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REPT. 110–541
Part 2

TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE BAY MILLS INDIAN COMMUNITY

APRIL 4, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

ADVERSE REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2176]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2176) to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community, having considered the same, reports unfavorably thereon without amendment and recommends that the bill do not pass.

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PURPOSE AND SUMMARY

H.R. 2176 would preemptively ratify a land claim settlement concluded between the Bay Mills Indian Community and the Governor of Michigan. Specifically, the bill would direct the Secretary of the Interior to accept in trust, in settlement of a claim by the Tribe to lands in Charlotte Beach, Michigan, in Michigan's Upper Peninsula, close to the Tribe's reservation—a claim the Tribe has already lost in court—a parcel of land in Port Huron, Michigan, as a new addition to its reservation, even though it is located hundreds of miles away. It would also make the newly acquired land automatically eligible for casino gaming, by preemptively deeming it to qualify under an exception to the Indian Gaming Regulatory Act's prohibition of gaming on newly acquired land.

In doing so, the bill would override the established procedures of the Indian Gaming Regulatory Act, promises made to the other Michigan Tribes, and the express wishes of the citizens of Michigan as reflected in a State-wide referendum passed just a few short years ago. It would set a dangerous precedent, a blueprint for flouting established law to build a casino in the name of an Indian tribe in any corner of the country.

BACKGROUND

BACKGROUND AND HISTORY OF THE INDIAN GAMING REGULATORY ACT

The Indian Gaming Regulatory Act ("IGRA")[1] was enacted in 1988 to provide a legal framework for regulating the operation of gaming on Indian lands. Congress enacted IGRA in response to *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987), in which the Supreme Court had held that, in the absence of any governing Federal statute, the States' interest in regulating gaming on Indian lands within their borders was outweighed by the Tribes' interest in promoting such gaming for the Tribe's economic benefit. In recognition of Tribal rights, IGRA incorporates the key holding of *Cabazon,* which recognizes a Tribe's right to conduct gaming under specified conditions even when it does not conform to the law of the State in which the Indian lands are located. The type of gaming at issue in the two bills before the Committee is class III gaming, or full-scale casino gaming.

Under IGRA, the term "Indian lands" includes not only lands within the limits of any Indian reservation, but also lands to which title either is held in trust by the United States for the benefit of an Indian Tribe or individual Native American, or is held by an Indian Tribe or individual Native American subject to restriction by the U.S. against alienation and with an Indian Tribe exercising governmental power.

A number of statutes, including the Indian Reorganization Act of 1934, authorize the Secretary of the Interior to acquire land in trust for individual Indian Tribes. Procedures for such land acquisition are specified in 25 C.F.R., Part 151. By this process, Indian owners of land in fee—i.e., unencumbered by liens that impair marketability—may apply to have their fee title conveyed to the Secretary to be held in trust for their benefit. This removes the land

[1] Pub. L. 100–497, 102 Stat. 2467, 25 U.S.C. Chapter 29.

from State and local tax rolls, and precludes the land from being sold, and from being taken by legal process.

One central objective of IGRA was to place limits on the potential proliferation of Indian gaming. Under section 20 of IGRA, 25 U.S.C. § 2719, lands acquired in trust by a Tribe after IGRA's enactment are generally not eligible for gaming if they are not within or contiguous to the boundaries of the Tribe's reservation. There are several exceptions, however.

The first exception authorizes the Secretary to permit gaming on newly acquired lands if (1) the governor of the State in which the lands are located consents and (2) the Secretary determines, after consulting with State and local officials, including officials of other Tribes, that permitting gaming on those lands "would not be detrimental to the surrounding community."

There are five other exceptions, under which gaming may be permitted on newly acquired lands without meeting those conditions. Four of those exceptions involve newly recognized Tribes, Tribes restored to recognition, or Tribes that had no reservation at the time IGRA was enacted, factors clearly not present here.

The fifth exception is for lands taken into trust as a land claim settlement. This is the exception that the two bills purport to be relying on. IGRA also requires that the Tribe and the State have entered into a compact setting forth the terms under which class III gaming will be conducted on the Indian lands in question, including how State criminal and civil laws will apply. The State-Tribe compact must be approved by the Secretary, but approval will be forthcoming as long as it complies with Federal law and the government's trust obligations. The Tribe must also have adopted an ordinance permitting class III gaming on those lands, which the Chairman of the National Indian Gaming Commission must find was not unduly influenced by anyone who, in light of criminal record, prior activities, reputation, or associations, poses a threat to the public interest or effective regulation, or a risk of unsuitable, unfair, or illegal activities.

