

Calendar No. 698

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-398

STIGLER ACT AMENDMENTS OF 2018

NOVEMBER 29, 2018.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 2606]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (H.R. 2606) to amend the Act of August 4, 1947 (commonly known as the Stigler Act), with respect to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

The purpose of H.R. 2606, is to amend certain provisions of the Act of August 4, 1947 (commonly referred to as the Stigler Act) with respect to the restricted fee status of land allotted to members of the Five Civilized Tribes of Oklahoma. Specifically, H.R. 2606 amends the Stigler Act to remove a one half-degree Indian blood quantum requirement for tribal member allotted lands to retain their restricted status.

BACKGROUND

Oklahoma is home to 38 federally-recognized Indian tribes. A majority of these tribes were forcibly removed from their traditional homelands to what is now known as the State of Oklahoma during the early to mid-1800's. Among the first tribes relocated were the Choctaw, Chickasaw, Mvskoke (Creek), Cherokee, and Seminole, which are sometimes referred to as the Five Civilized Tribes (the Five Tribes).

Years later, through the General Allotment Act of 1887 (also known as the Dawes Act),¹ Congress sought to end the tribal and reservation system in which Indians had been living and instead make them individual property owners through the allotment of the reservations. Under this Act, the President was authorized to allot 80-acre or 160-acre parcels of land within Indian reservations to individual Indians located on them, and to open remaining surplus lands to non-Indian settlement.

In 1893, the Dawes Commission² was created by Congress in part to seek allotment of the lands of the Five Tribes. In 1898, Congress enacted the Curtis Act³ which provided for the allotment of the lands of the Five Tribes. These allotted parcels were inalienable (unable to be sold or otherwise transferred) and nontaxable. The restricted fee parcels have, in most respects, the functional and legal equivalent of trust land.

In 1947, Congress enacted the Stigler Act⁴ which placed additional restrictions on title to those allotments that had been conveyed to members of the Five Tribes. The Stigler Act provides that upon probate, heirs and devisees of an allotment shall maintain at least one-half degree Indian blood quantum from one of the Five Tribes for the land to remain inalienable and nontaxable for the life of the owner.

The Five Tribes formed a coalition known as the Inter-Tribal Council to represent their collective interests.⁵ The Inter-Tribal Council is composed of only the Five Tribes and represents over 650,000 tribal members.⁶ Over the years, this Council developed legislative proposals to amend the Stigler Act to address problems created by the allotments and blood quantum requirements. The Council and each of the Five Tribes fully supports H.R. 2606.

SUMMARY

The bill, H.R. 2606, amends the Stigler Act to remove the blood quantum requirement for allotted lands to retain their restricted status. Under the bill, certain restricted lands owned by members or lineal blood descendants of members of the Five Tribes would remain restricted, regardless of the blood quantum of the owners.

LEGISLATIVE HISTORY

The bill, H.R. 2606, was introduced by Representative Cole with Representatives Lucas, Mullin, and Russell on May 23, 2017, and referred to the Committee on Natural Resources of the House of Representatives. The bill, H.R. 2606, was further referred to the Subcommittee on Indian, Insular and Alaska Native Affairs on June 6, 2017. The Subcommittee on Indian, Insular and Alaska

¹General Allotment Act of 1887, ch. 119, 24 Stat. 388 (formerly codified as amended at 25 U.S.C. 331–333).

²Act of March 3, 1893, ch. 209, 16 Stat. 612, 645, available at <https://www.loc.gov/law/help/statutes-at-large/52nd-congress/session-2/c52s2ch209.pdf>.

³Curtis Act of 1898, ch. 517, 30 Stat. 495, available at <https://www.loc.gov/law/help/statutes-at-large/55th-congress/session-2/c55s2ch517.pdf>.

⁴Stigler Act of 1947, Pub. L. No. 80–336, ch. 458, 61 Stat. 731.

⁵Ingrid P. Westmoreland, *Inter-Tribal Council of the Five Civilized Tribes*, The Encyclopedia of Oklahoma History and Culture, available at <http://www.okhistory.org/publications/enc/entry.php?entry=IN033>.

⁶*Legislative Hearing to Receive Testimony on the Following bills: H.R. 146, H.R. 2402, H.R. 2606 Before the Subcomm. on Indian, Insular and Alaska Native Affairs of the H. Comm. on Natural Resources*, 115th Cong. (2017) (Statement of Bill Jon Baker, Principal Chief, Cherokee Nation).

Native Affairs held a legislative hearing on October 4, 2017, at which Principal Chief Bill John Baker of the Cherokee Nation provided testimony in support of the bill.

