

STIGLER ACT AMENDMENTS OF 2018

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AUGUST 21, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
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Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 2606]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2606) to amend the Act of August 4, 1947 (commonly known as the Stigler Act), with respect to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stigler Act Amendments of 2018”.

SEC. 2. IN GENERAL.

The first section of the Act of August 4, 1947 (61 Stat. 731, chapter 458), is amended—

(1) in the matter before subsection (a), by striking “That all restrictions” and all that follows through subsection (a) and inserting the following:

“SEC. 1. (a) All restrictions against alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances upon all lands, including oil and gas or other mineral interests, in Oklahoma belonging to a lineal descendant by blood of an original enrollee whose name appears on the Final Indian Rolls of the Five Civilized Tribes in Indian Territory, whether acquired by allotment, inheritance, devise, gift, purchase, exchange, partition, partition sale, or by purchase with restricted funds, of whatever degree of Indian blood, and whether enrolled or unenrolled, shall be and are hereby, extended until an Act of Congress determines otherwise.

“(b) The extension of restrictions described in subsection (a) shall include without limitation, those interests in the estate of a decedent Indian who died before the date of enactment of the Stigler Act Amendments of 2018—

“(1) if such interests were acquired by an heir or devisee of one-half or more degree of Indian blood, as computed from the nearest enrolled lineal ancestors of Indian blood enrolled on the Final Rolls described in subsection (a), by final

order issued by an Oklahoma district court or a United States district court determining the decedent's heirs or devisees or otherwise determining the ownership of said interests before said date; or

"(2) if such interests were, immediately prior to the decedent's death, subject to restrictions and had not, as of said date, been—

"(A) the subject of a final order issued by an Oklahoma district court or a United States district court determining the decedent's heirs or devisees or otherwise determining the ownership of said interests;

"(B) conveyed by the decedent's undetermined heirs or devisees by deed approved by an Oklahoma district court; or

"(C) conveyed by the decedent's undetermined heirs or devisees of less than one-half degree of Indian blood with or without Oklahoma district court approval.

"SEC. 2. (a) Except as provided in subsection (f), subsection (g), subsection (h), and subsection (i), no conveyance, including an oil and gas or mineral lease, of any interest in the restricted lands described in this section shall be valid unless approved in open court by the district court of the county in Oklahoma in which the land is situated;"

(2) in subsection (b)—

(A) by striking "county judge" and inserting "district judge"; and

(B) by striking "Proceedings for approval of conveyances by restricted heirs or devisees" and inserting "Proceedings for approval of conveyances";

(3) in subsection (c), by striking "best interest of the Indian" and inserting "best interest of the grantor"; and

(4) by adding before the period at the end the following: "; (h) nothing contained in this section shall limit or affect the right of an Indian owner of restricted lands described in this Act to seek and obtain Secretarial removal of restrictions on all or any portion of said restricted lands in accordance with any applicable Federal law; (i) nothing contained in this section shall invalidate the alienation, conveyance, lease, including oil and gas or other mineral leases, mortgage, creation of liens, or other encumbrance of any lands, if such action was effective before the date of enactment of the Stigler Act Amendments of 2018 and valid under the law then in effect; and (j) in determining the quantum of Indian blood of any Indian heir or devisee, the Final Indian Rolls of the Five Civilized Tribes in Indian Territory as to such heir or devisee, if enrolled, shall be conclusive of his or her quantum of Indian blood. If unenrolled, his or her degree of Indian blood shall be computed from the nearest enrolled lineal ancestors of Indian blood enrolled on the Final Indian Rolls of the Five Civilized Tribes in Indian Territory".

SEC. 3. TECHNICAL AMENDMENTS.

The Act of August 4, 1947 (61 Stat. 731, chapter 458), is amended—

(1) in section 5, by striking "of one-half or more Indian blood,";

(2) in section 6(c)—

(A) by inserting "purchase, partition sale," after "gift," each place it appears; and

(B) by striking "of one-half or more Indian blood"; and

(3) in section 8, by striking "of one-half or more Indian blood,".

SEC. 4. REPEALS.

The following are repealed:

(1) The first section of the Act of August 11, 1955 (69 Stat. 666, chapter 768).

(2) Section 2 of the Act of August 4, 1947 (61 Stat. 731, chapter 458).

PURPOSE OF THE BILL

The purpose of H.R. 2606 is to amend the Act of August 4, 1947 (commonly known as the Stigler Act) with respect to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma.

BACKGROUND AND NEED FOR LEGISLATION

Oklahoma is home to 38 federally-recognized Indian tribes, a majority of which were resettled involuntarily, some forcibly, during the mid-1800s. The first tribes removed to what is now Oklahoma were the Choctaw, Chickasaw, Creek, Cherokee and Seminoles, which are collectively called the Five Civilized Tribes.

