

**Calendar No. 582**

111TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
111-300 }

KINGMAN AND HERITAGE ISLANDS ACT OF  
2009

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

H.R. 2092

TO AMEND THE NATIONAL CHILDREN'S ISLAND ACT OF 1995 TO  
EXPAND ALLOWABLE USES FOR KINGMAN AND HERITAGE IS-  
LANDS BY THE DISTRICT OF COLUMBIA, AND FOR OTHER PUR-  
POSES



SEPTEMBER 22, 2010.—Ordered to be printed

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## KINGMAN AND HERITAGE ISLANDS ACT OF 2009

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

### R E P O R T

[To accompany H.R. 2092]

The Committee on Homeland Security and Governmental Affairs, to which 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, reports favorably thereon with an amendment and recommends that the bill do pass.

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#### I. PURPOSE AND SUMMARY

In 1997, the federal government transferred to the District of Columbia title to much of two islands located in the Anacostia River. The law directing the title transfer required the District to use the land for a children's recreational park. Over the past decade, the District has reconsidered its plans for the islands and would like to make them available for broader recreational, environmental and educational uses than initially contemplated. H.R. 2092 would amend the existing law directing the title transfer to permit these expanded uses.

## II. BACKGROUND AND NEED FOR LEGISLATION

The U.S. Army Corps of Engineers created Kingman and Heritage Islands from sediment dredged from the Anacostia River. Until the enactment in 1996 of the National Children's Island Act (the Act), the National Park Service (NPS), part of the Department of the Interior, held administrative jurisdiction on both islands. The Act required the federal government to transfer title of Heritage Island and portions of Kingman Island (the Islands) to the District of Columbia for use as a children's recreational park. It also mandated that title to the Islands would revert back to the federal government if the District did not use the land in a manner consistent with the purposes specified in the Act. The Secretary of the Interior transferred title of the Islands to the District via quitclaim deed in January 1997.

D.C. has not developed a children's recreational park on the Islands, and since that time, it has re-evaluated its needs and interests and no longer seeks to use the Islands for that purpose. In 2003, in accordance with a memorandum of understanding between D.C. and several federal agencies, including the NPS, the District developed the Anacostia Waterfront Framework Plan (Waterfront Plan) to redevelop and revitalize the Anacostia waterfront. The Waterfront Plan envisions using the islands for nature-themed exhibitions and educational projects. The District also has developed a Comprehensive Plan to serve as a general policy document to provide overall guidance for future planning and development in D.C.<sup>1</sup>

Recently, the District has taken steps toward implementing the Waterfront Plan. In the summer of 2007, the Anacostia Waterfront Corporation,<sup>2</sup> partnered with a number of other organizations to begin using the Islands to host environmental programs and clean-up. Since May 2008, Living Classrooms, a non-profit educational organization with a focus on experiential learning, has been managing the islands and running programs there, including educational programming and volunteer events aimed at restoring the Islands.

To ensure that the activities it has authorized do not raise any questions about its title to the Islands,<sup>3</sup> the District has asked Congress to amend the Act to sanction the broader work now occurring on the Islands. H.R. 2092 would do just that, by amending the National Children's Island Act in order to allow the District to conduct recreational, environmental and educational activities on the Islands, consistent with the Waterfront Plan and the District's Comprehensive Plan.

In considering the bill, the Committee adopted one amendment to the House-passed language. As passed by the House, the bill would end the federal government's reversionary interest 30 years

<sup>1</sup>Information on the Comprehensive Plan can be found here: <http://www.planning.dc.gov/planning/cwp/view,a,1282,q,607547,planntingNav,32341,asp>. Information on the Waterfront Plan can be found here: [http://www.planning.dc.gov/planning/cwp/view,a,1285,q,582193,planntingNav\\_GID,1708,asp](http://www.planning.dc.gov/planning/cwp/view,a,1285,q,582193,planntingNav_GID,1708,asp).

<sup>2</sup>The Anacostia Waterfront Corporation was a government-sponsored enterprise of D.C. intended to lead the revitalization of lands along the Anacostia River. In 2007, it was dissolved and folded into the District's Office of the Deputy Mayor for Planning and Economic Development.

<sup>3</sup>In 2000, the Secretary of the Interior wrote the District a letter stating that the District had fully lived up to the letter and spirit of the Act and that D.C. should retain title to the Islands. All parties agree, however, that amending the law to make clear the permissibility of the current uses and other currently contemplated uses would be the best course.

after enactment. The Committee's amendment instead would retain the reversionary interest for the federal government in perpetuity. The Committee's amendment also clarified that if any portion of the land was used for an activity that was not recreational, environmental or educational, the reversionary process could begin.

