

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

January 12, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: **H.R. 3225 (Rep. Peter DeFazio)**, 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. “*Oregon Tribal Economic Development Act*”.
January 17, 2018 at 10:00 a.m.; 1324 Longworth House Office Building

H.R. 3225, Oregon Tribal Economic Development Act

Summary of the bill

H.R. 3225 was introduced by Rep. Peter DeFazio [D-OR-4] on July 13, 2017. H.R. 3225 would clarify that five federally recognized tribes in Oregon¹ can buy, sell, lease, or otherwise convey their non-trust (fee simple) owned land without approval from the federal government. According to the tribes, without clarification, an overly broad interpretation of the Indian Trade and Intercourse Act² could potentially hamper economic development on existing tribal lands, even if they are not held in trust.

Cosponsors

Rep. Greg Walden (R-OR-2)

Background

The Indian Trade and Intercourse Act

The Indian Trade and Intercourse Act of 1790,³ reserves to the United States the exclusive right to acquire Indian lands. 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,

¹ Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community, the Confederated Tribes of Siletz Indians, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians.

² 25 U.S.C. §177.

³ *Id.*

lease, or other conveyance of land owned by an Indian tribe to 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trust for Indians have had the effect of superseding the Trade and Intercourse Act even though this Act has never been repealed.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, as H.R. 3225 does, for transactions of non-trust land over an abundance of caution by both the tribal and non-tribal parties. 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 the tribe owned.⁴ In the 106th Congress, a bill was enacted into law, with a similar purpose, for the Lower Sioux Indian Community in Minnesota.⁵ Congress has also enacted several other pieces of legislation authorizing several tribes to sell or mortgage specific lands.⁶

H.R. 3225 would expressly authorize five tribes in Oregon to have more control over land that the tribes own in fee without further federal approval. The bill simply ensures that the Trade and Intercourse Act does not interfere with the ability of the five tribes to convey fee land. The tribes have stated that without H.R. 3225, these tribes would have difficulty demonstrating clear title to land necessary for securing financing vital to executing real estate transactions.

Need for Legislation

As noted previously, while the 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."⁷

H.R. 3225 would allow each of the aforementioned tribes⁸ 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. The bill also states that the legislation does not authorize the Tribes to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in any real property held in trust for their benefit.

⁴ See P.L. 114-127 and P.L. 113-88.

⁵ See P.L. 106-217.

⁶ See P.L. 102-497, 106 Stat. 3255; P.L. 107-331, 116 Stat. 2834; P.L. 103-435, 108 Stat. 4566; P.L. 105-256, 112 Stat. 1896, P.L. 110-76.

⁷ *City of Sherrill v. Oneida Nation of New York*, 544 U.S. 197, 204 (2005) (internal citation omitted).

⁸ Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community, the Confederated Tribes of Siletz Indians, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians.

Cost

The CBO estimated that a substantially similar bill, S. 1285 (115th Congress) would have no effect on the federal budget.⁹

Administration Position

On July 12, 2017, the Senate Committee on Indian Affairs held a legislative hearing on a substantially similar bill, S. 1285. During the hearing, the Administration testified in support of the bill.¹⁰ On September 13, 2017, Senate Committee on Indian Affairs' marked up S. 1285 and added two additional Oregon tribes to the bill (Klamath and Burns Paiute tribes).

On November 15, 2017, at a hearing on H.R. 3225 before the Subcommittee on Indian, Insular and Alaska Native Affairs, the Administration testified in support of the legislation.¹¹

Anticipated Amendment

None.

⁹ <https://www.cbo.gov/publication/53151/>.

¹⁰ Legislative Hrg S. 1285. Senate Committee on Indian Affairs. July 12, 2017. 115th Congress.

¹¹ Legislative Hrg. H.R. 3225. SCmte. Indian, Insular and Alaska Native Affairs. November 15, 2017. 115th Congress.