

TO WAIVE APPLICATION OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO A SPECIFIC PARCEL OF REAL PROPERTY TRANSFERRED BY THE UNITED STATES TO 2 INDIAN TRIBES IN THE STATE OF OREGON, AND FOR OTHER PURPOSES

JULY 30, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany S. 375]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 375) to waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 375 is to waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to two Indian tribes in the State of Oregon, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The parcel at issue was originally part of the Chemawa Indian School campus in Keizer, Oregon. In 1973 and 1974, the United States transferred land, including this parcel, to the State of Oregon for highway and associated road projects. In 1988, upon the completion of Interstate Route 5 and Salem Parkway, the State deeded the remaining acreage of the parcel back to the United States. Because the United States had no use for the returned acreage for the administration of Indian affairs, the Department of the Interior transferred the property to the Tribes for economic development and other purposes.

The land transfer was executed via quitclaim deed to the tribes pursuant to the ISDEAA, which requires the United States to include a reversionary clause in the deed. This clause states that title to the parcel will revert back to the United States if the land is not used for economic development purposes. On July 7, 2006, the Acting Northwest Regional Director of the Bureau of Indian Affairs informed the Confederated Tribes of the Siletz Reservation that the United States intended for the tribes to freely and fully develop the property. Although the Tribes intend to use the land for economic development purposes, the reversionary clause has created financing difficulties.

The land is an integral component of a major commercial development project in Keizer, Oregon. The property development plan includes a gas station, restaurants, retail space and flex office space. By waiving the application of the ISDEAA to the transfer of the property, S. 375 will clear title to the land and allow the tribes to obtain conventional financing from commercial lending institutions and to realize the full commercial potential of the property. Additionally, because S. 375 directs the Secretary to issue a new quitclaim deed that is exempt from the ISDEAA, there will be no reversionary clause. Consequently, the Tribes will be able to fully utilize the land for non-gaming economic development purposes. The land will remain in fee status and all applicable taxes and regulations will apply.

Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.)

Enacted in 1975, the ISDEAA authorizes Indian tribes and tribal organizations to contract or compact for the operation of federal programs within the Department of the Interior and the Indian Health Service. It also authorizes the Secretary of the Interior to transfer excess property to an Indian tribe in connection with an ISDEAA contract, but the property must revert back to the Secretary if the contract is terminated or the property is not used in accordance with the ISDEAA (25 U.S.C. 450j(f)). The Secretary does not have the authority to waive application of the reversionary clause. Here, the Tribes do not wish to terminate the ISDEAA contract and they intend to use the property in a manner consistent with the ISDEAA contract.

Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.)

Generally, the Indian Gaming Regulatory Act (IGRA) prohibits gaming on land acquired after October 17, 1988. Even then, the land must be placed into trust to qualify as “Indian lands” for purposes of the IGRA. Here, the Tribes do not intend to conduct gaming and the land is held in fee simple, not trust status. Moreover, gaming is explicitly prohibited on the lands at issue.

Legislative history

In the 109th Congress, Representative Hooley (D–OR) introduced H.R. 5394, which was referred to the House Committee on Resources. On May 24, 2006, the Committee requested executive comment but the Department of the Interior did not provide it. This Congress, Representatives Hooley, Blumenauer (D–OR), DeFazio (D–OR), and Wu (D–OR) introduced H.R. 679 on January 24, 2007.

S. 375 was introduced in the Senate on January 24, 2007 by Senators Smith (R–OR) and Wyden (D–OR). It was referred to the Committee on Indian Affairs, which unanimously ordered the bill to be reported without amendment on February 8, 2007. On May 22, 2007, the Senate passed S. 375 without amendment by unanimous consent. On May 23, 2007, S. 375 was referred to the House Committee on Natural Resources.

COMMITTEE ACTION

S. 375 was introduced on January 24, 2007 by Senator Gordon Smith (R–OR) and Senator Ron Wyden (D–OR). The bill was referred to the Committee on Natural Resources on May 22, 2007. The bill was then forwarded to the full Committee. A hearing was held on July 11, 2007, at which the Department of the Interior testified in support of this measure. On July 18, 2007, the full Natural Resources Committee met to consider the bill. No amendments were offered and the bill was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings

Section 1 sets forth findings supporting the intent of the bill, including that the parcel of land in the quitclaim deed is approximately 19.86 acres of land originally part of the Chemawa Indian School; that the United States does not desire the return of the parcel and does not intend under any circumstance to take action to seek return of the parcel; and that in reliance on this intent, the Tribes have committed over \$2.5 million to infrastructure improvements to the parcel.

Section 2. Waiver of application of Indian Self-Determination and Education Assistance Act

Section 2 provides that the Indian Self-Determination and Education Assistance Act does not apply to the transfer of the parcel of real property deeded by the United States to the Confederated Tribes of Siletz Indians of Oregon and the Confederated Tribes of the Grand Ronde Community of Oregon by quitclaim deed dated June 18, 2002. The Secretary of the Interior is directed to issue a new deed that does not include any restriction on the right to alienate the parcel or any reference to any provision of the Indian Self-Determination and Education Assistance Act. Class II and Class III Gaming pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) may not be conducted on the property.

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 Natural 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:

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S. 375 would direct the Secretary of the Interior to issue a new deed to the Confederated Tribes of Siletz Indians and the Confederated Tribes of the Grand Ronde Community of Oregon, exempting approximately 20 acres of land currently owned by the tribes from provisions of the Indian Self-Determination and Education Assistance Act. CBO estimates that enacting S. 375 would have no significant impact on the federal budget.

S. 375 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 Siletz and Grand Ronde Indian tribes in Oregon.

In June 2002, the federal government transferred approximately 20 acres of land to the Confederated Tribes of Siletz Indians and the Confederated Tribes of the Grand Ronde Community of Oregon. S. 375 would direct the Secretary to reissue a deed for the land that waives provisions of the Indian Self-Determination and Education Assistance Act related to the use of that property. Because the land in question is not currently owned or held in trust by the United States, CBO estimates that enacting the legislation would have no significant effect on the federal budget.

On February 20, 2007, CBO transmitted a cost estimate for S. 375, as ordered reported by the Senate Committee on Indian Affairs on February 8, 2007. The two versions of the legislation are similar, and our cost estimates are identical.

The CBO staff contact for this estimate is Daniel Hoople. 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.

EARMARK STATEMENT

S. 375 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

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.