



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 22, 2004

### **S. 1721**

### **American Indian Probate Reform Act of 2004**

*As ordered reported by the House Committee on Resources on July 14, 20004*

#### **SUMMARY**

S. 1721 would amend laws that regulate how the ownership of interests in Indian trust or restricted land (certain parcels of land that are owned by individuals or groups) is transferred upon the death of the owner. CBO estimates that implementing the legislation would cost \$25 million in 2005 and \$457 million over the 2005-2009 period for the Secretary of the Interior to acquire interests in trust or restricted land and to administer the grant and loan programs that would be established under the act. This activity is known as Indian land consolidation, and costs for this purpose would be subject to appropriation of the necessary sums. Most of the costs would stem from specified authorizations in S. 1721.

S. 1721 also would authorize the Secretary of the Interior to acquire certain interests in Indian trust or restricted land using revenue collected from leasing of natural resources on Indian land that has been acquired by the Secretary or from the sale of such land. Because such acquisitions could be made without appropriations, enacting S. 1721 would increase direct spending, but CBO estimates those costs would be less than \$500,000 in each year over the 2005-2014 period.

S. 1721 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

S. 1721 contains two private-sector mandates as defined in UMRA. The act would impose a private-sector mandate on individuals who would otherwise inherit interests in Indian trust or restricted lands under current law. The act also would allow the Secretary of the Interior to partition parcels of Indian land for sale under certain conditions. In the event that land is partitioned for sale without the consent of all the interest owners, S. 1721 would impose a private-sector mandate on those not consenting to the partition. CBO estimates that the direct cost of mandates in the act would fall below the annual threshold established by UMRA for

private-sector mandates (\$120 million in 2004, adjusted annually for inflation). The act also may benefit interest owners in Indian trust and restricted lands since it would remove certain restrictions on the use of such lands.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1721 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars					
	2004	2005	2006	2007	2008	2009
<b>SPENDING SUBJECT TO APPROPRIATION</b>						
Spending for Indian Land Consolidation						
Under Current Law						
Budget Authority	22	0	0	0	0	0
Estimated Outlays	13	12	5	2	0	0
Proposed Changes						
Purchase of Indian Trust and Restricted Land by the Secretary of the Interior						
Authorization Level	0	75	95	145	145	145
Estimated Outlays	0	23	59	97	128	140
Tribal Grants to Develop Probate Codes and Estate Planning						
Estimated Authorization Level	0	2	2	2	2	2
Estimated Outlays	0	2	2	2	2	2
Grants and Loans to Indians to Purchase Partitions at Auction						
Estimated Authorization Level	0	*	*	*	*	*
Estimated Outlays	0	*	*	*	*	*
Total Proposed Changes						
Enacted Authorization Level	0	77	79	147	147	147
Estimated Outlays	0	25	61	99	130	142
Total Spending Under S. 1721						
Estimated Authorization Level	22	77	97	147	147	147
Estimated Outlays	13	37	66	101	130	142

NOTE: \* = less than \$500,000.

## **BASIS OF ESTIMATE**

For this estimate, CBO assumes that S. 1721 will be enacted near the beginning of fiscal year 2005 and that the authorized and estimated amounts will be appropriated for each year. We also assume that outlays will follow the historical spending pattern of the Indian Land Consolidation Pilot Program.

The federal government originally allotted interests in trust and restricted land to individual Indians over a century ago. Over time, the number of owners of such allotted land has grown as owners have passed on ownership to their descendants. The cost to the Bureau of Indian Affairs (BIA) to administer ownership of this property has also grown. S. 1721 would modify the Indian Land Consolidation Act, which attempts to prevent further partitioning of such land.

### **Spending Subject to Appropriation**

S. 1721 would authorize the appropriation of \$75 million in 2005, \$95 million in 2006, and \$145 million in each year over the 2007-2010 period for the Secretary to acquire undivided interests in Indian trust and restricted lands from willing sellers at fair market value and to collect any revenue generated from the leasing of natural resources on that interest. CBO estimates that appropriating the specified amounts would result in outlays of \$23 million in 2005 and over \$440 million over the five-year period for purchases of such land.

The act also would authorize the Secretary of the Interior to provide grants to Indian tribes to develop tribal probate codes and provide estate-planning services to tribal members. Based on information from the Department of the Interior (DOI), CBO estimates that implementing this provision would cost \$2 million in each year over the 2005-2009 period for the Secretary to provide such grants.

