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INDIAN PUEBLO CULTURAL CENTER CLARIFICATION ACT

JUNE 28, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 4445]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4445) to amend Public Law 95–232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico, 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 "Indian Pueblo Cultural Center Clarification Act".

SEC. 2. REPEAL OF RESTRICTION ON TREATING AS INDIAN COUNTRY CERTAIN LANDS HELD IN TRUST FOR INDIAN PUEBLOS IN NEW MEXICO.

Public Law 95–232 is amended in the first section in subsection (b) by striking "However, such property shall not be 'Indian country' as defined in section 1151 of title 18, United States Code.".

SEC. 3. PROHIBITION ON GAMING.

Public Law 95–232 is amended in the first section by adding at the end the following:

"(e) PROHIBITION ON GAMING.—Gaming, as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), shall be prohibited on land held in trust pursuant to subsection (b).".

PURPOSE OF THE BILL

The purpose of H.R. 4445 is to amend Public Law 95–232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico.

BACKGROUND AND NEED FOR LEGISLATION

The Indian Pueblo Cultural Center property was owned by the United States and was originally the site of the Albuquerque Indian School, which was administered by the Bureau of Indian Affairs (BIA). In the 1960's, the federal government determined that the lands and improvements of the Indian school property were no longer needed for Indian school purposes. Subsequently, the BIA conveyed the land by quitclaim deed to the 19 New Mexico Pueblos as tenants in common. The purpose of the conveyance was to enable the Pueblos to develop an Indian Pueblo Cultural Center on the property.

The All Indian Pueblo Council (AIPC), which has existed for centuries as a pan-Pueblo organization, is comprised of the 19 New Mexico Pueblos and one Texas Pueblo (Ysleta del Sur became a member of AIPC in 2009). They meet monthly to discuss issues such as education, culture, and water and land rights. As overseers of the property conveyed to them by the BIA in 1969, they sought to clarify its legal status by requesting that the land be taken into trust by the United States for the benefit of the 19 Pueblos.

In 1978 Congress enacted Public Law 95–232, which directed the Secretary of the Interior to place 11.2857 acres of land into trust for the benefit of the Pueblos. The issue H.R. 4445 seeks to address regards Section (b) of that Act. It states:

> Such land shall be held in trust jointly for such Indian pueblos and shall enjoy the tax-exempt status of other trust lands, including exemption from State taxation and regulation. *However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code.* (italics added)

At the time Congress passed Public Law 95–232, there was a general legal understanding that the "Indian country" definition applied solely to criminal jurisdiction, not to civil jurisdiction such as taxation. Since 1978, however, various courts have applied the Section 1151 definition to both criminal and civil jurisdiction, including issues of state taxation.

Because of the change in the interpretation of the term "Indian country," the New Mexico Taxation and Revenue Department (NMTRD) decided in 1997 that the State could lawfully impose its gross receipts tax on a Pueblo member who engaged in business at the Indian Pueblo Cultural Center (*In the Matter of the Protest of Val Tech & Associates*, NMTRD Decision and Order, No. 97–26).[1] The NMTRD concluded that Congress intended to authorize the State to tax Pueblo activity on the Cultural Center trust land by stating in Public Law 95–232 that the land would "not be Indian country as defined in section 1151 of title 18, United States Code." Relying on post-1978 court decisions applying the "Indian country" definition to taxation, the NMTRD decided that only the Indian Pueblo Cultural Center property itself is exempt from state taxation. The NMTRD decision was not appealed.

[1] This hearing involved an enrolled member of the Pueblo of Laguna whose place of business was located at the Indian Pueblo Cultural Center. His business was to do private investigation, primarily personnel background investigations for casinos owned and operated by the Pueblos of Acoma, Sandia and San Felipe.

Indian Pueblo Marketing, Inc. (IPMI)

The Indian Pueblo Marketing, Inc. (IPMI) is a corporation chartered by the Secretary of the Interior pursuant to 25 U.S.C. § 477 and is owned jointly by the New Mexico Pueblos. IPMI has conducted retail business operations on the Cultural Center trust land since 1987. During that period, IPMI has never paid State taxes on its business operations at the Cultural Center, and the State has only assessed taxes against IPMI for its business operations at the Cultural Center once.[2] This occurred in 1998 when the NMTRD assessed cigarette and tobacco taxes against IPMI based on the *Val Tech* decision.

The following year, NMTRD entered into a Closing Agreement with IPMI withdrawing the assessments on cigarette and tobacco taxes against IPMI. The Agreement was approved by the NMTRD and the State Attorney General. It provided that Public Law 95–232 "does not reflect any intention by Congress that the Pueblos' activity on the Cultural Center trust land would be subject to state taxation."

Despite the Agreement, in 2000, 2004, and 2008 NMTRD declined to issue a written ruling requested by IPMI confirming that IPMI is exempt from State taxation for its business activity on the Cultural Center trust land. The Pueblos are therefore in an uncertain and risky position that NMTRD may decide that the Val Tech decision is controlling, notwithstanding the 1999 Closing Agreement.

