117TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
117–597

TO PROVIDE FOR THE EQUITABLE SETTLEMENT OF CERTAIN INDIAN LAND DISPUTES REGARDING LAND IN ILLINOIS, AND FOR OTHER PURPOSES

DECEMBER 7, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6063]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6063) to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, 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. SETTLEMENT OF CLAIMS.

(a) JURISDICTION CONFERRED ON THE UNITED STATES COURT OF FEDERAL CLAIMS.—Notwithstanding any other provision of law, jurisdiction is hereby conferred upon the United States Court of Federal Claims, which may hear, determine, and render judgment on the Miami Tribe of Oklahoma's land claim under the Treaty of August 1, 1805 (7 Stat. 91), without regard to the statute of limitations identified in section 2501 of title 28, United States Code, and any delay-based defense, including laches, estoppel, or acquiescence, no matter how characterized. The United States shall be the only entity or individual liable regarding such a claim. The jurisdiction hereby conferred on the United States Court of Federal Claims shall expire unless a claim is filed by the Miami Tribe of Oklahoma within 1 year after the date of the enactment of this Act.

(b) EXTINGUISHMENT OF TITLE AND CLAIMS.—Except for the claim of the Miami Tribe of Oklahoma against the United States as a defendant in an action before the United States Court of Federal Claims as provided in subsection (a), all other claims of the Miami Tribe of Oklahoma, or any member, descendant, or predecessor in interest to the Miami Tribe to title are extinguished, including claims arising under the Treaty of Grouseland, the Northwest Ordinance, the 5th amendment to the Con-

stitution, the laws commonly known as the "Trade and Intercourse Act of 1790", and any other Federal law, treaty, or agreement.

PURPOSE OF THE BILL

The purpose of H.R. 6063 is to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.

BACKGROUND AND NEED FOR LEGISLATION

The Miami Tribe of Oklahoma is a federally recognized tribe located in Ottawa County in Northeast Oklahoma. The Tribe's ancestral homelands are located south of the Great Lakes, in the states of Indiana, Illinois, and Ohio. In 1846, the Tribe was removed from its homelands and relocated to Kansas, and in 1867 was again removed, this time from Kansas to Oklahoma, where they reside today.

In 1805, the Miami Tribe, along with the Eel River and Wea tribes, signed the Treaty of Grouseland with the United States. Article IV of the Treaty made it clear that the tribes had not ceded lands in the Wabash River watershed, and the federal government agreed that it would not take any part of that watershed without the consent of all three tribal governments. However, over time the federal government placed the land in the public domain and transferred it to settlers—all without the consent of the Miami Tribe. The Tribe never agreed to nor was ever asked to agree to any sale of the Wabash watershed lands. The lands total approximately 2,648,420 acres.

H.R. 6063 will address this issue by extinguishing the Tribe's land claim to this acreage in exchange for a one-year window for the Tribe to bring its case before the United States Court of Federal Claims (CFC). The legislation would give the CFC the authority to decide whether the federal government took lands that were protected by the 1805 Treaty of Grouseland without paying the Tribe, and it would extinguish the Tribe's claim to those lands, which forever eliminates the cloud on title for the current landowners.[1]

COMMITTEE ACTION

H.R. 6063 was introduced on November 19, 2021, by Representative Betty McCollum (D–MN). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On April 27, 2022, the Subcommittee held a hearing on the bill. On June 15, 2022, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Rep. McCollum offered an amendment in the nature of a substitute. The amendment in the nature of a substitute was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by voice vote.

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[1] *See generally Hearing on H.R. 437, H.R. 6063, H.R. 6181 [Discussion Draft ANS], S. 314, S. 559, and S. 789 Before the Subcomm. for Indigenous Peoples of the U.S. of the H. Comm. on Nat. Res.,* 117th Cong. (Apr. 27, 2022) (not printed), https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=114668.

HEARINGS

For the purposes of clause 3(c)(6) of House Rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee for Indigenous Peoples of the United States held on April 27, 2022.

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) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) and clause 3(d) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee adopts as its own cost estimate the forthcoming cost estimate of the Director of the Congressional Budget Office, should such cost estimate be made available before House passage of the bill.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of Rule XIII, the general performance goals and objectives of this bill are to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.

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.

UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee, if such estimate is not publicly available on the Congressional Budget Office website.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of ArticleVI of the U.S. Constitution.

CHANGES IN EXISTING LAW

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

DISSENTING VIEWS

I oppose H.R. 6063 as ordered to be reported by the Committee on Natural Resources on June 15, 2022. H.R. 6063 purports to provide for the settlement of certain Indian land claims in the State of Illinois for the Miami Tribe of Oklahoma.

