

Calendar No. 405

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-197

CONVEYANCE OF CERTAIN SUBMERGED LANDS TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MAY 24, 2010.—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 H.R. 934]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 934) to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 934 is to convey to the government of the Commonwealth of the Northern Mariana Islands (CNMI) the submerged lands surrounding the islands extending three geographical miles outward from the coastline.

BACKGROUND AND NEED

The Northern Mariana Islands are an archipelago of fourteen islands between the Philippines and Japan and extending north of Guam. The U.S. captured the islands in World War II and in 1947 they became a district of the U.S.-administered, United Nations Trust Territory of the Pacific Islands. In accordance with the terms of the U.N. Trusteeship Agreement, the people of the Northern Mariana Islands expressed their desire for their future political status which was to join in political union with the U.S. Following bilateral negotiations, the *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America* (the “Covenant”) was approved in a U.N.-ob-

served plebiscite in the Mariana Islands and by the U.S. Congress with the enactment of Public Law 94–241 in 1976.

The Covenant defined the relationship between the U.S. and the CNMI, and provided for the establishment of self-government under a local constitution, but under the sovereignty of the U.S., and extended U.S. citizenship to the islands' residents. Article VIII provided for the transfer of real property from the Trust Territory Government to the new CNMI government, but disagreement arose regarding the status of submerged lands.

In 1999, the CNMI filed a quiet title suit against the U.S. in the U.S. District Court for the Northern Mariana Islands, seeking a ruling that the CNMI holds title to the submerged lands underlying the internal waters, archipelagic waters, and territorial waters adjacent to the Northern Mariana Islands. The district court granted summary judgment in favor of the United States, based on the paramountcy doctrine. As established by the Supreme Court in *United States v. California*, 332 U.S. 19 (1947), and subsequent cases, the paramountcy doctrine holds that the United States possesses paramount rights over seaward submerged lands, as a function of national external sovereignty.

On appeal, the U.S. Court of Appeals for the Ninth Circuit Court of Appeals affirmed the district court's judgment. *CNMI v. United States*, 399 F.3d 1057 (9th Cir. 2005). The Ninth Circuit held that the U.S. acquired paramount rights in the submerged lands off the shores of the CNMI based on the U.S. sovereignty over the CNMI pursuant to the Covenant. The court recognized, however, that Congress can, and has, transferred ownership of submerged lands to the states and other territories. The Court specifically cited the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, which conveyed submerged lands up to three geographical miles from shore to the states, and the Territorial Submerged Lands Act, 42 U.S.C. 1705, which transferred submerged lands to the territories of Guam, the U.S. Virgin Islands, and American Samoa.

The Territorial Submerged Lands Act, which became law in 1974, two years before approval of the Covenant, did not include the CNMI, and CNMI remains the only U.S. territory that does not have title to its submerged lands. Legislation is needed to convey to the CNMI title to its submerged lands seaward of its coastline.

LEGISLATIVE HISTORY

On October 25, 2005, during the 109th Congress, the Committee on Energy and Natural Resources held a hearing on S. 1831, legislation that contained language along the lines of H.R. 934 (S. Hrg. 109–291), but no further action was taken due to objections from the CNMI.

H.R. 934 was introduced in the 111th Congress on February 10, 2009, by the Delegate from the CNMI, Gregorio Kilili Sablan. It was reported by the House Committee on Natural Resources on June 23, 2009, H. Rept. 111–176, and passed the House on July 15, 2009, by a vote of 416 to 0.

H.R. 934 was referred to the Committee on July 16, 2009. The Committee held a hearing on December 17, 2009 (S. Hrg. 111–364), and ordered H.R. 934 favorably reported at a business meeting on May 6, 2010.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 6, 2010, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 934, as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1(a) amends the first section of Public Law 93–438 (48 U.S.C. 1705; commonly known as the Territorial Submerged Lands Act), which conveys the submerged lands up to three geographical miles seaward from the coastlines of Guam, the Virgin Islands, and American Samoa, to the governments of those territories, by inserting “the Commonwealth of the Northern Mariana Islands” after “Guam,” every place it appears. The effect of the amendment is to convey to the government of the CNMI the lands covered by tidal waters up to three geographical miles from the coastline of the CNMI, on the same terms as submerged lands were conveyed to Guam, the Virgin Islands, and American Samoa.

