

Calendar No. 99

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-48

AMENDING THE ACT OF AUGUST 9, 1955, TO EXTEND THE TERMS OF LEASES OF CERTAIN RESTRICTED INDIAN LAND, AND FOR OTHER PURPOSES

MAY 15, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 521]

The Committee on Indian Affairs, to which was referred the bill (S. 521) to amend the Act of August 9, 1955, to extend the terms of leases of certain restricted Indian land, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 521 is to amend the Act of August 9, 1955, 25 U.S.C. 415, Pub. L. 83-255 to expedite the leasing of tribal lands by eliminating duplicative Federal and tribal procedures for the leasing of Indian reservation lands.

BACKGROUND

Article I, section 8, clause 3 of the United States Constitution authorizes Congress to regulate commerce with Indian tribes. Under current law, the approval of the Secretary of the Interior is required for any lease of Indian lands held in trust by the United States for any Federally-recognized Indian tribe in the United States for a term of up to 25 years.¹

Indian tribes have long complained of the bureaucratic delays in securing secretarial approvals and the loss of economic opportunities resulting from those delays.

¹ 25 U.S.C. 415(a).

To attract and retain investment and encourage entrepreneurial activity, Indian tribes require an efficient leasing process that is less time-consuming than the current Interior Department review. In addition, tribes need the flexibility to execute leases for terms longer than the current 25 year limit.

Since its enactment in 1955, the original Act has been amended over 38 separate times to reflect the tribes' wishes that their leases include terms longer than 25 years.²

Because many tribes have established land leasing regulations, in many cases a typical lease on Indian reservation land must be approved twice—once by the tribe and then again by the Secretary. This results in serious delays that become a barrier to economic development on Indian lands.

The new framework included in the substitute amendment to S. 521 authorizes the Secretary to approve an Indian tribe's regulations governing the leasing of its tribal lands—except for leases involving the exploration or development of mineral resources—and, once approved, leases of Indian trust lands will no longer require Secretarial approval. The terms of such leases may not exceed the time frames specified in the bill.

LEGISLATIVE HISTORY

The Indian Lands Leasing Act of 2003 was introduced on March 5, 2003 by Senator Campbell, for himself and for Senator Inouye, and was referred to the Committee on Indian Affairs. On April 10, 2003, the Committee on Indian Affairs convened a business meeting to consider S. 521 and other measures that had been referred to it. On that date the Committee favorably reported an amendment in the nature of a substitute to S. 521.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On April 10, 2003, the Committee on Indian Affairs, in an open business session, adopted an amendment in the nature of a substitute to S. 521 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS OF THE SUBSTITUTE AMENDMENT

A section-by-section analysis of the amendment in the nature of a substitute follows.

Section 1. Short title

This Act may be cited as the Indian Lands Leasing Act of 2003.

Section 2. Authorization of 99-year leases

This section amends subsection (a) of the Act of August 9, 1955, 25 U.S.C. 415, to provide that leases of restricted lands held by the Confederated Tribes of the Umatilla Indian Reservation, the Yurok Tribe, the Hopland Rancheria, and the Muckleshoot Tribe may be of terms not to exceed 99 years.

²Id.

Section 3. Lease of tribally-owned land by the Assiniboiné and Sioux Tribes of the Fort Peck Reservation

This section authorizes the Assiniboiné and Sioux Tribes of the Fort Peck Reservation of Montana to lease land to the Northern Border Pipeline Company land for one or more gas pipelines for a term of 25 years beginning in 2011. The lease may be renewed for another 25 years and the rental rate for land shall be increased by 3 percent per annum for each 5-year period.

Section 4. Certification of rental proceeds

This section provides that any revenue accrued from renting land acquired under Farmers Home Administration Direct Loan Act, 25 U.S.C. 488 shall be considered the rental value of that land and considered the appraisal value of that land.

Section 5. Montana Indian Tribes; agreement with Dry Prairie Rural Water Association, Incorporated

Section 5 provides that the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation of Montana may enter into a lease agreement with the Dry Prairie Rural Water Association for the temporary conveyance of water rights recognized under the Fort Peck-Montana Compact to meet the water needs of the association for a term not to exceed 100 years.

