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SENATE

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TO REAFFIRM THE INHERENT SOVEREIGN RIGHTS OF THE OSAGE TRIBE TO DETERMINE ITS MEMBERSHIP AND FORM OF GOVERNMENT

SEPTEMBER 15, 2004.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 2912]

The Committee on Indian Affairs, to which was referred the bill (H.R. 2912) to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government, having considered the same, reports favorably thereon without amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of H.R. 2912 is to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2912 affirms the right of the Osage Tribe (the “tribe”) to form its own membership rules and tribal government, provided that no rights to any shares in the mineral estate of the tribe’s reservation are diminished.

The tribe is a Federally recognized tribe with a nearly 1.5 million-acre reservation located in northeast Oklahoma. In 1906, Congress enacted the Osage Allotment Act (“1906 Act”), which is unique among Federal Indian laws in that it restricts the Osage Tribe from defining its own membership rules, and prescribes a particular form of government which the tribe cannot change without seeking amendment of Federal law.

All other Federally recognized Indian tribes in the nation generally have the sovereign right to make their own internal member-

ship rules and to form suitable tribal governments. In brief, the 1906 Act—

—Defined the legal membership of the tribe to consist of all living Osage Indians who were on the Secretary of the Interior's 1906 roll for the tribe, plus their children born before July 1, 1907;

—Allotted a certain amount of surface land in the Osage Reservation to the tribal members;

—Provided that the tribe retained all mineral rights to the entire reservation in undivided ownership; and

—Provided for the distribution of royalties from the development of mineral resources to each of the enrollees, such shares in the royalties are called "headright shares."

U.S. Federal court decisions have interpreted the 1906 Act to mean that Congress took away the tribe's right to determine its own membership rules. The only individuals who may be members of the tribe and participate in the tribal government are those who are the lineal descendants of the original enrollees under the 1906 Act and who have a headright share of the mineral revenues from the reservation.

As a result, the 1906 Act excludes many thousands of Osage Indians from being members of the tribe because they do not have headright shares. Ironically, in the eyes of the Federal government, such individuals (including full-blooded Osages) are not "Indians" because one must be a member of a Federally-recognized tribe to be an Indian.

Those Osages who are precluded from being members of the tribe under the terms of the 1906 Act are thus denied important services and benefits, such as Native American academic scholarships, and more importantly, a role in participating in the life and government of the tribe.

Without clarifying the 1906 Act, the tribe is prevented from exercising its prerogatives as an Indian tribal government and individual Osages are prevented from the full enjoyment of their rights and privileges owing to their rightful membership in the Osage tribe.

H.R. 2912 clarifies the 1906 Act and re-affirms the right and authority of the tribe to craft its own membership, governance, and governmental rules on the same footing as all other Federally-recognized tribes. The bill provides that no individual Osage's rights to shares in the mineral estate are diminished by the exercise of the tribe's re-affirmed authority to determine its own membership.

The bill also directs the Secretary of the Interior to assist the tribe in holding appropriate elections and referenda at the request of the tribe.

LEGISLATIVE HISTORY

H.R. 2912 was introduced on July 25, 2003, by Congressman Frank Lucas (R-OK) and referred to the Committee on Resources. On March 15, 2004, that Committee held a hearing on the bill, and on May 5, 2004, the bill was favorably reported to the House of Representatives by unanimous consent. See H. Rpt. 108-502. On June 1, 2004, the House of Representatives passed the bill, and when it came to the Senate it was referred to the Committee on Indian Affairs.

On July 14, 2004, the Committee on Indian Affairs favorably reported H.R. 2912 to the Senate with recommendation that it do pass.

COMMITTEE RECOMMENDATION

The Senate Committee on Indian Affairs, in open business session on July 14, 2004, by a unanimous voice vote of a quorum present, considered the bill and ordered H.R. 2912, in the form of a substitute amendment, reported to the Senate with favorable recommendation that it be passed.

COST AND BUDGETARY CONCERNS

The costs estimate for H.R. 2912, as provided by the Congressional Budget Office, is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2912, an act to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

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

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2912—An act to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government

H.R. 2912 would enable the Osage Tribe to determine the tribe's membership roll and government rules in the same manner as other federally recognized tribes. In 1906, the Congress enacted the Osage Allotment Act that defined membership in the Osage Tribe. Under that act, Osage Indians may be legal members of the tribe and participate in the tribal government only if they are lineal descendants of the original enrollees under the 1906 act and own a share of the mineral revenues from the reservation. CBO estimates that implementing H.R. 2912 would have no effect on the federal budget because federal agencies currently provide services to all Osage Indians and do not restrict services to those considered to be members of the tribe under the Osage Allotment Act. Enacting H.R. 2912 would not affect revenues or direct spending.

H.R. 2912 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 would benefit the Osage Tribe.

On May 17, 2004, CBO transmitted a cost estimate for H.R. 2912, as ordered reported by the House Committee on Resources on

May 5, 2004. The two versions of the legislation and the CBO cost estimates are identical.

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

EXECUTIVE COMMUNICATIONS

The Committee has received no executive communications relating to H.R. 2912.

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 and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory and paperwork impact of H.R. 2912 will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of H.R. 2912 will not effect any changes in existing law.