INDIAN LAND CLAIM SETTLEMENT PROCESS

Prior to enactment of the Indian Claims Commission Act of 1946,[2] each Indian land claim required prior specific congressional authorizing legislation. That Act created the Indian Claims Commission ("ICC") to resolve such claims. When the ICC was dissolved in 1978, remaining unresolved claims were transferred to the U.S. Court of Claims, and all new claims are required to be filed there as well. A land claim may proceed to judgment, or may be resolved through negotiated settlement. The judgment or settlement agreement then becomes the basis for congressional resolution of the land claim. The entire process, from the initial assertion of the land claim to its eventual resolution, typically takes many years.

CASINOS ON TRIBAL LANDS IN MICHIGAN

According to the National Indian Gaming Commission, there are currently 19 Tribal casinos operated in the State of Michigan by 10

[2] 25 U.S.C. §§ 70–70v.

Tribes. The Bay Mills Tribe, now seeking a new casino pursuant to the bill, operates two of them.

The Bay Mills Tribe was among seven Michigan Tribes who in 1993 entered into parallel compacts with the State of Michigan governing the operation of class III gaming, including any development of off-reservation gaming.[3] A provision in those compacts, intended to forestall a proliferation of Indian gaming across the State, requires that any revenue generated by off-reservation gaming be shared among the seven Tribes:

> An application to take land into trust for gaming purposes pursuant to § 20 of IGRA (25 U.S.C. § 2719) shall not be submitted to the Secretary of Interior in the absence of a prior written agreement between the Tribe and the State's other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the § 20 application.

This provision requires each signatory Tribe to negotiate an agreement with the others to distribute a portion of the revenues from a casino opened on off-reservation lands acquired after the signing of the compact in 1993. This provision is still in effect.

OTHER MICHIGAN CASINO GAMING—THE DETROIT CASINOS

In 1994, Michigan voters approved a State-wide referendum that authorized three casinos in Detroit. Civic leaders promptly began discussions with interested parties, and the three casinos were opened within a few years. The MGM Grand opened in 1999, and its permanent resort facility opened in October 2007. The MotorCity opened in 1999 in a 1915 building that long housed the Wonder Bread bakery; with a permanent new casino and hotel both opening last year. The Greektown, of which the Sault Ste. Marie Tribe is majority owner, opened in 2000, and is constructing a permanent facility that is scheduled to open later this year.

The construction of these three casinos has brought significant economic development to the area. The MotorCity construction project has been valued at $400 million, and the MGM Grand project at $800 million, one of the largest projects in the State. These projects have also been a centerpiece of broader economic revitalization efforts in Detroit. Under the terms of the referendum, a portion of the earnings from the casinos is provided to the City of Detroit for police and fire protection services, and to the State for public education. By one measure, Detroit has already received well over a billion dollars in revenues. That is in addition to the multi-year construction jobs, permanent casino jobs, and other jobs directly or indirectly attributable to the casinos.

In 2004, concerned about attempts to expand casino gaming into horse-racing facilities, Michigan voters approved another State-wide referendum to restrict the expansion of gaming by requiring that any new private gaming expansion be approved in a general election by a State-wide majority as well as a majority of voters in the local community.

[3] This was the first Michigan compact. Other compacts were entered into in 1998 covering four other Tribes in Michigan who had recently been granted Federal recognition.

NEW INTERIOR GUIDANCE—WHETHER TO TAKE OFF-RESERVATION LAND INTO TRUST FOR GAMING

On January 3, 2008, the Interior Department issued "Guidance on Taking Off-Reservation Land into Trust for Gaming Purposes." It applies to all applications, pending or yet to be received, that involve requests to take land into trust that is off-reservation. 25 C.F.R. 151.11 sets forth the factors the Department will consider in making the determination. As the distance between a Tribe's reservation and the land to be acquired increases, the Department will "give greater scrutiny to the Tribe's justification of anticipated benefits from the acquisition" and give "greater weight to concerns raised by State and local governments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments."

