

## GUN LAKE TRUST LAND REAFFIRMATION ACT

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SEPTEMBER 15, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

### R E P O R T

[To accompany S. 1603]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 1603) to reaffirm that certain land has been taken into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatami Indians, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of S. 1603 is to reaffirm that certain land has been taken into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatami Indians.

#### BACKGROUND AND NEED FOR LEGISLATION

S. 1603 ratifies and confirms the trust status of a 147-acre parcel of land known as the Bradley Property for the Gun Lake Tribe of Michigan (also called the Match-E-Be-Nash-She-Wish Band of Pottawatami Indians). The Secretary of the Interior acquired the land in 2001 in trust for benefit of the Gun Lake Tribe using the authority of Section 5 of the Indian Reorganization Act of 1934 (IRA, 25 U.S.C. 465). The Bradley Property, located in Wayland, Michigan, 24 miles south of Grand Rapids, is the location for a casino operated by the tribe pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA, 25 U.S.C. 2701 et seq.). IGRA requires an Indian casino to operate on a reservation or trust land. If S. 1603 fails to be enacted, the continued operation of the Gun Lake Tribe casino will be placed in jeopardy.

The need for S. 1603 stems from what is now understood to be a likely unlawful acquisition of land by the Secretary for the Gun Lake Tribe in 2001. In 2009, the Supreme Court clarified that Section 5 of IRA does not authorize the acquisition of land in trust for a tribe, such as Gun Lake, whose members were not recognized and under federal jurisdiction on the date of enactment of IRA, or June 18, 1934. *Carcieri v. Salazar* (555 U.S. 379 (2009)).

The legislative history surrounding the development of IRA demonstrates the intent of Congress in Section 5 was to rebuild the decimated land base of Indian reservations subjected to the operation of the General Allotment Act (Dawes Act) of February 8, 1887, and related allotment laws enacted in that era of federal Indian policy. The allotment-era reservations are well-known and long-established; they are typically west of the Mississippi River in large reservations established under Act, treaty, or Executive Order, and characterized by checker-boarded land ownership stemming from the allotment process (distributing 80 or 160-acre allotments to individual Indians on the reservation) and the opening of surplus reservation lands to non-Indian homesteading.

Information provided to the Committee by the Department of the Interior does not conclusively show that Gun Lake is a tribe that was recognized and under federal jurisdiction when the IRA was enacted in 1934. Rather, the Department has provided scant information to the Committee regarding the status of any tribe in 1934 except for legal memoranda and various other records of questionable relevancy and accuracy.

Accordingly, S. 1603 is necessary for the Secretary to lawfully hold the Bradley Property in trust. Fortunately, the Secretary, agreeing with the need for the bill, supports S. 1603.

In addition to declaring the Bradley Property to be held in trust, S. 1603 would void a pending lawsuit challenging the lawfulness of the Secretary's original action to acquire the Bradley Property. The lawsuit, filed by a neighboring private landowner named David Patchak, has been dormant for most of the last two years since the U.S. Supreme Court upheld Patchak's standing to pursue the action. The legislation also forecloses, notwithstanding any other provision of law, "any action . . . relating to the land . . ." (Sec. 2(b)). While this is an unusually broad grant of immunity from lawsuits pertaining to the Bradley Property, no one has brought any concerns with the language to the attention of the Committee.

Approval of S. 1603 is not intended to validate, or set a precedent for validating or ratifying, unauthorized actions undertaken by the Secretary, including continuing actions by the Secretary which are inconsistent with *Carcieri v. Salazar* (555 U.S. 379 (2009)). The bill does not change general Indian law or policy. Rather, it ratifies the trust status of a discrete parcel of land. Section 2(c) of S. 1603 expressly provides that nothing alters the effect of *Carcieri* for any other action undertaken by the Secretary in the past, present, or future.

