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SENATE

{ REPORT  
{ 115-35

### BLACK HILLS NATIONAL CEMETERY BOUNDARY EXPANSION ACT

MAY 3, 2017.—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. 35]

[Including cost estimate of the Congressional Budget Office]

The Senate Committee on Energy and Natural Resources, to which was referred the bill (S. 35) to transfer administrative jurisdiction over certain Bureau of Land Management land from the Secretary of the Interior to the Secretary of Veterans Affairs for inclusion in the Black Hills National Cemetery, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Black Hills National Cemetery Boundary Expansion Act”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) CEMETERY.—The term “Cemetery” means the Black Hills National Cemetery in Sturgis, South Dakota.

(2) FEDERAL LAND.—The term “Federal land” means the approximately 200 acres of Bureau of Land Management land adjacent to the Cemetery, generally depicted as “Proposed National Cemetery Expansion” on the map entitled “Proposed Expansion of Black Hills National Cemetery—South Dakota” and dated June 16, 2016.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

#### SEC. 3. TRANSFER AND WITHDRAWAL OF BUREAU OF LAND MANAGEMENT LAND FOR CEMETERY USE.

(a) CONDUCT OF DUE DILIGENCE ACTIVITIES BY THE SECRETARY OF VETERANS AFFAIRS.—

(1) IN GENERAL.—Before the transfer of administrative jurisdiction and withdrawal of the Federal land under subsections (b) and (c), respectively, and subject to paragraph (2), the Secretary of Veterans Affairs shall complete any appropriate environmental, cultural resource, and other due diligence activities on the Federal land that would enable the Secretary of Veterans Affairs to confirm that the Federal land is suitable for cemetery purposes.

(2) NOTICE; REQUIRED COORDINATION.—The Secretary of Veterans Affairs shall—

(A) before conducting any due diligence activities under paragraph (1), notify the Secretary of the activities to be conducted; and

(B) as the Secretary of Veterans Affairs determines to be necessary in the conduct of the due diligence activities under paragraph (1), coordinate the activities with the Secretary; and

(C) if the Secretary of Veterans Affairs determines, on completion of the due diligence activities under paragraph (1), that the Federal land is suitable for cemetery purposes, submit written notice of the determination to the Secretary.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(1) TRANSFER.—

(A) IN GENERAL.—On receipt by the Secretary of written notice of a determination that the Federal land is suitable for cemetery purposes under subsection (a)(2)(C), except as provided in subparagraph (B), and subject to valid existing rights, administrative jurisdiction over the Federal land is transferred from the Secretary to the Secretary of Veterans Affairs for use as a national cemetery in accordance with chapter 24 of title 38, United States Code.

(B) EXCLUSION.—The transfer of administrative jurisdiction over the Federal land under subparagraph (A) shall not include the land located within 100 feet of the center of the Centennial Trail, as generally depicted on the map entitled “Proposed Expansion of Black Hills National Cemetery—South Dakota” and dated June 16, 2016.

(2) LEGAL DESCRIPTIONS.—

(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a notice containing a legal description of the Federal land.

(B) EFFECT.—A legal description published under subparagraph (A) shall have the same force and effect as if included in this Act, except that the Secretary may correct any clerical and typographical errors in the legal description.

(C) AVAILABILITY.—Copies of the legal description published under subparagraph (A) shall be available for public inspection in the appropriate offices of—

(i) the Bureau of Land Management; and

(ii) the National Cemetery Administration.

(D) COSTS.—The Secretary of Veterans Affairs shall reimburse the Secretary for the costs incurred by the Secretary in carrying out this paragraph, including the costs of any surveys and other reasonable costs.

(c) WITHDRAWAL.—On receipt by the Secretary of written notice of a determination that the Federal land is suitable for cemetery purposes under subsection (a)(2)(C) and subject to valid existing rights, the Federal land—

(1) is withdrawn from all forms of appropriation under the public land laws, including the mining laws, the mineral leasing laws, and the geothermal leasing laws; and

(2) shall be treated as property as defined under section 102(9) of title 40, United States Code.

(d) BOUNDARY MODIFICATION.—The boundary of the Cemetery is modified to include the Federal land.

(e) MODIFICATION OF PUBLIC LAND ORDER.—Public Land Order 2112, dated June 6, 1960 (25 Fed. Reg. 5243), is modified to exclude the Federal land.

#### PURPOSE

The purpose of S. 35 is to transfer administrative jurisdiction over approximately 200 acres of Bureau of Land Management (BLM) land in South Dakota from the Secretary of the Interior to the Secretary of Veterans Affairs for inclusion in the Black Hills National Cemetery.

## BACKGROUND AND NEED

The Black Hills National Cemetery (Cemetery) is located just outside of Sturgis, South Dakota. It is part of the national cemetery system for military veterans and their spouses administered by the Department of Veterans Affairs. Approximately 20,000 veterans or their close relatives have been buried within its 106-acre footprint since it was established in 1948. S. 35 would provide for a permanent transfer of approximately 200 acres for the purpose of expanding the Cemetery. The land would be transferred from the BLM to the Department of Veterans Affairs, and would provide for necessary accommodation to properly honor veterans with a dignified burial for generations to come.

## LEGISLATIVE HISTORY

Senator Thune introduced S. 35 on January 5, 2017.

In the 114th Congress, Senator Thune introduced a similar measure, S. 2223, on October 29, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing on April 21, 2016, to consider S. 2223. The Committee on Energy and Natural Resources met in open business session on July 13, 2016, and ordered S. 2223 favorably reported as amended.

