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WOUNDED KNEE MASSACRE MEMORIAL AND SACRED SITE ACT

OCTOBER 2, 2025.—Ordered to be printed

Mrs. MURKOWSKI, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany H.R. 165]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (H.R. 165) to direct the Secretary of the Interior to complete all actions necessary for certain land to be held in restricted fee status by the Oglala Sioux Tribe and Cheyenne River Sioux Tribe, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

H.R. 165 would place approximately 40 acres of the Wounded Knee massacre site, currently owned in fee by the Oglala Sioux Tribe and Cheyenne River Sioux Tribe, into restricted fee status.

BACKGROUND AND NEED

In 1868, the United States entered into the Treaty of Fort Laramie with the Sioux Nation.[1] In exchange for ceding thousands of acres of land, among other promises, to the United States, the Treaty established the Great Sioux Reservation in western South Dakota, which was "set apart for the absolute and undisturbed use and occupation" as a "permanent home" for the Nation.[2] The Reservation was ultimately divided into six separate reservations in

[1] 15 Stat. 635 (Feb. 16, 1869) (Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee Sioux bands and the Arapaho).
[2] *Id.*, Arts. 2, 7.

North and South Dakota, including the Pine Ridge and Cheyenne River Indian Reservations, by the Act of March 2, 1889.[3]

Despite the Treaty, tensions between non-Indian settlers, federal agents, and the Sioux bands continued. On December 28, 1890, Chief Spotted Elk (Big Foot) and his Miniconjou Sioux band were stopped by the U.S. Army's Seventh Cavalry on their way to Pine Ridge Indian Reservation in South Dakota. Major Samuel M. Whitside ordered Chief Spotted Elk and his people to camp near Wounded Knee Creek. Chief Spotted Elk objected and told him that they were headed to Pine Ridge and would camp there. Major Whitside refused and ordered them to camp at Wounded Knee overnight.[4]

On December 29, 1890, 7th Calvary troops were sent to disarm the Lakota due to non-Indian settler concern over potential armed attack. A struggle occurred between the U.S. Army and some of Chief Spotted Elk's band, and the U.S. Army opened fire on this largely unarmed group, massacring hundreds of Lakota men, women, and children. Those who tried to escape were hunted down and killed by the U.S. Army.

On the 100th anniversary of the massacre, Congress issued a formal apology, expressing deep regret for the actions of the federal government and acknowledging the historical significance of this event as the last armed conflict of the Indian wars.[5]

In September 2022, the Oglala Sioux Tribe and Cheyenne River Sioux Tribe purchased a portion of the land where the massacre occurred, in fee simple title, from a private owner. On October 21, 2022, both Tribes signed a covenant providing that the property will be maintained as a memorial and sacred site without any commercial development, including gaming.[6]

Legislation is needed in order to place the 40-acre Wounded Knee Massacre site into restricted fee status for the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe.[7]

SUMMARY

H.R. 165 directs the Secretary of the Interior to place the 40-acre Wounded Knee Massacre site into restricted fee status for the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe. H.R. 165 defines restricted fee status to mean that the two Tribes retain ownership of the land, the lands are part of the Pine Ridge Indian Reservation. The use of the lands is limited to those uses outlined in the October 2022 covenant, which states the lands will be held and maintained as a memorial and sacred site without commercial development, and the lands cannot be used for gaming.

LEGISLATIVE HISTORY

H.R. 165 was introduced by Representative Johnson (R–SD) on January 3, 2025. H.R. 165 passed the House of Representatives on a vote of 416–0 on January 21, 2025. H.R. 165 was received in the

[3] Act of March 2, 1889 (25 Stat. 888).

[4] *See, eg.*, Louis S. Warren, "The Lakota Ghost Dance and the Massacre at Wounded Knee," PBS, American Experience, Apr. 16, 2021. Available at: https://www.pbs.org/wgbh/americanexperience/features/american-oz-lakota-ghost-dance-massacre-wounded-knee/.

[5] S. Con. Res. 153 101st Cong. (1990).

[6] Covenant Between the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe Concerning the Czywczynski Property at Wounded Knee (Oct. 21, 2022), on record with the Committee.

[7] Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).

Senate and referred to the Committee on Indian Affairs on January 23, 2025. The Committee held a business meeting on March 5, 2025, to consider H.R. 165 and ordered the bill to be reported favorably, without amendment, by voice vote.

An identical bill, S. 105, was introduced by Senators Rounds and Thune on January 15, 2025. The Committee held a business meeting on March 5, 2025, to consider S. 105 and ordered the bill to be reported favorably, without amendment, by voice vote.

In the 118th Congress, an identical bill, H.R. 3371, was introduced by Representative Johnson (R–SD) in the House of Representatives on May 16, 2023. H.R. 3371 was referred to the House Committee on Natural Resources. The House Natural Resources Committee Subcommittee on Indian and Insular Affairs held a hearing on H.R. 3371 on June 7, 2023. H.R. 3371 was considered at a markup in the House Natural Resources Committee, on June 13, 2023, and ordered reported favorably by unanimous consent, without amendment. H.R. 3371 passed the House of Representatives by voice vote on September 14, 2023. H.R. 3371 was received in the Senate and referred to the Committee on Indian Affairs.

