

TO AMEND PUBLIC LAW 107-153 TO FURTHER ENCOUR-
AGE THE NEGOTIATED SETTLEMENT OF TRIBAL
CLAIMS

DECEMBER 6, 2005.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 4292]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4292) to amend Public Law 107-153 to further encourage the negotiated settlement of tribal claims, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4292 is to amend Public Law 107-153 to further encourage the negotiated settlement of tribal claims.

BACKGROUND AND NEED FOR LEGISLATION

In consequence of certain treaties, statutes, executive orders, and continuous dealings with Indian tribes, the United States through the Department of the Interior holds legal title to more than 50 million acres of lands in trust for tribes and individual Indians. The revenues derived from these assets, and the accounts into which these revenues are deposited, are also held in trust by the federal government.

Tribes currently have nearly \$2.5 billion in the tribal trust accounts managed by the Department of the Interior. For years, many tribal governments and individual Indians claimed that the Department had mismanaged their trust assets and that the Department could not provide sufficient accounting reports. Beginning

in the late 1980s, Congress began requiring the Interior Department to reconcile all Indian accounts.¹

In 1996, the Department began sending accounting reconciliation reports to tribes. The General Accounting Office (now called the Government Accountability Office) reviewed these efforts and found that a reliable and complete accounting for the tribes' accounts could not be assured. Without a sufficient accounting, tribes would not have reliable means to determine if their assets had been correctly managed by the federal government.

To protect their right to a proper accounting, by 2002 tribes began filing lawsuits to force a complete accounting of tribal accounts. They did so over concerns that a six-year statute of limitations had begun running on their accounting claims in 1996, the year when they began receiving the Department's accounting reports.

To stem the potential avalanche of lawsuits, Congress enacted Public Law 107-153. Public Law 107-153 deemed December 31, 1999, to be the date on which tribes received the accounting reports. This effectively gave tribes until December 31, 2005, to negotiate settlements with the United States before their claims could be barred by the statute of limitations. In other words, the law was meant to encourage negotiation instead of litigation.

For a number of reasons, tribes and the federal government have yet to reach settlements of the accounting claims. There is a great possibility that many tribes will file lawsuits before December 31, 2005, to protect such claims from being time-barred by the statute of limitations.

H.R. 4292 amends Public Law 107-153 to deem December 31, 2005, to be the date upon which tribes received tribal accounting reports from the Federal Government. This effectively begins a new six-year running of the statute of limitations. With a new six-year time-clock set, tribes will not feel compelled to file lawsuits before the end of 2005 to protect the viability of their claims. An avalanche of lawsuits is not in the interest of the tribes, the Administration, and U.S. district courts (and appellate courts) that would have to address them.

COMMITTEE ACTION

H.R. 4292 was introduced on November 10, 2005, by Resources Committee Chairman Richard W. Pombo (R-CA). The bill was referred to the Committee on Resources. On November 16, 2005, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

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 Resources' oversight findings and recommendations are reflected in the body of this report.

¹ Although the Department is responsible for both accounting for both tribal and individual Indian accounts held in trust, the accounting for tribal accounts was separated from accounting for individual Indians, which is being adjudicated in *Cobell v. Norton*. The Cobell accounting claims are not addressed by H.R. 4292.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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)(3)(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.

2. 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, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill could result in some unspecified amount of direct spending.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. 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:

H.R. 4292—A bill to amend Public Law 107–153 to further encourage the negotiated settlement of tribal claims

H.R. 4292 would effectively extend by six years the statute of limitations for certain tribal claims against the federal government related to federal management of tribal trust funds. Under the bill, tribes would have until December 31, 2011, to file such claims.

By extending the deadline for filing claims, H.R. 4292 could increase direct spending from the Judgment Fund for awards resulting from claims that might not otherwise be filed. Additionally, the bill could affect the timing of payments for claims that might be filed under current law. Enacting the bill also could lead to negotiated settlements rather than additional lawsuits against the federal government. CBO has no basis for estimating the bill's effect on the number and timing of tribal claims or settlements, and we therefore cannot estimate the timing or magnitude of any resulting change in federal spending. H.R. 4292 would not affect revenues.

H.R. 4292 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 could benefit Indian tribes by giving them additional time to file claims against the federal government.

On November 9, 2005, CBO transmitted a cost estimate for S. 1892, a bill to amend Public Law 107–153 to modify a certain date, as ordered reported by the Senate Committee on Indian Affairs on

October 27, 2005. The two pieces of legislation are similar, and their effects on the federal budget would be identical.

The CBO staff contact for this estimate is Mike Waters. The estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF MARCH 19, 2002

(Public Law 107-153)

AN ACT To encourage the negotiated settlement of tribal claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SETTLEMENT OF TRIBAL CLAIMS.

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the date on which an Indian tribe received a reconciliation report for purposes of applying a statute of limitations, any such report provided to or received by an Indian tribe in response to section 304 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4044) shall be deemed to have been received by the Indian tribe on **December 31, 1999** *December 31, 2005*.

* * * * *