

TO AMEND PUBLIC LAW 93-435 WITH RESPECT TO THE NORTHERN MARIANA ISLANDS, PROVIDING PARITY WITH GUAM, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

MAY 14, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 573]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 573) to amend Public Law 93-435 with respect to the Northern Mariana Islands, providing parity with Guam, the Virgin Islands, and American Samoa, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 573 is to amend Public Law 93-435 with respect to the Northern Mariana Islands, providing parity with Guam, the Virgin Islands, and American Samoa.

BACKGROUND AND NEED FOR LEGISLATION

The Northern Mariana Islands archipelago is located in the western Pacific, roughly 40 miles north of the U.S. territory of Guam, on the eastern-most boundary of the Philippine Sea. The archipelago consists of 14 volcanic islands, with a total land area of 184 square miles. The island chain spans 375 miles north to south or roughly 400 nautical miles from the southern island (Rota) to the northern island (Farallon De Pajaros).

After World War II, a U.S. military government was installed on the islands. In 1947, the islands became a United Nations Trust Territory of the Pacific Islands, with the U.S. administering the trusteeship agreement. The U.S. was required under the trusteeship to “promote the development of the inhabitants of the trust territory toward self-government.” The Marianas Political Status Commission, with representatives from the islands and a delega-

tion from the U.S., negotiated a Covenant to define the relationship between the parties. Under the covenant, the Northern Mariana Islands functions as a self-governing commonwealth, while recognizing U.S. sovereignty over the islands. The negotiators signed the Covenant on February 15, 1975, and it was unanimously approved by the legislature of the Mariana Islands District of United Nations Trust Territory of the Pacific Islands on February 17, 1975.

In 1976, Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands (CNMI) in Political Union with the United States and then-President Ford signed the bill which became Public Law 94-241. The CNMI government adopted a constitution in 1978 and its constitutional government took office in 1978. In 1986, Presidential Proclamation No. 5564 fully implemented the Covenant. Finally, the United Nations terminated the trust status as it applied to the CNMI in 1990.

In 1974, Congress passed the Territorial Submerged Lands Act which gave Guam, the Virgin Islands and American Samoa jurisdiction over submerged lands surrounding each of the islands out to three geographical miles. The CNMI was not granted similar authorities since it was not a U.S. territory at the time. The CNMI legislature passed legislation in 1979, 1980 and 1988 asserting that the CNMI had exclusive jurisdiction over submerged lands and offshore marine resources. However, the U.S. position has been that the submerged lands were not transferred to the CNMI under the Covenant and remain under the jurisdiction of the U.S.

In 2004, CNMI sued the U.S. in District Court under the Quiet Title Act (28 U.S.C. 2409a) asserting its claim of jurisdiction over oceanic submerged lands and marine resources from its coastline to a distance of 200 nautical miles. The District Court ruled that the U.S. has "paramount authority over those lands and resources as a necessary and retained element of its national sovereignty." CNMI appealed the decision to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed the District Court's ruling; however, it did recognize that Congress has the authority to transfer ownership of submerged lands to the states and its territories.

H.R. 573 amends section one and two of Public Law 93-435 (48 U.S.C. 1705) to provide CNMI with the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa. The amendment to section two of the public law retains federal defense and navigational rights.

In the 111th and 112th Congresses, similar legislation was reported out of the Natural Resources Committee. In the 111th Congress, H.R. 934 passed the House of Representatives by a roll call vote of 416-0, and in the 112th Congress, H.R. 670 passed by a roll call vote of 397-0.

COMMITTEE ACTION

H.R. 573 was introduced on February 6, 2013, by Congressman Gregorio Kilili Camacho Sablan (D-MP). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. On April 24, 2013, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs was discharged by unanimous consent. No amendments were offered, and the bill was then adopted and

ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(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 of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 573—A bill to amend Public Law 93-435 with respect to the Northern Mariana Islands, providing parity with Guam, the Virgin Islands, and American Samoa

CBO estimates that enacting H.R. 573 would have no significant effect on the federal budget. The bill 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. The legislation also would include CNMI among the islands where the United States may establish a naval defensive perimeter.

Based on information from the Department of the Interior, CBO estimates that implementing H.R. 573 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 do not apply.

H.R. 573 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.

2. Section 308(a) of Congressional Budget Act. As required by 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, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that enacting H.R. 573 would have no significant effect on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective

of this bill is to amend Public Law 93-435 with respect to the Northern Mariana Islands, providing parity with Guam, the Virgin Islands, and American Samoa.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

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 (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 in the Senate and the 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) all deposits of oil, gas, and other minerals, but the term “minerals” shall not include coral, sand, and gravel;

(ii) all submerged lands adjacent to property owned by the United States above the line of mean high tide;

(iii) all submerged lands adjacent to property above the line of mean high tide acquired by the United States by eminent domain proceedings, purchase, exchange, or gift, after the date of enactment of this Act, as required for completion of the Department of the Navy Land Acquisition Project relative to the construction of the Ammunition Pier authorized by the Military Construction Authorization Act, 1971 (84 Stat. 1204), as amended by section 201 of the Military Construction Act, 1973 (86 Stat. 1135);

(iv) all submerged lands filled in, built up, or otherwise reclaimed by the United States, before the date of enactment of this Act, for its own use;

(v) all tracts or parcels of submerged land containing on any part thereof any structures or improvements constructed by the United States;

(vi) all submerged lands that have heretofore been determined by the President or the Congress to be of such scientific, scenic, or historic character as to warrant preservation and administration under the provisions of the Act entitled “An Act to establish a National Park Service, and for other purposes”, approved August 25, 1916 (16 U.S.C. 1 et seq.);

(vii) all submerged lands designated by the President within one hundred and twenty days after the date of enactment of this Act;

(viii) all submerged lands that are within the administrative responsibility of any agency or department of the United States other than the Department of the Interior;

(ix) all submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise;

(x) all submerged lands within the Virgin Islands National Park established by the Act of August 2, 1956 (16 U.S.C. 398 et seq.), including the lands described in the Act of October 5, 1962 (16 U.S.C. 398c–398d); and

(xi) all submerged lands within the Buck Island Reef National Monument as described in Presidential Proclamation 3448 dated December 28, 1961.

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.

(c) No conveyance shall be made by the Secretary pursuant to subsection (a) or (b) of this section until the expiration of sixty calendar days (excluding days on which the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date on which the Secretary of the Interior submits to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an explanatory statement indicating the tract proposed to be conveyed and the need therefor, unless prior to the expiration of such sixty calendar days both committees inform the Secretary that they wish to take no action with respect to the proposed conveyance.

SEC. 2. (a) Nothing in this Act shall affect the right of the President to establish naval defensive sea areas and naval airspace reservations around and over the islands of Guam, *the Commonwealth of the Northern Mariana Islands*, American Samoa, and the Virgin Islands when deemed necessary for national defense.

(b) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of the lands transferred by the first section of this Act, and the navigable waters overlying such lands, for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control or the production of power.

(c) The United States retains all of its navigational servitude and rights in and powers of regulation and control of the lands conveyed by the first section of this Act, and the navigable waters overlying such lands, for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically conveyed to the government of Guam, *the Commonwealth of the Northern Mariana Islands*, the Virgin Islands, or American Samoa, as the case may be, by the first section of this Act.

(d) Nothing in this Act shall affect the status of lands beyond the three-mile limit described in section 1 of this Act.