

PROVIDING FOR THE USE AND DISTRIBUTION OF CERTAIN FUNDS
AWARDED TO THE GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY,
AND FOR OTHER PURPOSES

MARCH 10, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 162]

The Committee on Indian Affairs, to which was referred the bill (S. 162) to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, 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. 162 is to authorize the Gila River Indian Community to distribute a \$7 million judgment award to eligible Community members as required by the Indian Tribal Judgment Funds Use or Distribution Act and to waive the repayment of expert assistance loans made by the Department of the Interior to the Community.

BACKGROUND AND NEED

In 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission asserting a claim for the failure of the United States to protect the Community's use of water from the Gila and Salt Rivers. In 1972 and 1982, the Indian Claims Commission and U.S. Court of Claims found the United States liable to the Community regarding the claims made in the final two dockets of the litigation, Dockets 236 C and 236 D, respectively.

In 1999, the Community agreed to a monetary settlement in the amount of \$7 million. Final judgment was entered against the United States in that amount, and the Department of Treasury certified the payment of \$7 million, less attorneys fees, to be deposited in a trust account on behalf of the Community, which is currently being managed by the Office of Trust Funds Management at the

Department of Interior. S. 162 is the final step in resolving litigation that began in 1951 and this legislation represents the product of close consultation between the Community and the Bureau of Indian Affairs regarding the structure and content of the distribution plan. The per capita distribution authorized in S. 162 would result in a distribution of approximately \$400 per eligible tribal member.

The Community has experienced delays in finalizing the enrollment data and establishing the distribution plan set forth in the bill. Passage of S. 162 has become one of the Community's highest priorities.

LEGISLATIVE HISTORY

S. 162 was introduced on January 15, 2003, by Senator McCain and was referred to the Committee on Indian Affairs.

Section-by-section analysis

Sec. 1. Short Title; Table of Contents. The short title of S. 162 is the Gila River Indian Community Judgment Fund Distribution Act of 2003. The bill is divided into three titles preceded by a findings and definition section.

Sec. 2. Findings. There are 8 separate findings in the bill. These findings recite the history of the water claims brought by the Gila River Pima-Maricopa Indian Community against the United States on August 8, 1951 before the Indian Claims Commission in *Gila River Pima-Maricopa Indian Community v. United States*. These findings also describe the history of the claim, the establishment of liability against the United States on claims 236 C (1972) and 236 D (1982), the Community's settlement of dockets number 236 C and 236 D for a total of \$7,000,000 (April 27, 1999), the entry of a final judgment of \$7,000,000 against the United States (May 3, 1999), and the certification of \$7,000,000 payment, less attorney fees, and establishment of a trust account for the Community managed by the Department of Interior (October 6, 1999).

The findings conclude by reciting that the Secretary is required to submit a use and distribution plan to Congress for approval before funds can be distributed to individual Indians.

Sec. 3. Definitions. The bill defines "adult", "community", "Community owned funds", "IIM account", "judgment funds", "legally incompetent individual", "minor", "payment roll", and "Secretary". The definition of "Community-owned funds" has been amended and narrowed by the Committee from the original version of the bill as introduced to include revenues held by the Community that are derived from trust resources and which qualify for an exemption under section 7 or 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408). These "Community-owned funds" are the basis for per capital payments under the Act to adults and for transfer in trust to the Secretary for minors, deceased beneficiaries and incompetent individuals who are eligible for payment but who have not been listed on the final roll.

The Department of the Interior raised concerns about the former definition of "Community-owned funds" because it included revenues derived from "Community-owned enterprises" which potentially could have included revenues derived by the Community from taxable gaming activities. The Department was concerned that under the terms of S. 162 the Secretary is required to hold

these gaming revenues in a tax exempt trust account which later was to be paid to individual Indians on a per capita basis. The Department was also concerned that the mixing of exempt and non-exempt funds could change the status of these per capita funds from exempt to non-exempt, thus making them taxable to the recipient.

The Committee intends to make clear that these funds are eligible to be exempt from taxation by amending and narrowing the definition of “community-owned funds” to include only those funds derived from sources already exempt from taxation.

