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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–944

PROVIDING FOR EQUITABLE COMPENSATION FOR THE CHEYENNE RIVER SIOUX TRIBE, AND FOR OTHER PURPOSES

OCTOBER 6, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

[To accompany S. 964]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (S. 964) to provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 964 is to provide equitable compensation to the Cheyenne River Sioux Tribe.

BACKGROUND AND NEED FOR LEGISLATION

The purpose of S. 964 is to provide additional compensation to the Cheyenne River Sioux Tribe of South Dakota for the acquisition by the United States of 104,492 acres of tribal land for the construction of the Oahe Dam and Reservoir on the Missouri River.

The Pick-Sloan Missouri River Basin Program was included by Congress in the Flood Control Act of 1944 (33 U.S.C. 701–1, et seq.) to increase economic development in the Missouri River Basin. The project was designed to provide flood control, irrigation, and hydropower to that part of the Nation in 1944.

Cheyenne River Sioux tribal lands along the Missouri River were confiscated for use in the construction of the Oahe Dam and Reservoir project. Over 104,490 acres of tribal lands were inundated, reservation communities were flooded, and 30 percent of the entire tribal population was forced to relocate from the fertile bottom

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lands along the river to much less hospitable upland prairie. The Tribe thereby lost its ready source of potable water, its ceremonial grounds, a major portion of its cattle herd which had no place to graze, 90 percent of its timber, and most of its agricultural land.

In turn, the Tribe did not receive any of the benefits which the Pick-Sloan Program was designed to bring to the other residents of the Missouri River Valley. Unlike many South Dakota communities that received allocations of low-cost hydropower which they were able to turn into a source of revenue for their activities, the Tribe's request for such an allocation was denied. Nor did the Tribe receive any low-cost power for its own use. Instead, despite the generation of large amounts of hydropower from the Pick-Sloan power program, the cost of electricity on the Tribe's reservation has remained among the highest in the United States, burdening an already impoverished membership and serving as a barrier to economic development.

Ten years after Pick-Sloan Missouri River Basin Program was enacted into law, Congress enacted legislation to provide compensation to the Tribe in exchange for the acquisition of the Tribe's lands. Non-Indians received an average of $49.22 per acre for their agricultural lands, while the Tribe received only $21.49 per acre.

Various other tribes, whose reservations on the Missouri River had been adversely affected by flooding caused by the construction of Pick-Sloan project dams, sought additional compensation to rectify what they also considered to have been woefully inadequate compensation in view of their actual losses. As a result, the Secretary of the Interior established a Joint Tribal-Federal Advisory Committee (JTAC) to examine and make recommendations with respect to the effects of the impoundment of waters under the Pick-Sloan Missouri River Basin Program (Oahe and Garrison Reservoirs) on the Fort Berthold and Standing Rock Indian Reservations in 1984. The study concluded that the compensation that was provided to those Tribes in the 1950s indeed was inadequate and did not take into account the full extent of the Tribes' losses. Subsequently, the Congress asked the General Accounting Office (GAO) to review economic analyses prepared by consultants for the Fort Berthold and Standing Rock Tribes that documented what the Tribes considered to be the difference between the actual losses suffered as a result of the building of the Garrison Dam and the amount the Tribes received in compensation in 1952. The GAO recommended that the Congress base its decision on how much to provide additional compensation on a formula.

In view of the JTAC study findings and the GAO review, Congress enacted legislation that acknowledged, first, that the U.S. government did not justly compensate the Tribes at Fort Berthold and Standing Rock when it acquired their lands and, second, that the Tribes were entitled to additional compensation. Accordingly, legislation was enacted similar to S. 964 to compensate the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux Tribe. In arriving at compensation amounts, the Congress adopted the GAO formula using a corporate interest rate option in its calculations. In 1996, Congress enacted similar legislation for the Crow Creek Sioux Tribe, and in 1997 Congress enacted similar legislation for the Lower Brule Sioux Tribe.

