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2d Session }

SENATE

{ REPORT
118-223

A BILL TO REAFFIRM THE APPLICABILITY OF THE INDIAN REORGANIZATION ACT TO THE LYTTON RANCHERIA OF CALIFORNIA, AND FOR OTHER PURPOSES

SEPTEMBER 12, 2024.—Ordered to be printed

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

R E P O R T

[To accompany S. 4000]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, (S. 4000), to reaffirm the applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 4000 would reaffirm the applicability of the Indian Reorganization Act (IRA)¹ to the Lytton Rancheria of California (Rancheria) and clarify that it is eligible to have lands taken into trust through the Department of the Interior's (DOI) land-into-trust process.

BACKGROUND AND NEED

In 1961, Congress formally terminated the federal-tribal relationship with several Indian Tribes in California, including the Lytton Rancheria.² In 1991, the Rancheria's federal status was restored by court order after years of litigation,³ and in 2000, Congress directed the Secretary of the Interior to take 9.5 acres of land into trust for the Rancheria for gaming purposes in San Pablo, Cali-

¹ Pub. L. No. 73-383, 48 Stat. 984 (1934).

² California Rancheria Termination Act of 1958, Pub. L. No. 85-671 (1958).

³ *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C-86-3660 (N.D. Cal. March 22, 1991).

foria.⁴ In 2019, Congress enacted the *Lytton Rancheria Homelands Act*,⁵ which placed more than 500 acres of land into trust for the Rancheria to establish a permanent homeland and clarified a prohibition on gaming for these acres and any future lands taken into trust in Sonoma County, California.⁶

Due to the Supreme Court’s decision in *Carcieri v. Salazar*, the Secretary of the Interior’s authority to take land into trust is limited to Tribes that were “under federal jurisdiction” as of 1934.⁷ While the Rancheria believes that the *Lytton Rancheria Homelands Act* made clear the Rancheria’s ability to have its lands taken into trust under the IRA, DOI has not yet affirmed this position, necessitating the current clarifying legislation.⁸

SUMMARY OF S. 4000 AS ORDERED REPORTED

S. 4000 clarifies that the IRA applies to the Rancheria and affirms the DOI’s ability to acquire and take land into trust for the benefit of the Rancheria; the bill also clarifies that land to be taken into trust will be part of the Rancheria’s reservation and that the lands will be administered in accordance with the laws and regulations governing property held in trust by the U.S. for a Tribe.

LEGISLATIVE HISTORY

On March 20, 2024, Senator Padilla (D–CA) introduced S. 4000, *A Bill to Reaffirm the Applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes*. On the same day, the Senate referred the bill to the Committee on Indian Affairs. On June 12, 2024, the Committee held a legislative hearing to receive testimony on S. 4000. On July 25, 2024, the Committee met at a duly convened business meeting and ordered S. 4000 reported favorably, without amendment, by voice vote. Similar legislation has not been introduced in the House of Representatives.

SECTION-BY-SECTION ANALYSIS OF S. 4000 AS ORDERED REPORTED

Section 1—Lytton Rancheria of California land reaffirmation

Section 1(a) clarifies that the Lytton Rancheria of California is subject to the IRA and affirms the Secretary of the Interior’s ability to acquire and take land into trust for the benefit of the Rancheria.

Section 1(b) clarifies that land taken into trust for the Rancheria is part of the reservation of the Lytton Rancheria of California and that the lands will be administered in accordance with all laws and regulations applicable to lands held in trust for the benefit of a Tribe.

⁴Pub. L. No. 106–568, § 819, 114 Stat. 2919 (2000).

⁵Lytton Rancheria Homelands Act of 2019, Pub. L. No. 116–92 § 2869 (2019).

⁶*Id.*; see also S. REP. NO. 116–67 (2019).

⁷555 U.S. 379 (2009). The *Carcieri* decision has generated scores of cases challenging the trust status of Tribal lands.