Title I—Gila River judgment fund distribution

Section 101: Distribution of judgment funds (a) Per Capita Payments. Section (a) authorizes the distribution of the judgment fund amount, less attorneys fees and litigation expenses, including all accrued interest, to all eligible enrolled members of the Community on a per capital basis.

(b) Preparation of Payment Roll. Requires the Community to prepare the payment roll of eligible enrolled members according to specific criteria, and includes a description of individuals who shall be deemed ineligible to receive per capita payments.

(c) Notice to the Secretary. Requires the Community to notify the Secretary of Interior of the total number of individuals eligible to share in the per capita distribution after the Community’s preparation of the payment roll, and requires that such data be broken down into subdivisions reflecting the number of individuals falling within the following categories: eligible adult members, deceased individuals, legally incompetent individuals, and minors.

(d) Information Provided to the Secretary. Requires the Community to provide the Secretary of Interior with information necessary to allow the Secretary to establish estate accounts for deceased individuals and Individual Indian Money (IIM) accounts for legally incompetent individuals and minors.

(e) Disbursement of Funds. Requires the Secretary to disburse to the Community those funds necessary to make the per capita payments, not later than 30 days after the payment roll has been approved by the Community and the Community has reconciled the number of shares that belong in each payment category. Provides that once the funds are disbursed to the Community, the Community shall be responsible for administering and distributing the funds.

(f) Shares of Deceased Individuals. Requires the Secretary of Interior to distribute per capita shares of deceased individuals to their heirs and legatees in accordance with existing regulations. Where there are no heirs, provides that funds revert to the Community and shall be deposited in the Community’s general fund.

(g) Shares of Legally Incompetent Individuals. Requires the Secretary of Interior to deposit shares of legally incompetent individuals into supervised IIM accounts to be administered pursuant to existing regulations.

(h) Shares of Minors. Requires the Secretary of Interior to deposit shares of minors into supervised IIM accounts and requires the Secretary to hold these funds in trust until the minor attains the age of 18 years. Provides that section 3(b)(3) of the Indian Tribal Judgment Funds Distribution Act does not apply, the effect of

which is to prevent parents and guardians of minors from being able to receive any judgment funds on behalf of minors before they reach the age of 18 years.

(i) Payment of Eligible Individuals Not Listed on Payment Roll. Provides that individuals not listed on the payment roll but eligible for payment may be paid from any residual principal or interest fund remaining after the Community has made its per capita distribution and established its trust accounts.

If insufficient judgment funds remain to cover the cost of payments, the Community is authorized to use Community-owned funds as defined by section 3(3) of the bill to make these payments. In the case of minors, legally incompetent individuals, and deceased individuals, the Secretary of Interior is authorized to accept and deposit Community-owned funds into an IIM or estate account established for a minor, legal incompetent or deceased beneficiary eligible to receive payment but not listed on the payment roll. Provides that the Secretary shall invest these trust funds pursuant to existing law.

As indicated in the discussion under Section 3 “definitions”, the Committee has amended the definition of “Community-owned funds” under section 3(3)(B) so that payments under this section may only be made by the Community with funds derived from trust resources which qualify for tax exempt status under 25 U.S.C. 1407 and 1408.

(j) Use of Residual Funds. Allows for the transfer of residual funds from the Department of Interior to the general fund of the Community if the governing body of the Community makes such a request of the Secretary and adopts a tribal council resolution reaffirming its desire to have these residual funds transferred. The bill as introduced was amended to require the Community council to enact a tribal resolution manifesting its intention to have these residual funds transferred into the general fund of the Community.

(k) Reversion of Per Capita Shares to Tribal Ownership. Enables the transfer of funds held in trust and the interest accrued thereon by the Secretary to the Community if the per capita share is unclaimed for a minimum period of 6 years. A new section was added to clarify that a minimum of six years must pass before the Community may request that these unclaimed funds be transferred into the general fund of the Community. Section (k) “Non-applicability of Certain Law” was deleted because that section was rendered superfluous by the changes adopted to the definition of “Community-owned funds” under section 3(3)(b).

