115TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 115–1049

TO EXTEND THE RETAINED USE ESTATE FOR THE CANEEL BAY RESORT IN ST. JOHN, UNITED STATES VIRGIN ISLANDS, AND FOR OTHER PURPOSES

NOVEMBER 27, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4731]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4731) to extend the retained use estate for the Caneel Bay resort in St. John, United States Virgin Islands, and for other purposes, 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 all after the enacting clause and insert the following:

SECTION 1. EXTENSION OF RETAINED USE ESTATE.

(a) EXTENSION REQUIRED.—Not later than 90 days after a request by the grantor, the Secretary of the Interior shall extend the retained use estate in accordance with this section.

(b) REQUIREMENTS.—The extension under subsection (a) shall—

(1) except as provided in paragraph (2), be effective for the 60-year period beginning on the date the retained use estate would, but for the extension under this section, expire;

(2) be subject to the terms of the retained use estate, including the right of the grantor to terminate the retained use estate in accordance with the terms thereof; and

(3) require the grantor to pay to the United States, in quarterly installments for the period of the extension, fair market value rental for use of the premises

for operation and management of resort facilities and services in an amount equal to—

(A) for each of the first 15 years of the extension, a percentage of the gross revenues of the resort in accordance with subsections (c) and (d) to be determined no later than 90 days after the date on which the extension is granted under subsection (a) by—

(i) a written agreement between the Secretary and the grantor; or

(ii) if the Secretary and the grantor are unable to agree on such a percentage by the date that the extension is granted under subsection (a), through binding arbitration using procedures specified in section 51.51 of title 36, Code of Federal Regulations; and

(B) for each year of the extension thereafter, the amount determined under subparagraph (A), except that—

(i) such amount shall be adjusted if requested by the Secretary or the grantor;

(ii) any such adjustment shall be determined—

(I) through a written agreement between the Secretary and the grantor; or

(II) if the Secretary and the grantor are unable to agree on such an adjustment after a 60-day period for negotiation (or a longer period for negotiation agreed upon by the Secretary and the grantor), through binding arbitration between the Secretary and the grantor using the arbitration procedures specified in section 51.51 of title 36, Code of Federal Regulations; and

(iii) no more than one adjustment may be made under this subparagraph in any 15-year period.

(c) CALCULATION OF FAIR MARKET VALUE RENTAL.—The initial payment required under subsection (b)(3)(A) and any adjustment under subsection (b)(3)(B) shall reflect the fair market value of a land lease for hotel use, as determined by an appraisal by an independent qualified appraiser who is selected jointly by the Secretary and the grantor and shall reflect—

(1) any restrictions on the use of the property or terms of the retained use estate that limit the value or highest and best use of the property;

(2) any amounts expended or to be expended by the grantor for preservation, maintenance, restoration (including site restoration), improvement (including construction), or repair and related expenses to the extent that such amounts are for the resort; and

(3) the remaining term of the extended retained use estate.

(d) PAYMENTS.—Payments under subsection (b)(3) shall—

(1) be due—

(A) except as provided in subparagraph (B), 60 days after the end of the applicable quarter; and

(B) in the case of the last quarter of each calendar year (or the last quarter before the retained use estate expires), 90 days after the end of the calendar year (or the end of the retained use estate in the year that the retained use estate expires);

(2) be based on actual gross revenues for the preceding quarter;

(3) in the case of a payment due under paragraph (1)(B), include any adjustment that may be required after an audit of the gross annual revenues for the preceding year; and

(4) be deposited into the General Treasury.

(e) DEFINITIONS.—In this section—

(1) each of the terms "retained use estate" and "resort" has the meaning given such term in section 1 of Public Law 111–261 (16 U.S.C. 398d note); and

(2) the term "grantor" means the holder of the retained use estate.

PURPOSE OF THE BILL

The purpose of H.R. 4731 is to extend the retained use estate for the Caneel Bay resort in St. John, United States Virgin Islands.

BACKGROUND AND NEED FOR LEGISLATION

Caneel Bay Resort, on St. John, U.S. Virgin Islands (USVI), is located on a 150-acre peninsula on the northwest side of the island and was originally developed by Laurance Rockefeller beginning in 1956. Initially, Rockefeller donated over 5,000 acres of land to the National Park Service (NPS) and reserved the 150 acres that is now Caneel Bay Resort for the Jackson Hole Preserve, a Rockefeller family land trust. In 1983, the Jackson Hole Preserve donated the 150 acres of land to the U.S. government for inclusion in the Virgin Islands National Park. The preserved land was transferred to NPS with a 40-year retained use estate (RUE).[1]

Since 1983, the Resort under the RUE has been owned and/or managed by different companies. In 2004, Jackson Hole Preserve sold the RUE to CBI Acquisition LLC, which currently operates the Caneel Bay Resort. The RUE is scheduled to expire on September 30, 2023.[2]

As the largest employer on St. John, with approximately 450 employees, the Resort plays a significant role in the economy of the USVI. It brings 15,000 guests and over $65 million in spending to the island of St. John every year.[3] The Resort supports jobs and the local tourism industry, and accounts for 7% of the USVI total employment in the hotel and restaurant sector.