The measure was also included in Amendment No. 3234, which the Senate agreed to on April 19, 2016, as an amendment to S. 2012, the Energy Policy Modernization Act of 2016, which the Senate passed, as amended, on April 20, 2016.

In the House of Representatives, Representative Noem introduced a companion bill, H.R. 3839, on October 27, 2015.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 35 favorably reported as amended.

## COMMITTEE AMENDMENT

During its consideration of S. 35, the Committee adopted an amendment in the nature of a substitute to include provisions related to due diligence activities, agency coordination, and land exclusions. The amendment is further described in the section-by-section analysis.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 30, 2017, by a majority voice vote of a quorum present, recommends that the Senate pass S. 35, if amended as described herein.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 provides the short title.

*Section 2. Definitions*

Section 2 defines key terms.

*Section 3. Transfer and withdrawal of Bureau of Land Management land for cemetery use*

Section 3(a) directs the Secretary of Veterans Affairs to complete any appropriate environmental, cultural resource, and other due diligence activities on the Federal land that would enable the Secretary of Veterans Affairs to confirm the land is suitable for cemetery purposes prior to the transfer and withdrawal of administrative jurisdiction. This subsection further specifies required notifications and coordination between the Secretary of Veterans Affairs and the Secretary of the Interior.

Subsection (b) transfers administrative jurisdiction of the subject land from the Secretary of the Interior to the Secretary of Veterans Affairs, subject to valid existing rights; requires publication and availability of the legal description; requires the Secretary of Veterans Affairs to reimburse the Secretary of the Interior for reasonable costs incurred for carrying out this section; and excludes the transfer of administrative jurisdiction of lands located within 100 feet of the center of the Centennial Trail, as generally depicted on the specified map.

Subsection (c) withdraws the subject land from all forms of appropriation under the public land laws, subject to valid existing rights, and requires the Federal land to be treated as property as defined in 40 U.S.C. 102(9).

Subsection (d) modifies the boundary of the cemetery to include the Federal land.

Subsection (e) modifies the existing Public Land Order 2112, dated June 6, 1960 (25 Fed. Reg. 5243), to exclude the Federal land.

COST AND BUDGETARY CONSIDERATIONS

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

S. 35 would require the Bureau of Land Management (BLM) to transfer 200 acres of land to the Department of Veterans Affairs (VA) to expand a national cemetery. CBO estimates that implementing S. 35 would have insignificant costs for VA to cover administrative expenses associated with the transfer and make improvements to the Black Hills National Cemetery.

Under the bill, the affected lands would be withdrawn from mining and mineral leasing activities. Based on an analysis of information provided by BLM, CBO expects that those activities would not occur over the next 10 years and we estimate that withdrawing the lands would not affect the federal budget. Because enacting the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 35 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 35 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved 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. 35. 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. 35, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

S. 35, 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

Because S. 35 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The testimony provided by the Department of the Interior at the hearing before the Subcommittee on Public Lands, Forests, and Mining on April 21, 2016, follows:

STATEMENT OF MIKE POOL, ACTING DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT DEPARTMENT OF THE INTERIOR

Thank you for inviting the Department of the Interior to testify on S. 2223, the Black Hills National Cemetery Boundary Expansion Act, which transfers administrative jurisdiction of approximately 200 acres of public land currently managed by the Department's Bureau of Land Management (BLM) to the Department of Veterans Affairs' (VA) National Cemetery Administration (NCA) for inclusion in the Black Hills National Cemetery in Meade County, South Dakota. The Department of the Interior supports S. 2223.

## BACKGROUND

The Black Hills National Cemetery is located three miles southeast of Sturgis, South Dakota, near the Black Hills. Established in 1948, the cemetery currently encompasses 106 acres and has had over 20,000 interments. The BLM understands that the NCA would use the additional land provided under S. 2223 to expand the Black Hills National Cemetery to provide burial space for future needs. The BLM and the NCA have discussed such a transfer for several years, but the BLM has determined that no general authority exists for the agency to grant a perpetual transfer of jurisdiction as required by the NCA for a cemetery.

## S. 2223

S. 2223 directs the Secretary of the Interior to transfer administrative jurisdiction of approximately 200 acres of public land to the Secretary of Veterans Affairs to be incorporated into the existing Black Hills National Cemetery, subject to valid existing rights. The Secretary of Veterans Affairs would be required to pay all survey costs and other reasonable costs associated with the transfer. The Federal land to be transferred would be withdrawn from all forms of appropriation under the public land laws, including the mining, mineral leasing, and geothermal leasing laws. Under the bill, should the NCA ever determine that it no longer needs any portion of the additional land, the Secretary of the Interior could restore the unneeded land to the public domain. The Secretary of Veterans Affairs would be responsible for costs of any decontamination necessary for restoration to public land status.

The Department of the Interior supports S. 2223 and the transfer of administrative jurisdiction. We note that the expansion area is currently part of the Fort Meade Recreation Area/Area of Critical Environmental Concern (ACEC) and that the Centennial Trail runs along the northern boundary of the expansion area. We suggest adding bill language to provide a 100-foot setback boundary from the centerline of the trail. The Administration would also like to work with the sponsor and the Committee to clarify the provisions related to decontamination and restoration of the land to public land status.

## CONCLUSION

Thank you again for the opportunity to testify in support of S. 2223, the Black Hills National Cemetery Boundary Expansion Act. We appreciate the work of the South Dakota congressional delegation on this legislation, and we look forward to collaborating with them and the Committee to meet the needs of the Black Hills National Cemetery.

## 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.