The Five Civilized Tribes have stood together in different forms since 1842, when the Five Tribes first formed the Inter-Tribal Council of the Deep Fork River.¹ According to the Five Tribes, they recognized the need to stand together after being removed to Indian Territory (what is now Oklahoma). The Five Tribes formed the United Nations of Indian Territory in 1861, the Okmulgee Council in 1866, and most recently the Inter-Tribal Council of the Five Civilized Tribes in 1949.² Today, the Inter-Tribal Council represents over 650,000 tribal members from the Five Tribes.

Under the General Allotment Act of 1887 (also known as the Dawes Act),³ Congress sought to end the tribal and reservation system in which Indians had been living by making them individual property owners through allotment of the reservations. Under the Act, the President was authorized to allot 80-acre or 160-acre parcels of land in Indian reservations to individual Indians located on them, and to open remaining surplus lands to non-Indian settlement. In 1893, the Dawes Commission⁴ was created by Congress in part to seek allotment of the lands of the Five Tribes. In 1898, Congress enacted the Curtis Act⁵ which provided for the allotment of the Five Tribes' lands and authorized townsites that were opened to non-Indian ownership.⁶ Most tribal lands of the Five Tribes were allotted between 1897 and 1902 with most being, as a matter of federal law, inalienable (cannot be sold or otherwise transferred) and nontaxable.

In 1947, Congress passed the Stigler Act⁷ which sets forth certain additional restrictions on title to the allotments that had been conveyed to members of the Five Tribes. The Act provides that, upon probate, heirs and devisees of an allotment shall maintain at least one-half degree Indian blood quantum from one of the Five Tribes for the allotment to remain inalienable and nontaxable for the life of the owner. The effect of the Stigler Act has been that when a person of less than one-half degree Indian blood from one of the Five Tribes inherits an interest in an allotment, the interest in the land can be sold or exchanged and is taxable. None of the Five Tribes maintain a minimum degree blood quantum for membership.

Several attempts have been made to comprehensively update the Stigler Act. In 2000, H.R. 5308 was passed by the House, but the House bill and the Senate companion bill (S. 3182), saw no further action in the 106th Congress. The bill was introduced again in the 107th Congress as H.R. 2880, passing the House again in 2002. The bill was reported by the Senate Committee on Indian Affairs but failed to become law.

Rather than make a comprehensive update of the entire Stigler Act, H.R. 2606 would amend the Stigler Act to remove the Indian blood quantum requirement for interests in certain allotments of

¹ <http://www.okhistory.org/publications/enc/entry.php?entry=IN033>.

² <http://www.fivecivilizedtribes.org/Home/History/Chapter-One>.

³ Stat. 388, chapter 119.

⁴ Act of March 3, 1893, 16, 27 Stat. 612.

⁵ Act of June 28, 1898, 30 Stat. 495.

⁶ In doing so, it began the process of preparing Indian Territory to become the State of Oklahoma in 1906–1907.

⁷ The Act of August 4, 1947 (61 Stat. 731, chapter 458).

land to be maintained in restricted fee status⁸ for any member of the Five Tribes. Under the bill, restricted fee land currently owned by members of the Five Tribes would remain in restricted status regardless of the blood quantum of the owners.

COMMITTEE ACTION

H.R. 2606 was introduced on May 23, 2017, by Congressman Tom Cole (R–OK). 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 October 4, 2017, the Subcommittee held a hearing on the bill. On June 13, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop (R–UT) offered an amendment designated #1 to the bill; it was adopted by voice vote. No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by voice vote.

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, August 14, 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. 2606, the Stigler Act Amendments of 2018.

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.

⁸This is land or interest in land whose title is held in fee by an Indian, but such land may not, as a matter of federal law, be taxed or transferred (through sale, exchange, donation, or otherwise) without authorization from the federal government.

H.R. 2606—Stigler Act Amendments of 2018

H.R. 2606 would amend the Act of August 4, 1947 (commonly known as the Stigler Act) to revise the qualifications that need to be met by a person who inherits land originally allotted to members of the Five Civilized Tribes of Oklahoma—Cherokee, Creek (Muscogee), Choctaw, Chickasaw, and Seminole Tribes—for that land to remain in restricted status. Land in restricted status can only be conveyed or encumbered by an Indian owner with the approval of the Secretary of the Interior according to Indian land conveyance provisions and limitations found in the Code of Federal Regulations. The bill would not apply to individuals that have inherited property in restricted status prior to enactment.

Because the relevant land would remain privately owned whether it is held in restricted status or otherwise, CBO estimates that implementing the bill would have no federal cost.