The guidance explains that, as a general principle, the farther the economic enterprise is from the reservation, the greater the potential for significant negative consequences on reservation life. Tribes seeking off-reservation gaming desire the economic benefits of such activity—not only the income stream from the gaming facility, but also the related employment and job training opportunities for Tribe members. Because such employment programs foster a strong tribal government and community, they are a crucial benefit of tribal gaming facilities.

While greater distance from the reservation is not likely to have an impact on the income stream, it can have a deleterious effect on reservation life. A gaming facility that is "not within a commutable distance of the reservation" will not improve the employment rate of Tribal members living on the reservation. Instead, an off-reservation gaming facility would encourage Tribal members to *leave* the reservation.

Although the income stream from the gaming facility may help offset potential negative impacts, the guidance states that "no application to take land into trust beyond a commutable distance from the reservation should be granted unless it carefully and comprehensively analyzes the potential negative impacts on reservation life and clearly demonstrates why these are outweighed by the financial benefits of tribal ownership in a distant gaming facility."

Section 151.14 also states that the Department will give "greater weight to the concerns of State and local governments" with regard to the potential conflicts of land use and the removal of the land from the tax rolls as the distance between the Tribe's reservation and the land to be acquired increases. This is because the increase in distance makes it more likely that the transfer of Indian jurisdiction to the proposed parcel of land will "disrupt established governmental patterns" in distant communities that may not be conversant with the unique regulatory practices of tribal governments. Furthermore, the farther from the reservation the land acquisition is, the more difficult it will be for the Tribal government to exercise its authority appropriately. According to the guidance, any application which does not satisfactorily address these issues should be denied.

THE BAY MILLS AND SAULT STE. MARIE LAND CLAIMS

The Bay Mills Tribe traces its ancestry, as does the Sault Ste. Marie Tribe, to two Chippewa bands headed by O-Shaw-Wan-O and Shaw-wan. Its claim to the Charlotte Beach land stems from an 1857 deed from a non-Indian couple, Boziel Paul and his wife, to the Governor of Michigan. The deed purported to convey the land to the Governor in trust for the benefit of the two Chippewa bands. The Pauls had obtained the land in 1855 by Federal land patent. Approximately 30 years later, the State of Michigan sold the land, to non-Indians, to recover delinquent property taxes. The Governor had apparently never acknowledged the conveyance.

More than a hundred years after the sale by the Governor, the Bay Mills Tribe commenced two lawsuits concerning the Charlotte Beach land. In 1996, it filed a Federal action against the Charlotte Beach landowners seeking equitable title.[4] Around this time, the Tribe also filed a State suit against the State of Michigan for damages.[5] The Federal suit was dismissed for the Bay Mills Tribe's failure to join the Sault Ste. Marie Tribe of Chippewa Indians, which also has a claim to the Charlotte Beach lands, as an indispensable party—the Sixth Circuit ruled that because the Bay Mills and Sault Ste. Marie Tribes share a common ancestry, both Tribes have "a potential interest in the Charlotte Beach property."[6] The Bay Mills Tribe lost the State suit on both substantive and procedural grounds. Around this time, the Bay Mills Tribe filed an application with the Department of Interior, pursuant to 25 C.F.R. Part 151, to put the land into trust for gaming purposes. The fee trust application was withdrawn within months of its filing. On August 23, 2002, the Tribe entered into a settlement agreement with the Governor of Michigan; an addendum to this agreement was signed by the current Governor, Jennifer Granholm, on November 13, 2007.

The Sault Ste. Marie Tribe has never filed suit to claim the Charlotte Beach land.

THE PROPOSED LEGISLATION

H.R. 2176 would ratify an agreement executed on August 23, 2002, between the Bay Mills Tribe and Governor Jennifer Granholm of Michigan to transfer to the Tribe non-contiguous lands in Port Huron, Michigan—located 350 miles from its reservation and outside its historical and aboriginal territory—to settle its dubious claim to the Charlotte Beach lands, located in its historical territory in the Upper Peninsula of the State. The bill directs the Secretary to take the lands into trust within 30 days after receiving a title insurance policy showing that they are not subject to impairing encumbrances.

