

Calendar No. 249

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-175

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

OCTOBER 17, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 1285]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 1285) 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, reports favorably thereon with amendments and an amendment to the title and recommends the bill, as amended, do pass.

PURPOSE

The bill, S. 1285, would, as amended, allow seven Indian tribes in Oregon to purchase, sell, lease, or otherwise convey their interests in non-trust real property without approval from the federal government. The bill does not apply to the tribes' interests in real property that the federal government holds in trust. The bill, as amended, applies to the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, the Cow Creek Band of Umpqua Tribe of Indians, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Klamath Tribes, and the Burns Paiute Tribes.

BACKGROUND

Congress enacted a series of laws from 1790 to 1834,¹ collectively known as the *Indian Non-Intercourse Act*, to regulate trade and commerce with Indian tribes. The *Indian Non-Intercourse Act* provides, in pertinent part, that no purchase, grant, lease, or other conveyance of lands from any Indian nation or tribe of Indians will be valid unless made by treaty or convention entered into pursuant to the Constitution.²

The original purpose of the *Indian Non-Intercourse Act* was to “prevent unfair, improvident, or improper disposition by Indians of lands owned or possessed by them to other parties.”³ Although the purpose of the *Indian Non-Intercourse Act* is viewed by some as outdated, the U.S. Supreme Court in 2005 noted that the Act “remain[s] substantially in force today . . . [and] bars sales of tribal land without the acquiescence of the Federal Government.”⁴ Thus, by virtue of the *Act*, the federal government or a court may vacate the disposition of Indian lands made without a federal statute or treaty that authorizes the challenged conveyance.⁵

This bill, S. 1285, as amended, would allow seven tribes in Oregon to sell, lease, transfer, or otherwise convey their interests in non-trust real property without federal oversight or interference. By eliminating the *Indian Non-Intercourse Act’s* requirement that the United States ratify or otherwise authorize a conveyance, S. 1285 will eliminate some of the difficulties that the *Indian Non-Intercourse Act* imposes on tribes who seek to convey their interests in non-trust real property. In recent years, Congress has passed legislation exempting certain tribal lands from the proscriptions of the *Non Intercourse Act*.⁶

NEED FOR LEGISLATION

This legislation, S. 1285, would allow the aforementioned tribes in Oregon greater control over transactions involving some of their real property. The legislation is intended to remove the uncertainties created by the *Indian Non-Intercourse Act* over Indian land

¹*Indian Trade and Intercourse Act of 1790*, Pub. L. No. 1–33, § 4, 1 Stat. 137, 138 (July 22, 1790); *Act of March 1, 1793*, Pub. L. No. 2–19, § 8, 1 Stat. 329, 330; *Act of May 19, 1796*, Pub. L. No. 4–30, § 12, 1 Stat. 469, 472; *Act of March 3, 1799*, Pub. L. No. 5–46, § 12, 1 Stat. 743, 746; *Act of March 30, 1802*, Pub. L. No. 7–13, § 12, 2 Stat. 139, 143; *Act of June 30, 1834*, Pub. L. No. 23–161, § 12, 4 Stat. 729, 730 (codified as amended at 25 U.S.C. § 177 (2006)). In short, according to the “right of discovery” of European settlers, Indians were granted the “right of occupancy” to their lands. Although Indians remained upon their lands, the federal government restricted their ability to alienate, or dispose of, those lands. See *Mohegan Tribe v. State of Connecticut*, 638 F.2d 612, 616–17 (2d Cir. 1980). While the principles of the trust responsibility and tribal self-governance now govern Indian land jurisprudence, the federal government’s to the *Non-Intercourse Acts* is still a consideration in Indian land transactions.

²*Id.*

³*Fed. Power Comm’n v. Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960); see also 73 A.L.R. Fed. 2d 221 (Originally published in 2013).

⁴*City of Sherill v. Oneida Indian Nation of New York*, 544 U.S. 197, 204 (2005).

⁵See, e.g., *Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S.*, 672 F.3d 1021 (Fed. Cir. 2012) (invalidating an unauthorized lease to a third party for oil and gas production).

⁶*An Act to allow the Miami Tribe of Oklahoma to lease or transfer certain lands*, Pub. L. No. 114–27, 130 Stat. 286 (2016); *An Act to allow the Fond du Lac Band of Lake Superior Chippewa in the State of Minnesota to lease or transfer certain land*, Pub. L. No. 113–88, 128 Stat. 1019 (2014); *An Act to authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe*, Pub. L. No. 110–75, 121 Stat. 724 (2007); *An Act to authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in land owned by the Tribe*, Pub. L. No. 110–76, 121 Stat. 725 (2007); *An Act to provide that land which is owned by the Lower Sioux Indian Community in the State of Minnesota but which is not held in trust by the United States for the Community may be leased or transferred by the Community without further approval by the United States*, Pub. L. No. 106–217, 114 Stat. 344 (2000).

transactions involving non-trust real property. Without such clarity, these tribes have difficulty securing financing or demonstrating clear title, both of which are crucial to successfully executing real estate transactions. This bill is intended to facilitate the tribes' ability to purchase sell, lease, transfer, or otherwise convey their interests in non-trust real property.

LEGISLATIVE HISTORY

On May 25, 2017, Senator Merkley introduced S. 1285, *The Oregon Tribal Economic Development Act*, and the bill was referred to the Committee. Senator Wyden is an original co-sponsor. Representative Peter A. DeFazio (OR-04) introduced an identical House companion bill on July 13, 2017, which has been referred to the House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs, where it awaits further consideration.

The Committee received testimony from Tony Dearman, the Director of the Bureau of Indian Education, at a legislative hearing held on July 12, 2017. In his testimony, Mr. Dearman, on behalf of the U.S. Department of the Interior, expressed support for the legislation.⁷

The Committee considered S. 1285 at a business meeting on September 13, 2017. Senator Merkley filed one amendment to the bill. The amendment, timely filed and duly considered by the Committee, AEG17479, would allow two additional tribes in Oregon—the Klamath Tribes and the Burns Paiute Tribes—to lease, sell, transfer, or otherwise convey their interests in non-trust real property without federal approval. The Committee passed S. 1285, as amended, by voice vote and ordered the bill to be reported favorably.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth the short title of this bill as the “*Oregon Tribal Economic Development Act*.”

Section 2. Approval not required to validate land transactions

Section 2 specifies that the seven tribes included in the bill will not be required to obtain federal approval, authorization, or ratification should any wish to lease, sell, convey, warrant, or transfer any interest in real property.

Section 2 also provides that nothing in the bill applies to land held in trust by the United States for the benefit of any of the five tribes identified therein.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated September 25, 2017, was prepared for S. 1285:

⁷ *Legislative Hearing, to receive testimony on the following bills: S. 943, S. 1223, and S. 1285. Before the S. Comm. on Indian Affairs, 115th Cong. (2017) (testimony submitted by Tony Dearman, Director, Bureau of Indian Education—U.S. Department of the Interior).*

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, September 25, 2017.

Hon. JOHN HOEVEN,
 Chairman, Committee on Indian Affairs,
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1285, 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.

Enclosure.

S. 1285—Oregon Tribal Economic Development Act

S. 1285 would authorize seven 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 S. 1285 would not affect land that has any costs or benefits to the federal government, CBO estimates that enacting the bill would have no effect on the federal budget.

Enacting S. 1285 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1285 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1285 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, the Cow Creek Band of Umpqua Tribe of Indians, the Klamath Tribes, and the Burns Paiute Tribes by allowing the tribes to lease or transfer some land.

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 S. 1285 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1285.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived.

