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104TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 104-361

TO ACCEPT THE REQUEST OF THE PRAIRIE ISLAND INDIAN COMMUNITY TO REVOKE THEIR CHARTER OF INCORPO- RATION ISSUED UNDER THE INDIAN REORGANIZATION ACT

SEPTEMBER 3, 1996.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany H.R. 3068]

The Committee on Indian Affairs to which was referred the bill (H.R. 3068) to accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

The purpose of H.R. 3068 is to accept the request of the Prairie Island Indian Community of Minnesota to revoke the Federal charter of incorporation issued to the Community pursuant to the Indian Reorganization Act of 1934.

BACKGROUND

The Prairie Island Indian Community is organized under a Constitution and Bylaws adopted by the Community in 1936 pursuant to section 16 of the Indian Reorganization Act of 1934 (IRA) (25 U.S.C. 476). Article V of the Prairie Island Constitution, which enumerates the powers of the Community's Council, includes a provision that allows the Council to manage economic affairs and enterprises in accordance with the terms of a charter which may be issued to the Community by the Secretary of the Interior pursuant

to section 17 of the IRA. In 1937, the Secretary issued such a Federal charter to the Community.

Since the 1930's, the Prairie Island Community has relied upon the authorities of its Constitution and Bylaws for the operation of its government and for the operation of its business enterprises. Article V of the Constitution specifically provides authority for the Community to regulate the conduct of trade and the use and disposal of property on the reservation, as well as to charter subordinate organizations for economic purposes and to regulate the activities of such organizations.

The Community has come to view the 1937 charter, which hasn't been amended since it was issued, as outdated, cumbersome, and unnecessary to their efforts to operate successful business enterprises and become economically self-sufficient. Some charter provisions, such as one that precludes the Community from contracting for amounts in excess of \$100 without approval by the Secretary of the Interior, are seen as particularly paternalistic and inappropriate for effective management of tribal resources. Accordingly, the Community has requested that the charter be revoked.

H.R. 3068 accepts the request of the Prairie Island Indian Community that its Federal charter of incorporation be revoked and declares the charter to be revoked. Legislation is needed because Amendment 10 of the charter states that the charter can be revoked only by an Act of Congress.

SUBSTITUTE AMENDMENT

The Committee on Indian Affairs adopted an amendment in the nature of a substitute to H.R. 3068, offered by Senator McCain, that retains the unamended text of H.R. 3068, as passed by the House of Representatives, and adds two new sections that extend the deadlines for completion of two Indian water rights settlements enacted by the Congress in 1992.

The first new section extends until December 31, 1998, the deadline for completion of all requirements necessary to effect the Jicarilla Apache Tribe Water Rights Settlement Act of 1992. The availability to the Tribe of settlement funds and water from two Federal water projects in New Mexico is contingent upon dismissal of actions by the Tribe against the United States in Federal courts and a waiver of the Tribe's reserved water rights claims in general stream adjudications in state courts involving claims to the waters of the San Juan River and its tributaries and the Rio Chama and its tributaries. The 1992 Act requires partial final decrees agreed to by the United States, the Tribe, and the State of New Mexico to be entered into by December 31, 1996. However, this deadline cannot be met, due primarily to unforeseen delays in the necessary state court proceedings to consider the settlement. Accordingly, the Tribe, the State of New Mexico, and the Administration support an extension of the 1992 Act's deadline in order to preserve the benefits of the settlement to all parties.

The second new section extends until June 30, 1997, the deadline for completion of all requirements necessary to effect the San Carlos Apache Tribe Water Rights Settlement Act of 1992. This extension is intended to provide the Tribe and the Phelps Dodge Corporation, and the Tribe and the city of Globe, Arizona, additional

time to reach bilateral agreements that would be included as part of the overall Settlement Agreement that the Congress ratified in the 1992 Act. The relatively short time period is intended to ensure that the parties remain diligent in pursuing a final resolution of the issues between them. The Tribe, Phelps Dodge, Globe, and all other parties to the settlement, including the Administration, support this extension. The Committee recognizes that, in the event agreements are reached within the time provided by the amendment, an additional extension of time will be needed for the Arizona courts to consider the settlement in the context of the ongoing general stream adjudication of the waters of the Gila River basin.

LEGISLATIVE HISTORY

H.R. 3068 was introduced on March 12, 1996, by Representative Gil Gutknecht (R-MN). On May 16, the Committee on Resources reported H.R. 3068 favorably, by voice vote, after the bill was discharged from the Subcommittee on Native American and Insular Affairs. The House of Representatives passed H.R. 3068 by voice vote on May 23, 1996. In the Senate, the bill was referred to the Committee on Indian Affairs.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On July 24, 1996, the Committee on Indian Affairs, in an open business session, considered H.R. 3068 and ordered it reported with an amendment in the nature of a substitute, with a recommendation that the bill be passed.

SECTION-BY-SECTION ANALYSIS

Section 1. This section states that the request of the Prairie Island Indian Community to surrender the charter of incorporation issued to that Community on July 23, 1937, pursuant to the Indian Reorganization Act of 1934, is accepted and the charter is revoked.

Section 2. This section extends by two years the time deadline for completion of the Jicarilla Apache Tribe Water Rights Settlement Act (P.L. 102-441; 106 Stat. 2241), from December 31, 1996, to December 31, 1998.

Section 3. This section extends by six months the time deadline for completion of the San Carlos Apache Tribe Water Rights Settlement Act (title XXXVII of P.L. 102-575; 106 Stat. 4752), from December 31, 1996, to June 30, 1997.

