

OREGON TRIBAL ECONOMIC DEVELOPMENT ACT

JANUARY 10, 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 S. 1285]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom 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, the Cow Creek Band of Umpqua Tribe of Indians, the Klamath Tribes, and the Burns Paiute Tribes 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 S. 1285 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, the Cow Creek Band of Umpqua Tribe of Indians, the Klamath Tribes, and the Burns Paiute Tribes to lease or transfer certain lands.

BACKGROUND AND NEED FOR LEGISLATION

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. It does so by preventing the transfer, sale, lease, or other conveyance of land owned by an Indian tribe to

¹ 25 U.S.C. 177.

third parties without federal approval. This prohibition applies to both trust and fee lands, regardless of the source of money used to obtain the lands. Over the centuries, a number of acts of Congress providing for the acquisition, conveyance, and leasing of land in trust for Indians have had the effect of superseding the Indian Trade and Intercourse Act even though this Act has never been repealed.

In recent years, the Act has generally not interfered with the ability of a tribe to buy, sell, or lease land that it owns in fee simple. However, there is precedent for tribes to seek legislation in Congress to waive it in an abundance of caution by tribal and non-tribal parties, as S. 1285 does, for transactions of non-trust land. In the 113th and 114th Congresses, similar bills were enacted into law, allowing the Miami Tribe of Oklahoma and the Fond du Lac Band of Lake Superior Chippewa to lease or transfer fee land.² In the 106th Congress, a bill was enacted into law with a similar purpose for the Lower Sioux Indian Community in Minnesota.³ Congress has also enacted several other pieces of legislation authorizing several tribes to sell or mortgage specific lands.⁴

As noted previously, while the Indian Trade and Intercourse Act has not generally interfered with a tribe's fee land dealings, the Act has generated a great deal of litigation throughout history which has resulted in several court decisions on the issue. 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."⁵

S. 1285 would allow seven 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 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.

COMMITTEE ACTION

S. 1285 was introduced on May 25, 2017, by Senator Jeff Merkley (D-OR). The Senate passed the bill with amendments and an amendment to the title by Unanimous Consent on November 29, 2017. In the House of Representatives, the bill was referred to the Committee on Natural Resources. On December 12, 2017, the Natural Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent on December 13, 2017.

²See P.L. 114-127 and P.L. 113-88.

³See P.L. 106-217.

⁴See P.L. 102-497; P.L. 107-331; P.L. 103-435; P.L. 105-256; and P.L. 110-76.

⁵*City of Sherrill v. Oneida Nation of New York*, 544 U.S. 197, 204 (2005) (internal citation omitted).

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, the Cow Creek Band of Umpqua Tribe of Indians, the Klamath Tribes, and the Burns Paiute Tribes.

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, January 5, 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 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,
Director.

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 legislation 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 UMRA. The act 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.

On September 25, 2017, CBO transmitted a cost estimate for S. 1285 as ordered reported by the Senate Committee on Indian Affairs on September 13, 2017. The two versions of S. 1285 are similar, 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, the Cow Creek Band of Umpqua Tribe of Indians, the Klamath Tribes, and the Burns Paiute Tribes 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.