AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 110–541
Part 1

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

MARCH 6, 2008.—Ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2176]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, 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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) ALTERNATIVE LANDS.—The term "alternative lands" means those lands identified as alternative lands in the Settlement of Land Claim.

(2) CHARLOTTE BEACH LANDS.—The term "Charlotte Beach lands" means those lands in the Charlotte Beach area of Michigan and described as follows: Government Lots 1, 2, 3, and 4 of Section 7, T45N, R2E, and Lot 1 of Section 18, T45N, R2E, Chippewa County, State of Michigan.

(3) COMMUNITY.—The term "Community" means the Bay Mills Indian Community, a federally recognized Indian tribe.

(4) SETTLEMENT OF LAND CLAIM.—The term "Settlement of Land Claim" means the agreement between the Community and the Governor of the State of Michigan executed on August 23, 2002, and filed with the Office of Secretary of State of the State of Michigan, including the document titled "Addendum to Settlement of Land Claim", executed by the parties on November 13, 2007.

69–005

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 2. ACCEPTANCE OF ALTERNATIVE LANDS AND EXTINGUISHMENT OF CLAIMS.

(a) LAND INTO TRUST; PART OF RESERVATION.—

(1) LAND INTO TRUST.—The Secretary shall take the alternative lands into trust for the benefit of the Community not later than 30 days after both of the following have occurred:

(A) The Secretary has received a title insurance policy for the alternative lands that shows that the alternative lands are not subject to mortgages, liens, deeds of trust, options to purchase, or other security interests.

(B) The Secretary has confirmed that the National Environmental Policy Act of 1969 has been complied with regarding the trust acquisition of the property.

(2) PART OF RESERVATION.—The alternative lands shall become part of the Community's reservation immediately upon attaining trust status.

(b) GAMING.—The alternative lands shall be taken into trust as provided in this section as part of the settlement and extinguishment of the Community's Charlotte Beach land claims, and so shall be deemed lands obtained in settlement of a land claim within the meaning of section 20(b)(1)(B)(i) of the Indian Gaming Regulatory Act (25 U.S.C. 2719; Public Law 100–497).

(c) EXTINGUISHMENT OF CLAIMS.—Concurrent with the Secretary taking the alternative lands into trust under subsection (a), any and all claims by the Community to the Charlotte Beach lands or against the United States, the State of Michigan or any subdivision thereof, the Governor of the State of Michigan, or any other person or entity by the Community based on or relating to claims to the Charlotte Beach lands (including without limitation, claims for trespass damages, use, or occupancy), whether based on aboriginal or recognized title, are hereby extinguished. The extinguishment of these claims is in consideration for the benefits to the Community under this Act.

SEC. 3. EFFECTUATION AND RATIFICATION OF AGREEMENT.

(a) RATIFICATION.—The United States approves and ratifies the Settlement of Land Claim, except that the last sentence in section 10 of the Settlement of Land Claim is hereby deleted.

(b) NOT PRECEDENT.—The provisions contained in the Settlement of Land Claim are unique and shall not be considered precedent for any future agreement between any tribe and State.

(c) ENFORCEMENT.—The Settlement of Land Claim shall be enforceable by either the Community or the Governor according to its terms. Exclusive jurisdiction over any enforcement action is vested in the United States District Court for the Western District of Michigan.

PURPOSE OF THE BILL

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

BACKGROUND AND NEED

The Bay Mills Indian Community is a federally recognized Indian tribe, which has adopted a constitution, its name, and form of government pursuant to the Indian Reorganization Act. The Community currently has approximately 1,500 tribal members.

The present-day Community's ancestors lived in semi-autonomous bands of Chippewa Indians on the shores of the Upper Great Lakes in what is now Michigan and Ontario. Beginning in the mid–1600's the French and British established trading sites in these areas to trade with the local Indians. The Community's ancestors signed a peace treaty with the United States in 1795 to end fighting on the U.S. western frontier.

