April 23, 2009, and referred to the Committee on Oversight and Government Reform. The Committee held a markup of H.R. 2092 on September 10, 2009, and adopted by unanimous consent an amendment to retain the federal government's reversionary interest in the islands for 30 years. The Committee then ordered H.R. 2092 reported by voice vote.

#### SECTION-BY-SECTION

##### *Sec. 1. Short title*

The short title of the bill is the Kingman and Heritage Islands Act of 2009.

##### *Sec. 2. Amendments to National Children's Island Act of 1995*

Subsection (a) of Section 2 would amend the Children's Island Act to expand the allowable uses for the islands by stating that it is not a violation of the Children's Island Act for the District to use the lands conveyed and the easements granted under the Children's Island Act in accordance with the Anacostia Waterfront Framework Plan and the Comprehensive Plan. Subsection (a) also defines the Anacostia Waterfront Framework Plan and the Comprehensive Plan.

Subsection (b) of Section 2 would modify the reversionary interest of the federal government included in the Children's Island Act. The Children's Island Act includes a provision that allows title in the islands to revert back to the United States if the land is not used in a manner consistent with the purposes of the Act. Subsection (b) would amend the Children's Island Act, retaining a reversionary interest for the federal government for 30 years from the date of enactment of H.R. 2092. Subsection (b) states that the islands shall revert back to the federal government 60 days after the Secretary of Interior gives written notice to the District that the District is not using the islands for recreational, environmental,

or educational uses in accordance with the National Children's Island, the Anacostia Waterfront Framework Plan, or other recreational, environmental, or educational use.

#### EXPLANATION OF AMENDMENTS

An amendment offered by Congresswoman Norton was adopted by unanimous consent. H.R. 2092 as introduced would have eliminated the federal government's reversionary interest in the islands. The amendment adopted by the Committee would retain a reversionary interest for the federal government for 30 years from the date of enactment of H.R. 2092. This amendment retains a role for the federal government in ensuring that islands are used for the purposes stated in the Children's Island Act, as amended by H.R. 2092.

#### COMMITTEE CONSIDERATION

On Thursday, September 10, 2009, the Committee met in open session and favorably ordered H.R. 2092 to be reported to the House by a voice vote.

#### ROLLCALL VOTES

No rollcall votes were taken.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 2092 is not applicable to the legislative branch.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the finding that allowing the District to use the islands for recreational, environmental, and educational purposes will facilitate productive use of the islands.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including the objective that the District use the islands in a productive manner in accordance with the Children's Island Act, as amended by H.R. 2092.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed

by H.R. 2092. Article I, Section 8, Clauses 17 and 18 of the Constitution of the United States grant the Congress the power to enact this law.

#### FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

#### UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

#### EARMARK IDENTIFICATION

H.R. 2092 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

#### COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2092. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under Section 402 of the Congressional Budget Act.

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and Section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and Section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2092 from the Director of the Congressional Budget Office:

SEPTEMBER 15, 2009.

Hon. EDOLPHUS TOWNS,  
*Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2092, the Kingman and Heritage Islands Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 2092—Kingman and Heritage Islands Act of 2009*

H.R. 2092 would amend the National Children’s Island Act of 1995 to clarify that the District of Columbia may use two islands located in the Anacostia River for recreational, environmental, or educational purposes. In addition, the legislation would amend the terms of the reversionary interest in the islands held by the federal government. (Under reversionary interest, ownership of property that has been conveyed may revert to the federal government in certain circumstances.)

Title to the two islands was conveyed to the District government in 1997 for recreational use, and the federal government has no plans to reclaim the properties. CBO estimates that enacting H.R. 2092 would have no significant impact on the federal budget and would not affect direct spending or revenues. H.R. 2092 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as 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):

**NATIONAL CHILDREN’S ISLAND ACT OF 1995**

\* \* \* \* \*

**SEC. 3. PROPERTY TRANSFER.**

(a) \* \* \*

\* \* \* \* \*

(d) REVERSION.—(1) **【**The transfer under subsection (a) and the grant of easements under subsection (b) shall be subject to the condition that the Islands only be used for the purposes of National Children’s Island. Title in the property transferred under subsection (a) and the easements granted under subsection (b), shall revert to the United States 60 days after the date on which the Secretary provides written notice of the reversion to the District based on the Secretary’s determination, which shall be made in accordance with chapter 5 of title 5, United States Code (relating to administrative procedures), that one of the following has occurred:

**【**(A) Failure to commence improvements in the recreational park within the earlier of—

**【**(i) three years after building permits are obtained for construction of such improvements; or

**【**(ii) four years after title has been transferred, as provided in subsection (a).

**【**(B) Failure to commence operation of the recreation park within the earlier of—

[(i) five years after building permits are obtained for construction of such improvements; or

[(ii) seven years after title has been transferred, as provided in subsection (a).

[(C) After completion of construction and commencement of operation, the abandonment or non-use of the recreation park for a period of two years.

[(D) After completion of construction and commencement of operation, conversion of the Islands to a use other than that specified in this Act or conversion to a parking use not in accordance with section 4(b).] *Title in the property transferred under subsection (a) and the easements granted under subsection (b) shall revert to the United States upon the expiration of the 60-day period which begins on the date on which the Secretary provides written notice to the District that the Secretary has determined that the District is not using the property for recreational, environmental, or educational purposes in accordance with National Children’s Island, the Anacostia Waterfront Framework Plan, or for another recreational, environmental, or educational purpose, except that the reversionary interest of the United States under this paragraph shall expire upon the expiration of the 30-year period which begins on the date of the enactment of the Kingman and Heritage Islands Act of 2009. Such notice shall be made in accordance with chapter 5 of title 5, United States Code (relating to administrative procedures).*

\* \* \* \* \*

**SEC. 7. COMPREHENSIVE AND ANACOSTIA WATERFRONT FRAMEWORK PLANS.**

(a) *COMPLIANCE WITH PLANS.*—Notwithstanding any other provision of this Act, it is not a violation of the terms and conditions of this Act for the District of Columbia to use the lands conveyed and the easements granted under this Act in accordance with the Anacostia Waterfront Framework Plan and the Comprehensive Plan.

(b) *DEFINITIONS.*—For purposes of this section, the following definitions apply:

(1) *ANACOSTIA WATERFRONT FRAMEWORK PLAN.*—The term “Anacostia Waterfront Framework Plan” means the November 2003 Anacostia Waterfront Framework Plan to redevelop and revitalize the Anacostia waterfront in the District of Columbia, as may be amended from time to time, developed pursuant to a memorandum of understanding dated March 22, 2000, between the General Services Administration, Government of the District of Columbia, Office of Management and Budget, Naval District Washington, Military District Washington, Marine Barracks Washington, Department of Labor, Department of Transportation, National Park Service, Army Corps of Engineers, Environmental Protection Agency, Washington Metropolitan Area Transit Authority, National Capital Planning Commission, National Arboretum, and Small Business Administration.

(2) *COMPREHENSIVE PLAN.*—The term “Comprehensive Plan” means the Comprehensive Plan of the District of Columbia approved by the Council of the District of Columbia on December

*28, 2006, as such plan may be amended or superseded from time to time.*