Enacting H.R. 2606 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2606 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 2606 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed 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 amend the Act of August 4, 1947 (commonly known as the Stigler Act) with respect to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma.

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 MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 4, 1947

AN ACT Relative to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That all restrictions upon all lands in Oklahoma belonging to members of the Five Civilized Tribes, whether acquired by allotment, inheritance, devise, gift, exchange, partition, or by purchase with restricted funds, of whatever degree of Indian blood, and whether enrolled or unenrolled, shall be, and are hereby, removed at and upon his or her death: Provided, (a) That except as provided in subdivision (f) of this section, no conveyance, including an oil and gas or mineral lease, of any interest in land acquired before or after the date of this Act by an Indian heir or devisee of one-half or more Indian blood, when such interest in land was restricted in the hands of the person from whom such Indian heir or devisee acquired same, shall be valid unless approved in open court by the county court of the county in Oklahoma in which the land is situated;]

SEC. 1. (a) All restrictions against alienation, conveyance, lease, mortgage, creation of liens, or other encumbrances upon all lands, including oil and gas or other mineral interests, in Oklahoma belonging to a lineal descendant by blood of an original enrollee whose name appears on the Final Indian Rolls of the Five Civilized Tribes in Indian Territory, whether acquired by allotment, inheritance, devise, gift, purchase, exchange, partition, partition sale, or by purchase with restricted funds, of whatever degree of Indian blood, and whether enrolled or unenrolled, shall be and are hereby, extended until an Act of Congress determines otherwise.

(b) The extension of restrictions described in subsection (a) shall include without limitation, those interests in the estate of a decedent Indian who died before the date of enactment of the Stigler Act Amendments of 2018—

(1) if such interests were acquired by an heir or devisee of one-half or more degree of Indian blood, as computed from the nearest enrolled lineal ancestors of Indian blood enrolled on the Final Rolls described in subsection (a), by final order issued by an Oklahoma district court or a United States district court determining the decedent's heirs or devisees or otherwise determining the ownership of said interests before said date; or

(2) if such interests were, immediately prior to the decedent's death, subject to restrictions and had not, as of said date, been—

(A) *the subject of a final order issued by an Oklahoma district court or a United States district court determining the decedent's heirs or devisees or otherwise determining the ownership of said interests;*

(B) *conveyed by the decedent's undetermined heirs or devisees by deed approved by an Oklahoma district court;*
or

(C) *conveyed by the decedent's undetermined heirs or devisees of less than one-half degree of Indian blood with or without Oklahoma district court approval.*

SEC. 2. (a) *Except as provided in subsection (f), subsection (g), subsection (h), and subsection (i), no conveyance, including an oil and gas or mineral lease, of any interest in the restricted lands described in this section shall be valid unless approved in open court by the district court of the county in Oklahoma in which the land is situated;* (b) that petition for approval of conveyance shall be set for hearing not less than ten days from date of filing, and notice of hearing thereon, signed by the **[county judge]** *district judge*, reciting the consideration offered and a description of the land shall be given by publication in at least one issue of a newspaper of general circulation in the county where the land is located and written notice of such hearing shall be given to the probate attorney of the district in which the petition is filed at least ten days prior to the date on which the petition is to be heard. The grantor shall be present at said hearing and examined in open court before such conveyance shall be approved, unless the grantor and the probate attorney shall consent in writing that such hearing may be had and such conveyance approved in the absence of the grantor, and the court must be satisfied that the consideration has been paid in full. **[Proceedings for approval of conveyances by restricted heirs or devisees]** *Proceedings for approval of conveyances* under this section shall not be removable to the Federal court; (c) the evidence taken at the hearing shall be transcribed and filed of record in the case, the expense of which, including attorney fees and court costs, must be borne by the grantee. The court in its discretion, when deemed for the **[best interest of the Indian]** *best interest of the grantor*, may approve the conveyance conditionally, or may withhold approval; (d) that at said hearing competitive bidding may be had and a conveyance may be confirmed in the name of the person offering the highest bid therefor or when deemed necessary the court may set the petition for further hearing; (e) that the probate attorney shall have the right to appeal from any order approving conveyances to the district court of the county in which the proceedings are conducted within the time and in the manner provided by the laws of the State of Oklahoma in cases of appeal in probate matters generally, except of that no appeal bond shall be required; (f) that sales of the interests of minor and incompetent persons shall be made in conformity with the laws of the State of Oklahoma. Notice of such sale shall be given to the probate attorney of the district in which the petition is filed at least ten days prior to the date on which the petition for sale is to be heard; (g) that nothing contained in this section shall be construed to modify or repeal the Act of February 11, 1936 (49 Stat. 1135), relating to leases for farming and grazing purposes; (h) *nothing contained in this section shall limit or affect the right of an Indian owner of restricted lands*