By 1836, the Chippewa bands had formed personal relationships with many European settlers resulting in intermarriage and economic interdependence. Around this time a treaty was signed which identified the bands as "the six bands residing at or near Sault Ste. Marie". Historians further identified the bands by loca-

tion as: (1) St. Mary's River Rapids; (2) Waiskey Bay; (3) Tahquamenon River mouth; (4) Whitefish Bay; (5) Garden River and Sugar Island; and (6) Hay Lake area of St. Mary's River, which is now known as Charlotte Beach.

The settlement agreement ratified by this legislation would settle the longstanding land claim the Community has to 110 acres in Charlotte Beach. These lands were designated for withdrawal from the public domain for use by the Ottawa and Chippewa Indians pursuant to the 1855 Treaty of Detroit. In 1857, the lands were deeded to the Governor to be held in trust for the ancestral bands of the Community. Eventually, these lands were illegally sold for unpaid taxes without the consent of the United States nor the knowledge of the bands. Currently, some 100 non-Indian landowners live on the Charlotte Beach land under a clouded title, unable to acquire insurance and with depressed land values.

The Bay Mills Indian Community filed suit in 1996 in federal court against the current titleholders of the land in Charlotte Beach and also filed suit against the State of Michigan in the state court of claims. The federal case was dismissed on procedural grounds because the suit did not include other parties holding a similar claim, meaning the Sault Ste. Marie Tribe of Chippewa Indians. This decision was affirmed on appeal; however, the court did find that the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians both trace their ancestry to the bands named in the deed when the lands in question were held by the state. The state case was dismissed for failure to bring the claim within the state's statute of limitations.

Congress has the sole authority and responsibility to extinguish a land claim brought by an Indian tribe.

Settlement agreement

Two Governors of the State of Michigan have signed a settlement agreement with the Bay Mills Indian Community. Governor John Engler signed a settlement agreement on behalf of the state in August, 2002. Governor Jennifer Granholm signed an addendum to that settlement agreement on November 13, 2007. In a letter to the Committee on Resources on June 23, 2004, Governor Engler wrote, "As Governor of Michigan, it was my duty to negotiate the land settlement agreements between the State of Michigan and Bay Mills and the Sault Tribe in 2002." The settlement agreement would:

—Relinquish the Bay Mills Indian Community's claim to the lands in Charlotte Beach, Michigan, in return for land to be taken into trust in Port Huron, Michigan;

—Allow for gaming to be conducted on the Port Huron lands;

—Provide a formula through which a percentage of net win revenue of electronic games would go to the State and local governments including the City of Port Huron, the county, and the county school district;

—Ratify a restriction limiting to three, the total number of casinos the Community could operate in Michigan.

COMMITTEE ACTION

H.R. 2176 was introduced on May 3, 2007 by Rep. Bart Stupak (D–MI) for himself and Rep. Candice Miller (R–MI), and the bill was referred to the Committee on Natural Resources.

The Committee on Natural Resources held a hearing on the bill on February 6, 2008. A markup session was held by the Committee on February 13, 2008. Chairman Rahall (D–WV) offered an en bloc amendment to ensure compliance with the National Environmental Policy Act (NEPA), and to add to the bill the date of the addendum to the settlement of land agreement signed by the Bay Mills Indian Community and Governor Jennifer Granholm. Further, the en bloc amendment clarifies that all claims against the United States, State of Michigan, or any other person be extinguished concurrent with the Secretary taking land into trust for the Community. Chairman Rahall's en bloc amendment was agreed to by voice vote.

Rep. Heller (R–NV) offered an amendment to the bill that would delete Sec. 2(b) from the bill. Sec. 2(b) designates that lands taken into trust pursuant to this legislation would be deemed obtained in the settlement of a land claim under the Indian Gaming Regulatory Act (IGRA). Rep. Heller's amendment failed by a rollcall vote of 3 yeas and 16 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: February 13, 2008 **Convened:** **Adjourned:**

Meeting on: HR 2176 - Heller.027 amendment was NOT AGREED TO by a roll call vote of 3 yeas and 16 nays.

