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SENATE

{ REPORT
108-165

IMPLEMENTING THE RECOMMENDATIONS OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE BY PROVIDING AUTHORIZATION FOR THE CONSTRUCTIONS OF A RURAL HEALTH CARE FACILITY ON THE FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA

OCTOBER 15, 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. 1146]

The Committee on Indian Affairs, to which was referred the bill (S. 1146) to implement the recommendations of the Garrison Unit Joint Tribal Advisory Committee by providing authorization for the construction of a rural Health Care facility on the Fort Berthold Indian Reservation, North Dakota having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 1146 is to implement certain recommendations of the JTAC relating to the replacement by the Federal government of a health care facility on the Fort Berthold Indian Reservation, North Dakota, which was destroyed as a consequence of the construction of the Garrison Dam and Reservoir (the Garrison Dam). The bill authorizes \$20 million for the construction of a health care facility and such sums as are necessary for related facility expenses.

BACKGROUND

The Committee Report for Title XXXV of Pub. L. 102-575, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act (the Equitable Compensation Act), S. Rep. No. 102-250, contains an extensive history of the development and impacts of the Garrison Dam, the relevant portions of which are summarized herein.

The Flood Control Act of 1944 (the Flood Control Act), also known as the Pick-Sloan Project, was a water development program comprised of multi-purpose dams and reservoirs designed by the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation.

The Flood Control Act resulted in substantial flood control, navigation, recreation and power benefits throughout the Missouri River Basin but also generated significant impacts to the states and Indian tribes in the upper Missouri River Basin.

The Garrison Dam, constructed under the Flood Control Act, resulted in the loss of over 150,000 acres on the Fort Berthold Indian Reservation. Although existing treaty rights provided that this land could not be "taken" without the consent of the Three Affiliated Tribes of the Fort Berthold Indian Reservation (the tribe), the tribe was not consulted prior to enactment of the Flood Control Act. The Bureau of Indian Affairs had prior notice of the probable harm the tribe would suffer, yet registered no objection to the plan while it was being debated in Congress in 1944.

In 1949, 325 families of the tribe, representing 80 percent of the tribal membership, were forced to relocate due to the construction of the Garrison Dam. One quarter of the tribe's reservation land base was flooded and vital infrastructure, including the Elbowoods facility, a U.S. Public Health Service hospital, was destroyed.

Thirty years after completion of the Garrison Dam, the Secretary of the Interior (the Secretary) appointed the Garrison Diversion Unit Commission (the "GDUC") to review the initial stages of the Garrison Diversion Unit.

In its Final Report of December 20, 1984, the GDUC recommended that the Secretary establish a committee "to find ways to resolve inequities" borne by the tribe in the implementation of the Flood Control Act. S. Rep. No. 102-250, at 3. Compensation provided the tribe for the lands flooded by the Garrison Dam was determined by the GDUC to be inequitable relative to the losses experienced by the tribe.

On May 10, 1985, the Secretary established the JTAC to more closely examine the effects of the construction of the Garrison Dam on the tribe and make recommendations regarding compensation. In its Final Report of May 23, 1986, the JTAC concluded that the tribe was entitled to the replacement of lost infrastructure, including the health facility which the JTAC found to be an "urgent and critical need". S. Rep. No. 102-250, at 6.

C. Emerson Murry, former Chairman of the JTAC, testified before the Committee in 1991 that "many assurances were given expressly or by implication by various federal officials that the problems anticipated by the Indians would be remedied," yet many of the promises were never fulfilled.

Since that time, Congress has acted on several, but not all, of the recommendations contained in the JTAC report. The Equitable Compensation Act authorized a recovery fund to return to the tribe the Four Bears area of the reservation, among other things. However, no funding or authorization was provided to replace lost infrastructure. Accordingly, recommendations relating to the replacement or reconstruction of infrastructure, particularly the health facility, remain unfulfilled.