Sec. 102. Responsibility of Secretary; applicable law (a) Responsibility for Funds. Provides that after disbursement of funds by the Community to eligible adult living members as provided under section 101(e)(1), the Secretary shall no longer have trust responsibility for those judgment funds.

(b) Deceased and Legally Incompetent Individuals. Provides that Secretary shall continue to have a trust responsibility for funds retained in accounts for deceased beneficiaries and legally incompetent individuals until the date on which those funds are disbursed under the Act.

(c) Applicability of other Law. Provides that pursuant to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act, that all funds distributed under the Act, including all interest

and investment income thereon, shall be considered tax-exempt income to individual recipients.

Title II—Conditions relating to Gila River Indian Community judgment fund plans

Section 201. Amendment to plan for use and distribution of judgment funds awarded in Docket 228 (a) Definition of Plan. “Plan” means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 as modified by Public Law 99–493 (100 Stat. 1241).

(b) Conditions. Adds conditions providing that section 3(b)(3) of the Indian Tribal Judgment Funds Use and Distribution Act shall not apply to minors’ per capita shares held by the Secretary under the plan (effect is to prevent shares from being distributed to parents and guardians of minors prior to age 18), mandates the Secretary hold the minors’ per capita shares in trust until age 18 is attained by the minor, mandates the Secretary not disburse judgment funds or interest earned until the age 18 years is attained by the minor, and mandates that upon the Community’s request, any residual principal and interest funds remaining after the Community has declared the per capita payments have been completed shall be distributed to the Community and deposited into the Community’s general fund.

Section 202. Plan for use and distribution of judgment funds awarded in Docket 236 N (a) Definition of Plan. “Plan” means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236 N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

(b) Conditions. Adds conditions to require amendments to the plan to authorize disbursement of residual principal and interest to the Community. Adds further conditions providing that the provisions of the Indian Tribal Judgment Funds Act permitting payment to parents and legal guardians of minors shall not be applicable, and requires the Secretary to hold these minors’ shares in trust until these minors attain the age of 18 years.

Title III—Waiver of expert assistance loans

Section 301. Waives repayment by the Gila River Indian Community of expert assistance loans made by the Department of Interior to the Community. This section of S. 162 was amended to remove provisions pertaining to waivers of repayment for two other tribes in order to have the terms of S. 162 pertain only to the Gila River Indian Community.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on February 26, 2003, ordered S. 162 to be reported favorably to the Senate.

COST AND BUDGETARY CONSIDERATIONS

On February 28, 2003, the cost estimate of the Congressional Budget Office was received and a copy of that estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 28, 2003.

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 S. 162, the Gila River Indian Community Judgment Fund Distribution Act of 2003.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 162—Gila River Indian Community Judgment Fund Distribution Act of 2003

S. 162 would waive the repayment of expert assistance loans made to the Gila River Indian Community. Currently, the tribe owes the Department of the Interior about \$700,000 in principal and interest on loans provided to pay the expenses of expert witnesses in the tribe's claims against the federal government. CBO estimates that enacting this provision would increase direct spending by about \$700,000 over the next couple of years when the government would otherwise receive this repayment.

S. 162 also would establish procedures for the distribution of about \$7 million in judgment awards held in a trust fund on behalf of the members of the Gila River Indian Community. Under current law, the funds cannot be spent or distributed by the tribes until the Congress approves a plan to allocate the funds. The trust fund is held and managed in a fiduciary capacity by the federal government on behalf of the tribe and is treated in the budget as a nonfederal entity. As a result, outlays were recorded on the budget when the judgments were awarded to the tribe and paid into those funds, and there is no budgetary impact when the money is distributed to the individual members of the tribe. Therefore, CBO estimates that enacting this provision would have no effect on the federal budget.

S. 162 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 S. 162 would benefit the Gila River Indian Community by providing for the distribution of judgment funds.

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

EXECUTIVE COMMUNICATIONS

There are no executive communications received on this legislation.

REGULATORY AND PAPERWORK IMPACT

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 implementing the bill. The Committee finds that S. 162 will not require the promulgation of regulations so the regulatory and paperwork impact should be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by a bill are required to be set forth in the accompanying committee report. S. 162 effects no changes in existing law.

