Calendar No. 245

104TH CONGRESS, *1st Session* | SENATE | REPORT 104–174

THE SADDLEBACK MOUNTAIN-ARIZONA SETTLEMENT ACT OF 1995, TO PROVIDE FOR THE TRANSFER OF CERTAIN LANDS TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, AND THE CITY OF SCOTTSDALE, ARIZONA, AND FOR OTHER PURPOSES

NOVEMBER 17 (legislative day, NOVEMBER 16), 1995.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1341]

The Committee on Indian Affairs, to which was referred the bill (S. 1341) to provide for the transfer of certain lands to the Salt River Pima-Maricopa Indian Community and the City of Scottsdale, Arizona; having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 1341 is to approve an agreement to settle a dispute between the Salt River Pima-Maricopa Indian Community (hereinafter the "Community"), and the City of Scottsdale, Arizona, over 701 acres of land known as the Saddleback property. The property is currently held by the Resolution Trust Corporation.

BACKGROUND

The Saddleback property is located in the eastern-most part of Scottsdale, abuts 1.7 miles of the northern boundary of the Salt River Indian Reservation, and is undeveloped. Its most distinctive feature is Saddleback Mountain, a striking natural landmark that rises abruptly from the desert floor to a height of 900 feet. Due to its location, high conservation value and other special features, the property's use and disposition are of major importance both to the Community and the City.

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A dispute arose after the Resolution Trust Corporation, in its capacity as the receiver for the Sun State Savings & Loan Association, acquired the Saddleback property in 1989 and subsequently noticed it for sale. The Community submitted the highest cash bid for the property, $6,500,000, conditioned upon being able to develop the flat portion of the property. The City, concerned about the direction that development of the property by the Community might follow, sued the Resolution Trust Corporation to acquire the property by eminent domain. The Resolution Trust Corporation then rejected all auction sale bids and determined to transfer the property to Scottsdale through the eminent domain litigation. The Community thereupon filed civil rights actions against the City and the Resolution Trust Corporation, seeking damages.

Rather than pursue the litigation, the City, the Community and the Resolution Trust Corporation sought to resolve their dispute through negotiation. The result of their efforts is a settlement agreement under which the Resolution Trust Corporation will sell the property to Scottsdale and the Community for a total of $6,500,000. The City will pay $636,000 to acquire approximately 98 acres for preservation and 27 acres for future expansion of an important traffic artery, Shea Boulevard. The Community will pay $5,864,000 to acquire 576 acres adjoining its reservation. The two lawsuits (NO. CIV 93–2266–PHX–RCB and NO. CIV 93–2173–PHX–PGR), which are pending in the United States District Court for the District of Arizona, will be dismissed.

The settlement agreement provides that 365 acres of the property to be acquired by the Community, including Saddleback Mountain, will be forever preserved in its natural state for use only as a public park and recreation area. Except for a limited number of sites that are of particular historical and cultural significance to the Community, the public will have free access to this area. Together with the preservation property to be acquired by the City, it will be jointly managed by the City and the Community. The remaining 211 acres to be acquired by the Community will be subject to a detailed development agreement with the City, as well as the limitations and restrictions of current Community zoning laws.

A continuing disagreement in the settlement negotiations concerned the City's ability to enforce the Community's commitments regarding the use and development of the lands to be added to the Tribe's reservation. Given that the Saddleback property is located entirely within Scottsdale's city limits, and that there is a high level of local interest and concern regarding the future use of the property, the parties agreed to seek Federal legislation to eliminate any legal ambiguity as to the enforceability of the settlement agreement.

LEGISLATIVE HISTORY

S. 1341 was introduced on October 19, 1995, by Senators McCain and Kyl, and was referred to the Committee on Indian Affairs. In the House, Representative J.D. Hayworth (R-AZ) introduced a companion bill, H.R. 2490, which was referred to the Committee on Resources. On October 26, 1995, the Committee on Indian Affairs held a hearing on S. 1341, and received testimony from witnesses representing the Salt River Pima-Maricopa Indian Community, the

City of Scottsdale, and the Administration. All witnesses expressed support for the enactment of S. 1341.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on November 7th, 1995, the Committee on Indian Affairs, by voice vote, ordered S. 1341 reported with an amendment offered by Senator McCain, with the recommendation that the Senate do pass the bill as reported.