COST AND BUDGETARY CONSIDERATION

The cost and budgetary impact of H.R. 3068, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1996.

Hon. JOHN MCCAIN,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3068, an act to accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act, as ordered reported by the Senate Committee on Indian Affairs on July 24, 1996. CBO estimates that enacting this legislation would result in \$6 million in federal outlays that might not occur under current law.

Section 1 of H.R. 3068 would revoke the charter of incorporation issued to the Prairie Island Indian Community of Minnesota in 1937. Revoking the charter would not deny federal recognition to the tribe; instead, this action would make tribal management of its enterprises less cumbersome. Section 1 is identical to H.R. 3068, as passed by the House of Representatives on May 22, 1996.

Section 2 would amend the Jicarilla Apache Tribe Water Rights Settlement Act to extend the deadline for completing the settlement among the Jicarilla Apache tribe, the state of New Mexico, and the federal government by two years, to December 31, 1998. Extending the deadline would likely result in the expenditure of \$6 million in funds that have already been appropriated for the tribe but that would probably not be spent under current law. Because the deadline would be extended by two years, CBO expects that those funds would be spent in fiscal year 1999 or later.

Section 3 would amend the San Carlos Apache Tribe Water Rights Settlement Act of 1992 to extend the deadline for completing this settlement agreement by six months, to June 30, 1997. Implementing section 3 would impose no extra costs on the federal government. In this case, CBO expects that the funds previously appropriated for the tribe's use after completion of the settlement will be spent in any event.

H.R. 3068 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) and would impose no costs on state, local, or tribal governments. Any costs resulting from the two settlement agreements affected by this legislation would be incurred voluntarily by state, local, and tribal governments as parties to those agreements.

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

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regu-

latory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 3068 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

Reports from the Department of the Interior regarding H.R. 3068 and the extensions to the statutory deadlines for completing the Jicarilla Apache Tribe Water Rights Settlement Act and the San Carlos Apache Tribe Water Rights Settlement Act are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 24, 1996.

Hon. JOHN MCCAIN,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I am pleased to transmit our report on the Department of the Interior's views in support of H.R. 3068, a bill to accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act of 1934.

Tribal Charters of Incorporation issued under Section 17 of the Indian Reorganization Act (IRA) were intended to allow tribes to engage in economic activity in a corporate form. The Prairie Island Indian Community was issued their Section 17 charter of incorporation in 1937. Although usual corporate powers are conferred by this charter, many actions are made subject to the approval of the Secretary of the Interior. In this era, when the United States Government is moving toward tribal self-determination and self-governance, the high degree of Secretarial oversight is no longer practical for the Community's existence.

Our records do not contain any documentation indicating that this charter was ever used by the Prairie Island Indian Community to conduct any of its business activity. The Community decided instead to conduct its business operations through its tribal governing body which is organized under Section 16 of the Indian Reorganization Act. However, there are disadvantages to managing businesses under this structure.

We ask that you move swiftly to pass H.R. 3068, which we feel will provide the Prairie Island Indian Community with the ability to protect their sovereign status. The revocation of the 1937 charter will allow for implementation of a new, modern charter, which will allow the Community to become more responsive to its business concerns, would accomplish the goal of promoting tribal self-determination, and would not be inconsistent with the initial or current purposes of the Indian Reorganization Act.

Thank you for the opportunity to submit this report in support of H.R. 3068. Should you have further questions, please contact me.

Sincerely,

ADA E. DEER,
Assistant Secretary—Indian Affairs.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 17, 1996.

Hon. JOHN MCCAIN,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of July 3, 1996 in which you request a report on the proposed amendment to extend the statutory deadlines for completing the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102-441) and the San Carlos Apache Tribe Water Rights Settlement Act (title XXXVII of Public Law 102-575), to December 31, 1998 as the current deadline for each settlement is December 31, 1996.

The Bureau of Indian Affairs supports the Committee's efforts to extend these statutory deadlines for completing the activities associated with the Jicarilla Apache Tribe Water Rights Settlement Act and the San Carlos Apache Tribe Water Rights Settlement Act to December 31, 1998.

We understand that an extension is necessary in order to preserve the substantial settlement benefits for both tribes and the respective non-Indian parties. We are confident that the extension will permit completion of all negotiations and court actions.

The Office of Management and Budget has advised that it has no objection to the presentation of the report from the standpoint of the Administration's program.

Sincerely,

MICHAEL J. ANDERSON,
(For Ada E. Deer, Assistant Secretary—Indian Affairs).

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXIV of the Standing Rules of the Senate, changes in existing law made by the bill, as 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):

JICARILLA APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992

* * * * *

106 Stat. 2241

SEC. 8(e)

“(3) If the two partial final decrees specified in paragraph (1)(B) are not entered by **[December 31, 1996]** *December 31, 1998*, the Fund shall be terminated, and amounts contributed to the Fund by the United States, shall be deposited in the general fund of the Treasury.”

SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF
1992

* * * * *

106 Stat. 4752

SEC. 3711

“(b) CONDITIONS.—(1) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this section have not occurred by ~~December 31, 1996~~ *June 30, 1997*, subsections (c) and (d) of section 3704, subsections (a) and (b), of section 3705, section 3706, subsections (a)(2), (c), (d), and (f) of section 3707, subsections (b) and (c) of section 3708, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 3710 of this title, together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this title, and any funds appropriated pursuant to section 3707(c), and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the State of Arizona.”

