

## Calendar No. 299

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2d Session }

SENATE

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### TO MAKE A TECHNICAL AMENDMENT TO THE TUF SHUR BIEN PRESERVATION TRUST AREA ACT, AND FOR OTHER PURPOSES

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JANUARY 28, 2014.—Ordered to be printed

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Ms. CANTWELL, from the Senate Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 611]

The Committee on Indian Affairs, to which was referred the bill (S. 611) to make a technical amendment to the Tuf Shur Bien Preservation Trust Area Act, 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.

#### PURPOSE

S. 611 amends the 2003 Act entitled ‘Tuf Shur Bien Preservation Trust Area Act’ (P.L. 108–7), in order to resolve discrepancies involving the transfer of the specified lands related to the Sandia Pueblo of New Mexico land claim settlement.

#### BACKGROUND

The Tuf Shur Bien Preservation Trust Area Act settled the Pueblo of Sandia’s claim to the west face of Sandia Mountain, New Mexico. As part of the land settlement, the Act directed the U.S. Forest Service to prepare and offer a land exchange of approximately 700 acres of Forest Service land to the Pueblo, with title restrictions that the land transferred to the Pueblo would remain in its natural state and not subject to any commercial development. The Pueblo was to provide compensation to the Forest Service for the 700-acre land transfer.

Since the passage of the Act, the Forest Service has argued that the land to be transferred to the Pueblo should be appraised with-

out title restrictions because the land use limitations mandated by the Act would take effect post-conveyance. In response to the Forest Service’s interpretation, Congress acted to clarify its original intent by passing the Sandia Pueblo Land Exchange Technical Amendment in 2009 (P.L. 111–11). The amendment provided that the land use limitations on the lands to be transferred to the Pueblo be considered “as a condition of conveyance,” rather than limitations that apply post-conveyance. Notwithstanding the passage of the 2009 technical amendment, there has been continued confusion about the Congressional intent on the matter of land valuation for transfer.

S. 611 states that in return for the 700-acre land exchange, the Pueblo of Sandia will 1) transfer 70 acres (the La Luz Tract) to the Forest Service; and 2) agree to a conservation easement and right-of-way on another 160 acre parcel (Piedra Lisa). In addition, S. 611 makes the exchange automatic if it is not completed within 30 days of the Act’s enactment.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides the title of the bill to be the ‘Sandia Pueblo Settlement Technical Amendment Act’.

##### *Section 2. Sandia Pueblo Settlement Technical Amendment*

Section 2 amends section 413(b)(4) of the T’uf Shur Bien Preservation Trust Area Act (P.L. 108–7) by striking “conveyance” and inserting “title to be conveyed.”

Section 2 also adds a new subsection 6 to the Act, which provides that if the land transfer is not completed within thirty (30) days after enactment, on request of the Pueblo and the Secretary of the Interior, the Secretary of Agriculture is to carry-out the land transfer to the Secretary of the Interior to be held in trust by the United States for the Pueblo.

The subsection also provides that after the transfer is complete, the Secretary of the Interior, with the consent of the Pueblo, shall transfer to the Secretary of Agriculture the Pueblo’s La Luz tract and the conservation easement for the Piedra Lisa tract, and shall grant to the Secretary of Agriculture a right-of-way for the Piedra Lisa Trail within the Piedra Lisa tract.

#### LEGISLATIVE HISTORY

S. 611 was introduced on March 19, 2013, by Senator Tom Udall and Senator Martin Heinrich. The bill was referred to the Committee on Indian Affairs. On May 8, 2013, the Committee on Indian Affairs held a hearing on the bill. On October 30, 2013, the Committee met to consider the bill. One substitute amendment was offered, and the bill as amended was adopted and ordered favorably reported to the Senate by voice vote.

#### SUMMARY OF THE AMENDMENTS

Senator Udall of New Mexico offered an amendment in the nature of a substitute. The amendment clarifies that the Secretary of Agriculture is to transfer the Forest Service lands to the Secretary

of the Interior to be held in trust for the Pueblo. The Secretary of the Interior will transfer the agreed-upon Pueblo lands and easements in lands to the Secretary of Agriculture.

#### COMMITTEE RECOMMENDATION

October 30, 2013, the Senate Committee on Indian Affairs held a business meeting to consider S. 611 and other measures. Senator Udall of New Mexico introduced a substitute amendment, which was accepted by voice vote. The Committee ordered the bill, as amended, reported to the full Senate with the recommendation that it do pass.

#### COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated December 2, 2013, was prepared for S. 611:

DECEMBER 2, 2013.