### III. LEGISLATIVE HISTORY

H.R. 2092 was introduced by D.C. Delegate Eleanor Holmes Norton on April 23, 2009, and was referred to the House Committee on Oversight and Government Reform. That Committee considered the legislation on September 10, 2009, and adopted an amendment to limit the federal government's reversionary interest in the Islands to 30 years after enactment. The House Committee then adopted H.R. 2092, as amended by voice vote. On October 7, 2009, H.R. 2092 passed the House of Representatives under suspension of the rules.

On October 8, 2009, H.R. 2092 was referred to the Senate Homeland Security and Governmental Affairs Committee. The Committee considered the bill on May 17, 2010, and adopted one amendment by voice vote. The amendment, which was offered by Senators Daniel Akaka and George Voinovich, struck the provision limiting the federal government's reversionary interest to 30 years and clarified that if any portion of the land was used for an activity that was not recreational, environmental or educational, the reversionary process could begin.

The Committee then ordered the bill, as amended, favorably reported to the full Senate by voice vote. The Senators present for both voice votes were Senators Lieberman, Akaka, Carper, Pryor, Landrieu, Burris, Collins, Brown, Voinovich, and Graham.

### IV. SECTION-BY-SECTION ANALYSIS

#### *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 National Children's Island Act ("the Act") by creating a new section, which would state that it is not a violation of the Act for the District to use the lands conveyed and the easements granted under the Act for recreational, environmental, or educational purposes 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 section 3(d) of the Act by striking paragraph 1 and inserting language which states that the Islands shall revert back to the federal government if the Secretary determines that D.C. is using any portion of the Islands for any purpose that is not recreational, environmental or educational and in accordance with the National Children's Island, the Anacostia Waterfront Framework Plan or the Comprehensive Plan. The reversion will take place 60 days after the Secretary of the Interior gives written notice to the District of such a finding. This provision

would maintain the federal government's reversionary interest without an end date.

#### VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and has determined that the bill would have no regulatory impact. Moreover, CBO states that the bill 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.

#### VII. ESTIMATED COST OF LEGISLATION

MAY 24, 2010.

Hon. JOSEPH I. LIEBERMAN,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, 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. (The islands were conveyed by the Department of the Interior to the District in 1997 for recreational uses.) The legislation also would amend the terms of the department's reversionary interest in the properties, which governs the circumstances under which title to the property could revert to the federal government.

Based on information provided by the National Park Service, CBO estimates that enacting H.R. 2092 would have no impact on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

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.

On September 15, 2009, CBO transmitted a cost estimate for H.R. 2092, as ordered reported by the House Committee on Oversight and Government Reform on September 10, 2009. The two versions of the legislation are similar, and the estimated costs are the same.

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

## VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following 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):

**DISTRICT OF COLUMBIA CODE****TITLE 10—PARKS, PUBLIC BUILDINGS,  
GROUNDS, AND SPACE****Subtitle IV—Specific Locales****CHAPTER 14—NATIONAL CHILDREN’S ISLAND****Subchapter I—General****SEC. 10-1402. PROPERTY TRANSFER**

(a) \* \* \*

\* \* \* \* \*

(d) REVERSION.—

(1) **[(**The transfer under subsection (a) of this section and the grant of easements under subsection (b) of this section 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) of this section and the easements granted under subsection (b) of this section, 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 the 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) of this section.

**[(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) of this section.

**[(C)** After completion of construction and commencement of operation, the abandonment or nonuse of the recreation park for a period of 2 years.

**[(D)** After completion of construction and commencement of operation, conversion of the Islands to a use other than that specified in this subchapter or conversion to a parking use not in accordance with section 10-1403(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 using any portion of the property for a use other than recreational, environmental, or education purposes in accordance with National Children's Island, the Anacostia Waterfront Framework Plan, or the Comprehensive Plan. Such notice shall be made in accordance with chapter 5 of title 5, United States Code (relating to administrative procedures).*

\* \* \* \* \*

**SEC. 10-1406. 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 for recreational, environmental, or educational purposes in accordance with the Anacostia Waterfront Framework Plan and the Comprehensive Plan.*

(b) **DEFINITIONS.**—*For the 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, 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.*