



Legislative Bulletin.....June 25, 2008

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H.R. 2176—To provide for and approve the settlement of certain land claims of the Bay Mills Indian Community

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: 0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 2176—To provide for and approve the settlement of certain land claims of the Bay Mills Indian Community (*Stupak, D-MI*)

Order of Business: H.R. 2176 is scheduled to be considered on Wednesday, June 25, 2008, **subject to a closed rule** ([H.Res. 1298](#)), which allows one amendment in the nature of a substitute with the text of H.R. 4115 added to the bill. The rule provides for one hour of debate with 40 minutes divided equally between the Chairman and Ranking Member of the Committer on Natural Resources and 20 minutes divided equally between the Chairman and Ranking Member of the Committee on the Judiciary. The rule waives all points of order against the bill and against its consideration (except those for PAYGO and earmarks). The rule provides for one

motion to recommit the bill, with or without instructions, and allows the Chair to postpone consideration at any time.

Summary: H.R. 2176 (which includes the text of H.R. 4115, a bill to provide for and approve the settlement of certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians) would ratify a land swap between the State of Michigan and two Indian tribes—the Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community. The swap would require the tribes to surrender their claim to 110-acres of land in Northern Michigan in exchange for a parcel of land 63 miles north of Detroit, in Port Huron, Michigan, and a parcel of land 20 miles east of Detroit, in Romulus, Michigan. The new parcels of land, which are each more than 350 miles from the either tribe’s current reservation land, would be placed into trust for the tribe by the Secretary of Interior.

The bill would codify the terms of the swap that was originally approved by the tribes and former Governor of Michigan, John Engler, in 2002. Under the conditions of the land exchange, as authorized by H.R. 2176, **the two tribes would be free to operate gambling facilities on the Port Huron and Romulus sites**, despite their distance from the tribes’ reservations and the Indian Gaming Regulatory Act’s general prohibition against gambling on newly acquired Indian land. The settlement would allow the tribes to participate in class III operations, meaning the tribes could conduct full casino operations on the site.

The bill would state that the tribes would give up all pending or future claims to the 110-acres of land on Charlotte Beach in exchange for the casino-authorized land in southern Michigan. The legislation also states that the provisions in the bill are “unique and shall not be considered precedent for any future agreement between any tribe and State.”

The Sault Ste. Marie Chippewa and Bay Mills Land Claim: In 1855, the federal government entered into a land treaty with the Sault Ste. Marie Tribe of Chippewa Indians, reserving 110 acres of land on Charlotte Beach in Chippewa County, Michigan, for the tribe. The land in question is situated across from Canada where Lake Superior meets Lake Huron in Michigan’s Upper Peninsula. Though the treaty had been approved by both parties, in June of 1856, before the treaty was ratified by Congress, the federal government issued land patents for the property to a sole proprietor, who took control of the land as a private ownership. The following year, the owner of the land returned the property to the Governor of Michigan to be held in trust for the Ottawa and Chippewa Indians, the predecessors of the Sault Ste. Marie Chippewa and the Bay Mills Community.

While the land was held in trust by the state, Chippewa County subjected the property to taxes, which went unpaid. In 1884 and 1885, the county brought a suit for non-payment of taxes and the land was sold by the state to private owners who purchased the property for the price of the tax debt. Over one-hundred years after this transaction took place, the Bay Mills Community, which separated from the Sault Ste. Marie Tribe of Chippewa Indians in 1976, brought a suit against the State of Michigan and Charlotte Beach property owners.

In 1996, the Bay Mills Community filed lawsuits in both federal and state courts regarding their claim to the Charlotte Beach property. The federal action, filed in the Sixth District court, was

an action against Charlotte Beach property seeking equitable title to the land. The state suit sought “monetary damages for the loss of enjoyment, use, rents, and profits of the land.” The tribe claimed that, by allowing the land to be sold, the state of Michigan and the Governor violated the law and interfered with the tribe’s constitutional rights to due process and equal protection. The federal action was dismissed because Sault Ste. Marie Tribe (the other predecessor of the Ottawa and Chippewa Tribe that originally made the land treaty with the government) did not participate in the action. According to the Committee on the Judiciary, the state case was also dismissed on “both substantive and procedural grounds.” In both cases, the Sault Ste. Marie Tribe, which already operates five of Michigan’s 19 gambling facilities on tribal land and owns a controlling interest in Detroit’s Greektown Casino, was not formally involved.

Despite the tribe’s lack of success in court, the legal proceedings raised questions about the property rights of the landowners on Charlotte Beach. Although the Charlotte Beach land was legally purchased and privately owned, the continued appeals and civil actions left the legitimacy of property rights in the area in question. As such, property values on Charlotte Beach have fallen dramatically since the legal battle began. Complaints from residents of Charlotte Beach as well as the Bay Mills Community prompted the state to enter into negotiations with the tribe regarding their claim. On August 23, 2002, without a court ruling in favor of the tribes’ claim, Governor Engler and the tribes entered into a settlement to decide the issue. In exchange for dropping their property claim in Charlotte Beach, the tribes would be given a much smaller parcel of land, held in trust, in a much more densely populated part of the state—Port Huron and Romulus—some 350 miles to the south of each tribes’ respective reservation. To improve the deal for the tribes, the Governor agreed to allow gambling on the land despite the Indian Gaming Regulatory Act’s (IGRA) ban on Indian gambling facilities on newly acquired, off-reservation Indian lands.