__ Recorded Vote Vote # 1 Total: Yeas: 3 Nays: 16

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Gohmert, TX*			
Mr. Young, AK		✔		Mrs. Bordallo, GUAM		✔	
Mr. Miller, CA				*Mr. Cole, OK*		✔	
Mr. Saxton, NJ				Mr. Costa, CA			
Mr. Markey, MA				*Mr. Bishop, UT*		✔	
Mr. Gallegly, CA				Mr. Boren, OK			
Mr. Kildee, MI		✔		*Mr. Shuster, PA*			
Mr. Duncan, TN				Mr. Sarbanes, MD	✔		
Mr. DeFazio, OR				*Mr. Heller, NV*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY			
Mr. Faleomavaega, AS		✔		*Mr. Sali, ID*			
Mr. Cannon, UT				Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Lamborn, CO*			
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Ms. Fallin, OK*			
Mr. Flake, AZ				Mrs. Capps, CA		✔	
Mr. Pallone, NJ		✔		*Vacancy*			
Mr. Pearce, NM				Mr. Inslee, WA		✔	
Mrs. Christensen, VI				*Vacancy*			
Mr. Brown, SC		✔		Mr. Mark Udall, CO			
Mrs. Napolitano, CA		✔		Mr. Baca, CA			
Mr. Fortuño, PR				Ms. Solis, CA			
Mr. Holt, NJ				Ms. Herseth Sandlin, SD			
Mrs. McMorris Rodgers, WA				Mr. Shuler, NC			
Mr. Grijalva, AZ		✔					
				Total	3	16	

Markups - 1/3 to meet (16), 25 to report
March 6, 2008 (10:46am)

Rep. Heller (R–NV) also offered an amendment to the bill to authorize, rather than direct, the Secretary of Interior to take lands into trust for the Community. Further, the amendment would delete the provision of the bill which deems the lands taken into trust as part of a land settlement under the Indian Gaming Regulatory Act. In addition, the amendment would, prior to gaming activities commencing, require the Secretary to consult with nearby state, local and tribal officials to determine if the land acquisition is in the best interest of the Bay Mills Indian Community and the surrounding communities. It would further require the Governor concur with the determination as required in IGRA Sec. 20(b)(1)(A). Finally, the amendment would require the Secretary of the Interior to give greater scrutiny in reviewing the Secretary's findings then currently required by regulation. Rep. Heller's amendment failed by a rollcall vote of 5 yeas and 19 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: February 13, 2008 **Convened:** **Adjourned:**

Meeting on: **HR 2176 - Heller.031 amendment was NOT AGREED TO by a roll call vote of 5 yeas and 19 nays.**

__ Recorded Vote Vote # 2 Total: Yeas: 5 Nays: 19

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Gohmert, TX*			
Mr. Young, AK		✔		Mrs. Bordallo, GUAM		✔	
Mr. Miller, CA				*Mr. Cole, OK*		✔	
Mr. Saxton, NJ				Mr. Costa, CA			
Mr. Markey, MA				*Mr. Bishop, UT*		✔	
Mr. Gallegly, CA				Mr. Boren, OK			
Mr. Kildee, MI		✔		*Mr. Shuster, PA*		✔	
Mr. Duncan, TN				Mr. Sarbanes, MD	✔		
Mr. DeFazio, OR				*Mr. Heller, NV*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY			
Mr. Faleomavaega, AS				*Mr. Sali, ID*			
Mr. Cannon, UT				Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Lamborn, CO*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Ms. Fallin, OK*			
Mr. Flake, AZ				Mrs. Capps, CA		✔	
Mr. Pallone, NJ		✔		*Vacancy*			
Mr. Pearce, NM				Mr. Inslee, WA		✔	
Mrs. Christensen, VI				*Vacancy*			
Mr. Brown, SC		✔		Mr. Mark Udall, CO			
Mrs. Napolitano, CA		✔		Mr. Baca, CA	✔		
Mr. Fortuño, PR				Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA				Mr. Shuler, NC			
Mr. Grijalva, AZ		✔					
				Total	5	19	