Subsection (b) provides that each reference of the date of enactment of Public Law 93–435 shall also be considered as a reference to the date of enactment of H.R. 934.

COST AND BUDGETARY CONSIDERATION

H.R. 934—An act to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands.

H.R. 934 would convey ownership of submerged lands to the Commonwealth of the Northern Mariana Islands (CNMI) from the mean high tide seaward to the point that is three geographical miles from its coast line. Under current law, those lands are owned by the United States. Based on information from the Department of the Interior, CBO estimates that implementing H.R. 934 would have no significant cost to the federal government. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 934 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.

On June 18, 2009, CBO transmitted a cost estimate for H.R. 934 as ordered reported by the House Committee on Natural Resources on June 10, 2009. The two versions of the legislation are similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, 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 H.R. 934.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals or businesses.

No personal information would be collected by the Federal government. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would be required by the Federal government from the enactment of H.R. 934.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 934, as 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 December 17, 2009 hearing on H.R. 934 follows:

STATEMENT FOR THE RECORD, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES REGARDING H.R. 934—CONVEYANCE OF NORTHERN MARIANA ISLANDS SUBMERGED LANDS, DECEMBER 17, 2009

Mr. Chairman and members of the Committee on Energy and Natural Resources I am pleased to appear before you today on behalf of the Department of the Interior to support enactment of legislation that would convey the three geographical miles of submerged lands adjacent to the Northern Mariana Islands to the Government of the Northern Mariana Islands. The Administration would strongly support this bill if amended to address the issues outlined below.

The bill is intended to give the Commonwealth of the Northern Mariana Islands (CNMI) authority over its submerged lands from mean high tide seaward to three geographical miles distant from its coast lines.

It has been the position of the Federal Government that United States submerged lands around the Northern Mariana Islands did not transfer to the CNMI when the Covenant came into force. This position was validated in Ninth Circuit Court of Appeals opinion in the case of the *Commonwealth of the Northern Mariana Islands v. the United States of America*. One consequence of this decision is that CNMI law enforcement personnel lack jurisdiction in the territorial waters surrounding the islands of the CNMI without a grant from the Federal Government.

At present, the CNMI is the only United States territory that does not have title to the submerged lands in that portion of the United States territorial sea that is three miles distant from the coastlines of the CNMI's islands. It is appropriate that the CNMI be given the same authority as her sister territories.

I have three comments on the bill, and then a recommendation. First, the Territorial Submerged Lands Act, which became public law in 1974, contains several sections

that refer to the territories by name. H.R. 934 inserts the CNMI's name only in section 1, but not in section 2, which reserves military rights and navigational servitudes. In order to achieve consistency, the Department recommends that the CNMI be included in all provisions of the Territorial Submerged Lands Act where other territories are named.

Second, H.R. 934 includes language interpreting "date of enactment" in the original act as meaning "date of enactment" of H.R. 934 when referencing the provisions of H.R. 934. For those who will later interpret the statute, it would be helpful if the interpretation is included in the main statute itself, rather than being relegated to a separately listed amendment or reference note.

Third, on January 6, 2009, by presidential proclamation, the Marianas Trench Marine National Monument was created, including the Islands Unit, comprising the submerged lands and waters surrounding Uracas, Maug, and Asuncion, the northernmost islands of the CNMI. While creation of the monument is a historic achievement, it should be remembered that the leaders and people of the CNMI were and are these three islands' first preservationists. They included in their 1978, plebiscite-approved constitution the following language:

ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources. The marine resources in the waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

Section 2: Uninhabited Islands. . . . The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

It is important to note that the legislature has never taken action adverse to the preservation of these northern islands and the waters surrounding them. The people of the CNMI are well aware of their treasures. CNMI leaders consented to creation of the monument because they believed that the monument would bring Federal assets for marine surveillance, protection, and enforcement to the northern islands that the CNMI cannot afford.

