

OREGON TRIBAL ECONOMIC DEVELOPMENT ACT

—
FEBRUARY 15, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
—

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 3225]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3225) to allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands, 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. 3225 is to allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands.

BACKGROUND AND NEED FOR LEGISLATION

A law commonly called the Indian Trade and Intercourse Act reserves to the United States the exclusive right to acquire Indian lands.¹ The Act was intended to protect Indian tribes by preventing the loss of their lands, except by treaty. Specifically, the Act prohibits the transfer, sale, lease, or other conveyance of land owned

¹ 25 U.S.C. 177.

by an Indian tribe to third parties without federal approval. This prohibition applies to both trust and fee lands of a tribe.

Over the last century, Congress has enacted laws that govern the acquisition by the Secretary of the Interior of land in trust for tribes, and for the leasing of these trust lands. Because such laws, which are thought to supersede the Indian Trade and Intercourse Act, do not impose a restriction on a tribe's acquisition, sale, exchange, or leasing of land not held in trust, tribes often buy, sell, and dispose of non-trust lands without federal approval, notwithstanding that the Indian Trade and Intercourse Act remains in the U.S. Code. Although the purpose of the Act is viewed by some as outdated, the U.S. Supreme Court in 2005 said it "remain[s] substantially in force today . . . [and] bars sales of tribal land without the acquiescence of the Federal Government."²

Tribes occasionally seek a waiver of the Act to facilitate business transactions and mortgages related to their non-trust lands. For example, in the 113th and 114th Congresses, bills similar to H.R. 3225 were enacted to permit the Miami Tribe of Oklahoma and the Fond du Lac Band of Lake Superior Chippewa to lease or transfer interests in their fee land without further federal approval.³ In the 106th Congress, a bill was enacted into law with a similar purpose for the Lower Sioux Indian Community in Minnesota.⁴ Congress has also enacted other legislation authorizing several tribes to sell or mortgage specific parcels of fee lands.⁵

H.R. 3225 would allow five tribes⁶ in Oregon to lease, sell, convey, warrant, or transfer all or any portion of interest in any real property not held in trust for the tribes. Without this bill, these tribes may encounter difficulty securing financing or demonstrating clear title due to the restrictions imposed by the Indian Trade and Intercourse Act.

H.R. 3225 is similar to S. 1285, which was reported by the Committee on January 10, 2018 (H. Rept. 115–507). Both bills waive the Indian Trade and Intercourse Act for the non-trust lands of five tribes in Oregon; however, S. 1285 additionally waives the Act for the Klamath Tribes and the Burns Paiute Tribes.

COMMITTEE ACTION

H.R. 3225 was introduced on July 13, 2017, by Congressman Peter A. DeFazio (D–OR). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On January 17, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

²*City of Sherrill v. Oneida Nation of New York*, 544 U.S. 197, 204 (2005) (internal citation omitted).

³See P.L. 114–127 and P.L. 113–88.

⁴See P.L. 106–217.

⁵See P.L. 102–497; P.L. 107–331; P.L. 103–435; P.L. 105–256; and P.L. 110–76.

⁶Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians.

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.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 13, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3225, the Oregon Tribal Economic Development Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3225—Oregon Tribal Economic Development Act

H.R. 3225 would authorize five Indian tribes located in Oregon to lease, sell, or otherwise transfer any real property owned by those tribes that is not held in trust by the United States for the benefit of those tribes. Under current law, those tribes are prohibited from leasing, selling, or otherwise transferring any land, whether or not the government holds it in trust for their benefit, without specific Congressional approval.

Because H.R. 3225 would not affect land that has any associated costs or benefits to the federal government, CBO estimates that enacting the bill would have no effect on the federal budget.

Enacting H.R. 3225 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3225 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3225 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow

Creek Band of Umpqua Tribe of Indians by allowing the tribes to lease or transfer some land.

On January 5, 2018, CBO transmitted a cost estimate for S. 1285 as ordered reported by the House Committee on Natural Resources on December 13, 2017. The two pieces of legislation are similar (S. 1285 would affect seven tribes whereas H.R. 3225 would affect five tribes), and CBO's estimates of their budgetary effects are the same.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

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 to existing law.