CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 22, 1999

H.R. 562

A bill to approve and ratify certain transfers of land and natural resources by or on behalf of the Delaware Nation of Indians, and for other purposes

As ordered reported by the House Committee on Resources on April 28, 1999

H.R. 562 would approve and ratify any transfer of land or natural resources by or on behalf of the Delaware Nation of Indians that occurred prior to 1833 within the present boundaries of the state of New Jersey. The bill also would extinguish any title to the transferred lands and resources that the Delaware Nation might otherwise have. As a result, H.R. 562 would extinguish all claims against the United States and the state of New Jersey made by the Delaware Nation of Indians that are based on an interest in land or resources transferred prior to 1833.

CBO estimates that enacting H.R. 562 would have no significant impact on the federal budget. H.R. 562 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that this mandate would not impose costs above the threshold established by that act ($50 million in 1996, adjusted annually for inflation) in any of the five years following its enactment. The bill contains no new private-sector mandates as defined in UMRA.

In the early 1800s, the Lenape Indians—a band recognized as part of the Delaware Nation of Tribes—left their reservation in New Jersey. At the tribe's request, the state of New Jersey sold their land and placed the proceeds in trust for the tribe. In 1832 the state made an additional payment to the tribe to settle the tribe's claim to hunting and fishing rights on that land. These transactions were never ratified by the Congress, as required by the Trade and Intercourse Act of 1790, and so the land could be subject to claims on behalf of tribes claiming to be descendants of the Lenape. This bill would extinguish all such claims as of December 31, 1832, thus cutting off the primary legal avenue currently available to these tribes to pursue land claims in New Jersey. CBO has determined that this action would constitute a mandate as defined in UMRA because it would prohibit the tribes from exercising a legal right that they currently possess.

The cost of this mandate would depend on the outcome of any future land claims that might be brought under current law and would equal whatever compensation a tribe might realize from such a claim. No such claims have been brought, but the Department of the Interior is investigating whether members of the Delaware Tribe of Western Oklahoma are descended from the Lenape and could pursue a claim for that land on behalf of the tribe. That claim would be forestalled by this legislation.

CBO has no basis for predicting the outcome of this potential claim or any others that might be affected by this bill. We find it highly unlikely, however, that tribes would realize a monetary gain of more than $50 million in any year within the five-year time frame established by UMRA, in part because any such claims are not likely to be settled within that period. Further, the initial monetary benefits, if any, probably would be less than $50 million. Based on information provided by New Jersey state officials, CBO estimates that the value of the land that might be claimed by the Delaware Tribe of Western Oklahoma probably would initially be less than that amount. Consequently, CBO estimates that the mandate would not impose costs to tribes above the UMRA threshold in any of the next five years.

Enactment of this bill could impose substantially greater costs on Indian tribes beyond the five-year period. Considering only the possible claim of the Delaware Tribe of Western Oklahoma, the value of a settlement could be much greater several years from now, should the tribe prevail and establish profitable businesses on the land. Any other claims that might be brought by this or other tribes under current law also would be precluded. CBO cannot predict whether such claims would be brought or would be successful.

In contrast, the state of New Jersey and local governments in the state would benefit from enactment of this legislation to the extent that it would preclude any land claims that might otherwise impose costs on those entities.

The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.