A. THE HEALTH FACILITY

S. 1146 would implement the JTAC's recommendations that the tribe is entitled to replacement of the Elbowoods facility. S. Rep. No. 102-250, at 6. The bill would amend the Equitable Compensation Act to authorize \$20 million for the construction of a health facility. The bill also authorizes "such sums as are necessary" for expenses related to the facility. These expenses include the costs associated with staffing, equipping, operating and maintaining the facility.

The Committee wishes to make clear that the facility authorized under this bill is not intended to be a full service hospital. The Committee agrees that a full service inpatient hospital is not feasible and recognizes that such a facility would duplicate services already provided by existing facilities near the tribe's reservation.

The health care facility authorized under this bill is intended to provide extended hours of care to meet the emergency medical needs on the tribe's reservation in the evenings and on weekends on an outpatient basis. The facility will also provide such services as cancer screening and care, testing for cardiovascular diseases, expanded dialysis services, and tele-health capabilities not currently available at the existing Indian Health Service clinic.

The Committee has urged previous administrations to provide the resources to replace the health facility destroyed by the Garrison Dam. The Committee believes that with this authorization, every effort should be made by the administration and Congress to provide the federal funding for this health facility as expeditiously as possible.

The Committee also recognizes that funding for construction of Indian Health Service facilities is currently limited to only those facilities already on the construction priority list. The facility authorized by this legislation is not on this priority list.

The Committee does not wish to bypass the priority list, given that some of the projects on that list have been waiting a decade or more to be funded. However, the Committee does recognize the unique federal responsibility of replacing the facility on the Fort Berthold Indian Reservation and urges the Administration to give this project full and fair consideration.

LEGISLATIVE HISTORY

S. 1146 was introduced on May 23, 2003, by Senator Conrad for himself, and for Senator Dorgan. The bill was referred to the Committee on Indian Affairs. Senator Campbell was added as a cosponsor on June 11, 2003.

The Committee held a hearing on S. 1146 on June 11, 2003. The Committee received testimony from the Three Affiliated Tribes and the Mandan, Hidatsa and Arikara Elders Organization. During the hearing, tribal representatives expressed their support for the bill and the need for the federal government to fulfill the longstanding commitment made during the implementation of Flood Control Act.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

This Act may be cited as the “Three Affiliated Tribes Health Facility Compensation Act”.

Sec. 2. Findings

This section sets forth the findings of Congress regarding the effects of the Garrison Dam and Reservoir upon the Fort Berthold Indian Reservation. Congress found that the Garrison Dam and Reservoir flooded over 150,000 acres of the reservation and destroyed tribal infrastructure including a hospital. Congress further found that after examination by the Garrison Unit Joint Tribal Advisory Committee, established by the Secretary of the Interior, the Three Affiliated Tribes of the Fort Berthold Indian Reservation were entitled to reparations, much of which have yet to be fulfilled.

Sec. 3. Rural health care facility, Fort Berthold Indian Reservation, North Dakota

This section amends Title XXXV of Pub. L. 102-575, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, to authorize \$20,000,000 for the construction of a health care facility on the Fort Berthold Indian Reservation and such additional sums which are necessary for other expenses related to the health care facility.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On July 16, 2003, the Committee, in an open business session, considered S. 1146 and an amendment recommended by Senator Conrad. The Committee voted unanimously to favorably report S. 1146, as amended, to the full Senate with a recommendation that the bill, as amended, do pass.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1146 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 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. 1146, the Three Affiliated Tribes Health Facility Compensation Act.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1146—Three Affiliated Tribes Health Facility Compensation Act

Summary: S. 1146 would authorize the appropriation of \$20 million for the construction of a new hospital on the Fort Berthold Indian Reservation in North Dakota. The bill also would authorize the appropriation of such sums as necessary for other expenses—such as operating costs—associated with the new facility.

CBO estimates that implementing S. 1146 would cost \$2 million in 2004 and \$57 million over the 2004–2008 period, assuming appropriation of the necessary funds. These costs would be borne by the Indian Health Service (IHS), which would construct and operate the new hospital. The bill would have no effect on direct spending or revenues.