H.R. 6063 is fundamentally a waiver of the United States' immunity from a suit that could have been, but was not filed, by the Miami Tribe of Oklahoma during the period when Indian Claims Commission Act (ICCA) claims were required to be filed. It bypasses the strict bar contained in the ICCA, not only by authorizing the filing of a claim in the Court of Federal Claims, but by waiving any delay-based defense by the United States against such claims, including laches and the statute of limitation provided in the ICCA.

The Miami Tribe of Oklahoma originated in the Great Lakes region but was removed to Kansas and finally to Oklahoma by the U.S. government. In 2000, the tribe filed a lawsuit against homeowners and farmers in Illinois, claiming 2.65 million acres of the Wabash River watershed as rightfully theirs under the 1805 Treaty of Grouseland.[1] A court ruled that the tribe could only file this lawsuit against the United States—not private citizens—and the tribe voluntarily withdrew its lawsuit in 2001.

H.R. 6063 aims to settle this proposed tribal land claim, but in so doing, it would open past land claims after the statutory deadline to bring these claims has passed. This bill would confer exclusive jurisdiction to the U.S. Court of Federal Claims (CFC) for the Miami Tribe of Oklahoma's land claim arising under the Treaty of Grouseland. The court would be required to render judgement without regard to defenses based on the passage of time, including any statute of limitations. The United States is the only entity liable for such a claim, and monetary damages are the only available remedy. Jurisdiction conferred shall expire unless a claim is filed in one year.

H.R. 6063 is fundamentally a waiver of the United States' sovereign immunity from a suit that was not filed by the tribe during the period when the ICCA claims were required to be filed. The Miami Tribe was aware of the ICCA process, as it filed several claims, which resulted in cash judgments for the tribe and other tribes and identifiable groups of Indians.

Congress barred claims against the United States that pre-date August 13, 1946, and that were not filed before the Indian Claims Commission (ICC) by August 13, 1951. Section 12 of the ICCA states:

[1] Complaint for Possession of Indian Tribal Lands, Damages and Declaratory Judgment, *Miami Tribe* v. *Walden*, U.S. District Court for the Southern District of Illinois, filed 6/02/2000.

> "The Commission shall receive claims for a period of five years after the date of approval of this Act [August 13, 1946] and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by Congress." [2]

Through the ICCA, Congress intended to vest the ICC with time-limited, exclusive jurisdiction to hear Indian tribes' and identifiable groups' pre-1946 claims against the United States. The "chief purpose of the [Act was] to dispose of the Indian claims problem with finality." [3] Moreover, Congress intended "the jurisdiction of the Commission ought to be broad enough so that no tribe could come back to Congress ten years from now and say that it had a meritorious claim." [4] These Congressional goals, as well as the plain wording of Section 12 of the ICCA, firmly establish that the ICC was the only tribunal with authority to adjudicate pre-1946 Indian tribal, and identifiable group, claims against the United States.

While H.R. 6063 aims to resolve the proposed land claims of the Miami Tribe by giving them more time to file land claims, it is doing exactly what Congress intended to prevent by enacting ICCA. H.R. 6063 would open up past claims and prevent the United States from asserting a defense against these claims based on the tribe's lack of timely filing.

In addition, H.R. 6063 could make the land eligible for gaming. Section 20 of the Indian Gaming Regulatory Act of 1988 bans gaming on newly acquired trust lands, with certain exceptions. One of these exceptions is when land is acquired in settlement of a land claim. Under the land claim exception, land acquired in trust through judgment or settlement of a land claim is automatically eligible for gaming, without the consent of the state or the federal government. In effect, the bill waives the United States' immunity from suit and removes the statutory bar on the Tribe's lawsuit in the U.S. CFC over its land claim in Illinois.

For these reasons, I oppose this legislation.

BRUCE WESTERMAN.

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[2] ICCA, § 12 (emphasis added); see also Sioux Tribe v. United States, 500 F.2d 458, 489 (Ct. Cl. 1974) ("The Act provides in no uncertain terms that any claim existing prior to August 13, 1946, must be filed within five years (i.e., before August 13, 1951), and if it is not filed within that period, it cannot thereafter be submitted to any court . . . for consideration. There is no doubt about the fact that Congress intended to cut off all claims not filed before August 13, 1951.").

[3] United States v. Dann, 470 U.S. 39, 45–46 (1985) (quoting 92 Cong. Rec. 5312 (1946) and H.R. Rep. No. 1466, 79th Cong., 1st Sess., 10 (1945)).

[4] *Navajo Tribe of Indians* v. *New Mexico*, 809 F.2d 1455, 1465 (10th Cir. 1987) (quoting 92 Cong. Rec. 5312 (1946)).