SECTION-BY-SECTION ANALYSIS OF S. 1341

Short title

Section 1 cites the Short Title as the "Saddleback Mountain-Arizona Settlement Act of 1995".

Congressional findings

Section 2(a) enumerates Congressional Findings that:

(1) the Salt River Prima-Maricopa Indian Community and the City of Scottsdale, Arizona, have a longstanding interest in a 701-acre tract of land within the City of Scottsdale, known as the Saddleback Property, that lies within the boundaries of the City and abuts the north boundary of the Salt River Reservation;

(2) the Saddleback Property includes Saddleback Mountain and scenic hilly terrain along the Shea Boulevard corridor in Scottsdale that has significant conservation value and is of historic and cultural significance to the Community;

(3) in 1989, the Resolution Trust Corporation acquired the Saddleback Property in its capacity as receiver for the Sun City Savings and Loan Association;

(4) after the Saddleback Property was noticed for sale by the Resolution Trust Corporation, a dispute between the Salt River Community and Scottsdale arose concerning the future ownership, use, and development of the Saddleback Property;

(5) the Community and the City each filed litigation with respect to that dispute, but in lieu of pursuing litigation, the Community and the City negotiated a Settlement Agreement that addresses their respective concerns regarding the Saddleback Property and provides for dismissal of the litigation;

(6) under the Settlement Agreement, subject to detailed use and development agreements, the Community will purchase a portion of the Saddleback Property and the City will purchase the remaining portion of that property; and

(7) the Community and the City agree that the enactment of legislation by Congress to ratify the Settlement Agreement is necessary for the Settlement Agreement to become effective, and for the United States to take into trust the property to be purchased by the Community and make it part of the Reservation.

(b) sets forth the purposes of this Act to be:

(1) to approve and confirm the Settlement, Release, and Property Conveyance Agreement executed by the City, the Community, and the Resolution Trust Corporation;

(2) to ensure that the Settlement Agreement (including the Development Agreement, the Use Agreement, and all other associated ancillary agreements and exhibits) is carried out and is fully enforceable in accordance with its terms, including judicial remedies and binding arbitration provisions;

(3) to provide for the taking into trust by the United States of the portion of the Saddleback Property purchased by the Community in order to make that portion a part of the Reservation.

Definitions

Section 3 defines the terms "City"; "Community"; "Dedication Property"; "Development Agreement"; "Development Property"; "Mountain Property"; "Preservation Property"; "Reservation"; "Saddleback Property"; "Secretary"; "Settlement Agreement"; and, "Use Agreement".

Approval of agreement

Section 4 states that the Settlement Agreement is approved and ratified and shall be fully enforceable in accordance with its terms and the provisions of this Act.

Transfer of properties

Section 5(a) provides that the Resolution Trust Corporation shall transfer: (1) to the Secretary, the Mountain Property and the Development Property purchased by the Community; and, (2) to the City, the Preservation Property and the Dedication Property purchased by the City, upon satisfaction of all conditions of closing set forth in the Settlement Agreement.

(b) provides that the Mountain Property and the Development Property transferred to the Community shall, subject to sections 6 and 7, be held in trust by the United States for the Community and become part of the Reservation.

(c) provides that, notwithstanding any other provision of law, the United States shall not be liable for any preexisting conditions on the parcels of land to be transferred to the United States in trust for the Community;

The language of this subsection (c) was requested by the Administration and adopted by the Committee.

(d) provides that, upon satisfaction of all conditions of closing set forth in the Settlement Agreement, the Secretary shall cause to have plats of survey depicting the Dedication, Development, Mountain, and Preservation properties filed with the office of the Maricopa County Recorder and the Titles and Records Center of the Bureau of Indian Affairs in Albuquerque, New Mexico.

