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SENATE

REPORT
113–194

TO REAFFIRM THAT CERTAIN LAND HAS BEEN TAKEN INTO TRUST FOR THE BENEFIT OF THE MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS, AND FOR OTHER PURPOSES

JUNE 17, 2014.—Ordered to be printed

Mr. TESTER, from the Senate Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany S. 1603]

The Committee on Indian Affairs, to which 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 Pottawatomi Indians, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

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 Pottawatomi Indians, and for other purposes.

BACKGROUND

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe) is a federally recognized tribe residing in rural Michigan. In 1998, the Department of the Interior recognized the Tribe through the administrative federal acknowledgement process. Two years later, the Tribe filed an application with the Department of the Interior to place a tract of land, known as the Bradley Property, into trust pursuant to the Indian Reorganization Act.

The trust acquisition by the Secretary was quickly challenged by an anti-gaming organization and a neighboring landowner. These

challenges resulted in numerous court decisions, culminating in the United States Supreme Court's decision in *Patchak* v. *Salazar*. The *Patchak* decision ultimately provided the neighboring landowner legal standing to challenge the Secretary's trust acquisition for the Tribe. That challenge is currently pending before a federal district court, and places in jeopardy the Tribe's only tract of land held in trust and the economic development project that the Tribe is currently operating on the land.

S. 1603 would ratify and confirm the Secretary's acquisition of the tract of land in trust for the Tribe. The bill would provide certainty to the legal status of the land, on which the Tribe has begun gaming operations as a means of economic development for its community.

The Senate Committee on Indian Affairs held a hearing on the bill on May 7, 2014, where the Tribe and the Department of the Interior testified in support of the bill.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This Act may be cited as the "Gun Lake Trust Land Reaffirmation Act."

Section 2—Reaffirmation of Indian Trust Land

The land taken into trust by the United States for the benefit of the Tribe and described in the final Notice of Determination of the Department of the Interior (70 Fed. Reg. 25596 (May 13, 2005)) is reaffirmed as trust land, and the actions of the Secretary of the Interior in taking that land into trust are ratified and confirmed.

Notwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land shall not be filed or maintained in a Federal court and shall be promptly dismissed.

Nothing in this Act alters or diminishes the right of the Tribe from seeking to have any additional land taken into trust.

LEGISLATIVE HISTORY

S. 1603 was introduced on October 29, 2013, by Senator Debbie Stabenow (D–MI) and Senator Carl Levin (D–MI). The bill was referred to the Committee on Indian Affairs. On May 7, 2014, the committee held a hearing on the bill. On May 21, 2014, the committee met to consider the bill. No amendments were offered, and the bill was adopted and ordered reported favorably to the Senate by voice vote. On June 12, 2014, the bill was reported and placed on the Senate Legislative Calendar.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated June 17, 2014, was prepared for S. 1603:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 2014.

Hon. JON TESTER,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1603, the Gun Lake Trust Land Reaffirmation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

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 Pottawatomi Indians. The bill 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 the bill, 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 the bill 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 deter-

mine 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).

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs), Melissa Merrell (for the state and local impact), and Marin Burnett (for the private-sector impact). The estimate was approved by Theresa Gullo, 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 each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1603 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1603.

CHANGES IN EXISTING LAW (CORDON RULE)

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1603 will not make any changes in existing law.

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