

Calendar No. 530

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-260

FEDERAL LAND TRANSACTION FACILITATION ACT

AUGUST 5, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 1787]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1787) to reauthorize the Federal Land Transaction Facilitation Act, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, strike line 9 and insert the following:
(B) in subsection (d), by striking “10” and inserting “20”;
2. On page 2, strike lines 13 and 14 and insert the following:
(A) in paragraph (1)—
 - (i) by striking “96–568” and inserting “96–586”; and
 - (ii) by striking “; or” and inserting a semicolon;
3. On page 2, line 23, strike “or”.
4. On page 3, strike line 3 and insert the following: 108–424; 118 Stat. 2403);
 - “(5) subtitle F of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1132 note; Public Law 111–11);
 - “(6) subtitle O of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www note, 1132 note; Public Law 111–11);
 - “(7) section 2601 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1108); or

“(8) section 2606 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1121).”.

PURPOSE

The purpose of S. 1787, as ordered reported, is to reauthorize the Federal Land Transaction Facilitation Act for an additional 10-year period.

BACKGROUND AND NEED

In July of 2000, Congress enacted the Federal Land Transaction and Facilitation Act (FLTFA) as Title II of the Valles Caldera Preservation Act (Public Law 106–248). FLTFA authorizes the Bureau of Land Management (BLM) to sell public lands identified for disposal through the land use planning process prior to July 2000 and to retain the proceeds from the sales in a special account set up in the Treasury, to be available without further appropriation. The funds in that account are used to buy inholdings within Federally-designated areas in the same State, including BLM, National Park Service, Fish and Wildlife Service, and Forest Service areas. The authorization for FLTFA expires on July 25, 2010.

Since enactment of FLTFA in 2000, the BLM has used the FLTFA authority to sell 309 parcels previously identified for disposal, totaling 29,437 acres, with a total value of approximately \$113.4 million. During the same time period, the Federal government has acquired 28 parcels totaling 16,738 acres, with a total value of approximately \$43.8 million. An additional 11 parcels, totaling 1,282 acres and valued at approximately \$23 million, have been approved for acquisition.

Because FLTFA is scheduled to sunset on July 25, 2010, S. 1787, as ordered reported, would extend the program’s authorization to July 25, 2020 and expand the pool of eligible lands to be sold to include any lands identified for disposal as of the date of enactment of S. 1787. Furthermore, if the law is not reauthorized, proceeds from BLM land sales will not be available for future acquisitions and instead will be deposited into the Treasury.

LEGISLATIVE HISTORY

S. 1787 was introduced by Senator Bingaman on October 14, 2009. Senator Mark Udall is a cosponsor. The Subcommittee on Public Lands and Forests held a hearing on S. 1787 on December 17, 2009. S. Hrg. 111–364. The Committee on Energy and Natural Resources considered the bill and adopted amendments at its business meeting on June 16, 2010. The Committee ordered S. 1787 129 favorably reported, as amended, at its business meeting on June 21, 2010.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 21, 2010, by voice vote of a quorum present, recommends that the Senate pass S. 1787, if amended as described herein.

COMMITTEE AMENDMENTS

During its consideration of S. 1787, the Committee adopted several amendments. Amendment #1 strikes the permanent reauthorization of FLTFA, and instead sunsets the program's authorization on July 25, 2020. The next two amendments make technical and conforming changes. The fourth amendment references several sections from the Omnibus Public Land Management Act of 2009 (which authorized the sale of certain Federal lands) to clarify those lands remain eligible for sale under separate laws and that the provisions of FLTFA will not apply.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the "Federal Land Transaction Facilitation Act Reauthorization of 2009".

Section 2(1) amends section 203(2) of FLTFA (Public Law 106-248) to make any federally designated area (as defined in section 103(o) of the Federal Land Policy and Management Act of 1976) eligible for FLTFA funds, regardless of when the area was established.

Section 2(2) amends section 205 of FLTFA by allowing any Federal lands identified for disposal in approved land use plans as of the date of enactment of this Act to be eligible for sale under FLTFA. As originally enacted, only lands identified for disposal as of July 2000 were eligible for sale under FLTFA. The section extends the authorization for FLTFA through July 25, 2020.

Section 2(3) strikes subsection (f) of section 206 of FLTFA, which requires the proceeds from BLM land sales to be deposited into the Treasury when FLTFA's authorization ends.

Section 2(4) makes technical and conforming changes to section 207(b) of FLTFA, and amends section 207(b) to include the White Pine County Conservation, Recreation, and Development Act of 2006, the Lincoln County Conservation, Recreation, and Development Act of 2004, and several subtitles and sections from the Omnibus Public Land Management Act of 2009 to clarify that those lands remain eligible for sale under separate laws and that the FLTFA provisions will not apply.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1787—Federal Land Transaction Facilitation Act Reauthorization of 2009

Summary: S. 1787 would authorize several federal agencies to spend, without further appropriation, proceeds from the sale of certain lands administered by the Bureau of Land Management (BLM). Based on information from BLM, CBO estimates that enacting the legislation would increase direct spending by \$8 million over the 2011–2020 period; therefore, pay-as-you-go procedures would apply. Enacting the legislation would not affect revenues.