The Cheyenne River Sioux Tribe legislation, S. 964, employs the same 1991 GAO formula used in the aforementioned legislation applicable to the other Tribes affected by the Pick-Sloan project. Using this formula, the GAO calculated the amount of additional compensation owed to the Tribe to be $290 million.

SUMMARY OF PROVISIONS

Title I—Cheyenne River Sioux Tribe equitable compensation

Title I, the Cheyenne River Sioux Tribe Equitable Compensation Act, would provide additional compensation for the Cheyenne River Sioux Tribe pursuant to the GAO formula in an amount roughly proportionate to that provided for the Fort Berthold, Standing Rock, Crow Creek and Lower Brule tribes.

The bill provides for the establishment in the U.S. Treasury of the Cheyenne River Sioux Tribal Recovery Trust Fund. On the first day of the eleventh fiscal year that begins after the enactment of S. 964, the Secretary of the Treasury is directed to deposit into the Fund $290,722,958 from the General Fund of the Treasury, together with an additional amount that equals the amount of interest that would have accrued on that deposit had it been invested in interest-bearing obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this bill and compounded annually thereafter. The Secretary is to invest these funds only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States, and to deposit interest from such investments in the Fund.

Beginning on the first day of the eleventh fiscal year after enactment, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall transfer the aggregate amount of interest on the Fund to the Secretary of the Interior, who shall use the money to make payments to the Tribe pursuant to tribal resolution. The Tribe could spend the interest earned on the Fund to promote its economic and infrastructure development, and the educational, health, recreational and social welfare objectives of the Tribe and its members. No amount of the principal could be withdrawn nor could any of the interest be used to make per capita payments to tribal members. Upon the deposit of funds, together with interest, into the Fund, S. 964 would extinguish all monetary claims which the Tribe has or may have against the United States for the taking of its land and property by the United States for the Oahe Dam and Reservoir Project.

Title II—Bosque Redondo Memorial

Title II of S. 964 is entitled the "Bosque Redondo Memorial Act". This title would authorize $1,000,000 in fiscal year 2000 and $500,000 for each of fiscal years 2001 and 2002 for use as matching grants to the State of New Mexico to create a memorial to the nearly 9,000 Navajo Indians who were detained by the United States in 1863 and forced to march 350 miles to Bosque Redondo, New Mexico, where they were incarcerated at Fort Sumner, together with members of the Mescalero Apache Tribe.

In 1868, the Navajo Nation signed a treaty with the United States, and the survivors of the "Long Walk" were allowed to re-

turn to their reservation after surviving five years of harsh living conditions. The grants and State matching funds would provide for the construction of a memorial and visitor-interpretive center at Fort Sumner State Monument in New Mexico that would offer all Americans opportunities to learn about and appreciate the significance of a painful episode in the history of the Navajo and Apache peoples' relationship with the United States government.

For additional information, see Senate Report 106–217.

COMMITTEE ACTION

S. 964 was introduced on May 5, 1999, by Senator Tom Daschle (D–SD). The bill was passed by the Senate on November 19, 1999, with an amendment by unanimous consent. In the House of Representatives, the bill was referred to the Committee on Resources. On September 13, 2000, the Full Resources Committee met to mark up the bill. No amendments were offered and the bill was then ordered favorably reported to the House of Representatives by voice vote.

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.

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. The Congressional Budget Office indicates that enactment of this bill will increase direct spending by an estimated $493 million, but that pay-as-you-go procedures do not apply because the spending out occur in 2011.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

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 Com-

mittee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2000.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 964, the Cheyenne River Sioux Tribe Equitable Compensation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette Keith (for federal costs) and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 964—Cheyenne River Sioux Tribe Equitable Compensation Act

Summary: S. 964 would compensate the Cheyenne River Sioux Tribe—in 2011—for the taking of certain lands in South Dakota and would authorize appropriations for the construction of a memorial for the Navajo and Mescalero Apache people who were incarcerated at Bosque Redondo, New Mexico, in the 1800s. CBO estimates that implementing S. 964 would cost $2 million over the 2001–2005 period, assuming appropriation of the necessary amounts. Enacting S. 964 also would increase direct spending by an estimated $493 million, but pay-as-you-go procedures would not apply because the spending would not occur until fiscal year 2011.