Limitations on use and development

Section 6 provides that upon the satisfaction of all of the conditions of closing set forth in the Settlement Agreement, the properties to be transferred to the City and the Community pursuant to section 5 shall be subject to the following limitations:

(1) the Preservation Property shall be forever preserved in its natural state for use only as a public park or recreation area that shall be used, maintained, and subject to section 4(C)

of the Settlement Agreement, except that, at the sole discretion of the City, that portion of the Preservation Property known as the Dedication Property may be used to widen, reconfigure, repair or reengineer Shea Boulevard in accordance with section 4(D) of the Settlement Agreement.

(2) the Dedication Property shall be used to widen, reconfigure, repair or reengineer Shea Boulevard and 136th Street, in accordance with sections 4(D) and 7 of the Settlement Agreement.

(3) the Mountain Property shall be forever preserved in its natural state for use only as a public park or recreation area that shall be used, maintained, and subject to the restrictions set forth in section 5(C) of the Settlement Agreement.

(4) the Development Property shall be used and developed for the economic benefit of the Community in accordance with the provisions of the Settlement Agreement and the Development Agreement.

Amendments to the settlement agreement

Section 7 provides that no amendment made to the Settlement Agreement (including any deviation from an approved plan described in section 9(B) of the Settlement Agreement) shall become effective unless the amendment is made in accordance with the applicable requirements relating to the form and approval of the amendment under sections 9(B) and 34 of the Settlement Agreement and is consistent with the provisions of this Act.

Section 9(B) of the Settlement Agreement provides that neither the City nor the Community may deviate from any requirement of the Settlement Agreement or the Development Agreement or the Use Agreement without the prior written consent of the other party. Section 34 provides that the Settlement Agreement shall not be altered or amended except by a writing signed by all parties to the Settlement Agreement.

COST AND BUDGETARY CONSIDERATIONS

The analysis of the Congressional Budget Office on the costs of S. 1341 follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 16, 1995.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1341, the Saddleback Mountain-Arizona Settlement Act of 1995, as ordered reported by the Senate Committee on Indian Affairs on November 7, 1995. S. 1341 would ratify a settlement agreement that would transfer 701 acres from the Resolution Trust Corporation (RTC) to the Salt River Pima-Maricopa Indian Community (to be held in trust by the Department of the Interior) and the city of Scottsdale, Arizona. Under the settlement agreement, the Salt River Community and the city of Scottsdale have agreed to pay the RTC a total of $6.5 million, which would be offsetting

collections to the federal government. We estimate that enacting S. 1341 would increase federal collections by $6.5 million in fiscal year 1996, but that such collections would be offset by a loss of a similar amount some time over the next several years.

Based on information from the RTC, CBO expects that the land would not be sold in the near term in the absence of the bill. We cannot predict the timing or price of such a sale under current law, but we expect that the land would be sold eventually even without this legislation. Hence, CBO estimates that enacting S. 1341 would increase offsetting collections to the RTC by $6.5 million in fiscal year 1996, thus reducing RTC outlays by that amount, but over time, there would be no significant net budgetary impact.

The receipts obtained in 1996 would constitute proceeds from a non-routine asset sale. As a result, pay-as-you-go procedures would not apply to the bill. Under the 1996 budget resolution, proceeds from asset sales are counted in the budget totals for purposes of Congressional scoring. Under the Balanced Budget Act, however, proceeds from asset sales are not counted in determining compliance with pay-as-you-go requirements.

In addition to authorizing the transfer of land, S. 1341 also would clarify limitations on the use of the lands. For example, the city of Scottsdale would be permitted to extend and repair certain streets on its land, and part of the property transferred to the Salt River Community would be held forever as park or recreation lands. Other than the payments from the Salt River Community and the city of Scottsdale to the RTC, S. 1341 would not significantly affect the budgets of state or local governments.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

REGULATORY 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. 1341, as amended, will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Department of the Interior testified on S. 1341 at the Committee hearing on October 26, 1995. A copy of that testimony follows:

STATEMENT OF TERRANCE VIRDEN, ACTING DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good Morning Mr. Chairman and Members of the Committee. My name is Terry Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs. It is my pleasure to come before you today to present the Department of the Interior's views on S. 1341, a bill "To provide for the transfer of certain lands to the Salt River Pima-

Maricopa Indian Community and the City of Scottsdale, Arizona, and for other purposes.''