S. 1787 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The Federal Land Transaction Facilitation Act (FLTFA), which expired in July 2010, authorized BLM to sell certain federal lands and deposit the proceeds from those sales into the Federal Land Disposal Account. FLTFA also authorized four land-management agencies (BLM, the U.S. Fish and Wildlife Service, the National Park Service, and the Forest Service) to spend amounts in that account, without further appropriation, to purchase inholdings (privately held land surrounded by federal land). Upon termination of the authorities provided under FLTFA, amounts in the Federal Land Disposal Account were deposited into the Land and Water Conservation Fund and available for authorized purposes subject to appropriation.

S. 1787 would authorize those four land-management agencies to spend, without further appropriation, proceeds from the sale of BLM land to purchase inholdings. Because the authority to spend amounts in the Federal Land Disposal Account has expired, CBO expects that extending the authority would result in new direct spending from future sales of BLM land. Under current law, proceeds from the sale of BLM lands are deposited in the Treasury and are not available to be spent without appropriation. Based on historical trends in BLM land sales, CBO estimates that enacting the legislation would increase direct spending by \$8 million over the 2011–2020 period. For this estimate, CBO assumes that the legislation will be enacted near the end of 2010.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 1787 would increase direct spending; therefore, pay-as-you-go procedures would apply. The budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1787, THE FEDERAL LAND TRANSACTION FACILITATION REAUTHORIZATION ACT OF 2009, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON JUNE 21, 2010

	By fiscal year in millions of dollars—												2010–2015	2010–2020
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020			
	NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact ...	0	1	1	1	1	1	1	1	1	1	1	1	4	8

Intergovernmental and private-sector impact: S. 1787 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, 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. 1787.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic 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. 1787, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1787, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Land Management at the December 17, 2009 Subcommittee hearing on S. 1787 follows:

STATEMENT OF EDWIN ROBERSON, ASSISTANT DIRECTOR,
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE
INTERIOR

Thank you for the opportunity to testify on S. 1787, the Federal Land Transaction Facilitation Act Reauthorization of 2009. The Administration strongly supports S. 1787 and encourages the Congress to move swiftly to reauthorize the Federal Land Transaction Facilitation Act (FLTFA). Over the past decade, the Department of the Interior has made a number of important acquisitions using the FLTFA's provisions. Reauthorization of the Act will allow us to continue to use this critical tool for enhancing our Nation's treasured landscapes.

BACKGROUND

Congress enacted the FLTFA in July of 2000 as Title II of Public Law 106-248 (frequently referred to as the "Baca Bill"). As originally enacted, the FLTFA is scheduled to sunset on July 24, 2010, just seven months away.

Under the FLTFA, the Bureau of Land Management (BLM) may sell public lands, identified for disposal through the land use planning process prior to July 2000, and retain the proceeds from those sales in a special account in the Treasury. The BLM may then use those funds to acquire, from willing sellers, inholdings within certain Federally-designated areas and lands that are adjacent to those areas that contain exceptional resources. Lands may be acquired within and/or adjacent to areas managed by the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (FS), and the BLM. To date, approximately 29,400 acres have been sold under this authority and approximately 17,000 acres of treasured landscapes have been acquired.

The 1976 Federal Land Policy and Management Act (FLPMA) provides clear policy direction to the BLM that public lands should generally be retained in public ownership. However, section 203 of FLPMA allows the BLM to identify lands as potentially available for disposal if they meet one or more of the following criteria: fl

- Lands consisting of scattered, isolated tracts that are difficult or uneconomic to manage; or
- Lands that were acquired for a specific purpose and are no longer needed for that purpose; or
- Lands that could serve important public objectives, such as community expansion and economic development, which outweigh other public objectives and values that could be served by retaining the land in Federal ownership.

The BLM identifies lands that may be suitable for disposal through its land use planning process, which involves full public participation. The process of identifying these lands does not typically include review of other considerations such as the presence of threatened or endangered species, cultural or historic resources, or encumbrances because these considerations are not included in the FLTFA criteria. Before the BLM can sell, exchange, or otherwise dispose of these lands, however, it must undertake extensive environmental impact analyses, clearances, surveys, and appraisals for the individual parcels.

Before the enactment of the FLTFA, the BLM had the authority under FLPMA to sell lands identified for disposal. The proceeds from those sales were deposited into the General Fund of the Treasury. However, because of the costs associated with those sales (including environmental and cultural clearances, appraisals, and surveys), few sales were undertaken. Rather, the BLM relied largely on land exchanges to adjust land tenure. This can often be a less efficient process.