Hon. MARIA CANTWELL,  
*Chairwoman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 611, the Sandia Pueblo Settlement Technical Amendment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

#### *S. 611—Sandia Pueblo Settlement Technical Amendment Act*

S. 611 would require the Secretary of Agriculture to transfer certain lands in the Sandia Mountain Wilderness and Cibola National Forest in New Mexico to the Department of the Interior to be held in trust for the Pueblo of Sandia. In exchange for the specified National Forest lands, the legislation would require the Secretary of the Interior to transfer certain lands and easements held in trust for the Pueblo of Sandia to the Forest Service.

CBO estimates that implementing S. 611 would have no significant impact on the federal budget. Based on information provided by the Forest Service, CBO estimates that the cost of administering the land transfers would be minimal. Enacting S. 611 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 611 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit the Pueblo of Sandia.

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

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying

out the bill. The Committee believes that S. 920 will have a minimal impact on regulatory or paperwork requirements.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 611.

#### CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 611, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter printed in italic):

#### 16 U.S.C. 539m-11

##### (b) LAND EXCHANGE.—

(1) IN GENERAL.—Not later than 180 days after February 20, 2003, after consultation with the Pueblo, the Secretary shall, in accordance with applicable laws, prepare and offer a land exchange of National Forest land outside the Area and contiguous to the northern boundary of the Pueblo's Reservation within sections 3, 10, 11, and 14 of T12N, R4E, N.M.P.M., Sandoval County, New Mexico excluding wilderness land, for land owned by the Pueblo in the Evergreen Hills subdivision in Sandoval County contiguous to National Forest land, and the La Luz tract in Bernalillo County.

(2) ACCEPTANCE OF PAYMENT.—Notwithstanding section 1716(b) of title 43, the Secretary may either make or accept a cash equalization payment in excess of 25 percent of the total value of the land or interests transferred out of Federal ownership.

(3) FUNDS RECEIVED.—Any funds received by the Secretary as a result of the exchange shall be deposited in the fund established under section 484a of this title, and shall be available to purchase non-Federal land within or adjacent to the National Forests in the State of New Mexico.

(4) TREATMENT OF LAND EXCHANGED OR CONVEYED.—All land exchanged or conveyed to the Pueblo is declared to be held in trust for the Pueblo by the United States and added to the Pueblo's Reservation subject to all existing and outstanding rights and shall, as a condition of the *title to be conveyed* [conveyance], remain in its natural state and shall not be subject to commercial development of any kind. Land exchanged or conveyed to the Forest Service shall be subject to all limitations on use pertaining to the Area under sections 539m-12 of this title.

(5) FAILURE TO MAKE OFFER.—If the land exchange offer is not made by the date that is 180 days after February 20, 2003, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, a report explaining the reasons for the failure to make the offer including an assessment of the need for any additional legislation that may be necessary for the exchange. If

additional legislation is not necessary, the Secretary, consistent with this section, should proceed with the exchange pursuant to existing law.

(6) *FAILURE TO EXCHANGE.*—

(A) *IN GENERAL.*—*If the land exchange authorized under paragraph (1) is not completed by the date that is 30 days after the date of enactment of this paragraph, the Secretary, on request of the Pueblo and the Secretary of the Interior, shall transfer the National Forest land generally depicted as ‘Land to be Held in Trust’ on the map entitled ‘Sandia Pueblo Settlement Technical Amendment Act’ and dated October 18, 2013, to the Secretary of the Interior to be held in trust by the United States for the Pueblo—*

*(i) subject to the restriction enforced by the Secretary of the Interior that the land remain undeveloped, with the natural characteristics of the land to be preserved in perpetuity; and (ii) consistent with subsection (c).*

(B) *OTHER TRANSFERS.*—*After the transfer under subparagraph (A) is complete, the Secretary of the Interior, with the consent of the Pueblo, shall—*

*(i) transfer to the Secretary, consistent with section 411(c)—*

*(I) the La Luz tract generally depicted on the map entitled ‘Sandia Pueblo Settlement Technical Amendment Act’ and dated October 18, 2013; and*

*(II) the conservation easement for the Piedra Lisa tract generally depicted on the map entitled ‘Sandia Pueblo Settlement Technical Amendment Act’ and dated October 18, 2013; and*

*(ii) grant to the Secretary a right-of-way for the Piedra Lisa Trail within the Piedra Lisa tract generally depicted on the map entitled ‘Sandia Pueblo Settlement Technical Amendment Act’ and dated October 18, 2013.*