Section 6. Leases of restricted Indian land; non-Indian land business partners on Indian land

This section amends the Act of August 9, 1955 regarding leases of restricted Indian lands to provide that, at the discretion of any Indian tribe, any lease approved by a tribe for any use permitted under 25 U.S.C. 415 shall not require the Secretary of the Interior's approval if the lease is executed pursuant to tribal regulations approved by the Secretary. The lease term may not exceed 99 years.

Section 6 also authorizes the Secretary to approve or disapprove such tribal regulations, and sets forth the process for the Secretary to review and approve or disapprove the regulations. This section also provides that the United States shall not be liable for losses sustained by any party—including the Indian tribe—to a lease executed pursuant to such tribal regulations.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 521 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 28, 2003.

Hon. BEN NIGHTHORSE CAMPBELL,
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. 521, the Indian Land Leasing Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

BARRY B. ANDERSON
(For Doug Holtz-Eakin, Director).

Enclosure.

S. 521—Indian Land Leasing Act of 2003

CBO estimates that enacting S. 521 would have no significant impact on the federal budget. Enacting S. 521 would not affect direct spending or revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 521 would add four Indian tribes to the list of tribes that can lease lands held in trust for up to 99 years. Under current law, these tribes may only enter into leases on lands in trust that do not exceed 25 years. S. 521 also would allow other tribes to enter into such long-term leases without the approval of the Secretary if certain requirements are met. Based on information provided by the Bureau of Indian Affairs, CBO expects that implementing this change in lease terms could result in a small administrative cost savings to that agency because of less frequent lease renewals. However, CBO estimates that any such savings would be less than \$500,000 a year over the 2003–2008 period.

The CBO staff contact for this estimate is Lanette J. Walker. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of the rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enactment of S. 521 will create only de minimis regulatory or paperwork burdens.

EXECUTIVE COMMUNICATIONS

The Committee has received no official communication from the Administration on the provisions of the amendment in the nature of a substitute to S. 521.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 521 will result in the following changes in 25 U.S.C. Sec. 415 et seq., (with existing law proposed to be omitted is enclosed in black brackets and the new language to be added in *italic*):

25 U.S.C. 415(a)

(a) AUTHORIZED PURPOSES; TERM; APPROVAL BY SECRETARY.—Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of

the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with the operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant") the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, *the Reservation of the Confederate Tribes of the Umatilla Indian Reservation*, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation, the Pueblo of Cochiti, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, *the Yavapai-Prescott Community Reservation*, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, *The Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe*, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising the Moses Allotment Numbered 10, Helen County, Washington[,], and lands held in trust for the Twenty-Nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederate Tribes of the Umatilla Reservation, lands held in trust for the Pueblo of Santa Clara, *lands held in trust for the Yurok Tribe*, *lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria*, lands held in trust for the Confederate Tribes of the Coville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederate Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederate Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or ex-

tension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

25 U.S.C. 415(f)

(f) APPROVAL OF, AND REGULATIONS RELATING TO, TRIBAL LEASES.—

(1) Definitions. In this subsection:

(A) INDIAN TRIBE.—The Term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and the Education Assistance Act (25 U.S.C. 450b).

(B) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) APPROVAL OF LEASES.—At the discretion of any federally recognized Indian tribe, a lease by the federally recognized Indian tribe for a purpose authorized under subsection (a) (not including any lease for the exploration, development, or extraction of any mineral resource) shall not require the approval of the Secretary if—

(A) the lease is executed under the tribal regulations approved by the Secretary under paragraph (3); and

(B) the term of the lease does not exceed—

(i) in the case of a business or agricultural lease, 99 years; and

(ii) in the case of a lease for a public, religious, educational, recreational, or residential purpose, 99 years, if such a term is provided for by the federally recognized Indian tribe in the tribal regulations.

(3) TRIBAL REGULATIONS.—

(A) IN GENERAL.—The Secretary may approve or disapprove tribal regulations referred to in paragraph (2)(B)(ii).

(B) APPROVAL AND DISAPPROVAL.—Not later than 90 days after the date on which the Secretary receives tribal regulations described in paragraph (2)(B)(ii) from a federally recognized Indian tribe (or such later date as may be established by the Secretary, after consultation with the Indian tribe), the Secretary shall—

(i) review the tribal regulations; and

(ii)(I) if the Secretary determines that the tribal regulations are consistent with the regulations of the Secretary promulgated under subsection (a)—

(aa) approve the regulations; and

(bb) provide for an environmental review process with respect to the regulations; or

(II) if the Secretary determines that the regulations are not consistent with the regulations of the Secretary promulgated under subsection (a)—

- (aa) disapprove the regulations; and
- (bb) provide to the Indian tribe that submitted the tribal regulations a written explanation that describes the basis for the disapproval.