Once the FLTFA was enacted, the BLM developed guidance, processes, and tools to complete the FLTFA land sales. Working cooperatively, the BLM, NPS, FWS, and FS then developed guidance, processes, and tools for subsequent FLTFA land acquisitions. The BLM markedly increased sales under the program over the last few years. Recent market conditions, however, have led to less-robust sales than earlier in the life of the program.

Since it was enacted, the BLM utilized FLTFA to sell 309 parcels previously identified for disposal totaling 29,437 acres, with a total value of approximately \$113.4 million. Over the same time period, the Federal government acquired 28 parcels totaling 16,738 acres, with a total value of approximately \$43.8 million using FLTFA authority. An additional 11 parcels, totaling 1,282 acres and valued at approximately \$23 million have been approved for acquisition. Work on these acquisitions is proceeding swiftly.

Some lands identified for disposal and sold through the FLTFA process are high-value lands in the urban inter-

face. For example, in 2007 the BLM in Arizona sold at auction a 282-acre parcel in the suburban Phoenix area for \$7 million. However, many of the lands the BLM has identified for disposal are isolated or scattered parcels in remote areas with relatively low value. Frequently, there is limited interest in acquiring these lands, and the costs of preparing them for sale may exceed their market value.

Since the inception of the FLTFA, the BLM has deposited \$108.9 million into the Federal Land Disposal Account. That figure represents 96% of the total revenues from these sales. Approximately \$4.5 million has been transferred to the states in which the sales originated, as provided for in individual Statehood Acts (typically 4% of the sale price).

Using the FLTFA proceeds, the BLM, NPS, FWS, and FS have acquired significant inholdings and adjacent lands from willing sellers, consistent with the provisions of the Act. For example, just last month the BLM used FLTFA funds to complete the acquisition of 4,573 acres within the BLM's Canyons of the Ancients National Monument in southwest Colorado. These inholdings encompass 25 documented cultural sites, and archaeologists expect to record an additional 700 significant finds. The acquisition also included two particularly important areas: "Jackson's Castle," which is archeologically significant; and the "Skywatcher Site," a one-of-a-kind 1,000 year old solstice marker. The following are a few additional examples of important FLTFA acquisitions:

- *Elk Springs Area of Critical Environmental Concern (ACEC), New Mexico/BLM*—This 2,280-acre acquisition protects critical elk wintering habitat.
- *Hells Canyon Wilderness, Arizona/BLM*—A 640-acre parcel constituting the last inholding within the Hells Canyon Wilderness, located just 25 miles northwest of Phoenix.
- *Grand Teton National Park, Wyoming/NPS*—This small (1.38 acres), but critical inholding within the Park was acquired and protected from development.
- *Zion National Park, Utah/NPS*—A combination of FLTFA and Land and Water Conservation Fund monies were used to acquire two 5-acre inholdings that overlook some of the Park's outstanding geologic formations. These areas were previously targeted for development.
- *Nestucca Bay National Wildlife Refuge, Oregon/FWS*—This 92-acre dairy farm on the outskirts of Pacific City, Oregon was slated for residential development and was acquired to protect a significant portion of the world's population of the Semidi Islands Aleutian Cackling Goose.
- *Six Rivers National Forest, California/FS*—Over 4,400 acres were acquired within the Goose Creek National Wild and Scenic River corridor, preserving 4 miles of the river known for dense stands of Douglas fir, redwoods, and Port Orford cedar.

S. 1787 would both extend and enhance the original FLTFA through four major changes.

First, the bill eliminates a 10-year sunset provision included in the original FLTFA. This change would enable the BLM to plan for and implement this program on a long-term basis.

Second, under the original FLTFA, only lands identified for disposal prior to July 25, 2000 were eligible to be sold. S. 1787 modifies that restriction by allowing any lands identified for disposal through the BLM's land use planning process by the date of enactment of S. 1787 to be sold through the FLTFA process. The Department supports this change, which recognizes the usefulness and importance of the BLM's land use planning process. However, we would recommend eliminating this restriction rather than simply moving the date forward.

The BLM currently oversees the public lands through 172 Resource Management Plans (RMPs). Since 2000, the BLM has completed 67 new RMPs, 18 major amendments to existing RMPs, and numerous smaller land use plan amendments. Additionally, the BLM is currently involved in planning efforts on 35 new RMPs, all of which the agency expects to complete within the next three years. Planning updates are an ongoing part of the BLM's mandate under FLPMA. In this process, the BLM often makes incremental modifications to the plans, and identifies lands that may be suitable for disposal. All of these planning modifications or revisions are made in compliance with the National Environmental Policy Act, and are undertaken through a process that invites full public participation.

