

Public Law 97-361
97th Congress

An Act

Oct. 22, 1982

[H.R. 3787]

To amend sections 10 and 11 of the Act of October 21, 1970 (Public Law 91-479; 16 U.S.C. 460x), entitled "An Act to establish in the State of Michigan the Sleeping Bear Dunes National Lakeshore, and for other purposes".

Sleeping Bear
Dunes National
Lakeshore,
Mich.
16 USC 460x-9.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Act entitled "An Act to establish in the State of Michigan the Sleeping Bear Dunes National Lakeshore, and for other purposes", approved October 21, 1970 (16 U.S.C. 460x-x14), is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) Any person who is—

"(1) an owner of improved property described in section 11(a)(2) which is situated within the area designated for inclusion in the lakeshore on the date of its acquisition by the Secretary; or

"(2) an occupier of improved property described in section 11(a)(2) which is situated within the area designated for inclusion in the lakeshore on the date of its acquisition by the Secretary, in situations where the fee ownership of such improved property has been heretofore acquired by the United States (whether by donation, purchase, condemnation, exchange or otherwise);

may retain, for a term not to exceed twenty-five years from January 1, 1973, or for a term ending on the death of such owner or occupier, the right of use or occupancy of such property for any residential purpose which is not incompatible with the purposes of this Act or which does not impair the usefulness and attractiveness of the area designated for inclusion. Such owner or occupier must notify the Secretary of any intention to exercise such option within 60 days after receipt of the notice referred to in section 11(c)(3). In situations where the United States has not heretofore acquired fee title to the improved property, the Secretary shall pay to the owner the value of the property on the date of such acquisition, less the value on such date of the right retained by the owner. In situations where the United States has heretofore acquired fee title to the improved property, the occupier may notify the Secretary that such occupier elects to retain continued use and occupancy of such property pursuant to this section, in which event the occupier shall pay to the Secretary the value of the additional right retained, which value shall be based upon the value of the property at the time of its acquisition by the Secretary.

"(c) Any deed or other instrument used to transfer title to property, with respect to which a right of use and occupancy is retained under this section, and any instrument evidencing any right of use and occupancy retained by any occupier under this section, shall provide that such property shall not be used for any purpose which is incompatible with purposes of this Act, or which impairs the usefulness and attractiveness of such area, and if it should be so

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Post, p. 1721.

used, that the Secretary may terminate such right. In the event the Secretary exercises his power of termination under this subsection he shall pay to the owner of the right terminated an amount equal to the value of that portion of such right which remained unexpired on the date of such termination.

"(d)(1) Any owner or occupier of improved property who retains a right of use and occupancy under subsection (b) may convey or lease such right during its existence to a member of such owner or occupier's immediate family for noncommercial residential purposes which are not incompatible with the purposes of this Act and which do not impair the usefulness and attractiveness of the area designated for inclusion.

Right of use and occupancy.

"(2) Any owner or occupier of improved property who has retained a right of use and occupancy under subsection (b) may terminate such right at any time, and the Secretary shall pay, within 120 days after the date of such termination, to the owner of the right terminated an amount equal to the value of that portion of such right which remained unexpired on the date of such termination.

Termination.

"(3) As used in this Act, the term 'member of the immediate family' means spouse, brother, sister, or child, including persons bearing such relationships through adoption, and step-child."

"Member of the immediate family."

SEC. 2. Section 11 of the Act amended by the first section of this Act is amended to read as follows:

"SEC. 11. (a) As used in this Act, the term 'improved property' means a detached, one-family dwelling, construction of which—

"Improved property."
16 USC 460x-10.

"(1) was begun before December 31, 1964, or

"(2) for the purposes of section 10(b) or 10(d), was begun on or after December 31, 1964, and before October 21, 1970, and has been openly and continuously used, at least during the summer months of each year when similar dwellings in the area are used, as a residential dwelling since such construction was completed, and with respect to the portion of such period after any acquisition of such property by the United States, by the owner, or a member of the immediate family of the owner, of such dwelling on the date of such acquisition,

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together with so much of the land on which the dwelling is situated, such land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the lands so designated. The amount of land so designated shall in every case be at least three acres in area, or all of such lesser acreage as may be held in the same ownership as the dwelling, and in making such designation the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed.

