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SENATE

{ REPORT
{ 111-246

TO AMEND THE ACT OF AUGUST 9, 1955, TO MODIFY A
PROVISION RELATING TO LEASES INVOLVING CERTAIN
INDIAN TRIBES

AUGUST 3, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 2906]

The Committee on Indian Affairs, to which was referred the bill (S. 2906) to modify a provision relating to leases involving certain Indian tribes, orders the bill be reported to the full Senate and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 2906 is to amend the Act of August 9, 1955, to modify a provision relating to leases involving certain Indian tribes.

BACKGROUND

Since the enactment of the Act of June 30, 1834, 4 Stat. 730, codified as 25 U.S.C. § 177, and predecessor statutes, land transactions with Indian tribes were prohibited unless specifically authorized by Congress. This law is commonly known as the Non-intercourse Act.

Congress enacted the Act of August 9, 1955, codified at 25 U.S.C. § 415, commonly known as the Long-Term Leasing Act, to overcome the prohibition of the Non-intercourse Act. The Long-Term Leasing Act permitted some land transactions between Indian tribes and nonfederal parties—specifically, the leasing of Indian lands. The Act required that leases of Indian lands be approved by the Secretary of the Interior and limited lease terms to 25 years.

As business opportunities and economic considerations changed over time, leases longer than 25 years were desired. To facilitate

economic development on trust lands, over the years, a number of tribes have obtained amendments to the Long-Term Leasing Act so that they could enter into leases for terms longer than 25 years. Approximately 50 tribes have obtained these amendments and all are listed in the Long-Term Leasing Act as having authority to enter into leases for terms as long as 99 years.

S. 2906 would further amend the Long-Term Leasing Act by adding two additional tribes to the list. H.R. 2906 adds two Washington State tribes, the Kalispel Tribe of Indians and the Puyallup Tribe of Indians to the list of tribes that may enter into 99 year leases. S. 2906 also authorizes the Puyallup Tribe of Indians, the Swinomish Indian Tribal Community, and the Kalispel Tribe of Indians to enter into business and residential surface leases without approval by the Secretary of the Interior, provided the term of the lease meets certain restrictions.

LEGISLATIVE HISTORY

S. 2906 was introduced on December 18, 2009, by Senator Cantwell for herself and Senator Murray and referred to the Committee on Indian Affairs. A companion bill, H.R. 4401, was introduced on December 16, 2009, by Congressman Adam Smith for himself and Congressman Norman Dicks and referred to the Committee on Natural Resources.

SUMMARY OF THE AMENDMENT

Senator Cantwell introduced an amendment at a business meeting on June 10, 2009, adding the Puyallup Tribe of Indians to the list of tribes with the authority to enter into 99-year leases and other technical amendments. The amendment was accepted by voice vote.

SECTION-BY-SECTION OF S. 1448, AS AMENDED

Section I. Leases involving certain Indian tribes

This section amends subsection (a) of the first section of the Act of August 9, 1955, in the second sentence by inserting “and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians,” after “the Kalispel Indian Reservation”.

This section also amends subsection (b) of the first section by inserting “the Puyallup Tribe of Indians, the Swinomish Indian Tribal Community, or the Kalispel Tribe of Indians” after “Tulalip Tribes.” This would allow these tribal communities to be able to enter into leases, except a lease for the exploitation of any natural resource, without approval by the Secretary of the Interior provided the term of the lease does not exceed fifteen years with no option to renew; thirty years with no option to renew if the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior; or seventy-five years (including options to renew, and the lease is executed under tribal regulations approved by the Secretary of the Interior under clause (3) of section (b).

COMMITTEE RECOMMENDATION

On June 10, 2010, the Committee on Indian Affairs held a business meeting to consider S. 2906 and other measures. Senator

Cantwell introduced an amendment which was accepted by voice vote. S. 2906, as amended, passed by voice vote. The Committee ordered the bill, as amended, reported to the full Senate with the recommendation that it do pass.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated June 24, 2010, was prepared for S. 2906:

S. 2906—A bill to amend the Act of August 9, 1955, to modify a provision relating to leases involving certain Indian tribes

S. 2906 would authorize the Kalispel Tribe of Indians and the Puyallup Tribe of Indians to lease lands held in trust for up to 99 years. In general, under current law, the tribes can lease trust lands to schools, businesses, and public entities for 25-year terms, subject to the approval of the Bureau of Indian Affairs (BIA). The Kalispel Tribe currently has the authority to lease its reservation land for up to 99 years. The bill also would allow the Kalispel Tribe, the Puyallup Tribe, and the Swinomish Indian Tribal Community to lease lands held in trust for up to 15 years without prior approval from the Secretary of the Interior as long as no natural resources are extracted from the leased lands.

CBO estimates that implementing S. 2906 would have no significant impact on the federal budget. Any additional proceeds from such leases would accrue to the owners of the trust land and would have no effect on the federal budget. CBO also estimates that implementing the bill would have a negligible effect on BIA's workload. Enacting S. 2906 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 2906 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.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Sam Papenfuss, Unit Chief for Income Security and Education Cost Estimates Unit, Budget Analysis Division.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impact of S. 2906 should be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received no official communication from the Administration on the provisions of S. 2906.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2906, as ordered to be reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to be

added in italic, existing law to which no change is proposed is shown in roman):

25 U.S.C. 415

ACT OF AUGUST 9, 1955

(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation, *and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians*, the pueblo of Cochiti, the pueblo of Pojoaque,

* * * * *

(b) Leases involving Tulalip Tribes

Any lease by the Tulalip Tribes, *the Puyallup Tribe of Indians, the Swinomish Indian Tribal Community, or the Kalispel Tribe of Indians* under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior, or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3).