Markups - 1/3 to meet (16), 25 to report
March 6, 2008 (10:47am)

The Committee on Natural Resources then ordered H.R. 2176 favorably reported to the House of Representatives, as amended, by a rollcall vote of 21 yeas and 5 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: February 13, 2008 **Convened:** **Adjourned:**

Meeting on: HR 2176 - favorably reported to the House of Representative, as amended, was AGREED TO by a roll call vote of 21 yeas and 5 nays.

__ Recorded Vote Vote # 3 Total: Yeas: 21 Nays: 5

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV	✔			*Mr. Gohmert, TX*			
Mr. Young, AK	✔			Mrs. Bordallo, GUAM	✔		
Mr. Miller, CA				*Mr. Cole, OK*	✔		
Mr. Saxton, NJ				Mr. Costa, CA	✔		
Mr. Markey, MA				*Mr. Bishop, UT*	✔		
Mr. Gallegly, CA				Mr. Boren, OK	✔		
Mr. Kildee, MI	✔			*Mr. Shuster, PA*			
Mr. Duncan, TN				Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR				*Mr. Heller, NV*		✔	
Mr. Gilchrest, MD				Mr. Hinchey, NY			
Mr. Faleomavaega, AS				*Mr. Sali, ID*			
Mr. Cannon, UT				Mr. Kennedy, RI	✔		
Mr. Abercrombie, HI	✔			*Mr. Lamborn, CO*		✔	
Mr. Tancredo, CO		✔		Mr. Kind, WI	✔		
Mr. Ortiz, TX				*Ms. Fallin, OK*			
Mr. Flake, AZ				Mrs. Capps, CA	✔		
Mr. Pallone, NJ	✔			*Vacancy*			
Mr. Pearce, NM				Mr. Inslee, WA	✔		
Mrs. Christensen, VI				*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO			
Mrs. Napolitano, CA	✔			Mr. Baca, CA	✔		
Mr. Fortuño, PR				Ms. Solis, CA	✔		
Mr. Holt, NJ	✔			Ms. Herseth Sandlin, SD	✔		
Mrs. McMorris Rodgers, WA				Mr. Shuler, NC		✔	
Mr. Grijalva, AZ	✔						
				Total	21	5	

Markups - 1/3 to meet (16), 25 to report
March 6, 2008 (10:47am)

SECTION-BY-SECTION ANALYSIS

Section 1. Definitions

Section 1 provides the definitions of terms used in the bill including "Alternative Lands," "Charlotte Beach Lands," "Community," "Settlement of Land Claim," and "Secretary."

Section 2. Acceptance of alternative lands and extinguishment of claims

Section 2(a) provides direction to the Secretary of the Interior to take lands into trust for the Community within 30 days of receiving a title insurance policy proving the lands to be free of mortgages, liens, or other security interests. The specific lands to be placed in trust are identified in the Settlement of Land Claim Agreement between the Governor of Michigan and the Community. Further, this section provides for the lands to be considered part of the reservation of the Bay Mills Indian Community.

Section 2(b) provides the lands taken in trust be deemed as obtained 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).

Section 2(c) provides that all claims against the United States, the State of Michigan, or any other person by the Bay Mills Indian Community relating to the Charlotte Beach lands, be extinguished concurrent with the Secretary taking land into trust for the Community.

Section 3. Effectuation and ratification of agreement

Section 3(a) provides for the ratification of the Settlement of Land Claim signed between the State of Michigan and the Bay Mills Indian Community on August 23, 2002 as well as the Addendum signed between the parties on November 13, 2007, except for the last sentence in section 10 of the 2002 agreement. Section 10 of the 2002 agreement contains support for a severability clause whereby if any portion of the agreement is found to be unconstitutional, the parties intend for the remaining part of the agreement to remain in place. Section 10 also holds that no changes made to the settlement agreement would be binding without concurrence by the Governor and approval of a resolution by the Community.