If enacted as passed by the House, H.R. 934 would become a public law enacted subsequent to the creation of the monument. H.R. 934's amendments to the Territorial Submerged Lands Act would convey to the CNMI the submerged lands surrounding Uracas, Maug, and Asuncion without addressing the effect of this conveyance on the administrative responsibilities of the Department of the Interior and the Department of Commerce. Presidential Proclamation 8335 establishes shared management responsibil-

ities for the Marianas Marine National Monument between the Department of the Interior and the Department of Commerce. The proclamation further states that the “Secretary of Commerce shall have the primary management responsibility . . . with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.) and any other applicable authorities.” The proclamation provides that submerged lands that are granted to the CNMI “but remain controlled by the United States under the Antiquities Act may remain part of the monument” for coordinated management with the CNMI. The Department of the Interior seeks to harmonize all interests in the waters surrounding the CNMI’s three northernmost islands and provide sufficient control over the submerged lands and waters of the monument to enable co-management of the Islands Unit of the monument. Thus, the Department recommends that language be included in H.R. 934 referencing the proclamation that created the monument, including the Federal and CNMI roles. Such harmonizing language is intended to protect the Islands Unit of the monument and at the same time acknowledge the present and historic conservation effort of the leaders and people of the CNMI in protecting Uracas, Maug, and Asuncion, and their surrounding waters.

I have appended to my written statement legislative language that would (1) address the submerged lands surrounding the Northern Mariana Islands to the Government of the Northern Mariana Islands, and (2) clearly address the three issues of concern to the Department that I raised here today. The Department of the Interior strongly supports H.R. 934 if it is amended to include the legislative language provided. The Department of the Interior looks forward to the Commonwealth of the Northern Mariana Islands gaining rights in the submerged lands surrounding them similar to those accorded her sister territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Public Law 93-435 (48 U.S.C. 1705) is amended:

(a) by inserting the words ‘the Commonwealth of the Northern Mariana Islands,’ after the word ‘Guam,’ wherever it appears, and

(b) by adding at the end the following language:

‘Sec. 7. All provisions of this Act that refer to “date of enactment”, shall, when applicable to the Commonwealth of the Northern Mariana Islands, mean the date of enactment of the amendment that included the Commonwealth of the Northern Mariana Islands in this Act.

‘Sec. 8. Nothing in this Act is intended to amend, repeal, or otherwise alter the Marianas Trench Marine National Monument as described in Presidential Proclamation 8335 dated January 6, 2009, including the proclamation’s provisions that reference the management responsibilities of the Secretaries of the Interior and Commerce and the rights,

responsibilities of officials of the Commonwealth of the Northern Mariana Islands.’

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, H.R. 934, as ordered reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 5, 1974

(Public Law 93-435)

AN ACT to place certain submerged lands within the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories of Guam, *the Commonwealth of the Northern Mariana Islands*, the Virgin Islands, and American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters, are hereby conveyed to the governments of Guam, *the Commonwealth of the Northern Mariana Islands*, the Virgin Islands, and American Samoa, as the case may be, to be administered in trust for the benefit of the people thereof.

(b) There are excepted from the transfer made by subsection (a) hereof—

(i) * * *

* * * * *

Upon request of the Governor of Guam, *the Commonwealth of the Northern Mariana Islands*, the Virgin Islands, or American Samoa, the Secretary of the Interior may, with or without reimbursement, and subject to the procedure specified in subsection (c) of this section convey all right, title, and interest of the United States in any of the lands described in clauses (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this subsection to the government of Guam, *the Commonwealth of the Northern Mariana Islands*, *the Virgin Islands*, or American Samoa, as the case may be, with the concurrence of the agency having custody thereof.

* * * * *

(d)(1) The Secretary of the Interior shall, not later than sixty days after the date of enactment of this subsection, convey to the governments of Guam, *the Commonwealth of the Northern Mariana Islands*, the Virgin Islands, and American Samoa, as the case may be, all right, title, and interest of the United States in deposits of

oil, gas, and other minerals in the submerged lands conveyed to the government of such territory by subsection (a) of this section.