The bill provides that immediately upon the receipt of the new lands in trust, they will be considered part of the Tribe's reservation, and deemed eligible for gaming as lands "taken into trust as part of a settlement of a land claim" in compliance with 25 U.S.C. § 2719(b)(1)(B)(i). The bill extinguishes the land claim, and ratifies

[4] *Bay Mills Indian Community v. Western United Life Assurance Co.,* 2000 WL 282455 (6th Cir., March 28, 2000).

[5] *Bay Mills Indian Community v. State of Michigan, et al.,* Mich. Ct. App. Docket No. 218580.

[6] *Bay Mills Indian Community v. Western United Life Assurance Co.,* 2000 WL 282455 (6th Cir., March 28, 2000).

the transfer in settlement. And it specifies as the court of jurisdiction for resolving any dispute regarding the land claim the United States District Court for the Western District Court of Michigan—where the lands subject to the claim are located, but not the lands to be transferred in settlement.

The process set forth in the bill departs from the normal processes envisioned in IGRA and in Michigan law in a number of significant respects.

First, the time it normally takes the Interior Department to take lands into trust for gaming purposes is normally not a matter of days, as the bill prescribes, but years, even decades. Each of the four steps deemed immediately satisfied by the bill—taking the lands into trust, approving the compact, designating the lands as eligible for gaming under an exception in IGRA, and declaring the lands as reservation—requires a separate administrative procedure in the Interior Department. One of the important administrative processes is the extensive environmental review required by the National Environmental Policy Act. Another is the rigorous review at Interior of the extent of any legal and historical connections the Tribe has to the requested lands, as part of the determination whether the lands qualify for gaming pursuant to one of IGRA's exceptions. This review is considered particularly important when the lands to be taken into trust are not within or contiguous to the Tribe's reservation lands, as set forth in 25 C.F.R. Part 151.

Second, the land claim settlement agreements that the bill ratifies state that the lands have been obtained in settlement of a land claim under section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(i), when there has been no claim against the United States considered or processed by Interior, no agreement reached with any duly authorized representative of the United States prior to its execution. Instead, this is essentially a negotiation between the Tribes and the Governor, to transfer lands to the Tribe, with no involvement by an ordinarily essential party to such a claim and such a transfer. While the Governor and the Tribe have another option for bypassing the normal process set forth in IGRA—namely, going to the voters of Michigan—they have opted to bypass that established route as well.

Third, the settlement agreement alters central provisions of the 1993 compacts to which the Tribe is signatory. These compacts were negotiated between the Tribe and the Governor, executed by them, then ratified by the Michigan State Legislature, then submitted to, reviewed, and approved by the Secretary of the Interior. The settlement agreement, however, provides that a core commitment in the 1993 compact, that a Tribe seeking off-reservation gaming locations would enter into revenue-sharing agreements with the other signatory Tribes, either does not apply, or is waived if deemed to apply. Withdrawing from this core commitment ordinarily would require going back to the legislature and the Secretary for approval, as is required under Michigan and Federal law.

Fourth, the bill would, apparently for the first time, legislatively ratify what is essentially a Tribal-State gaming compact, which under IGRA the Department of Interior must review, approve, and publish in the Federal Register before the Tribe may conduct class III gaming. In its testimony before the Committee, the Department

of Interior expressed a number of concerns about departing from normal IGRA procedure and eliminating Interior's evaluation.

Fifth, this Indian land claim is unusual in the sense that it is against the State of Michigan—alleging wrongful sale of the lands by the State for back property taxes before the lands were in the legal possession of the Tribe—and the land claim settlement agreement is likewise between the Tribe and the State of Michigan. The land claim could thus be settled without any Federal involvement, by agreement between the State and the Tribe. The United States is not, and has never been, a party to the land claim, nor has it been involved with the negotiation of the land claim settlement agreement, which is unusual for a land claim submitted for ratification by Congress.

Sixth, the claim asserted by the Tribe has already been litigated and lost. It was pursued in both Michigan and Federal courts, by the Bay Mills Tribe. The Federal court dismissed the case without prejudice, on the ground that the Sault Ste. Marie Tribe was an indispensable party due to its own claim on the same land—the two Tribes had once been parts of the same Tribe—but had not been joined. But the Michigan case was dismissed with prejudice, barring re-litigation of the claim.