S. 964 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State, local, and tribal governments might incur some costs as a result of S. 964's enactment, but these costs would be voluntary.

Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that S. 964 will be enacted near the start of fiscal year 2001 and that the amounts necessary to implement the act will be appropriated each year. Estimated outlays are based on historical spending patterns for similar activities.

Direct spending

Title I of S. 964 would provide additional compensation to the Cheyenne River Sioux Tribe for the taking of 104,492 acres of land by the federal government to construct the Oahe Dam and Reservoir project. Construction of the dam began in 1948 and compensation of about $10 million was paid to the tribe in 1955. The act would establish the Cheyenne River Sioux Tribal Recovery Trust Fund and would direct the Secretary of the Treasury to deposit $291 million in the fund on the first day of fiscal year 2011. An additional deposit equal to the amount of interest that the fund would have earned if the fund had been capitalized and invested in 2001 would be made at the same time. CBO estimates that this additional payment would total $202 million, for a total deposit of

$493 million in 2011. Once the Secretary pays these amounts, any monetary claims the tribe may have against the United States regarding this project would be extinguished. Starting in 2011, the act would allow the tribe to spend amounts equivalent to the annual interest earned on the fund pursuant to a tribal spending plan.

The federal budget excludes trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes. Hence, deposits to the trust fund established under this act would be treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited to the fund in 2011 would be recorded as budget authority and outlays in that year. Because the trust fund would be nonbudgetary, the subsequent use of such funds by the tribe would not affect federal outlays.

Spending subject to appropriation

Title I would authorize the appropriation of such sums as may be necessary to cover the administrative costs for the Cheyenne River Sioux Tribal Recovery Trust Fund. Based on information from the Department of the Interior, CBO estimates that these costs would not be significant in any year.

Title II would authorize the Secretary of Defense, upon the request of the state of New Mexico, to establish the Bosque Redondo Memorial within the boundaries of Fort Summer State Monument. The provision would authorize the Secretary to make grants to New Mexico for up to 50 percent of its construction costs. CBO estimates that the federal share of the memorial would cost $2 million. The act would require the state to match the federal contribution to be eligible for the grants. Based on information from the state, CBO expects these matching funds to be provided during 2001. Assuming appropriation of the necessary amounts. CBO estimates that the entire federal share of the cost of constructing the monument would be spent during the 2001–2005 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. For the purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted. Although enacting this legislation would increase direct spending by an estimated $493 million, pay-as-you-go procedures would not apply to the act because the outlay would occur in fiscal year 2011.

Estimated impact on State, local, and tribal governments: S. 964 contains no intergovernmental mandates as defined in UMRA, but it would impose some conditions on the Cheyenne River Sioux and on the State of New Mexico for receipt of Federal funds. Title I would require the tribe to prepare and adopt a plan for using payments from the trust fund and to obtain an audit of the funded expenditures. Based on information provided by tribal officials, CBO does not expect that these requirements would result in significant additional costs for the tribe. Title II would require New Mexico to contribute matching funds equal to 50 percent of the costs of constructing the Bosque Redondo Memorial.

Estimated impact on the private sector: This Act contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On November 5, 1999, CBO transmitted an cost estimate for S. 964, a bill to provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes, as ordered reported by the Senate Committee on Indian Affairs on October 13, 1999, and subsequently amended on October 27, 1999. The two versions of the legislation are nearly identical. Differences in our cost estimates for these versions of the legislation reflect changes in CBO's projection of interest rates.

Estimate prepared by: Federal Costs: Lanette Keith. Impact on State, local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy 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

If enacted, this bill would make no changes in existing law.

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