Senators Rounds and Thune introduced S. 2088, an identical bill to H.R. 3371, on June 21, 2023. The Committee held a hearing on S. 2088 on July 19, 2023 (S. Hrg. 118–170). On November 15, 2023, the Committee held a business meeting to consider S. 2088 and ordered the bill to be reported favorably, without amendment, by voice vote (S. Rept. No. 118–208).

COMMITTEE RECOMMENDATION

The Senate Committee on Indian Affairs in an open business meeting on March 5, 2025, by a majority voice vote of a quorum present, recommends that the Senate pass H.R. 165, without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section establishes the short title of the bill as, the "Wounded Knee Massacre Memorial and Sacred Site Act."

Section 2—Definitions

This section provides definitions for the terms used in the bill.

Section 3—Land held in restricted fee status by the tribes

This section directs the Secretary of the Interior place into restricted fee status, not later than one year after enactment of the legislation, approximately 40 acres of land that is currently jointly owned in fee simple title by the Oglala Sioux Tribe and Cheyenne River Sioux Tribe. The bill also clarifies that the land shall be subject to restrictions against alienation; limited to the purposes described in the 2022 covenant between the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe;[8] subject to existing encumbrances, rights-of-way, or other restriction or use; and subject to a

[8] Covenant Between the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe, supra note 6, at page 2.

prohibition against gaming under the Indian Gaming Regulatory Act.[9]

COST AND BUDGETARY CONSIDERATIONS

H.R. 165, Wounded Knee Massacre Memorial and Sacred Site Act
As ordered reported by the Senate Committee on Indian Affairs on March 5, 2025

By Fiscal Year, Millions of Dollars	2025	2025-2030	2025-2035
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2036?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2036?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No

* = between zero and $500,000.

H.R. 165 would direct the Department of the Interior (DOI) to place approximately 40 acres of land owned by the Oglala Sioux and Cheyenne River Sioux Tribes in restricted fee status. The two tribes would retain ownership of the land, and the land could not be transferred without the consent of the Congress and the tribes. H.R. 165 would limit the use of the land to a memorial and sacred site and prohibit commercial development and gaming activity as outlined in a covenant signed in October 2022. The act also would require DOI to make any necessary corrections to the survey and legal description of the land. Using information from the department, CBO estimates that the administrative costs to implement H.R. 165 would not be significant.

H.R. 165 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). The act would prohibit state and local governments from taxing land placed into restricted fee status for the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe. Information from Oglala Lakota County about taxes and other receipts associated with the land indicates that those foregone revenues would total less than $100,000 annually, well below the annual intergovernmental threshold established in UMRA ($103 million in 2025, adjusted annually for inflation).

The act contains no private-sector mandates.

On April 3, 2025, CBO transmitted a cost estimate for S. 105, the Wounded Knee Massacre Memorial and Sacred Site Act, as ordered reported by the Senate Committee on Indian Affairs on March 5, 2025. The two pieces of legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contacts for this estimate are Julia Aman (for federal costs) and Rachel Austin (for mandates). The estimate was re-

[9] Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721 (1988).

viewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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 H.R. 165 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE TESTIMONY AND COMMUNICATIONS

The testimony provided by the U.S. Department of the Interior from the July 19, 2023, hearing on S. 2088 follows:

STATEMENT OF WIZIPAN GARRIOTT PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS U.S. DEPARTMENT OF THE INTERIOR

S. 2088—Wounded Knee Massacre Memorial and Sacred Site Act

Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Wizipan Garriott, and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony regarding S. 2088, Wounded Knee Massacre Memorial and Sacred Site Act.

In October 2022, the Oglala Sioux Tribe and Cheyenne River Sioux Tribe of the Cheyenne River Reservation (Tribes) acquired approximately 40 acres of land in Wounded Knee, South Dakota. The lands are significant to both Tribes as more than 300 Lakota people were lost at the site in 1890. The Tribes acquired the land from private owners and plan to maintain the site as a memorial and sacred site protected from commercial development.

S. 2088 directs the Secretary of the Interior, within one year, to complete and make any corrections to the survey and legal description of the land and any other necessary actions for the land to be held by the Tribes in restricted fee status. S. 2088 defines restricted fee status to mean that the two Tribes retain ownership of the land, the lands are part of the Pine Ridge Indian Reservation and subject to civil and criminal jurisdiction of the Oglala Sioux Tribe, cannot be transferred without the consent of Congress and the Tribes, is not subject to State or local taxation, and is not subject to any law requiring the review or approval of the Secretary of the Interior for the Tribes to use the land as allowed by the covenant the Tribes entered into on October 21, 2022. The use of the lands is limited by S. 2088 to those outlined in the October 2022 covenant, which states the lands will be held and maintained as a memorial and sacred site without commercial development, and the lands cannot be used for gaming activities under the

Indian Gaming Regulatory Act. The Department supports S. 2088 as it aligns with the Administration's commitment to restore Tribal homelands. The Tribes will have more authority to honor and protect the Wounded Knee site.

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

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