

# Committee on Natural Resources

Rob Bishop, Chairman

## Markup Memo

July 6, 2015

To: Natural Resource Committee Members

From: Subcommittee on Indian, Insular and Alaska Natives Staff (x6-9725)

Hearing: Full Committee Mark-up on H.R. 487 (Rep. Markwayne Mullin), *“To allow the Miami Tribe of Oklahoma to lease or transfer certain lands.”*

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### **H.R. 487, To allow the Miami Tribe of Oklahoma to lease or transfer certain lands.**

#### **Summary of the Bill**

H.R. 487 would exempt lands held in fee by the Miami Tribe of Oklahoma from the limitations imposed by Indian Non-Intercourse Act<sup>1</sup>, which restricts an Indian tribe from leasing or conveying any lands a tribe owns in fee without federal approval in the form of a “treaty or convention.”<sup>2</sup> The bill would give the Tribe the legal ability to lease, sell, convey, warrant or transfer any portion of the interest in real property not held in trust for the Miami Tribe of Oklahoma. The bill received favorable testimony at the June 10, 2015 Subcommittee hearing.

#### **Background**

The Miami Tribe of Oklahoma (“Tribe”) is a federally recognized tribe and organized under the Oklahoma Indian Welfare Act of 1936.<sup>3</sup> The Tribe voted to adopt the Oklahoma Indian Welfare Act Constitution and Bylaws on October 10, 1939. This Act is similar to but separate from the 1934 Indian Reorganization Act which mainly concerned non-Oklahoma tribes.

*Non-Intercourse Act (25 U.S.C. § 177)*. The Non-Intercourse Act, one of the earliest laws passed by the Congress after the ratification of the Constitution, 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, 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in trust for Indians have had the effect of superseding the Non-Intercourse Act even though this Act has never been repealed.

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<sup>1</sup> 25 U.S.C. § 177.

<sup>2</sup> Id.

<sup>3</sup> 49 Stat. 1967

In recent years, the Non-Intercourse Act has generally not interfered with a tribe's ability 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 the Non-Intercourse Act, as H.R. 487 does, for transactions of non-trust land over an abundance of caution by both the tribal and non-tribal parties. In the 113<sup>th</sup> Congress, a bill nearly identical to H.R. 487 was enacted into law, allowing the Fond du Lac Band of Lake Superior Chippewa to lease or transfer fee land the tribe owned.<sup>4</sup> In the 106<sup>th</sup> Congress, a bill was enacted into law, with a similar purpose, for the Lower Sioux Indian Community in Minnesota.<sup>5</sup> Congress has also enacted several other pieces of legislation authorizing several tribes to sell or mortgage specific lands.<sup>6</sup>

Similarly to the bills mentioned above, H.R. 487 would allow the Miami Tribe of Oklahoma to have more control over land that the tribe owns in fee without further Congressional approval. The bill simply ensures that the Non-intercourse Act does not interfere with the ability to convey fee land owned by the Tribe, which is viewed by the tribe as an interference with economic development and the creation of jobs. The tribe has stated that title insurance companies will not issue title commitments to either lenders or prospective purchasers due to uncertainties raised by an old act of Congress.

As noted previously, the Non-Intercourse Act has not generally interfered with a tribe's fee land dealings. However, 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 Non-Intercourse Act is viewed by some and quite 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."<sup>7</sup>

At the request of the Miami Tribe of Oklahoma, H.R. 487 was introduced by a member of Congress whose district is affected.

### **Cost**

We do not anticipate H.R. 487 to score.

### **Administration's Position**

The Department testified in support of the bill at the June 10, 2015 hearing.

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<sup>4</sup> See P.L. 113-88.

<sup>5</sup> See P.L. 106-217.

<sup>6</sup> 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.

<sup>7</sup> *City of Sherill v. Oneida Indian Nation of New York*, 544 U.S. 197, 204 (2005).