In 2006, NPS commenced consideration of the future management of the Caneel Bay Resort property. In 2010, Congress enacted Public Law 111–261, which authorized NPS, subject to several limiting conditions, to enter into a long-term lease with the holder of the RUE for continued resort operations upon relinquishment of the remaining term of the RUE.

Following the passage of Public Law 111–261, NPS analyzed the conversion of the RUE to a long-term lease. In addition to the 150-acre Caneel Bay Resort, three additional parcels of land totaling 3.01 acres outside of the RUE (but owned by the holder of the RUE) were considered as part of the lease negotiations. These parcels include a 1.01-acre area utilized for three executive homes, a 1.69-acre area utilized for a 24-unit apartment building for employee housing, and a 0.31-acre marina used for ferry docking, maintenance, and fuel sales.

NPS finished an Environmental Assessment in 2013 that analyzed the environmental and human impacts of entering a long-term lease under the terms of Public Law 111–261. The preferred alternative included the relinquishment of the remaining term of the RUE and the award of a long-term lease to the holder of the relinquished RUE under the terms of Public Law 111–261. Despite nearly eight years of studies and negotiations on the conversion of the RUE to a long-term lease, NPS and the current holder of the RUE have not come to an agreement on lease terms.

On September 6 and September 19, 2017, Hurricanes Irma and Maria destroyed much of St. John and the Caneel Bay Resort. The Resort was forced to cancel its entire November-to-August season and lay off some 300 employees.[4]

H.R. 4731 requires the Secretary of the Interior to extend the RUE by 60 years and requires the holder of the RUE to pay a rental fee for use of the property. Extending the RUE provides long-term certainty to the current holder of the RUE, thus allowing the

[1] "Caneel Bay Resort Lease." PEPC Planning, Environment & Public Comment. Accessed February 21, 2018. https://parkplanning.nps.gov/projectHome.cfm?projectID=43598.

[2] Ibid.

[3] Shimel, Judi. "Caneel Restoration Awaits Congressional Action." St. John Source. January 30, 2018. Accessed February 23, 2018. https://stjohnsource.com/2018/01/30/caneel-restoration-awaits-congressional-action/.

[4] Pérez-Peña, Richard. "After Irma and Maria: How 3 Spots on the U.S. Virgin Islands Are Faring." The New York Times. November 10, 2017. Accessed February 23, 2018. https://www.nytimes.com/2017/11/10/us/virgin-islands-hurricanes.html.

holder to realize a return on the significant capital investments necessary to reopen the Resort and thereby contribute to the economy and recovery of USVI. It will also, for the first time, generate funds to the United States for the use of the land.

COMMITTEE ACTION

H.R. 4731 was introduced on December 21, 2017, by Congresswoman Stacey E. Plaskett (D–VI). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. On February 28, 2018, the Subcommittee held a hearing on the bill. On March 7, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop (R–UT) offered an amendment designated #1; it was adopted by voice vote. Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated .080; it was not adopted by voice vote. No additional amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 2018.

Hon. ROB BISHOP,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4731, a bill to extend the retained use estate for the Caneel Bay resort in St. John, United States Virgin Islands, and for other purposes.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4731—A bill to extend the retained use estate for the Caneel Bay resort in St. John, United States Virgin Islands, and for other purposes

Summary: Under current law, the Caneel Bay resort in the Virgin Islands National Park operates under a retained use estate (RUE), an arrangement that grants a private entity that is not the landowner managerial control over the resort. When the RUE expires in 2023, the National Park Service (NPS) will assume managerial control over the resort. H.R. 4731 would, upon request by the current RUE holder, extend the RUE for an additional 60 years.

H.R. 4731 would require the RUE holder to make payments that would be deposited into the general fund of the Treasury. Those payments would be recorded on the budget as offsetting receipts, which are recorded in the budget as reductions in direct spending. CBO estimates that enacting the bill would reduce direct spending by $3 million over the 2019–2028 period. Because enacting H.R. 4731 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 4731 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 4731 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 4731 is shown in the following table. The costs of the legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019–2023	2019–2028
DECREASES IN DIRECT SPENDING													
Estimated Budget Authority	0	0	0	0	0	0	*	*	−1	−1	−1	0	−3
Estimated Outlays	0	0	0	0	0	0	*	*	−1	−1	−1	0	−3

* = between −$500,000 and zero.

The bill would require an independent appraisal of the fair-market value of payments. CBO estimates that the appraisal would cost less than $500,000, subject to the availability of appropriated funds.

Basis of estimate: For this estimate, CBO assumes H.R. 4731 will be enacted near the end of 2018 and that the current RUE holder would request an extension of the agreement as provided in the bill.

