

## Calendar No. 448

108TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
108-238

### BEND PINE NURSERY LAND CONVEYANCE ACT

MARCH 9, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 1848]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1848) to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the State of Oregon, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. MODIFICATION OF BEND PINE NURSERY LAND CONVEYANCE.

(a) DESIGNATION OF RECIPIENTS AND CONSIDERATION.—Section 3 of the Bend Pine Nursery Land Conveyance Act (Public Law 106-526; 114 Stat. 2512) is amended—

(1) in subsection (a), by striking paragraph (1) and redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively;

(2) in subsection (e)—

(A) by striking “this section” both places it appears and inserting “subsection (a)”;

(B) in paragraph (1), by striking “Subject to paragraph (3), the” and inserting “The”; and

(C) by striking paragraph (3); and

(3) by adding at the end the following:

“(g) BEND PINE NURSERY CONVEYANCE.—

“(1) CONVEYANCE TO PARK AND RECREATION DISTRICT.—Upon receipt of consideration in the amount of \$3,503,676 from the Bend Metro Park and Recreation District in Deschutes County, Oregon, the Secretary shall convey to the Bend Metro Park and Recreation District all right, title, and interest of the United States in and to a parcel of real property consisting of approximately 185 acres and containing the Bend Pine Nursery, as depicted on the site plan map entitled ‘Bend Pine Nursery Administrative Site, May 13, 1999’. Subject to paragraph (2), the real property conveyed to the Bend Metro Park and Recreation District shall be used only for public recreation purposes and may be developed for those purposes. If the Secretary determines that the real property subject

to this condition is converted, in whole or in part, to a use other than public recreation, the Secretary shall require the Bend Metro Park and Recreation District to pay to the United States an amount equal to the fair market value of the property at the time of conversion, less the consideration paid under this paragraph.

“(2) RECONVEYANCE OF PORTION TO SCHOOL DISTRICT.—As soon as practicable after the receipt by the Bend Metro Park and Recreation District of the real property described in paragraph (1), the Bend Metro Park and Recreation District shall convey to the Administrative School District No. 1, Deschutes County, Oregon, without consideration, a parcel of real property located in the northwest corner of the real property described in paragraph (1) and consisting of approximately 15 acres. The deed of conveyance shall contain a covenant requiring that the real property conveyed to the School District be used only for public education purposes.”.

(b) CONFORMING AMENDMENT.—Section 4(a) of such Act is amended by striking “section 3(a)” and inserting “section 3”.

#### PURPOSE OF THE MEASURE

As ordered reported, the purpose of S. 1848 is to amend the Bend Pine Nursery Land Conveyance Act (Public Law 106–526), enacted in November 2000, to direct the sale of the Forest Service’s Bend Pine Nursery to the community of Bend, Oregon, for use as a public park and recreation facility, and public school site.

#### BACKGROUND AND NEED

On November 11, 2000, the Bend Pine Nursery Land Conveyance Act was signed into law. That law authorized the Forest Service to sell the approximately 210-acre Bend Pine Nursery and other small parcels in Oregon, with the Bend Metro Parks and Recreation having the right of first refusal to purchase the property. When the Bend Pine Nursery Land Conveyance Act was enacted, it was anticipated that the sale would be completed within a year. At that time, the estimated fair market value of the property was approximately \$3.5 million. However, because of delays resulting from the Forest Service’s administrative processes, the property has not been conveyed, and recent appraisals have estimated the value at \$5.8 million.

The community has always been willing to pay for this property and continues to have a need to utilize the property for public recreation and a small part of the property for public education purposes.

#### LEGISLATIVE HISTORY

S. 1848 was introduced on November 11, 2003, by Senators Wyden and Smith. On November 18, 2003, the Subcommittee on Public Lands and Forests held a hearing on the bill. S. Hrg. 108–321. The Senate Energy and Natural Resources Committee ordered the bill to be favorably reported on February 11, 2004 with an amendment in the nature of a substitute.

During the 107th Congress, Representative Greg Walden introduced a companion bill (H.R. 3505) which is similar to S. 1848.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on February 11, 2004, by a unanimous vote of a quorum present recommends that the Senate pass S. 1848, if amended as described herein.

The rollcall vote on reporting the measure was 23 yeas, 0 nays.

YEAS

NAYS

Mr. Domenici  
 Mr. Nickles  
 Mr. Craig  
 Mr. Campbell\*  
 Mr. Thomas  
 Mr. Alexander  
 Ms. Murkowski  
 Mr. Talent  
 Mr. Burns  
 Mr. Smith\*  
 Mr. Bunning  
 Mr. Kyl\*  
 Mr. Bingaman  
 Mr. Akaka  
 Mr. Dorgan\*  
 Mr. Graham of Florida\*  
 Mr. Wyden\*  
 Mr. Johnson\*  
 Ms. Landrieu\*  
 Mr. Bayh\*  
 Mrs. Feinstein\*  
 Mr. Schumer\*  
 Ms. Cantwell

\* Indicates vote by proxy.