S. 1603 is necessary because there is no consensus in Congress on how to address *Carcieri*. Moreover, the Department of the Interior's views regarding the need for addressing *Carcieri* are inconsistent. On the one hand, the Department has submitted testimony to the committees of jurisdiction declaring strongly support for a full reversal of the Supreme Court ruling. On the other hand, in

2013 “the Bureau of Indian Affairs [announced that it] approved the 1,200th individual application since 2009 for taking land into trust for tribal governments, bringing the total to more than 208,000 acres.” (Interior press release, June 27, 2013). This amounts to more land taken into trust than by the previous Administration during the same time period. The Department cannot say it needs a reversal of Carcieri at the same time it is acquiring hundreds of thousands of acres of land in trust for tribes using the authority of the IRA. Until the conflict between the Department’s words and actions are reconciled, consideration of bills to take specific lands in trust, as long as they have the support of the elected representatives for the affected lands, tribes, and communities, is the appropriate means of resolving trust land matters.

#### COMMITTEE ACTION

S. 1603 was introduced on October 29, 2013, by Senator Debbie Stabenow (D–MI). On June 19, 2014, the bill passed the Senate by unanimous consent without amendment. The bill was then referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On July 15, 2014, the Subcommittee held a hearing on the bill. On July 30, 2014, the Natural Resources Committee met to consider S. 1603. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. Congressman Paul A. Gosar (R–AZ) offered an amendment designated .184 to the bill; the amendment was withdrawn. No further amendments were offered and the bill was adopted and 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

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

##### *S. 1603—Gun Lake Trust Land Reaffirmation Act*

S. 1603 would reaffirm the status of lands taken into trust by the Department of the Interior (DOI) for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians in the state of Michigan. The legislation also would prohibit any lawsuits related to the

trust land. In 2012, the Supreme Court ruled that DOI lacked the authority to take nearly 150 acres into trust.

Based on information provided by DOI, CBO estimates that implementing the legislation would have no significant effect on the federal budget. The legislation would not significantly increase the cost of managing tribal trust lands. Enacting S. 1603 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1603 contains an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would end rights of action for public and private entities that are currently able to pursue legal actions related to the land held in trust for the Match-E-Be-Nash-She-Wish Band of Pottawatomie Indians. The act would prohibit any action relating to the trust land from being brought or maintained in a federal court. The cost of the mandate would be any forgone compensation that would have been awarded through legal actions.

The state of Michigan and several local governments have entered into an agreement with the tribe related to the use of the land, and CBO believes it is unlikely that, absent enactment of S. 1603, any other public entity would bring an action that would result in significant compensation. Therefore, CBO estimates the cost of the intergovernmental mandate would not exceed the annual threshold established in UMRA for such mandates (\$76 million, in 2014, adjusted annually for inflation).

Private entities, however, have no such agreement, and S. 1603 would extinguish all rights to legal actions relating to the trust lands. Awards in such claims are in many cases limited to the value of the land. Because of the commercial properties located on the trust land, the value of awards related to those lands could be significant. However, because both the number of claims that could be barred or terminated and the value of forgone compensation stemming from those claims are uncertain, CBO has no basis for estimating the cost of the mandate. Therefore, CBO cannot determine whether the cost of the private-sector mandate would exceed the annual threshold established in UMRA for such mandates (\$152 million, in 2014, adjusted annually for inflation).

On June 17, 2014, CBO transmitted a cost estimate for S. 1603 as ordered reported by the Senate Committee on Indian Affairs on May 21, 2014. The versions of the legislation are similar, and the CBO cost estimates are the same.

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs), Melissa Merrell (for the state and local impact), and Mann Burnett (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by 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, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Department of the Interior, CBO estimates that implementing the legislation would have no significant effect on the federal budget.

3. 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 reaffirm that certain land has been taken into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatami Indians.

#### 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 intergovernmental unfunded mandates. The Congressional Budget Office was unable to determine if the legislation contained a private-sector mandate as defined under Public Law 104-4.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

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 in existing law.