(4) *EXECUTED LEASES.*—If a federally recognized Indian tribe has executed a lease under paragraph (2) in accordance with tribal regulations approved under paragraph (3), the Indian tribe shall provide to the Secretary—

(A) a copy of the lease (including all amendments to and renewals of the lease); and

(B) in the case of a tribal regulation or lease that permits payments for the lease to be made directly to the Indian tribe, documentation of the payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (5)(B).

(5) *LIABILITY AND TRUST RESPONSIBILITY.*—

(A) *LIABILITY.*—The United States shall not be liable for any loss sustained by any party to a lease approved under paragraph (2) in accordance with tribal regulations approved under paragraph (3) (including any loss by an Indian tribe).

(b) *TRUST RESPONSIBILITY.*—Nothing in this paragraph diminishes or otherwise affects the authority of the Secretary to take appropriate actions, including the cancellation of a lease, in furtherance of the trust obligation of the United States to an Indian tribe.

(6) *COMPLIANCE REVIEW.*—

(A) *IN GENERAL.*—After exhaustion of tribal remedies, any person may submit to the Secretary, in a timely manner, a petition to review compliance of an Indian tribe with tribal regulations of the Indian tribe approved under paragraph (3).

(B) *ACTION BY SECRETARY.*—The Secretary shall—

(i) review compliance of an Indian tribe described in subparagraph (A); and

(ii) on completion of the review, if the Secretary determines that an Indian tribe is not in compliance with tribal regulations approved under this subsection, take such action as is necessary to compel compliance, including—

(I) rescinding a lease approved under paragraph (2); or

(II)(aa) suspending a lease approved under paragraph (2) until an Indian tribe is in compliance with tribal regulations; and

(bb) rescinding approval of the tribal regulations and reassuring the responsibility for approval of leases under paragraph (2).

(C) *COMPLIANCE.*—If the Secretary seeks to compel compliance of an Indian tribe with tribal regulations under subparagraph (B)(ii), the Secretary shall—

(i) make a written determination that describes the manner in which the tribal regulations have been violated;

(ii) provide the Indian tribe with a written notice of the violation together with the written determination; and

(iii) before taking any action described in subparagraph (B)(ii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal regulations.

(7) **APPLICABILITY.**—This subsection shall not apply to individually owned Indian allotted land.

25 U.S.C. 415(g)

(1) **IN GENERAL.**—Notwithstanding subsection (a) and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboiné and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

(2) **CONDITIONS.**—A lease entered into under paragraph (1)—

(A) shall commence during fiscal year 2011 for an initial term of 25 years;

(B) may be renewed for an additional term of 25 years; and

(C) shall specify in the terms of the lease an annual rental rate—

(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations (or a successor regulation).

25 U.S.C. 415(h)

Notwithstanding any other provision of law, any actual rental proceeds from the lease of land acquired under section 1 of Public Law 91-229 (25 U.S.C. 488) certified by the Secretary of the Interior shall be deemed—

(1) to constitute the rental value of that land; and

(2) to satisfy the requirement for appraisal of that land.

25 U.S.C. 415(i)

(a) **IN GENERAL.**—The Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation (referred to in this section as the “Tribes”) may, with the approval of the Secretary of the Interior, enter into a lease or other temporary conveyance of water rights recognized under the Fort Peck-Montana Compact (Montana Code Annotated 84-20-201) for the purpose of meeting the water needs of the Dry Prairie Rural Water Association, Incorporated (or any successor entity), in accordance with section 5 of the Fort Peck Reservation Rural Water System Act of 2000 (114 Stat. 1454).

(b) **CONDITIONS OF LEASE.**—With respect to a lease or other temporary conveyance described in subsection (a)—

(1) the term of the lease or conveyance shall not exceed 100 years; and

(2)(A) the lease or conveyance may be approved by the Secretary of the Interior without monetary compensation to the Tribes; and

(B) the Secretary of the Interior shall not be subject to liability for any claim or cause of action relating to the compensation or consideration received by the Tribes under the lease or conveyance.

(c) NO PERMANENT ALIENATION OF WATER.—Nothing in this section authorizes any permanent alienation of any water by the Tribes.