#### COMMITTEE AMENDMENT

During the consideration of S. 1848, the Committee adopted an amendment in the nature of a substitute. The amendment makes several clarifying and conforming changes and simplifies the conveyance procedure of the 15-acre parcel to be used for educational purposes. The amendment is described in detail in the section-by-section analysis, below.

#### SECTION-BY-SECTION ANALYSIS

Section 1(a) amends section 3 of the Bend Pine Nursery Land Conveyance Act (Public Law 106–526; 114 Stat. 2512) to direct the Secretary of Agriculture to convey approximately 185 acres of land to the Bend Metro Park and Recreation District upon receipt of \$3,503,676 from the District. The District is to reconvey 15 acres of the property to the Deschutes County, Oregon, Administrative School District No. 1 for no consideration.

Section 1(b) makes a conforming amendment to the Act.

#### COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, March 3, 2004.

Hon. PETE V. DOMENICI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1848, a bill to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the state of Oregon.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

*S. 1848—A bill to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the state of Oregon*

Public Law 106-526 authorized the Secretary of Agriculture to sell certain lands within the Deschutes National Forest in Oregon. S. 1848 would amend that law to require the Secretary to sell some of those lands to the Bend Metro Park and Recreation District for a specified price of \$3.5 million. Under S. 1848, as under current law, the Secretary could spend proceeds from the sale to construct or improve facilities within the forest.

Based on information from the Forest Service, CBO estimates that enacting S. 1848 would have no significant net impact on the federal budget. The bill would not affect revenues. According to the agency, the appraised value of the affected lands exceeds the sale price specified in the bill by between \$500,000 and \$1.5 million. Hence, we estimate that enacting this bill would reduce offsetting receipts (a credit against direct spending) from the sale. Those forgone receipts would be fully offset, however, by a corresponding decrease in direct spending for new facilities within the Deschutes National Forest. Based on information from the Forest Service about the likely timing of the proposed sale and subsequent spending, CBO estimates that any resulting net change in direct spending would be negligible.

S. 1848 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. Enacting this legislation would benefit the Bend Metro Park and Recreation District.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, 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. 1848. The bill is not a regulatory measure in the sense of impos-

ing Government-established standards or significant 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. 1848.

#### EXECUTIVE COMMUNICATIONS

On February 12, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on S. 1848. These reports had not been received at the time the report on S. 1848 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service on S. 1848 at the Subcommittee hearing follows:

#### STATEMENT OF TOM THOMPSON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today. I would like to present the Department's views on H.R. 708, the Mendocino National Forest Land Exchange, S. 1167, to resolve boundary conflicts in Barry and Stone Counties, in the State of Missouri, and S. 1848, the Bend Pine Nursery Administrative Site Act. The Department supports H.R. 708, objects to S. 1167 unless the bill is amended to address the concerns identified in my testimony, and would like to discuss a different alternative for S. 1848.

\* \* \* \* \*

#### S. 1848—THE BEND PINE NURSERY ADMINISTRATIVE SITE

S. 1848 would amend the Bend Pine Nursery Land Conveyance Act (P.L. 106-526) to require the Secretary to offer to sell 170 acres of the Bend Pine Nursery Administrative Site, on the Deschutes National Forest to the Bend Metro Park and Recreation District in Deschutes, County, Oregon for \$3.5 million. Proceeds from this sale would be deposited in the fund established under Public Law 90-171 (16 U.S.C. 484a), commonly known as the Sisk Act. The funds would then be available to the Forest Service for the acquisition, construction, or improvement of administrative and visitor facilities and associated land in connection with the Deschutes National Forest in the Bend community, and the acquisition of lands and interests in lands in Oregon. The Forest Service has been working with the community of Bend, Oregon to implement P.L. 106-526.

S. 1848 would also direct the conveyance of 15 acres located in the northwest corner of the Bend Pine Nursery Administrative Site, for no consideration, to the Adminis-

trative School District, No. 1, Deschutes County, Oregon, in accordance with section 202 of the Education Land Grant Act (16 U.S.C. 479a).

The Department believes a better approach would be for the 170 acres to be appraised for recreational purposes. We would point out that the severing of the 15-acre tract for conveyance under the Education Land Grant Act to the Ben-La Pine School District may cause unintended delay, because additional survey work and analysis would be needed beyond what has already occurred. In lieu of this two-conveyance process, we suggest a single conveyance of the 185-acre tract, which has already been surveyed, to the District, with the requirement that the District then convey the 15-acre tract as envisioned in the legislation.

