

Committee on Natural Resources

Rob Bishop, Chairman

Markup Memorandum

June 20, 2017

To: All Natural Resources Committee Members

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

Markup: **S. 249 (Sen. Tom Udall)**, To provide that the Pueblo of Santa Clara may lease for 99 years certain restricted land, and for other purposes.
June 22 & 27, 2017; 1324 Longworth HOB

S. 249 (Sen. Udall), *“To provide that the pueblo of Santa Clara may lease for 99 years certain restricted land, and for other purposes”*

Summary of the Bill

S. 249 would amend the Indian Long-Term Leasing Act of 1955¹ to authorize the Pueblo of Santa Clara and the Ohkay Owingeh Pueblo to lease their tribal lands for a term of up to 99 years, subject to approval by the Secretary of the Interior. Such leases may be for a variety of non-mineral development purposes as mineral leasing of tribal lands is regulated under other law. While current law authorizes the two tribes to lease lands held in trust for their benefit, the purpose of S. 249 is to authorize the tribes to lease their trust land and “restricted fee land” for up to 99 years, subject to the approval of the Secretary of the Interior.

Cosponsors

Sen. Martin Heinrich (D-NM)

Background

In 1834 with the enactment of the Non-intercourse Act,² land transactions with Indians were prohibited unless authorized by Congress. Over time, such restrictions came to apply primarily to lands held in trust by the United States for the benefit of individual Indians or tribes (“trust lands”), and to lands title to which is held in fee by Indians or tribes subject to a restriction on alienation (“restricted fee lands”).

In 1955, Congress passed what is commonly known as the Indian Long-Term Leasing Act (the Act) to overcome the Non-Intercourse Act. The Act generally authorizes any Indian lands (in trust or in restricted fee status) to be leased by their Indian owners, subject to the approval of the Secretary of the Interior, for “public, religious, educational, recreational,

¹ 25 U.S.C. § 415(a).

² 25 U.S.C. § 177.

residential, or business purposes...” for “a term of not to exceed twenty-five years” except for grazing purposes, in which case the term shall not exceed ten years. The original 1955 specified that non-grazing leases may be renewed up to one additional term of 25 years, under rules and regulations developed by the Secretary.³

Congress has amended the Long Term Leasing Act more than 40 times to adjust the terms and conditions of leases of Indian lands, and to authorize leases of specific Indian lands by their Indian owners for a term of up to 99 years, subject to approval of the Secretary. Relevant to S. 249, in 1992 the Act was amended to authorize leasing of up to 99 years for lands held in trust for the Pueblo of Santa Clara,⁴ and in 2011 the Act was amended to authorize 99 year leases for lands held in trust for the Ohkay Owingeh Pueblo (formerly known as the Pueblo of San Juan).⁵

The Santa Clara Pueblo is located in Rio Arriba County, New Mexico, and is home to 1,018 tribal members.⁶ Along with the Ohkay Owingeh, it is a member of the Eight Northern Pueblos of New Mexico.⁷ Located on the Rio Grande, about a mile south of Española, New Mexico, the Santa Clara Pueblo is a total of 2.1 square miles, or roughly 24 acres. Currently, the reservation land consists of land granted from the Spanish via land grant, and reservation land established in 1905 via Executive Order.⁸

The Ohkay Owingeh Pueblo, previously known as the San Juan Pueblo as recently as 2005, is a reservation along the Rio Grande approximately 25 miles north of Santa Fe and is home to 2,723 enrolled members. Originally, the Supreme Court ruled that Indians were not the original settlers of this territory and reduced their land grant to 5,000 acres.⁹ Since that time, however, additional lands have been attained by the reservation. As the Capital of the Eight Northern Pueblos in New Mexico, it is an important cultural touchstone for Indian Tribes in New Mexico and the tribal governance structure.

While the Santa Clara and Ohkay Owingeh Pueblos currently have 99-year leasing authority, such authority applies only to the tribes’ trust lands. The purpose of S. 249 is to clarify that the tribes may lease their restricted fee lands for up to 99 years, subject to the usual approval of the Secretary.

Cost

The CBO has estimated that enactment would have no significant effect the federal budget.¹⁰

Administration’s Position

³ Pub. L. 255 - Aug. 9, 1955, ch. 615, Sec. 1, 69 Stat. 539.

⁴ Pub.L. 102-497, 106 Stat. 3256.

⁵ Pub.L. 111-381, 124 Stat. 4133.

⁶ 2010 US Census Data.

⁷ Eight Northern Pueblos, Inc.

⁸ Executive Order XXVI (1905).

⁹ U.S. v. Sandoval, 167 U.S. 278.

¹⁰ <https://www.cbo.gov/publication/52432>

At the Subcommittee on Indian, Insular and Alaska Native Affairs legislative hearing on June 7, 2017, the Trump Administration testified in support of the bill.

Effect on Current Law (Ramseyer)

Showing current law as amended by S. 249, as passed the Senate

[New text is highlighted in yellow; text to be deleted is bracketed and highlighted in blue]

Subsection (a) of the first section of the Act of August 9, 1955 (commonly known as the “Long-Term Leasing Act”) (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 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 Aqua 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 reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, land held in trust for the Coquille Indian Tribe, land held in trust for the Confederated Tribes of Siletz Indians, land held in trust for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, land held in trust for the Klamath Tribes, and land held in trust for the Burns Paiute Tribe, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d’Alene Indian Reservation, the Kalispel Indian Reservation and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of [Indians, ,] Indians, the pueblo of Cochiti, Ohkay Owingeh pueblo, the pueblo of Pojoaque, the pueblo of Santa Clara, 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 [the] lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, 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 Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, and

lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, [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 Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated 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, and [lands held in trust for Ohkay Owingeh Pueblo] which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 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 extension 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.