

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

JUNE 23, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 934]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. CONVEYANCE OF CERTAIN SUBMERGED LANDS TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) IN GENERAL.—The first section of Public Law 93-435 (48 U.S.C. 1705) is amended by inserting “the Commonwealth of the Northern Mariana Islands,” after “Guam,” each place it appears.

(b) REFERENCES TO DATE OF ENACTMENT.—For the purposes of the amendment made by subsection (a), each reference in Public Law 93-435 (48 U.S.C. 1705) to the “date of enactment” shall be considered to be a reference to the date of the enactment of this section.

(c) Nothing in this section amends, repeals, or otherwise alters the Proclamation of the President dated January 6, 2009, establishing the Marianas Trench Marine National Monument.

PURPOSE OF THE BILL

The purpose of H.R. 934 is to convey to the government of the Commonwealth of the Northern Mariana Islands (CNMI) the sub-

merged lands surrounding such islands and extending three geographical miles outward from their coastline.

BACKGROUND AND NEED FOR LEGISLATION

The CNMI, located in the western Pacific Ocean, is an archipelago comprised of fourteen islands. The majority of the CNMI's population lives on three of the most southern islands: its capital Saipan, Rota, and Tinian. The CNMI's southernmost island is approximately 40 miles north of the U.S. Territory of Guam.

At the end of World War II, the Northern Mariana Islands, along with all other islands in the Micronesian region—except Guam, Nauru, and Kiribati—became part of the United Nations Strategic Trust Territory of the Pacific Islands (TTPI) administered by the United States. Consistent with the U.N. trusteeship agreement, the Northern Mariana Islands took steps in the early 1970's to express their desire for greater self-government. By 1975, following negotiations with the U.S. and a subsequent local plebiscite, the Northern Mariana Islands submitted its "Covenant" proposal to the U.S. for final approval. After favorable consideration by Congress, the *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America* (Covenant) was signed into law (P.L. 94-241) in 1976 by President Gerald Ford.

The Covenant, coming into full effect in 1986, conferred U.S. citizenship, provided a greater measure of self-government, and defined the relationship between the U.S. and the CNMI. The *Covenant's* Article VIII addressed the distribution of property (right, title, and interest), from the TTPI government to the newly formed Northern Mariana Islands government.

In 2004, the CNMI government appealed a ruling of the District Court of the Northern Mariana Islands granting summary judgment in favor of the United States, requesting a declaration by the Ninth Circuit Court of Appeals that the CNMI holds title to, or an order mandating that the U.S. quitclaim any interest in, the submerged lands "underlying the internal waters, archipelagic waters, and territorial waters adjacent to the Northern Mariana Islands." The CNMI offered two arguments to substantiate its request: (1) contending the paramouncy doctrine is inconsistent with the *Covenant's* limitations on the application of federal law, and (2) arguing alternatively that the *Covenant's* transfer of real property creates a "recognized exception" to the paramouncy doctrine. The doctrine instructs that the United States, as a "function of national external sovereignty," acquires "paramount rights" over seaward submerged lands. The Ninth Circuit found neither argument persuasive, and thus affirmed the District Court's summary judgment.

In the Ninth Circuit's opinion (*CNMI v. United States*, 399 F.3d 1057 (2005)) however, the Court recognizes along with the CNMI that Congress can, and has, transferred ownership of submerged lands to the states or other entities. The Court cites as examples the Submerged Lands Act of 1953 (43 U.S.C. § 1301), which transferred lands up to three miles from shore back to the states, and 42 U.S.C. § 1705, which conveyed submerged lands to Guam, the Virgin Islands, and American Samoa.

H.R. 934 is the first bill sponsored by new CNMI Delegate, Gregorio Kilili Sablan and is similar to ones introduced in both the

House and the Senate during the 109th Congress. The Senate Energy and Natural Resources held a hearing where the Department of the Interior (DOI) testified in favor of conveying submerged lands to the CNMI. Suggested changes to the legislation, made by the DOI at that time, are reflected in H.R. 934.

COMMITTEE ACTION

H.R. 934 was introduced on February 10, 2009, by Rep. Gregorio Kilili Camacho Sablan (I-MP). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Insular Affairs, Oceans and Wildlife.

On June 10, 2009, the Subcommittee was discharged from further consideration of H.R. 934 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Bordallo (D-GU) offered an amendment in the nature of a substitute to H.R. 934. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Conveyance of Certain Submerged Lands to the Commonwealth of the Northern Mariana Islands

Section 1(a) amends Public Law 93-438 (48 U.S.C. 1705) to insert “the Commonwealth of the Northern Mariana Islands” after “Guam,” every place it appears in that Act.

Section 1(b) provides that each reference of the date of enactment for Public Law 93-435 shall also be considered as a reference to the date of enactment of this section.

Section 1(c) provides that nothing in this section amends, repeals or otherwise alters the establishment of the Marianas Trench Marine National Monument.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. 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 which would be incurred in carrying out this bill. 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 of 1974.

2. 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.

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 convey to the government of the Commonwealth of the Northern Mariana Islands the submerged lands surrounding such Islands and extending three geographical miles outward from their coastline.

4. Congressional Budget Office Cost Estimate. 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. 934—A bill 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 three geographical miles from its coast lines. Under current law, the submerged lands off the CNMI are owned by the United States. Based on information from the Department of the Interior, CBO estimates that implementing this bill would have no significant effect on the federal budget.

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.

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

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 934 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or (f) of rule XXI.

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 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.

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