"(b) The Secretary may exclude from the land designated under subsection (a) any beach or waters on Lake Michigan, together with so much of the land adjoining any such beach or waters as the Secretary may deem necessary for public access thereto. If the Secretary makes such exclusion, an appropriate buffer zone shall be provided between any residence and the public access or beach.

Beach or waters, exclusion.

"(c)(1) The Secretary may exclude from the category of 'improved property' under this Act any property described in subsection (a)(2) which the Secretary determines is in an area required for public use or development in the immediate future. In making any such determination the Secretary shall take into account the proximity of such

Improved property, exclusion.

property to any other improved property, the development or public use of the lakeshore and the related timetable therefor, and the anticipated availability in the immediate future of funds related to such development or public use.

Right of use and
occupancy,
termination.

“(2)(A) With respect to any improved property, as defined in subsection (a)(2), with respect to which the occupier has retained a right of use and occupancy under section 10(b), the Secretary may terminate such right 90 days after notifying in writing the occupier, if the Secretary determines that such improved property is needed for public use or development under this Act. In making any such determination the Secretary shall take into account the proximity of such property to any other improved property, the development or public use requirements of the lakeshore and related timetable therefor, and the current availability of funds for the proposed public use or development.

“(B) The Secretary shall pay to the owner of the right terminated an amount equal to the value of that portion of such right which remained unexpired on the date of such termination.

“(3)(A) The Secretary must, within 60 days after the date of enactment of this subsection, notify in writing any owner or occupier of property described in subsection (a)(2) that an option to retain rights with respect to such property exists under section 10(b), whether such property shall be subject to any action by the Secretary under paragraph (1) of this subsection, the nature of such proposed action, the reasons for such proposed action, and the contemplated timetable therefor.

“(B) With respect to any proposed action to be taken under paragraph (2) of this subsection, if the Secretary determines within 60 days after the date of enactment of this subsection, after taking into account timetable and funding projections, that, consistent with the General Management Plan dated October 1979, public use or development is anticipated before 1998 for an area containing any improved property described in subsection (a)(2), the Secretary shall include notice of such determination in any notification under subparagraph (A) of this paragraph. Any failure of the Secretary to so notify an occupier pursuant to this subparagraph shall not preclude the Secretary from taking action under paragraph (2) at some future date.”

16 USC 460x-11.

SEC. 3. Section 12 of the Act amended by the first two sections of this Act is amended—

(1) by inserting “(a)” immediately before “In order to facilitate”;

(2) by inserting “Benzie County and within” after “within” in the first sentence thereof; and

(3) by adding the following at the end thereof:

Land exchange.

“(b) Except as provided in subsection (c), any lands in Leelanau County acquired by the Secretary under this section before the date of enactment of this subsection which are within the parkway zone depicted on the map specified in section 2(a) but which are not within, or contiguous to, the lakeshore zone as depicted on such map may be exchanged by the Secretary for other lands of approximately equal value in the lakeshore. If the Secretary is unable to effect such an exchange, such lands may be offered for sale to the person who owned such lands immediately before their acquisition by the Secretary. If such previous owner declines such offer, the Secretary may sell such lands to any buyer. Proceeds from any sale under this

subsection shall be credited to the account established under section 17 of this Act.

“(c) The Secretary is authorized to obtain and administer, according to the provisions of this section, as a part of the lakeshore as Resource Preservation Areas certain interests in the following lands:

Administration.

“(1) Approximately 600 acres designated as ‘Miller Hill’ on the map numbered 634-91,001, dated September 1982.

Miller Hill.

“(2) Approximately 975 acres as designated as ‘Bow Lakes’ on the map numbered 634-91-002, dated September 1982.

Bow Lakes.

“(d)(1) The Secretary may obtain fee title under subsection (e) to lands described in subsection (c)(1), or easements or other restrictive agreements for the preservation of scenic values in such lands.

“(2) The Secretary may obtain fee title under subsection (e) to lands described in subsection (c)(2), or public access easements or other restrictive agreements consistent with use of such lands for educational purposes and for research and interpretation of natural features.

“(e)(1) Except as provided under paragraph (4), the Secretary may obtain fee title or other lesser interests to lands described in subsection (c) only—

“(A) by gift, donation, or bequest;

“(B) by purchase from a willing seller under paragraph (2); or

“(C) as an exercise of a right of first refusal under paragraph

(3).

