

WINNEBAGO LAND TRANSFER ACT OF 2023

JANUARY 30, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1240]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1240) to transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska, 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. SHORT TITLE.

This Act may be cited as the “Winnebago Land Transfer Act of 2023”.

SEC. 2. LAND TO BE TAKEN INTO TRUST.

(a) **IN GENERAL.**—Subject to all valid existing rights, all right, title, and interest (including improvements and appurtenances) of the United States in and to the Federal lands described in subsection (b), those Federal lands—

(1) are declared to be part of the Winnebago Reservation created by the Treaty between the United States and the Winnebago Tribe in 1865; and

(2) shall be held in trust by the United States for the benefit of the Winnebago Tribe of Nebraska subject to the same terms and conditions as those lands described in the Treaty with the Winnebago Tribe, 1865 (14 Stat. 671).

(b) **FEDERAL LANDS DESCRIBED.**—The Federal lands described in this subsection are the following:

(1) That portion of Tract No. 119, the description of which is filed in the United States District Court for the Northern District of Iowa (Western Division), Civil Case No. 70-C-3015-W, executed May 11, 1973, said tract being situated in Section 8 and the accretion land thereto, the Southwest Quarter of Section 9, the West Half of Section 16, the East Half of Section 17, Township 86 North, Range 47 West of the Fifth Principal Meridian, Woodbury County, Iowa, lying Easterly of the Nebraska/Iowa State Line and Southerly of the Easterly extension of the North line of the Winnebago Reservation.

(2) Tract No. 210, as described in Schedule “A” of the “Declaration of Taking, Legal Description of Tract 210 and Judgment on Stipulation and Order of Distribution”, filed in the United States District Court for the Northern District of Iowa (Western Division), Civil Case No. 70–C–3015–W.

(3) Tract No. 113, as described in the “Judgment on Declaration of Taking and Legal Description of Tract 113”, filed in the United States District Court for the District of Nebraska, Civ. No. 03498.

(c) GAMING PROHIBITION.—Class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not be allowed at any time on the land taken into trust under subsection (a).

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1240 is to transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1240 would transfer administrative jurisdiction of approximately 1,600 acres of land from the Army Corps of Engineers in the state of Iowa to the Bureau of Indian Affairs to be held in trust for the Winnebago Tribe of Nebraska.

The Winnebago tribe of Nebraska is one of the federally recognized tribes of the Ho-Chunk people, with the reservation encompassing approximately 117,000 acres of land located in Thurston and Dixon Counties in Nebraska, and Woodbury County in Iowa. The tribe has approximately 5,300 enrolled members.¹ The Treaties of 1865² and 1874³ between the Winnebago Tribe and the U.S. government set aside land in Nebraska and Iowa for the occupation and future home of Winnebago Indians.

In 1970, the Army Corps of Engineers condemned certain land on the eastern boundary of the Winnebago reservation and Missouri River in Nebraska and Iowa through eminent domain for the Snyder-Winnebago Oxbow Lake Recreation Complex project.⁴ This project was never completed. In response, the tribe challenged the Corps of Engineers condemnation in federal court, both in Iowa and Nebraska. During the proceedings in the District Court of Nebraska, the tribe was successful in reclaiming the land as the court held that the Corps of Engineers was without authority to take tribal lands by eminent domain.⁵

In the Iowa proceedings, the tribe’s attorney entered into a stipulation in the District Court of Iowa, which conceded that the state of Iowa owned the land that was condemned by the Corps of Engineers. In return the tribe would receive a separate land selection or \$45,000. According to the tribe, their attorney was not authorized to enter into the stipulation. Additionally, the tribe neither received a different land selection nor monetary compensation.

The tribe then appealed the ruling to the Eighth Circuit Court of Appeals, which held that the Corps of Engineers illegally con-

¹“Winnebago tribe of Nebraska”, Tiller’s Guide to Indian Country, Edited and Compiled by Veronica E. Velarde Tiller (2015).

²14 Stat. 671.

³18 Stat. 170.