In addition, S. 1721 would establish a process whereby an owner in an undivided parcel of land or the tribe may apply for the partition (when a parcel of land with multiple owners is split into discrete pieces) by sale of certain parcels of trust or restricted land. S. 1721 would authorize DOI to provide grants and low-interest loans to individuals who successfully bid on Indian land auctioned by the Secretary on behalf of an owner who wishes to partition and sell their interest in such land. Based on information from the department, CBO estimates that providing such grants and loans would cost the federal government about \$1 million over the five-year period, subject to the availability of appropriated funds.

Based on information from BIA, CBO expects that implementing S. 1721 could result in some administrative cost savings to that agency because there would be fewer individual

owners of interests in trust and restricted lands. Any such savings would depend on amounts appropriated in the future, but CBO estimates that savings would not be significant over the 2005-2009 period.

### **Direct Spending**

Under current law, DOI may spend—subject to appropriation—any receipts from natural resources leases on trust or restricted land that has been purchased by the Secretary or any proceeds from the sale of such land. Subject to appropriation, the Secretary is authorized to spend such funds to acquire additional interests in Indian land, as long as the additional land is located on the same reservation that generated those leasing receipts or land-sale proceeds.

S. 1721 would authorize the Secretary to spend such receipts or land-sale proceeds without further appropriation. Since the start of the program in 1999, the department has collected nearly \$200,000 from such transactions. CBO estimates that enacting this provision would increase direct spending by about \$200,000 in 2005 and a negligible amount in each subsequent year over the 2006-2014 period.

### **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

S. 1721 contains no intergovernmental mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

### **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

S. 1721 contains two private-sector mandates as defined in UMRA. The act would impose a private-sector mandate on individuals who would otherwise inherit interests in Indian trust or restricted lands under current law. The act also would allow the Secretary of the Interior to partition parcels of Indian land for sale under certain conditions. In the event that land is partitioned for sale without the consent of all the interest owners, S. 1721 would impose a private-sector mandate on those not consenting to the partition. CBO estimates that the direct cost of mandates in the act would fall below the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation). The act also may benefit interest owners in Indian trust and restricted lands since it would remove certain restrictions on the use of such lands.

## **Intestate Disposition of Interests in Trust and Restricted Lands**

S. 1721 would amend federal probate laws that govern how an individual's interest in certain parcels of Indian land is transferred upon death. The act would impose private-sector mandates on certain individuals who would inherit interest in trust or restricted lands under current law. Indian trust or restricted lands are those lands held by the United States in trust for an Indian tribe or held by an individual Indian or tribe subject to restrictions against transferring such property.

Currently, the probate of Indian trust and restricted lands follows the laws for intestate succession of the state where the land is located in cases where there is no tribal probate code. In such cases when there are no heirs in the immediate family, distant relatives would be eligible to inherit land interests under current law. Under S. 1721, such distant relatives would not be eligible heirs in certain cases. The loss of inheritance could impose costs on persons who would otherwise receive an interest in such property. The changes in probate code would apply to very small interests in few cases. CBO expects that the cost of the mandate would be small.

## **Partition of Highly Fractionated Indian Lands**

The act also would allow the Secretary of the Interior to partition certain parcels of highly fractionated Indian lands for sale at the request of the Indian tribe with jurisdiction over the land or any owner of an interest in the parcel. To partition the land, among other conditions, the Secretary must obtain the written consent of the Indian tribe with jurisdiction, any owner who has kept residence or operated a business (including a farm or ranch) on the land for the three years preceding the date of the request for partition, and the owners of at least 50 percent of the undivided interests in the parcel if at least one owner's undivided interest has a value in excess of \$1,500. The act would impose a mandate on those interest owners not consenting to the partition. The cost that the mandate would impose on nonconsenting interest holders would be small. The interests involved are small, and all owners of interests in the partitioned land would receive compensation equal to at least the fair market value of their interest in land.

## **PREVIOUS CBO ESTIMATE**

On May 13, 2004, CBO transmitted a cost estimate for S. 1721 as ordered reported by the Senate Committee on Indian Affairs on April 21, 2004. The two versions of the legislation and the cost estimates are identical.

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