S. 1341, if enacted, would resolve a dispute between the City of Scottsdale, Arizona, and the Salt River Pima-Maricopa Indian Community. The bill would approve and ratify a Settlement, Release and Property Conveyance Agreement (which includes a Development Agreement and a Land Use Agreement) for the Salt River Pima-Maricopa Indian Community, the City of Scottsdale, Arizona, and the Resolution Trust Corporation. It also ensures that the Settlement Agreement is carried out and fully enforceable by its terms, including judicial remedies and binding arbitration provisions.

The bill resolves conflicts and resulting lawsuits between the City and the Community, and provides for land transfers from the Resolution Trust Corporation to both parties. The City of Scottsdale and the Salt River Pima-Maricopa Indian Community have spent many months in negotiations and have agreed on the use of the property.

The 701-acre parcel of land is within the City of Scottsdale and is contiguous to the north boundary of the Sale River Indian Reservation. The Resolution Trust Corporation acquired the Saddleback property in 1989, as receiver for the failed Sun States Savings and Loan Association. In October of 1993, the city filed a condemnation action in an attempt to block a transfer of the property to the Community through an advertised sale conducted by the Resolution Trust Corporation. The condemnation action was brought because the city had certain use restrictions which could be enforced against the Community if the property were acquired in trust status, and concern that the Community's acquisition of the property would limit the City's right to control traffic in the northeast part of the city.

In response to the city's condemnation suit and the Resolution Trust Corporation's failure to transfer the property to the tribe (as the high bidder), the tribe filed a civil rights action in Federal District Court. As previously indicated, the parties to the two suits have now negotiated settlement agreements with the understanding that special legislation is needed to authorize the negotiated land transfers and confirm the agreed-upon land use restrictions.

The BIA generally supports reservation expansions to include lands which are contiguous to existing reservation boundaries, when local officials have been consulted about potential jurisdictional conflicts and an attempt has been made to address their concerns. S. 1341 would approve and ratify a Settlement Agreement which is dated September 11, 1995, but was executed on various other dates on behalf of the Resolution Trust Corporation, the City, and the Community.

The Settlement Agreement provides for the transfer of approximately 125 acres to the City of Scottsdale, Arizona. The Settlement Agreement also provides for the transfer of

approximately 576 acres to the Community in trust status, with 365 acres of "mountain property" to be preserved largely in its natural state for the general public. The Community would have exclusive use of specifically-identified "special cultural land" within the "mountain property," and it would be free to develop the 211-acre "development property" in accordance with specific use restrictions which have been set forth in a separate Development Agreement. Among other things, the Development Agreement would prohibit any future use which obstructs existing drainages or facilitates any gambling activities which would not be legal within the City of Scottsdale.

The Settlement Agreement would also provide for the transfer of certain water rights from the Resolution Trust Corporation, and the transfer of a roadway within the "development property" from the City. Both transfers are to be made to the "United States in trust for the Community" by quitclaim deed. The City and the Community are paying fair market value for their respective shares of the property.

While we strongly support the enactment of S. 1341, we recommend existing Section 5(b) be amended by adding: "Notwithstanding any other provision of law, the United States shall not incur any liability for conditions, existing prior to the transfer, on the parcels of land to be transferred to the United States in trust for the Salt River Pima-Maricopa Indian Community."

Consistent with our support for cooperative agreements in land acquisition and reservation expansion cases, we support the enactment of S. 1341. We believe that the Settlement will achieve an equitable resolution of the ongoing litigation, provide a basis for future economic development on the Salt River Indian Reservation. It will require only a limited expenditure of federal funds for the completion of the land transfers and no additional federal funds for the management of the land to be acquired on behalf of the Community. Further, we commend the City and the Community for their cooperative efforts—as government to government—to achieve this settlement.

This concludes my prepared statement. I would be happy to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 1341, as amended, will make no change in any existing law.

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