The Indian Gaming Regulatory Act of 1988 (IGRA): The Indian Gaming Regulatory Act of 1988 (IGRA) was enacted to provide a statutory framework to regulate gambling operations on Indian lands. The legislation was initiated by the Supreme Court ruling in *California v. Cabazon Band of Mission Indians*, which held that, because there was no federal law governing gambling on tribal land, an Indian tribe’s economic interests in operating gambling facilities on tribal land prevailed over a state’s interests in regulating gambling.

In general, IGRA permits gambling operations on all Indian lands that were either part of a reservation or held in trust prior to October 17, 1988, when IGRA became law. Lands held in trust are lands that are owned outright by Indian tribes and conveyed to the Secretary of Interior to be held on the tribe’s benefit. Indian lands held in trust are not subject to state and local taxes, and the tribe may not sell land in trust or have it taken from them through a legal process.

According to the Congressional Research Service (CRS), under IGRA, Indian tribes are generally banned from establishing gaming operations on newly acquired land taken into trust after October 17, 1988. Though tribes are allowed to establish new casinos on their reservations, IGRA prohibits tribes from building gambling facilities on newly acquired off-reservation sites. There are, however, certain exceptions under IGRA that give the Secretary of Interior authority to approve the establishment of a gambling facility on newly acquire Indian land in certain situations. The Secretary of Interior may authorize gambling on newly acquired lands that are

held in trust if the Secretary: 1) receives the consent of the governor, 2) consults with local officials, including other tribes, 3) ensures that a gambling facility on the new land would be in the best interest of the tribe, and 4) determines that gambling operations would not be detrimental to the community. Outside of this review process, exceptions to IGRA allow a tribe to establish a gambling facility on newly acquired land in the following circumstances:

- Any tribe that has been newly recognized by the Bureau of Indian Affairs may have gambling on lands taken into trust to be their first reservation.
- Any tribe that is restored to federal recognition may have gaming on newly restored lands.
- Any tribe that did not have a reservation before IGRA became law is allowed to have gambling on newly acquired lands in Oklahoma if the land is either within the boundaries of the tribe's former reservation or contiguous to other land held in trust.
- Any tribe outside of Oklahoma that did not have a reservation before IGRA became law may have gaming on newly acquired lands if the lands are "within the Indian tribe's last recognized reservation within the State."
- Any tribe may operate gambling facilities on lands taken into trust as a land claim settlement.

Under the agreement between the state of Michigan and the two tribes, the Port Huron and Romulus sites would be considered newly acquired Indian lands taken into trust as a land claim settlement. Therefore, the land would qualify under the final IGRA exception and would bypass the established DOI review process for approving gambling on new Indian land. The Secretary of Interior has not recognized the settlement or authorized the inclusion of gambling on the sites through its normal review process. Legislation is necessary to approve of the claim settlement and allow gambling on a new Indian land that is located more than 350 miles the tribes' existing reservations.

Support for the Legislation: Proponents of H.R. 2176 generally cite a fair settlement of the tribes' land claims and the positive economic effect of new casinos in the Port Huron and Romulus areas in their support of the bill:

- *Settlement of Land Claims:* Supporters of the legislation argue that the bill settles the disputed land claims between the Sault Ste. Marie Tribe, the Bay Mills Indian Community and the Charlotte Beach landowners in a way that allows property owners to keep full title to their land and compensates the tribes for the loss of their ancestral land.
- *Economic Benefits for New Casino Sites:* Supporters contend that, since Port Huron is the only border crossing between Michigan and Canada with a casino on the Canadian side and no casino on the U.S. side, millions of U.S. dollars that are currently spent in Canada will be spent in Port Huron. In addition, supporters stress that Sault Ste. Marie

Tribe casino in Romulus would add up to 3,000 jobs and up to \$7 million in growth in Wayne County, Michigan.

➤ Outside Support: H.R. 2176 is **supported** by the following labor unions:

- The American Federation of Labor and Congress of Industrial Organization (AFL-CIO)
- The United Auto Workers (UAW)

Opposition to the Legislation: Opponents to H.R. 2176 raise a number of concerns regarding the bill, including:

- Expansion of Off-Reservation Gambling: Opponents argue that the bills represent an unprecedented expansion of off-reservation gambling by authorizing the establishment of a new tribal casino more than 350 miles from the tribe's traditional lands. Congress has never unilaterally authorized off-reservation gambling, and opponents believe that these bills set a hazardous precedent that would create a short-cut around the IGRA process for other tribes wishing to expand off-reservation gambling.
- Circumventing IGRA and DOI Procedures: Under IGRA, newly acquired land that is held in trust by the Department of Interior (DOI) must go through a procedural process wherein the Secretary of Interior determines a number of issues and consult with multiple officials before gambling operations are authorized. Opponents contend that these bills circumvent this important process and could result in negative effects on communities and environments where the casinos are built without proper review.
- Questionable Validity of Land Claims: Though the legislation is intended to settle a disputed land claim that case was thrown out of both federal and state courts. Opponents of the legislation argue that no federal or state court, nor the DOI or the Department of Justice, have ever recognized the tribes' land claims, and Congress should not pass controversial legislation that goes around a standard legal precedent in order to establish casinos.
- "Card Check" in New Casino: Some opponents of the bills have expressed concerns that the legislation would authorize a "backdoor" card check agreement between labor unions and the Indian tribes operating new gambling facilities. Given the fact that labor unions have been aggressively encouraging card check in casinos nationwide, and that these bills are supported by the AFL-CIO and the UAW, some opponents are concerned that the casinos may have agreements with labor unions to institute card check at casinos authorized under the bill.
- Negative Effects of Gambling: Some opponents contend that gambling has a harmful effect on families and communities and oppose expansion of casino gambling. With three casinos operating in Detroit,—just 63 miles from the proposed Port Huron casino and 20 miles from the proposed Romulus casino—casinos are already quite prevalent in the area.

➤ Outside Opposition: H.R. 2176 is **opposed** by the following outside organizations:

- Coalition for a Conservative Majority
- American Conservative Union
- Citizens United
- 60 Plus Association
- Christian Coalition of America
- Family Research Council
- Concerned Women for America
- Frontiers of Freedom
- Alliance for Worker Freedom
- UNITE HERE

Possible Conservative Concerns: Some conservatives may be concerned that the bills circumvent a long-standing process for allowing gambling on newly acquired Indian land that was established by the Indian Gaming Regulatory Act of 1988 (IGRA). Conservatives may also be concerned that the swap would qualify under an IGRA exception that would allow gambling on newly acquired Indian land without going through the established DOI review process. Some conservatives may believe that this legislation would set the precedent of using congressional action to avoid DOI standards for new off-reservation casinos.

Some conservatives may be concerned that H.R. 2176 drastically expands off-reservation Indian gambling by authorizing casinos some 350 miles away from either tribe's reservations. Conservatives may also be concerned that the bill would place two new casinos on off-reservation land within close proximity to three other casinos. In addition, some conservatives may be concerned that the three Detroit casinos that are located near the gambling sites proposed by H.R. 2176 were approved by Michigan voters with the understanding that no new casinos would be built in the area.

Some conservatives may be concerned that no federal or state court, nor the Department of Interior or the Department of Justice, have ever recognized the tribes' claim to land in Charlotte Beach. The state of Michigan made the settlement despite the fact that no other branch government has legally recognized the tribes' claim to the disputed land. Some conservatives may believe that Congress should not pass controversial legislation that bypasses legal precedent and procedure in order to authorize new casinos.

Some conservatives may also be concerned by reports that labor unions are supportive of H.R. 2176 because they have been assured that the new casinos will implement a card check system for unionizing casino employees. Some conservatives may be concerned that card checks take away an employee's right to choose, freely and anonymously, whether to unionize while leaving them open to harassment, intimidation, and union pressure.

Committee Action: H.R. 2176 was introduced on May 3, 2007, and referred to the Committee on Natural Resources and on February 6, 2008, committee hearings were held. On February 13, 2007, a committee mark up was held and the bill was reported, as amended, by a vote of 21-5.

The Committee on Natural Resources favorably reported [House Report 110-541, Part I](#), on March 6, 2008.

On March 6, 2008, H.R. 2176 was referred to the Committee on the Judiciary, which held committee hearings on March 14, 2008. On April 2, 2008, the Committee on the Judiciary held a mark-up and **reported the bill unfavorably by a vote of 29-0**. The Committee on the Judiciary **adversely reported** [House Report 110-541, Part II](#), on April 4, 2008.

H.R. 4115 was introduced on November 8, 2007, and referred to the Committee on Natural Resources and On February 6, 2008, committee hearings were held. On February 13, 2007, a committee mark up was held and the bill was reported, as amended, by a vote of 22-5. The Committee on Natural Resources report [House Report 110-542, Part I](#), on March 6, 2008.

On March 6, 2008, H.R. 4115 was referred to the Committee on the Judiciary, which held committee hearings on March 14, 2008. On April 2, 2008, the Committee on the Judiciary held a mark-up and **reported the bill unfavorably by a vote of 27-0**. The Committee on the Judiciary **adversely reported** [House Report 110-542, Part II](#), on April 4, 2008.

Cost to Taxpayers: According to CBO, neither H.R. 2176 nor H.R. 4115 would impose any cost on the federal government.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? The Committee on Natural Resources, in [House Report 110-542, Part I](#), and [House Report 110-542, Part I](#), states that neither H.R. 2176 nor H.R. 4115 “contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.”

Constitutional Authority: The Committee on Natural Resources, in [House Report 110-542, Part I](#) and [House Report 110-542, Part I](#) cites constitutional authority in Article I, Section 8, Clause 3, the “commerce clause.”

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