⁴The federal land acquisition for this project was for construction of a protective levee and water control structure that would allow for greater control of the water levels and sediment control of the Oxbow lakes in Iowa and Nebraska, as well as a public recreation area for fishing and wildlife purposes. <https://www.nwo.usace.army.mil/mrrp/site-Snyder-Winnebago-Complex/>.

⁵United States v. Winnebago Tribe of Nebraska. 542 F.2d 1002, 1006 (8th Cir. 1976).

demned the land in Iowa and that the land could only be taken by an Act of Congress and voided the stipulation. However, the court also held that because the tribe failed to properly preserve the right to appeal in the Iowa District Court proceedings, the court could not order the return of the land.⁶ These tracts are referred to as Tracts 119 and 210 in H.R. 1240 and encompass approximately 1,600 acres.

H.R. 1240 would place tracts 210 and a portion of 119 into trust for the tribe to be made part of the reservation. In addition, a formerly privately owned 60-acre tract of land, referenced as Tract 113 in H.R. 1240, that was also condemned by the Corps of Engineers, would be placed into trust, as it would be landlocked by the other tracts placed into trust under the bill.

COMMITTEE ACTION

H.R. 1240 was introduced on February 28, 2023, by Rep. Randy Feenstra (R-IA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Insular Affairs. On June 7, 2023, the Subcommittee on Indian and Insular Affairs held a hearing on the bill. On June 13, 2023, the Committee on Natural Resources met to consider the bill. The Subcommittee on Indian and Insular Affairs was discharged from further consideration of H.R. 1240 by unanimous consent. Rep. Hageman (R-WY) offered an amendment designated Hageman #1. The amendment offered by Rep. Hageman was agreed to by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

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 on Indian and Insular Affairs held on June 7, 2023.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill as the “Winnebago Land Transfer Act of 2023.”

Section 2. Land to be taken into trust

Section 2(a) provides that all right, title, and interest of the United States in and to the Federal lands described in subsection (b) shall be held in trust for the benefit of the Winnebago Tribe of Nebraska and declared to be part of the reservation as established by the Treaty of March 8, 1865.

Section 2(b) describes the lands that will be taken into trust for the Winnebago Tribe of Nebraska as a portion of Tract No. 119, Tract No. 210 in the state of Iowa, and Tract No. 113 in the state of Iowa.

⁶Bear v. United States, 810 F.2d 153 (8th Cir. 1987).

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:

H.R. 1240, Winnebago Land Transfer Act of 2023			
As ordered reported by the House Committee on Natural Resources on June 13, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1240 would transfer administrative jurisdiction of about 1,500 acres of land in Woodbury County and Monona County, Iowa, from the Army Corps of Engineers to the Bureau of Indian Affairs to take such lands into trust for the Winnebago Tribe of Nebraska. The bill would prohibit certain types of gaming on that land. Using information from the agencies, CBO estimates that the administrative costs to implement H.R. 1240 would not be significant; any spending would be subject to the availability of appropriated funds.

The transfer of that land would reduce the number of acres in the Missouri River Recovery Program, an effort to compensate for losses of fish and wildlife habitat resulting from past development. The license between the Corps and Iowa expressly prohibits any liability against the federal government if lawmakers enact legislation conveying the land to the tribe.

H.R. 1240 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) on the Winnebago Tribe of Nebraska by prohibiting gaming on tribal land in Iowa. That prohibition would apply to land being placed into trust for the benefit of the tribe under the bill. Because gaming on such land is currently allowed under federal law, the proposed ban would be a mandate. However, because the tribe has no plans to

conduct gaming on the land, the cost of the mandate would be small and below the threshold established in UMRA (\$99 million in 2023, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Julia Aman (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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 transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska, and for other purposes.

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

According to the Congressional Budget Office (CBO), H.R. 1240 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) on the Winnebago Tribe of Nebraska by prohibiting gaming on tribal land in Iowa. However, CBO estimates that the cost of the mandate would be small and below the threshold established in UMRA (\$99 million in 2023, adjusted annually for inflation).

EXISTING PROGRAMS

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.

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 Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

As ordered reported by the Committee on Natural Resources, H.R. 1240 makes no changes in existing law.

