

## Calendar No. 411

118TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
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### WINNEBAGO LAND TRANSFER ACT OF 2023

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JUNE 3, 2024.—Ordered to be printed

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

### R E P O R T

[To accompany H.R. 1240]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, H.R. 1240, to transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of H.R. 1240 is to transfer approximately 1,585 acres of land, currently administered by the U.S. Army Corps of Engineers (USACE), to the Bureau of Indian Affairs, to be held in trust for the Winnebago Tribe of Nebraska as part of the Tribe's reservation.

#### BACKGROUND AND NEED

The Winnebago Tribe is a federally-recognized Tribe with a reservation located on the banks of the Missouri River in both Nebraska and Iowa. In the 1830s, the federal government began to forcibly remove the Winnebago Tribe from its homelands in Wisconsin, to Iowa, Minnesota, South Dakota, and finally, in 1865, to its present-day reservation in Nebraska and Iowa.<sup>1</sup>

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<sup>1</sup>S. REP. NO. 45-747, (1879). See also Winnebago Tribe of Nebraska, *Tribal History*, ABOUT US, WINNEBAGO TRIBE, <https://winnebagoTribe.com/tribal-history/> (last visited May 28, 2024).

In 1970, the USACE condemned approximately 1,585 acres of the Tribe’s original reservation lands in Iowa and Nebraska to make way for the Snyder-Winnebago Oxbow Lake Recreation Complex project.<sup>2</sup> Following several lawsuits initiated by the Tribe, the Court of Appeals for the Eighth Circuit held that while the USACE did not have Congressional authorization to condemn the reservation lands, the Court did not have authority to compel the USACE to return those lands.<sup>3</sup>

Congressional action is needed to return certain lands previously condemned and taken by the USACE, without authority, to the Winnebago Tribe.<sup>4</sup>

#### SUMMARY OF H.R. 1240 AS ORDERED REPORTED

This bill would declare approximately 1,585 acres to be part of the Winnebago reservation and held in trust for the benefit of the Tribe and prohibit class II and class III gaming under the Indian Gaming Regulatory Act on those lands.

#### SECTION-BY-SECTION ANALYSIS OF H.R. 1240 AS ORDERED REPORTED

##### *Section 1—Short title*

This section sets forth the short title as the “Winnebago Land Transfer Act of 2023.”

##### *Section 2—Land to be taken into trust*

Section 2(a) clarifies that lands described in subsection (b) shall, subject to valid existing rights, be part of the Winnebago reservation, created by Treaty in 1865 and will be held in trust for the Tribe’s benefit.

Section 2(b) provides a description of the lands to be taken into trust.

Section 2(c) prohibits class II and class III gaming on the lands taken into trust.

#### LEGISLATIVE HISTORY

On February 28, 2023, Representative Feenstra (R-IA) introduced H.R. 1240, the *Winnebago Land Transfer Act of 2023*, along with Representatives Flood (R-NE), Nunn (R-IA), Davids (D-KS), and Smith (D-NE). Three additional cosponsors joined after introduction. The bill was referred to the Committee on Natural Resources and further referred to the Subcommittee on Indian and Insular Affairs on March 22, 2023. On June 7, 2023, the Subcommittee held a hearing on the bill. On June 13, 2023, the Committee met to consider the bill. The Subcommittee was discharged from further consideration of H.R. 1240 by unanimous consent, and the Committee ordered H.R. 1240 reported favorably with an amendment. The bill was placed on the Union calendar on January 30, 2024, and on February 5, 2024, Representative Westerman (R-AR) moved to suspend the rules and pass, as amended, H.R. 1240. The bill passed the House by voice vote. H.R. 1240, as amended, was received in the Senate on February 6, 2024 and referred to the

<sup>2</sup> <https://www.nwo.usace.army.mil/mrrp/site-Snyder-Winnebago-Complex/>.

<sup>3</sup> *United States v. Winnebago Tribe of Nebraska*, 542 F.2d 1002 (8th Cir. 1976); *Bear v. United States*, 810 F.2d 153 (8th Cir. 1987).

<sup>4</sup> *United States v. Winnebago Tribe of Nebraska*, 542 F.2d 1002 (8th Cir. 1976).

Committee on Indian Affairs. On May 3, 2024, at a duly convened business meeting, the Committee ordered H.R. 1240 reported favorably, without amendment, by voice vote.

On November 6, 2023, Senator Fischer (R–NE), along with Senator Grassley (R–IA), Senator Ernst (R–IA), and Senator Ricketts (R–NE), introduced S. 3230, the *Winnebago Land Transfer Act of 2023*, an identical companion bill to H.R. 1240. On the same day, the Senate referred the bill to the Committee on Indian Affairs. On February 8, 2024, the Committee held a legislative hearing to receive testimony on S. 3230.

*117th Congress.* On April 8, 2021, Representative Fortenberry (R–NE) introduced H.R. 2402, the *Winnebago Land Transfer Act of 2021*. On the same day, the bill was referred to the Committee on Natural Resources. On June 5, 2021, the bill was further referred to the Subcommittee for Indigenous Peoples of the United States. On October 5, 2021, the Subcommittee held a hearing on the bill. The House took no further action on H.R. 2402 in the 117th Congress. On December 1, 2022, Representative Sharice Davids (D–KS) introduced similar legislation, H.R. 9382, the *Winnebago Land Transfer Act of 2022*. H.R. 9382 was referred to the Committee on Natural Resources. The House took no further action on H.R. 9382 during the 117th Congress.

#### COST AND BUDGETARY CONSIDERATIONS

<b>H.R. 1240, Winnebago Land Transfer Act of 2023</b>			
As ordered reported by the Senate Committee on Indian Affairs on May 1, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply? No	
		<b>Mandate Effects</b>	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1240 would transfer administrative jurisdiction of about 1,500 acres of land in Woodbury County and Monona County, Iowa, from the Army Corps of Engineers to the Bureau of Indian Affairs to take such lands into trust for the Winnebago Tribe of Nebraska. The act would prohibit certain types of gaming on that land. Using information from the agencies, CBO estimates that the administrative costs to implement H.R. 1240 would not be significant; any related spending would be subject to the availability of appropriated funds.

The transfer of that land would reduce the number of acres in the Missouri River Recovery Program, an effort to compensate for losses of fish and wildlife habitat resulting from past development.

The license between the Corps and Iowa expressly prohibits any liability against the federal government if lawmakers enact legislation conveying the land to the tribe.

H.R. 1240 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) on the Winnebago Tribe of Nebraska by prohibiting gaming on tribal land in Iowa. That prohibition would apply to land being placed into trust for the benefit of the tribe under the act. Because gaming on such land is currently allowed under federal law, the proposed ban would be a mandate. However, because the tribe has no plans to conduct gaming on the land, the cost of the mandate would be small and below the threshold established in UMRA (\$100 million in 2024, adjusted annually for inflation).

The act contains no private-sector mandates as defined in UMRA.

On November 8, 2023, CBO transmitted a cost estimate for H.R. 1240, the Winnebago Land Transfer Act of 2023, as ordered reported by the House Committee on Natural Resources on June 13, 2023. The two bills are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contacts for this estimate are Julia Aman (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 1240 will have minimal impact on regulatory or paperwork requirements.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 1240.

#### CHANGES IN EXISTING LAW

On February 9, 2023, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.