Since 1978 Congress has taken other land into trust jointly for the New Mexico Pueblos on two separate occasions: the "Santa Fe Indian School Act," Public Law 106–568; and the "Albuquerque Indian School Act," Public Law 110–453. In both Acts, Congress declared that the land would be held in trust for the Pueblos, but did not state that the new trust land would not be Indian country. Enacting H.R. 4445 would grant the Cultural Center trust land the same legal status as these other lands placed in trust for the New Mexico Pueblos.

COMMITTEE ACTION

H.R. 4445 was introduced by Rep. Martin Heinrich (D–NM) on January 13, 2010, and was referred to the Committee on Natural Resources. The Committee held a hearing on the bill on April 21, 2010. Mr. George Skibine, Acting Principal Deputy Assistant Secretary for Indian Affairs, testified in support of this legislation, provided that the State of New Mexico and the City of Albuquerque concur with the purposes of the bill. He also requested the addition of language clearly stating that the subject lands are "Indian country" for the purposes of section 1151 of title 18 of the United States Code. The State of New Mexico testified in support of H.R. 4445 and the City of Albuquerque has submitted a written letter of support.

[2] Neither Bernalillo County nor the City of Albuquerque, in which the Cultural Center trust land is located, has attempted to impose any tax on IPMI or Pueblo members based on their activity or property on the Cultural Center Trust Land. Further, the County and City have never attempted to tax the Cultural Center Trust Land itself, or the substantial improvements on that land. The local authorities seem to treat this land in the same manner as they do other lands taken into trust jointly for the New Mexico Pueblos.

On June 16, 2010 the Natural Resources Committee met to consider H.R. 4445. An amendment was offered by Mr. Heinrich to prohibit gaming on the Indian Pueblo Cultural Center lands. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Indian Pueblo Cultural Center Clarification Act."

Section 2. Repeal of restriction on treating as indian country certain lands held in trust for Indian Pueblos in New Mexico

Section 2 amends Public Law 95–232 by striking "However, such property shall not be Indian country' as defined in section 1151 of title 18, United States Code." This section would provide the lands, on which the Indian Pueblo Cultural Center is located, the same legal status as other lands taken into trust jointly for the Pueblos of New Mexico. Declaring the lands that are the subject of H.R. 4445 to be "Indian country" would differentiate them from other lands held in trust jointly for the Pueblos of New Mexico. Despite the lack of specification in this bill that the subject lands are "Indian country," it is Congress' intent that all lands held in trust jointly for the Pueblos of New Mexico are to be considered "Indian country."

Section 3. Prohibition on gaming

Section 3 amends Public Law 95–232 to prohibit gaming, as defined and regulated by the Indian Gaming Regulatory Act, on lands subject to this legislation.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section

308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. 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 Public Law 95–232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4445—Indian Pueblo Cultural Center Clarification Act

H.R. 4445 would eliminate a provision of current law that prohibits certain land, located in New Mexico and held in trust by the federal government for the New Mexico Pueblos, from being considered Indian Country, as defined by federal law. Because the federal government is responsible for certain law enforcement activities in Indian Country, enacting the legislation could increase the workload of certain federal law enforcement agencies. Based on information from the Department of the Interior, CBO estimates that any costs associated with additional law enforcement activities would be insignificant and subject to the availability of appropriated funds. Enacting H.R. 4445 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 4445 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting gaming on some land held in trust for the Pueblos in New Mexico. Because the Pueblos are not currently operating gaming activities on this land nor do they have plans to do so in the future, CBO estimates the cost, if any, would be small and well below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation).

This bill contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Melissa Merrell (for the state, local, and tribal impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 4445 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

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, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 95–232

AN ACT To provide for the return to the United States of title to certain lands conveyed to certain Indian pueblos of New Mexico and for such land to be held in trust by the United States for such tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the duly authorized officials of each of the Indian pueblos of New Mexico are hereby authorized to convey to the United States all the right, title, and interest of such peublos in the land located in Albuqerque, County of Bernalillo, State of New Mexico, which was conveyed to such pueblos on behalf of the United States and the Secretary of the Interior by the quitclaim deed executed on June 17, 1969, by the Acting Commissioner of Indian Affairs, and by the correction quitclaim deed executed July 30, 1970, by the Commissioner of Indian Affairs, and which is described as follows:

* * * * * * *

(b) Upon approval by the Secretary of the Interior, the Secretary shall accept such conveyances on behalf of the United States. Such land shall be held in trust jointly for such Indian pueblos and shall enjoy the tax–exempt status of other trust lands, including exemption from State taxation and regulation. [However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code.] The Secretary shall cause a description of such trust land to be published in the Federal Register.

* * * * * * *

(e) PROHIBITION ON GAMING.—Gaming, as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), shall be prohibited on land held in trust pursuant to subsection (b).

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