described in this Act to seek and obtain Secretarial removal of restrictions on all or any portion of said restricted lands in accordance with any applicable Federal law; (i) nothing contained in this section shall invalidate the alienation, conveyance, lease, including oil and gas or other mineral leases, mortgage, creation of liens, or other encumbrance of any lands, if such action was effective before the date of enactment of the Stigler Act Amendments of 2018 and valid under the law then in effect; and (j) in determining the quantum of Indian blood of any Indian heir or devisee, the Final Indian Rolls of the Five Civilized Tribes in Indian Territory as to such heir or devisee, if enrolled, shall be conclusive of his or her quantum of Indian blood. If unenrolled, his or her degree of Indian blood shall be computed from the nearest enrolled lineal ancestors of Indian blood enrolled on the Final Indian Rolls of the Five Civilized Tribes in Indian Territory.

【SEC. 2. In determining the quantum of Indian blood of any Indian heir or devisee, the final rolls of the Five Civilized Tribes as to such heir or devisee, if enrolled, shall be conclusive of his or her quantum of Indian blood. If unenrolled, his or her degree of Indian blood shall be computed from the nearest enrolled paternal and maternal lineal ancestors of Indian blood enrolled on the final rolls of the Five Civilized Tribes.】

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SEC. 5. That all funds and securities now held by, or which may hereafter come under the supervision of the Secretary of the Interior, belonging to and only so long as belonging to Indians of the Five Civilized Tribes in Oklahoma **【of one-half or more Indian blood,】** enrolled or unenrolled, are hereby declared to be restricted and shall remain subject to the jurisdiction of said Secretary until otherwise provided by Congress, subject to expenditure in the meantime for the use and benefit of the individual Indians to whom such funds and securities belong, under such rules and regulations as said Secretary may prescribe.

SEC. 6. (a) Except as hereinafter provided, the tax-exempt lands of any Indian of the Five Civilized Tribes in Oklahoma shall not exceed one hundred and sixty acres, whether the said lands be acquired by allotment, descent, devise, gift, *purchase, partition sale*, exchange, partition, or by purchase with restricted funds.

(b) All tax-exempt lands owned by an Indian of the Five Civilized Tribes on the date of this Act shall continue to be tax-exempt in the hands of such Indian during the restricted period: Provided, That any right to tax exemption which accrued prior to the date of this Act under the provisions of the Acts of May 10, 1928 (45 Stat. 495), and January 27, 1933 (47 Stat. 777), shall terminate unless a certificate of tax exemption has been filed of record in the county where the land is located within two years from the date of this Act

(c) Any interest in restricted and tax-exempt lands acquired by descent, devise, gift, *purchase, partition sale*, exchange, partition, or purchase with restricted funds, after the date of this Act by an Indian of the Five Civilized Tribes **【of one-half or more Indian blood】** shall continue to be tax-exempt during the restricted period: Provided, That the tax-exempt lands of any such heir, devisee, donee, or grantee, whether acquired by allotment, descent, devise, gift, *purchase, partition sale*, exchange, partition, or purchase with

restricted funds, shall not exceed one hundred and sixty acres in the aggregate: Provided further, That nothing contained in this subsection shall be construed to terminate or abridge any right to tax exemption to which any Indian was entitled on the effective date of this Act.

(d) Nothing contained in this section shall be construed to affect any tax exemption provided by the Act of June 26, 1936 (49 Stat. 1967).

(e) On or before the 1st day of January of each year the Secretary of the Interior shall cause to be filed with the county treasurer of each county in the State of Oklahoma where restricted lands of members of the Five Civilized Tribes are situated a list of the nontaxable lands that have been sold during the preceding year.

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SEC. 8. That no tract of land, nor any interest therein, which is hereafter purchased by the Secretary of the Interior with restricted funds by or for an Indian or Indians of the Five Civilized Tribes in Oklahoma [of one-half or more Indian blood,] enrolled or unenrolled, shall be construed to be restricted unless the deed conveying same shows upon its face that such purchase was made with restricted funds.

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ACT OF AUGUST 11, 1955

AN ACT To extend the period of restrictions on lands belonging to Indians of the Five Civilized Tribes in Oklahoma, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That subject to the provisions of section 2 of this Act, the period of restrictions against alienation, lease, mortgage, or other encumbrance of lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half degree or more Indian blood, which period was extended to April 26, 1956, by the Act of May 10, 1928 (45 Stat. 495), is hereby extended for the lives of the Indians who own such lands subject to such restrictions on the date of this Act.]

* * * * *