

**House Report 108-502 - TO REAFFIRM THE INHERENT SOVEREIGN RIGHTS
OF THE OSAGE TRIBE TO DETERMINE ITS MEMBERSHIP AND FORM OF
GOVERNMENT**

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29-006

108TH CONGRESS
Report
HOUSE OF REPRESENTATIVES

2d Session

108-502

--TO REAFFIRM THE INHERENT SOVEREIGN RIGHTS OF THE OSAGE TRIBE TO
DETERMINE ITS MEMBERSHIP AND FORM OF GOVERNMENT

May 19, 2004- Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed
Mr. POMBO, from the Committee on Resources, submitted the following
R E P O R T

[To accompany H.R. 2912]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2912) to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2912 is to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2912 affirms the right of the Osage Tribe to form its own membership rules and tribal government, provided that no one's rights to any shares in the mineral estate of the tribe's reservation are diminished.

The Osage Tribe is a federally recognized tribe with a nearly 1.5 million-acre reservation in northeast Oklahoma. In 1906, Congress enacted the Osage Allotment Act ('1906 Act'), which is unique among federal Indian laws in that it restricts the Osage Tribe from defining its own membership rules, and prescribes a particular form of government which the tribe cannot change. All other federally recognized Indian tribes generally have the sovereign right to make their own internal membership rules and to form suitable tribal governments.

In brief, the 1906 Act--

- Defined the legal membership of the tribe to consist of all living Osage Indians who were on the Secretary of the Interior's 1906 roll for the tribe, plus their children born before July 1, 1907;
- Allotted a certain amount of surface land in the Osage Reservation to the tribal members;
- Provided that the tribe retained all mineral rights to the entire reservation in undivided ownership; and
- Provided for the distribution of royalties from development of mineral resources to each of the enrollees; such shares in the royalties are called 'headright shares.'

Federal court decisions have interpreted the 1906 Act to mean that Congress took away the Osage Tribe's right to determine its own membership rules. The only ones who may be members of the Osage tribe and participate in the tribal government are those who are the lineal descendants of the original enrollees under the 1906 Act and have a headright share of the mineral revenues from the reservation.

As a result, the 1906 Act excludes many thousands of Osage persons from being members of the tribe because they do not have headright shares. Ironically, in the eyes of the federal government, such individuals (including full-blooded Osages) are not 'Indians' because one must be a member of a federally recognized tribe to be an Indian. Those Osage people who are precluded from being members of the tribe under the terms of the 1906 Act are thus denied important services and benefits, such as Native American academic scholarships, and more importantly, a role in participating in the life and government of the tribe. Without clarifying the 1906 Act, the Osage Tribe is prevented from attaining the self-sufficiency and strength of all other tribes who have the sovereign right and freedom to form their own rules.

H.R. 2912 clarifies the 1906 Act and enables the Osage Tribe to craft its own membership and tribal government rules on the same footing as all other federally-recognized tribes. The bill provides that no one's rights to shares in the mineral estate are diminished through the Osage Tribe's new ability to determine its own membership. Significantly, in a hearing on this bill, a representative of an association of headright owners testified in support of the legislation. The bill

additionally provides that the Secretary of the Interior shall assist the tribe in holding appropriate elections and referenda at the request of the tribe.

The full committee hearing on H.R. 2912 was held on the Osage Reservation on March 15, 2004, where testimony was received from the regional director of the Bureau of Indian Affairs, the tribal chief, a tribal councilman, a representative of the Osage Shareholders Association, and two young Osage Indians who are currently denied membership in the tribe because of the 1906 Act. All testified in support of the legislation.

COMMITTEE ACTION

H.R. 2912 was introduced on July 25, 2003, by Congressman Frank Lucas (R-OK). The bill was referred to the Committee on Resources. On March 15, 2004, the full Committee held a hearing on the bill. On May 5, 2004, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

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, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

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:

**U.S. Congress,
Congressional Budget Office,
Washington, DC, May 17, 2004.**

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2912, a bill to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

Elizabeth Robinson

(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2912--A bill to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government

H.R. 2912 would enable the Osage Tribe to determine the tribe's membership roll and government rules in the same manner as other federally recognized tribes. In 1906, the Congress enacted the Osage Allotment Act that defined membership in the Osage Tribe. Under the act, Osage Indians may be legal members of the tribe and participate in the tribal government only if they are lineal descendants of the original enrollees under the 1906 act and own a share of the mineral revenues from the reservation. CBO estimates that implementing H.R. 2912 would have no effect on the federal budget because federal agencies currently provide services to all Osage Indians and do not restrict services to those considered to be members of

the tribe under the Osage Allotment Act. Enacting H.R. 2912 would not affect revenues or direct spending.

S. 1423 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. Enacting this legislation would benefit the Osage Tribe.

The CBO staff contact for this estimate is Lanette J. Walker. This estimate was 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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