S. 1146 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1146 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

| | By fiscal year, in millions of dollars— | | | | | |
|-------------------------------------|---|------|------|------|------|------|
| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Construction of new hospital: | | | | | | |
| Estimated authorization level | 0 | 1 | 1 | 12 | 6 | 0 |
| Estimated outlays | 0 | 1 | 1 | 12 | 6 | 0 |
| Construction of staff quarters: | | | | | | |
| Estimated authorization level | 0 | 1 | 1 | 12 | 5 | 0 |
| Estimated outlays | 0 | 1 | 1 | 12 | 5 | 0 |
| Equipment and furnishings: | | | | | | |
| Estimated authorization level | 0 | 0 | 0 | 0 | 3 | 0 |
| Estimated outlays | 0 | 0 | 0 | 0 | 3 | 0 |
| Operating costs: | | | | | | |
| Estimated authorization level | 0 | 0 | 0 | 0 | 5 | 10 |
| Estimated outlays | 0 | 0 | 0 | 0 | 5 | 10 |
| Total spending under S. 1146: | | | | | | |
| Estimated authorization level | 0 | 2 | 2 | 24 | 19 | 10 |
| Estimated outlays | 0 | 2 | 2 | 24 | 19 | 10 |

Basis of estimate: CBO estimates that implementing S. 1146 would cost a total of \$57 million over the 2004–2008 period, assuming appropriation of the necessary funds. Construction of the new hospital would cost \$20 million over that period, while related costs would total \$37 million.

Construction of new hospital

S. 1146 would authorize the appropriation of \$20 million for a new hospital on the Fort Berthold Indian Reservation in North Dakota. Based on the Indian Health Service's experience in building other hospitals, CBO assumes that planning and design for the new hospital would take place during 2004 and 2005, and that construction would begin in 2006 and be completed in 2007. CBO estimates that costs for these activities would be \$1 million in both 2004 and 2005, \$12 million in 2006, and \$6 million in 2007.

Construction of staff quarters

In addition to the hospital itself, IHS would also have to build living quarters for hospital staff. Based on information from IHS, CBO estimates that the cost of these quarters would total about \$19 million. CBO assumes that these quarters would be built at the same time as the hospital, with costs of \$1 million in both 2004 and 2005, \$12 million in 2006, and \$5 million in 2007.

Equipment and furnishings

Based on information from IHS, CBO estimates that the purchase of medical equipment and furnishing for the new hospital would cost \$3 million in 2007.

Operating costs

Based on information from IHS, CBO estimates that staffing and maintenance costs for the new hospital would total \$5 million in 2007 and \$10 million in 2008. Costs in 2007 would be lower because CBO assumes that the new hospital would be open for only part of the year.

Intergovernmental and private-sector impact: S. 1146 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Eric Rollins. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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 to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 1146 will not require the promulgation of regulations so the regulatory and paperwork impact should be minimal.

EXECUTIVE COMMUNICATIONS

There have been no executive communications received on this legislation.

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 the bill S. 1146, as ordered 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):

**RECLAMATION PROJECTS AUTHORIZATION AND
ADJUSTMENT ACT OF 1992**

Public Law 102-575

AN ACT To authorize additional appropriations for the construction of the Buffalo
Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program,
Wyoming

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

* * * * *

**TITLE XXXV. THREE AFFILIATED TRIBES AND
STANDING ROCK SIOUX TRIBE EQUITABLE
COMPENSATION PROGRAM, NORTH DAKOTA**

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SEC. 3504. FUNDS.

* * * * *

*AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be
appropriated such sums as are necessary to carry out this section.*

[SEC. 3511. AUTHORIZATION.

] There are authorized to be appropriated such sums as may be
necessary to carry out the provisions of section 3504 of this title.**]**

**SEC. 3511. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN
RESERVATION, NORTH DAKOTA.**

*There are authorized to be appropriated to the Secretary of Health
and Human Services \$20,000,000 for the construction of, and such
sums as are necessary for other expenses relating to, a rural health
care facility on the Fort Berthold Indian Reservation of the Three
Affiliated Tribes, North Dakota.*