Seventh, the lands identified for transfer in settlement of the claims are far removed from the Tribes' ancestral lands, from the Tribe's current reservation, and from the lands subject to the claims. They are completely outside the 12 million acre area originally ceded by the Tribe to the United States, and approximately 350 miles from both the Tribes' reservation and the Charlotte Beach lands. While it is not unusual for land claim settlements to involve acquisition of lands outside a Tribe's reservation, it is highly unusual to acquire lands that are such a great distance away. And it may be unprecedented for a Tribe to acquire lands outside of its historical territory in settlement of a land claim.

Finally, the bill would, apparently for the first time, specifically deem the lands acquired pursuant to a land claim settlement agreement to qualify for gaming. Staff is not aware of any Federal legislation that has previously directed specific off-reservation lands to be taken into trust and at the same time designated those lands as qualifying for gaming under an exception to IGRA.

HEARINGS

The Committee held a legislative hearing on H.R. 2176 on Friday, March 14, 2008. Witnesses at the hearing were: Rep. Carolyn Kilpatrick (D-MI); Rep. Shelly Berkley (D-NV); Carl Artman, Assistant Interior Secretary for Indian Affairs, Department of the Interior; Fred Cantu, Chief, Saginaw Chippewa Tribe of Michigan; Alicia Walker, Counsel, Sault Ste. Marie Chippewa Tribe of Michigan; Kathryn Tierney, Tribal Attorney, Bay Mills Indian Community; and Dr. Guy Clark, Chairman, National Coalition Against Legalized Gambling.

COMMITTEE CONSIDERATION

On Wednesday, April 2, 2008, the Committee met in open session and ordered the bill H.R. 2176 unfavorably reported, without amendment, by a rollcall vote of 29 to 0, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall vote occurred during the Committee's consideration of H.R. 2176:

1. Reporting the bill unfavorably. Approved 29–0.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler	X		
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Ms. Sutton			
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin			
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis	X		
Ms. Wasserman Schultz			
Mr. Ellison	X		
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	29	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2176, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 3, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2176, a bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

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

H.R. 2176 would ratify an agreement between the state of Michigan and the Bay Mills Indian Community regarding the tribe's claim to land in northern Michigan, known as Charlotte Beach. CBO estimates that this bill would have no significant effect on the Federal budget.

H.R. 2176 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.

The agreement that would be ratified by the bill stipulates that the tribe relinquish all claims to the Charlotte Beach property and that Michigan give the tribe an alternative parcel of land in Port Huron, Michigan. The legislation would require the Secretary of the Interior to take that land into trust for the tribe and proclaim it to be part of the tribe's reservation, provided that certain conditions are met. According to information from the Bureau of Indian Affairs and the tribe, the lands would primarily be used for gaming purposes.

On March 6, 2008, CBO trasmitted a cost estimate for H.R. 2176 as ordered reported by the House Committee on Natural Resources

on February 13, 2008. The two versions of the legislation are the same, and our cost estimates are identical.

The staff contact for this estimate is Leigh Angres, who can be reached at 226–2860. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2176 would preemptively ratify a land claim settlement concluded between the Bay Mills Indian Community and Governor Jennifer Granholm of Michigan and preemptively deem the newly-acquired off-reservation land part of the Tribe's reservation and eligible for class III casino gaming.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, section 8, clause 3 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2176 does not 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.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Definitions. This section sets forth the definitions of terms used in the bill. "Alternative Lands," for example, refers to non-contiguous land in Port Huron, Michigan identified in an agreement executed on August 23, 2002, between the Bay Mills Indian Community and Governor Jennifer Granholm of Michigan to be transferred to the Tribe in settlement of a claim to the "Charlotte Beach lands."

Sec. 2. Taking Land into Trust; Extinguishment of Claims; and Gaming. Section 2(a) of the bill directs the Secretary of the Interior to take the alternative lands into trust within 30 days of receipt of a title insurance policy for said lands proving they are not subject to any impairing encumbrances; upon attaining trust status, the lands will be deemed part of the Tribe's reservation. This would bypass established practice, under which Interior conducts an extensive environmental review, as required by the National Environmental Policy Act, before taking land into trust. The mandatory nature of this provision would require the alternative lands to be taken into trust even if NEPA liabilities are present, thereby subjecting the government to potentially extensive liability.