Third, the original FLTFA only allows acquisitions of inholdings within, or special lands adjacent to Federal units that existed prior to July 25, 2000. S. 1787 eliminates this limitation as well, and we support this change. In March of this year, President Obama signed the Omnibus Public Land Management Act of 2009 (Public Law 111-11) into law, which designates or expands numerous wilderness areas, wild and scenic rivers, national park units, and other units of the BLM's National Landscape Conservation System. S. 1787 will allow the use of FLTFA funds to acquire inholdings within these areas and areas designated by other legislation enacted after July 2000.

Finally, S. 1787 adds exceptions to the FLTFA in recognition of specific laws that modify the FLTFA with respect to some particular locations. The FLTFA does not apply to lands available for sale under the Santini-Burton Act (P.L. 96-586) and the Southern Nevada Public Land Management Act (P.L. 105-263). S. 1787 additionally exempts lands included in the White Pine County Conservation, Recreation, and Development Act (P.L. 109-432) and the Lincoln County Conservation, Recreation and Development Act (P.L. 108-424).

However, we note that S. 1787 does not account for some provisions of the Omnibus Public Land Management Act of 2009 that modify the application of FLTFA at specific sites or for specific purposes. The portions of the Omnibus Public Land Management Act of 2009 that contain language regarding the applicability of the FLTFA include:

- Owyhee Public Land Management (Title I, Subtitle F);
- Washington County, Utah (Title I, Subtitle O);
- Carson City, Nevada, land conveyances (Title II, Subtitle G, section 2601); and
- Douglas County, Washington, land conveyance (Title II, Subtitle G, section 2606).

We are happy to work with the Committee, as appropriate, to address these special provisions.

CONCLUSION

Thank you for the opportunity to testify in strong support of S. 1787, the Federal Land Transaction Facilitation Act Reauthorization of 2009. By extending the FLTFA, the Congress will allow the BLM to continue a rational process of land disposal that is anchored in public participation and sound land use planning, while providing for land acquisitions to augment and strengthen our Nation’s treasured landscapes.

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. 1787, 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):

VALLES CALDERA PRESERVATION ACT; FEDERAL LAND TRANSACTION FACILITATION ACT

(Public Law 106–248; Approved July 25, 2000)

AN ACT To authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes.

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

* * * * *

TITLE II—FEDERAL LAND TRANSACTION FACILITATION

* * * * *

SEC. 203. DEFINITIONS.

In this title:

(1) **EXCEPTIONAL RESOURCE.**—The term “exceptional resource” means a resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, State, or local governmental authority, and for which there is a compelling

need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.

(2) **FEDERALLY DESIGNATED AREA.**—The term “federally designated area” means land in Alaska and the eleven contiguous Western States (as defined in section 103(o) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(o)) that [on the date of enactment of this Act was] *is* within the boundary of—

* * * * *

SEC. 205. DISPOSAL OF PUBLIC LAND.

(a) **IN GENERAL.**—The Secretary shall establish a program, using funds made available under section 206, to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans (as in effect on the date of enactment of [this Act] *the Federal Land Transaction Facilitation Act Reauthorization of 2009*) under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

* * * * *

(d) **TERMINATION OF AUTHORITY.**—The authority provided under this section shall terminate [10] 20 years after the date of enactment of this Act.

SEC. 206. FEDERAL LAND DISPOSAL ACCOUNT.

* * * * *

[(f) **TERMINATION.**—On termination of activities under section 205—

- (1) the Federal Land Disposal Account shall be terminated; and
- (2) any remaining balance in the account shall become available for appropriation under section 3 of the Land and Water Conservation Fund Act (16 U.S.C. 4601–6).]

SEC. 207. SPECIAL PROVISIONS.

(a) **IN GENERAL.**—Nothing in this title provides an exemption from any limitation on the acquisition of land or interest in land under any Federal law in effect on the date of enactment of this Act.

(b) **OTHER LAW.**—This title shall not apply to land eligible for sale under—

- (1) Public Law [96–568] 96–586 (commonly known as the “Santini-Burton Act”) (94 Stat. 3381)[; or];
- (2) the Southern Nevada Public Land Management Act of 1998 (*Public Law 105–263*; 112 Stat. 2343)[.];
- (3) *the White Pine County Conservation Recreation, and Development Act of 2006 (Public Law 109–432; 120 Stat. 3028)*;
- (4) *the Lincoln County Conservation, Recreation, and Development Act of 2004 (Public Law 108–424; 118 Stat. 2403)*;
- (5) *subtitle F of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1132 note; Public Law 111–11)*;
- (6) *subtitle O of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www note, 1132 note; Public Law 111–11)*;

(7) section 2601 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1108); or
(8) section 2606 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1121).

* * * * *