⁸Memorandum from Hobbs, Straus, Dean & Walker LLP to the S. Comm. on Indian Affs. (Apr. 18, 2024) (on file with the Committee) (discussing the Lytton Rancheria Land Reaffirmation Act).

COST AND BUDGETARY CONSIDERATIONS

S. 4000, a bill to reaffirm the applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes			
As ordered reported by the Senate Committee on Indian Affairs on July 25, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 4000 would clarify that the Department of the Interior has the authority to take land into trust for the Lytton Rancheria of California under the Indian Reorganization Act. The bill also would deem lands that are taken into trust under that act to be part of the tribe's reservation and administered accordingly.

Based on the costs of similar activities, CBO estimates that the administrative costs to implement S. 4000 would be insignificant; any related spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Julia Aman. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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. 4000, as reported, will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE TESTIMONY

Written statement of Bryan Newland, Assistant Secretary for Indian Affairs, U.S. Department of the Interior, before the U.S. Senate Committee on Indian Affairs, June 12, 2024, follows below:

Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on . . . S. 4000, "To reaf-

firm the applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes,” . . .

S. 4000 and the Impacts of the Carcieri v. Salazar Decision

In *Carcieri v. Salazar*, the United States Supreme Court was faced with the question of whether the Department could acquire land in trust under section 5 of the Indian Reorganization Act (IRA) on behalf of the Narragansett Tribe of Rhode Island for a housing project. The Court’s majority noted that section 5 permits the Secretary to acquire land in trust for Federally recognized Tribes that were “under Federal jurisdiction” in 1934. It then determined that the Secretary was precluded from taking land into trust for the Narragansett Tribe, who had stipulated that it was not “under Federal jurisdiction” in 1934.

The *Carcieri* decision upset the settled expectations of both the Department and Indian Country and led to confusion about the scope of the Secretary’s authority to acquire land in trust for all Federally recognized Tribes—including those Tribes that were Federally recognized or restored after the enactment of the Indian Reorganization Act. As many Tribal leaders have noted, the *Carcieri* decision is contrary to existing congressional policy, and has the potential to subject Federally recognized Tribes to unequal treatment under Federal law.

Since the *Carcieri* decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act was “under Federal jurisdiction” in 1934. This analysis is done on a Tribe-by-Tribe basis, even for those Tribes whose jurisdictional status is unquestioned. This analysis may be time-consuming and costly for Tribes and for the Department. Overall, it has made the Department’s consideration of fee-to-trust applications more complex and created an additional administrative burden for the Federal government and Tribes related to decisions taking land into trust. The Tribes at issue in S. 3263 and S. 4000 are just two of the many Tribes who have experienced undue burdens to reclaim and develop their lands . . . S. 4000 would clarify that the IRA applies to the Lytton Rancheria and that the Secretary has the authority to take land into trust for the Lytton Tribe under Section 5 of the IRA. The bill would also deem lands taken into trust under Section 5 of the IRA for the Lytton Rancheria as part of the Tribe’s reservation and would be administered accordingly.

The Department supports . . . S. 4000. Tribal homelands are at the heart of Tribal sovereignty, self-determination, and self-governance. The power to acquire lands in trust is an important tool for the United States to effectuate its longstanding policy of fostering Tribal self-determination. Congress has worked to foster self-determination for all Tribes and did not intend to limit this essential tool to only one class of Tribes. In addition to . . . S. 4000, the Department has consistently expressed strong support for a universal legislative solution to the *Carcieri* decision for all Tribes. Further, the President’s budgets for fiscal years 2024 and 2025 proposed a simple and clean fix to the IRA to ensure the Secretary has the authority to take land into trust for all Tribes without the need for the complex review of whether a Tribe was “under Federal jurisdiction” in 1934. The Department urges Congress to consider a legisla-

tive fix to *Carcieri* decision for all Tribes to eliminate the need for each Tribe to seek separate legislation.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 4000, or its reported version.

CHANGES IN EXISTING LAW

On February 9, 2023, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

