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SENATE

{ REPORT
109-201

AMENDING PUBLIC LAW 107-153 TO MODIFY A CERTAIN DATE

DECEMBER 8, 2005.—Ordered to be printed

Filed under authority of the order of the Senate of November 18, 2005

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1892]

The Committee on Indian Affairs, to which was referred the bill (S. 1892) to amend Public Law 107-153 to modify a certain date, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1892 is to address the possibility that the statute of limitations is running or has run on legal claims that Indian tribal governments may assert against the United States, related to the management of tribal funds that are held in trust by the United States, as a result of reconciliation reports provided to the tribes by the Department of the Interior in response to Section 304 of the American Indian Trust Fund Management Reform Act of 1994, (25 U.S.C. 4044, P.L. 103-412, Title III, 304), and to further encourage the negotiated settlement of such legal claims. The bill does not address issues relating to Individual Indian Money accounts.

BACKGROUND

Congress enacted Public Law 107-153 to deem that certain reconciliation reports provided to Indian tribes beginning in January of 1996 were received no earlier than December 31, 1999. Such action was necessary to prevent the assertion that these reconciliation reports commenced the running of the statute of limitations

at a date earlier than December 31, 1999, so as to preserve Indian tribes' claims for losses to or mismanagement of their trust funds related to these reconciliation reports; to prevent the immediate filing of numerous tribal claims that would consume federal government resources better reserved for other matters; and to encourage negotiated settlements of such claims.

Because the provisions of Public Law 107-153 could arguably be interpreted to extend the period for filing of claims related to the reconciliation reports only to December 31, 2005, S. 1892 was introduced to amend Public Law 107-153 so that such reconciliation reports are deemed to have been received by an Indian tribe on December 31, 2005, adding another six years to the potential filing period. This would essentially prevent the assertion that the reconciliation reports commenced the running of the statute of limitations at a date earlier than December 31, 2005, and would prevent the potential for multiple adjudications with varying and inconsistent results, and allow the Department of the Interior and Indian tribes to continue to negotiate settlements of any potential claims related to the reconciliation reports. The Committee understands that the Department of the Interior is in negotiations with several tribes regarding the settlement of potential and real claims related to the mismanagement of tribal trust fund accounts.

The reconciliation reports at issue in Public Law 107-153 were issued by the Department of the Interior to Indian tribes beginning in January 1996 in response to section 304 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4044), which required that the Department of the Interior provide Indian tribes with reconciled account statements as of September 30, 1995. Since then, questions have arisen as to the adequacy and reliability of the reconciliation reports, and as to whether such reconciliation reports constituted an "accounting" for purposes of the language set forth in numerous Department of Interior Appropriations Acts.¹

Although it is not at all clear that the reconciliation reports at issue did in fact constitute an "accounting" sufficient to commence the running of the statute of limitations, the Committee is concerned that the immediate filing of claims could interfere with the opportunity for the United States and tribal governments to pursue continued negotiations for the settlement of tribal accounting or resource management claims. S. 1892 should not be construed to favor any one of the competing interpretations of the provisions of the appropriations acts which preclude the statute of limitations

¹To ensure that the statute of limitations did not commence to run on certain claims until Indian tribes received an accounting, various appropriations acts, beginning in 1991 and through the present, included a provision stating that the statute of limitations shall not commence to run on any claim concerning losses to or mismanagement of trust funds until the affected tribe or individual Indian has been furnished with "an accounting of such funds." See, P.L. 101-512 (Department of the Interior and Related Agencies Appropriations Act 1991); P.L. 102-154 (Department of the Interior and Related Agencies Appropriations Act 1992); P.L. 102-381 (Department of the Interior and Related Agencies Appropriations Act 1993); P.L. 103-138 (Department of the Interior and Related Agencies Appropriations Act 1994); P.L. 103-332 (Department of the Interior and Related Agencies Appropriations Act 1995); P.L. 104-134 (Omnibus Consolidated Rescissions and Appropriations Act 1996); P.L. 104-208 (Omnibus Consolidated Appropriations Act 1997); P.L. 105-83 (Department of the Interior and Related Agencies Appropriations Act 1998); P.L. 105-277 (Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999); P.L. 106-113 (Consolidated Appropriations Act for FY 2000); P.L. 106-291 (Department of the Interior and Related Agencies Appropriations Act 2001); P.L. 107-63 (Department of the Interior and Related Agencies Appropriations Act 2002); P.L. 108-7 (Consolidated Appropriations Resolution 2003); P.L. 108-108 (Department of the Interior and Related Agencies Appropriations Act 2004); P.L. 108-447 (Consolidated Appropriations Act 2005); and P.L. 109-54 (Department of the Interior and Related Agencies Appropriations Act 2006).

from commencing to run until an Indian tribe has received “an accounting of such funds.” Rather, the bill solely intends to prevent the assertion that certain reconciliation reports received by Indian tribes commenced the running of a statute of limitations prior to December 31, 2005.

LEGISLATIVE HISTORY

S. 1892 was introduced on October 19, 2005, by Senator McCain for himself and Senator Dorgan, and was referred to the Committee on Indian Affairs.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on October 27, 2005, the Committee, by voice vote, ordered that S. 1892 be reported favorably, without amendment, to the full Senate.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated November 9, 2005, was prepared for S. 1892:

S. 1892—A bill to amend Public Law 107-153 to modify a certain date

S. 1892 would effectively extend by six years the statute of limitations for certain tribal claims against the federal government related to federal management of tribal trust funds. Under the bill, tribes would have until December 31, 2011, to file such claims.

By extending the deadline for filing claims, S. 1892 could increase direct spending from the Judgment Fund for awards resulting from claims that might not otherwise be filed. Additionally, the bill could affect the timing of payments for claims that might be filed under current law. Because the effect on the number and timing of tribal claims as a result of enacting S. 1892 is uncertain, however, CBO cannot estimate the timing or magnitude of any resulting change in direct spending. S. 1892 would not affect revenues.

S. 1892 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enacting this legislation could benefit Indian tribes by giving them additional time to file claims against the federal government.

The CBO staff contact for this estimate is Mike Waters. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1892 will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has received no official executive communications on S. 1892.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 1892 will result in the following changes in the law (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic):

25 U.S.C. 4044 note (Public Law 107-153, § 1, Mar. 19, 2002, 116 Stat. 79)

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the date on which an Indian tribe received a reconciliation report for purposes of applying a statute of limitations, any such report provided to or received by an Indian tribe in response to section 304 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4044) shall be deemed to have been received by the Indian tribe on **December 31, 1999** *December 31, 2005*.

(b) STATEMENT OF PURPOSE.—Subsection (a) is solely intended to provide recipients of reconciliation reports with the opportunity to postpone the filing of claims, or to facilitate the voluntary dismissal of claims, to encourage settlement negotiations with the United States.