“(2) The Secretary may negotiate with willing sellers for the transfer of fee title to other lesser interests to lands described in subsection (c). If the Secretary and such willing seller are unable to agree to a fair purchase price, that question may, by mutual consent be submitted to the appropriate United States District Court for adjudication.

“(3) If the owner of any lands described in subsection (c) intends to transfer any interest in such lands except by gift, donation, or bequest, such owner must notify the Secretary of such intention. The Secretary shall have 90 days after notification in which to exercise a right of first refusal to match any bona fide offer to obtain such interest under the same terms and conditions as are contained in such offer. If the Secretary has not exercised such right within 90 days, the owner may transfer such interest.

“(4) Condemnation may be used with respect to any lands described in subsection (c) only—

Condemnation.

“(A) to clear title if necessary for any transfer to the Secretary under this subsection; or

“(B) to purchase fee title or such lesser interest as may be sufficient to prevent significant damage to the scenic, soil, or water resources of the lakeshore. Action under this subparagraph shall be used only after attempts to negotiate a solution to the problem have failed. If the Secretary determines that such attempts have failed, the Secretary shall notify in writing the owner of the property involved of the proposed action to be taken under this subparagraph and the Secretary shall seek an injunction to prevent such resource damage. The Secretary may at any time, and if an injunction is granted under this subparagraph the Secretary shall within 30 days after the date of such injunction, send in writing to the owner of the property the Secretary's best and final offer for the purchase of such property. If the owner does not accept such offer, the Secretary may file for condemnation. The Secretary must notify the Committee

Notification to congressional committees.

on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives of any action taken under this subparagraph.

“(f)(1) The Secretary shall enter into discussions with appropriate local government officials to develop mutually agreeable zoning restrictions for the protection of scenic resources with respect to the lands described in subsection (c)(1).

“(2) The Secretary shall enter into discussions with appropriate State and local officials responsible for the administration of the Goemaere-Anderson Wetland Protection Act (Michigan, P.A. 203, 1979) to ensure the protection of natural resources with respect to the lands described in subsection (c)(2).

“(g) If the owner of the area designated as ‘The Kettle’ in the General Management Plan dated October 1, 1979, and comprising 240 acres, agrees to donate fee title or a scenic easement to, or other less than fee interest in, such area, the lands in such area may be included as a part of the lakeshore upon publication in the Federal Register by the Secretary of a revised map of the lakeshore which includes such lands.

“(h) The Secretary may, upon request in writing by any owner or occupier of lands in the lakeshore, provide services, such as road maintenance, subject to reimbursement.”

The Kettle, revised map, publication in Federal Register.

16 USC 460x-14.

SEC. 4. Section 15 of the Act amended by the first three sections of this Act is amended by striking out “\$57,753,000” and inserting in lieu thereof “\$66,153,000”.

SEC. 5. The Act amended by the first four sections of this Act is further amended by adding at the end the following new sections:

Presidential recommendations to Congress. 16 USC 460x-15.

“SEC. 16. In accordance with section 3(c) of the Wilderness Act (78 Stat. 890, 892; 16 U.S.C. 1132(c)), the President shall, no later than June 1, 1983, advise the United States Senate and House of Representatives of his recommendations with respect to the suitability or nonsuitability as wilderness of any area within the lakeshore. Subject to existing private rights, the areas described in the report prepared by the National Park Service entitled ‘Wilderness Recommendation; Sleeping Bear Dunes National Lakeshore’ dated January, 1981, and recommended for wilderness (approximately 7,128 acres) and for potential wilderness additions (approximately 23,775 acres) shall, until Congress determines otherwise, be administered by the Secretary so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.”

Administration.

SEC. 6. No authority under this Act or any amendment made by this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts.

SEC. 7. For purposes of section 7(a)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)(3)), the statutory ceilings on appropriations established by the amendments made by this Act shall be deemed to be statutory ceilings contained in a provision of law enacted prior to the convening of the Ninety-fifth Congress.

Statutory
ceilings.
16 USC 460x-14
note.

Approved October 22, 1982.

LEGISLATIVE HISTORY—H.R. 3787:

HOUSE REPORT No. 97-882 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Sept. 29, considered and passed House.

Oct. 1, considered and passed Senate, amended; House concurred in Senate amendments.