Direct spending

In 2017, the Caneel Bay resort sustained extensive damage from Hurricanes Irma and Maria. CBO expects that rehabilitation of the resort by the current RUE holder would be contingent on a long-term operating agreement between the NPS and the RUE holder. The two parties could enter into such an agreement under current law or under H.R. 4731.[1]

Options under Current Law. Under current law, the NPS is authorized to enter into a long-term lease with the current RUE holder upon expiration of the RUE in 2023. If the two parties enter into a lease, the current RUE holder will be required to make fair-market rental payments to the NPS that are equal to a percentage of the gross revenues of the resort; those payments would be recorded in the federal budget as offsetting receipts. (Currently, the RUE holder does not make any payments to the NPS.) Based on an appraisal of the property, CBO estimates that under this scenario the NPS would collect, on average, $750,000 annually over the 2024–2028 period.

If the NPS decides not to enter into a long-term lease with the current RUE holder, it will assume management of the resort on October 1, 2023. CBO has no information about whether the agency plans to rebuild and operate the resort if reconstruction and operations are not initiated prior to that date. Because we do not know whether the NPS and the current RUE holder will enter into a lease, CBO assumes that the probability of the two parties entering into a long-term lease under current law is 50 percent.[2] Adjusting for that probability, CBO estimates that lease payments would total about $2 million over the 2024–2028 period. Under current law, any amounts collected by the NPS are available to be spent without further appropriation for visitor services and resource protection within the Virgin Islands National Park. Based on historical spending patterns, CBO estimates that the agency will spend $1 million, or about half of the expected collections, at that park over the 2024–2028 period. Therefore, CBO estimates that under current law, the expected net operating expenses for that park will decline by $1 million over the 2024–2028 period.

RUE Extension. Under the bill, CBO expects that the current RUE holder would pay amounts similar to those expected under current law ($750,000 annually, beginning in 2024) for a total of about $4 million over the 2024–2028 period. Those payments would be recorded as offsetting receipts, would be deposited into the general fund of the Treasury, and would not be available for spending unless appropriated. Thus, on net, CBO estimates that enacting H.R. 4731 would reduce direct spending by $3 million over the

[1] For this estimate, CBO assumes that the NPS will not seek appropriations to rebuild the resort or enter into a concession contract after 2023.

[2] CBO endeavors to develop estimates that are in the middle of the distribution of potential budgetary outcomes. In cases where there is no clear precedent for predicting agency behavior under a legislative proposal, CBO has adopted a convention of assuming a 50 percent chance of an agency using its discretion under the bill. CBO takes this approach in uncertain situations for the purpose of informing the Congress about the potential costs of legislation.

2024–2028 period (the $4 million in savings under the bill minus the $1 million that will be saved under current law).

Spending subject to appropriation

The bill would require an independent qualified appraiser to determine the fair market value of payments under the extended RUE. Based on the costs of similar tasks, CBO estimates that the appraisal would cost less than $500,000; such spending would be subject to the availability of appropriated funds.

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. As shown in the table on page 2, the net decrease in outlays that are subject to those pay-as-you-go procedures is $3 million over the 2024–2028 period. Enacting the bill would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 4731 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 4731 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Janani Shankaran; Mandates: Zachary Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to extend the retained use estate for the Caneel Bay resort in St. John, United States Virgin Islands.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

ADDITIONAL VIEWS

H.R. 4731 adds an additional 60 years to the Retained Use Estate (RUE) for Caneel Bay Resort, a private hotel that operates within the Virgin Islands National Park. The resort is a high-end, world-class tourist destination and one of the top employers on the island of St. John. Unfortunately, like much of the Virgin Islands, the hotel was severely damaged by last year's hurricanes.

The land associated with the Virgin Islands National Park was donated to the United States by Laurence Rockefeller in 1956. Mr. Rockefeller retained a small piece of the island to develop the Caneel Bay Resort, which was, ultimately, donated to the Federal government to complete the vision for the park. However, the donation of the resort initiated the RUE, a unique legal arrangement that authorized the hotel to operate for 40 years before becoming part of the park.

In 2010, Congress authorized the National Park Service to enter into a 40-year sole source lease with the owner of the RUE.[1] To honor the spirit of the original donation, the authorized lease is required to include provisions that limit expansion of the resort, prohibit the division and subsequent sale of the property, and include provisions to protect the park and the public interest. The operators of the resort and the National Park Service have been negotiating a lease for the last eight years and have not been able to agree on the terms.

The hurricanes and the urgent need to rebuild the resort led to the introduction of H.R. 4731, which bypasses the lease negotiation process and simply extends the RUE. This removes the National Park Service from the process and does not provide any additional oversight or assurances that new construction complements the management goals of the national park.

Natural Resources Committee Ranking Member Grijalva offered an amendment that would have authorized the National Park Service to ensure that the hotel's reconstruction and future operation comply with all appropriate laws and regulations. In the context of providing a 60-year license to continue business as usual on property owned by the American taxpayer, this is a fair request. Committee Republicans characterized the amendment as overly broad and refused to incorporate it into the bill.

Rebuilding Caneel Bay Resort is a priority for the Virgin Islands, and should be a priority for Congress, but this bill lacks the necessary safeguards to ensure that the property is managed in a way that complements the mission of the Virgin Islands National Park. We hope to continue working with our colleagues to ensure that the resort is developed in a manner that honors its status as a piece of the park.

[1] Public Law 111–261 (16 U.S.C. 398d note).

RAÚL M. GRIJALVA,
Ranking Member, Committee on Natural Resources.