Section 3(b) provides that this settlement agreement is not intended to set a precedent.

Section 3(c) provides the U.S. District Court for the Western District of Michigan with jurisdiction over enforcement of the settlement agreement.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(e)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article 1, section 8, clause 3, of the Constitution of the United States grants Congress the authority to enact this legislation.

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 provision that would increase direct spending.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for the settlement of certain land claims of the Bay Mills Indian Community.

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. 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.

The staff contact for this estimate is Leigh Angres. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

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.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill does not preempt state, local or tribal law.

CHANGES IN EXISTING LAW

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

Dissenting Views on H.R. 2176
offered by the Honorable Dean Heller
House Natural Resources Committee
March 6, 2008

H.R. 2176 would settle Native American land claims in Michigan for the Bay Mills Indian Community, currently with claims in the northern portion of the state, with land taken into trust for gaming further south, about 300 miles away.

I have real concerns that this bill has significant negative effects on existing Indian gaming law already in need of reform. Off-reservation Indian gaming has become highly controversial matter across the nation in several states. This bill sharply divides members of both parties in Michigan, divides local Native American tribes, and divides this committee and other Members of the House. Finally, this bill circumvents the existing procedure in place to approve of tribal gaming, and trample states' rights on this issue. For all of these reasons, it is a bad bill and should be opposed.

Coming from Nevada, I obviously support gaming, including Michigan's right to have gaming, so its expansion is not the issue. But the issue of off-reservation gaming is highly controversial and divisive for many communities, and what this committee and Congress does has clear, national repercussions.

Circumventing existing law on the matter – the Indian Gaming Regulatory Act (IGRA) -- has far-reaching consequences. Passing this bill circumvents IGRA. The unprecedented congressional approval of off-reservation gaming will set off shockwaves across the nation and among tribes. Dozens of tribes with no gaming facilities will see this move as yet another green light to set up in nearly any economically viable location. Other tribes with gaming on historical land may want a new location for their facility in order to remain competitive.

The door to off-reservation gaming has been opening wider with each passing year, and this bill kicks it open for a nationwide explosion of Indian casinos in nearly any location. Numerous states have already fought over this off-reservation matter. This Committee has done work to reform this law in the past, and should do so again, instead of continuing the status quo. IGRA is now 20 years old, and perhaps we should take a good look at it before passing this bill.

IGRA wisely allows for States to take the lead on these issues, for tribal-state compacts to be negotiated, and for the Department of the Interior and BIA to play proper oversight roles. This bill wipes all that away, without any close understanding of Michigan law. I would object to this committee trampling Nevada law, as I think most members would of their own states.

The Michigan delegation is deeply divided over this issue, and not along party lines. Why should we force something so divisive without more time to address it a without a

closer understanding of state law? House Judiciary Chairman Conyers says that Michigan law is being ignored on this matter.

Even the Tribes in Michigan are divided. I join the members of this committee who support the rights of Native Americans, including those rights under IGRA. But we are treating some differently than others by approving this "reservation shopping".

Additionally, the rights of the state of Michigan are clearly being circumvented as well. Michigan law is being trumped by the fact that we, here in this committee, are going to make law that should be set by the state, as already set forth in IGRA. Approving these bills is de facto approving the gaming compacts for Michigan – documents we haven't read or examined, and which have had little or no discussion. Is the Natural Resources Committee or Congress prepared to do the oversight needed to grant gaming compacts? Nevada has procedures in place to ensure high ethical standards are used when granting gaming licenses, and Michigan does as well. Is Congress or the Committee going to assume that responsibility, that liability, those efforts on this issue in place of the State of Michigan?

I oppose this bill because it is simply bad policy in so many ways, is a controversial matter that has not been vetted appropriately, and it is divisive for tribes, our colleagues throughout Congress, and many of our constituents.

○