This concludes my statement. I would be pleased to answer any questions that you may have.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1848, as ordered 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):

#### Public Law 106–526, 106th Congress

AN ACT To authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other National Forest System land in the State of Oregon and use the proceeds derived from the sale or exchange for National Forest System purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Bend Pine Nursery Land Conveyance Act”.

\* \* \* \* \*

#### SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.

(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title, and interest of the United States in and to the following National Forest System land and improvements:

[(1) Tract A, Bend Pine Nursery, comprising approximately 210 acres, as depicted on site plan map entitled “Bend Pine Nursery Administrative Site, May 13, 1999”.]

[2] (1) Tract B, the Federal Government owned structures located at Shelter Cove Resort, Deschutes National Forest, buildings only, as depicted on site plan map entitled “Shelter Cove Resort, November 3, 1997”.

[3] (2) Tract C, portions of isolated parcels of National Forest Land located in Township 20 south, Range 10 East section 25 and Township 20 South, Range 11 East sections 8, 9, 16, 17, 20, and 21 consisting of approximately 1,260 acres, as de-

pictured on map entitled “Deschutes National Forest Isolated Parcels, January 1, 2000”.

【4】 (3) Tract D, Alsea Administrative Site, consisting of approximately 24 acres, as depicted on site plan map entitled “Alsea Administrative Site, May 14, 1999”.

【5】 (4) Tract F, Springdale Administrative Site, consisting of approximately 3.6 acres, as depicted on site plan map entitled “Site Development Plan, Columbia Gorge Ranger Station, April 22, 1964”.

【6】 (5) Tract G, Dale Administrative Site, consisting of approximately 37 acres, as depicted on site plan map entitled “Dale Compound, February 1999”.

【7】 (6) Tract H, Crescent Butte Site, consisting of approximately .8 acres, as depicted on site plan map entitled “Crescent Butte Communication Site, January 1, 2000”.

\* \* \* \* \*

(e) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—【Subject to paragraph (3), the】 *The* Secretary may solicit offers for sale or exchange of land under 【this section】 *subsection (a)* on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer made under 【this section】 *subsection (a)* if the Secretary determines that the offer is not adequate or not in the public interest.

【(3) RIGHT OF FIRST REFUSAL.—The Bend Metro Park and Recreation District in Deschutes County, Oregon, shall be given the right of first refusal to purchase the Bend Pine Nursery described in subsection (a)(1).】

(f) REVOCATIONS.—

(1) IN GENERAL.—Any public land order withdrawing land described in subsection (a) from all forms of appropriation under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

(2) EFFECTIVE DATE.—The effective date of any revocation under paragraph (1) shall be the date of the patent or deed conveying the land.

(g) BEND PINE NURSERY CONVEYANCE.—

(1) CONVEYANCE TO PARK AND RECREATION DISTRICT.—*Upon receipt of consideration in the amount of \$3,503, 676 from the Bend Metro Park and Recreation District in Deschutes County, Oregon, the Secretary shall convey to the Bend Metro Park and Recreation District all right, title, and interest of the United States in and to a parcel of real property consisting of approximately 185 acres and containing the Bend Pine Nursery, as depicted on the site plan map entitled “Bend Pine Nursery Administrative Site, May 13, 1999”. Subject to paragraph (2), the real property conveyed to the Bend Metro Park and Recreation District shall be used only for public recreation purposes and maybe developed for those purposes. If the Secretary determines that the real property subject to this condition is converted, in whole or in part, to a use other than public recreation, the Secretary shall require the Bend Metro Park and Recreation District to pay to the United States an amount equal to the fair*

*market value of the property at the time of conversion, less the consideration paid under this paragraph.*

(2) *RECONVEYANCE OF PORTION TO SCHOOL DISTRICT.—As soon as practicable after the receipt by the Bend Metro Park and Recreation District of the real property described in paragraph (1), the Bend Metro Park and Recreation District shall convey to the Administrative School District No. 1, Deschutes County, Oregon, without consideration, a parcel of real property located in the northwest corner of the real property described in paragraph (1) and consisting of approximately 15 acres. The deed of conveyance shall contain a covenant requiring that the real property conveyed to the School District be used only for public education purposes.*

**SEC. 4. DISPOSITION OF FUNDS.**

(a) **DEPOSIT OF PROCEEDS.**—The Secretary shall deposit the proceeds of a sale or exchange under **section 3(a)** *section 3* in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the “Sisk Act”).

\* \* \* \* \*