Section 2(b) provides that the alternative lands taken into trust will be classified as part of a land settlement within the meaning of section 20(b)(1)(B)(i) of the Indian Gaming Regulatory Act (25 U.S.C. 2719). The land would thereby be made automatically eligible for gaming, again bypassing established practice, the review by Interior taking into account the factors set forth in 25 C.F.R. Part 151—a review that is especially important for off-reservation gam-

ing where, the farther the economic enterprise is from the reservation, the greater the potential for harm to reservation life.

Section 2(c) states that all land claims concerning the Charlotte Beach lands by the Tribe against the U.S., the State of Michigan, or any other person will be extinguished upon the bill's enactment.

Sec. 3. Effectuation and Ratification of Agreement. Section 3(a) mandates the ratification of the August 23, 2002 land claim settlement agreement, in disregard of established prerequisites and procedures, except the last sentence in Section 10 of the agreement related to severability. Section 3(b) states that this land claim proposal shall not be considered precedent for any future agreement between a State and an Indian Tribe because of its unique nature. Section 3(c) specifies as the court of jurisdiction for the resolution of any dispute regarding the land claim the U.S. District Court for the Western District of Michigan, where the lands subject to the claim are located but not the lands to be transferred in settlement.

ADDITIONAL VIEWS

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

We oppose H.R. 2176, a bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community. We share the Majority's concerns with this bill, but have other concerns as well.

This bill will authorize a land transfer between the State of Michigan and the Bay Mills Indian Community in Michigan's Upper Peninsula. The agreement between the State and the Tribe allows for Indian gaming casinos to be operated on land that is located near the metropolitan area of Detroit, Michigan, roughly 350 miles away from the Bay Mills reservation.

We share the Majority's concern that this land transfer circumvents Michigan state laws regulating the establishment and expansion of Indian gaming operations. A 2004 amendment to the Michigan Constitution requires state-wide voter approval for expansion of gambling operations. To date, that voter approval has not been given. H.R. 2176 usurps the rights of the citizens of Michigan to vote on any proposed expansion of gaming within the state.

We are also concerned that this legislation represents an expansion of the Indian Gaming Regulatory Act (IGRA) beyond Congress' original intent. IGRA provides that gaming may only take place on Indian lands, including lands held in trust. Lands acquired in trust after IGRA's enactment are generally ineligible for gaming if they are outside of and not contiguous to the boundaries of a tribe's reservation. H.R. 2176 takes the unprecedented step of authorizing Indian gaming as part of a land settlement on lands that are not contiguous to the Bay Mills reservation.

We note that the Department of the Interior opposes this legislation as well. The bill preempts the Department's procedures for evaluating the subject property to determine whether hazardous materials are present. Under a well-established review process, the Department recommends approval for land transfers only after determining the land meets applicable environmental standards. This Committee should ensure that these procedures are followed in

every instance. Further, we should not approve any legislation that intentionally undermines such a review process.

Where we perhaps depart from the Majority in our opposition is our concern about the link between gambling and crime and the impact that these casinos will have on the local communities. A 2004 study by the Department of Justice of arrestees indicated that more than 30 percent of arrestees identified as pathological gamblers committed a robbery within a year of their arrest. The study also stated that nearly one-third of that group admitted they committed the robbery to pay for gambling or gambling debts. In addition, the same study found that 13 percent of those studied said they had assaulted someone to get money. According to the study, 25 percent of those assaults were related to gambling.

In an earlier study undertaken in the neighboring state of Minnesota, municipalities surrounding Indian casinos responded to questions regarding their perception of changes since the introduction of casino gambling. Of the areas questioned, 26.5 percent of the precincts reported higher crime rates, 36.8 percent reported increased traffic congestion, and 37.5 percent reported an increase in problem gambling.

Even proponents of Indian gaming acknowledge the limited benefits of legalized gambling. The pro-gaming National Congress of American Indians states "even after the advent of gaming, Indian reservations continue to have a 31% poverty rate and a 46% unemployment rate." Similarly, Indian health and education statistics are among the worst in the country.

For these reasons, we join the Majority in reporting H.R. 2176 adversely to the House.

LAMAR SMITH.
STEVE KING.
JIM JORDAN.

○