The Committee on Natural Resources of the House of Representatives met to consider the bill during a business meeting on June 13, 2018. The Subcommittee was discharged by unanimous consent. Representative Bishop offered an amendment to the bill which was adopted by voice vote. The amendment made a number technical corrections, provided clarity as to the bill's application, and added subsection (j) to section 2- concerning determinations of Indian blood. No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by voice vote.

The bill, H.R. 2606, as amended, was reported favorably by the Committee on Natural Resources of the House of Representatives on August 21, 2018. On September 12, 2018, bill, as amended, was agreed to by voice vote of the House of Representatives.

The bill, as amended, was received in the Senate on September 17, 2018, and was referred to the Committee. On November 14, 2018, the Committee held a legislative hearing on the bill. The Honorable James Floyd, Principal Chief, Muscogee (Creek) Nation, and Mr. Darryl LaCounte, Acting Director, Bureau of Indian Affairs, U.S. Department of the Interior, both testified in support of the bill.

Additionally, the Honorable Bill Anoatubby, Governor of the Chickasaw Nation, the Honorable Gary Batton, Chief of the Choctaw Nation, and the Honorable Bill John Baker, Principal Chief of the Cherokee Nation, all provided testimony in support of the bill. A Senate companion bill has not been introduced at this time. On November 28, 2018, by voice vote, the Committee ordered the bill to be reported favorably to the Senate.

Prior Congresses

107th Congress. On September 12, 2001, Representative Watkins along with Representatives Carson, Condit, and Kildee introduced H.R. 2880 where it was referred to the Committee on Resources of the House of Representatives. The Committee on Resources of the House of Representatives held a mark-up session on March 30, 2002, where an amendment was adopted. The bill, H.R. 2880, as amended, was ordered favorably reported to the House of Representatives by voice vote.

On June 11, 2002, the bill, as amended, was agreed to by voice vote of the House of Representatives. The bill, as amended, was received in the Senate on June 6, 2002, and was referred to the Committee. On September 18, 2002, the Committee held a legislative hearing. On September 25, 2002, the Committee held a business meeting and ordered the bill to be reported favorably without further amendment. No further action was taken on the bill. No companion bill was introduced in the Senate.

106th Congress. Representative Watkins introduced H.R. 5308 on September 26, 2000, where it was referred to the Committee on Resources of the House of Representatives. Representative Kildee was added as a cosponsor on October 2, 2000, and Representative Colburn was added as a cosponsor on October 12, 2000. On October 17, 2000, the bill was agreed to by voice vote of the House of Rep-

representatives. On October 18, 2000, a correction of engrossment was agreed to without objection. The bill, as amended, was received by the Senate on October 18, 2000. No further action was taken on the bill.

On October 10, 2000, Senator Inhofe introduced a Senate companion bill, S. 3182, where it was referred to the Committee. No further action was taken on the bill.

NEED FOR LEGISLATION

The effect of the Stigler Act has been that when a person of less than one-half degree of Indian blood from one of the Five Tribes inherits an interest in an allotment, that interest loses its restricted status and can then be sold or otherwise transferred and is taxable. Since the passage of the Stigler Act, efficient or productive land use has not been achieved, rather a significant amount of tribal member land has been lost, most notably in tax sales or other questionable land transfers.

Moreover, this blood quantum requirement is inconsistent with how the Five Tribes define membership, as none of the Five Tribes maintain a minimum degree blood quantum for membership. Additionally, the blood quantum requirement is inconsistent with other federal laws, as no other tribes are subject to a blood quantum requirement in order for inherited land to retain its restricted or trust status.⁷ This legislation, H.R. 2606, removes the blood quantum requirement and will create parity in federal law in the treatment of Indian allotted lands.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Act may be cited as the “Stigler Act Amendments of 2018.”

Section 2. In general

Section 2 amends the Act of August 4, 1947 (the Stigler Act), by:

- Striking the one half degree blood quantum requirement for allotted lands to retain their restrictive status and provides for the restricted lands to remain in restricted status if the land recipient is a lineal blood descendant of an original enrollee on the Final Indian Rolls of the Five Civilized Tribes.
- Extends the restrictive status until Congress determines otherwise.
- Sets the parameters for the Act’s application.
- Incorporating requirements previously contained in section 1 of the original Stigler Act regarding proceedings for state court approval of conveyances of restricted land.
- Makes clear that nothing within this Act limits the right of an Indian owner of restricted lands to seek and obtain removal of restrictions by the Secretary of the Interior.
- Sets forth provisions concerning the determination of degree of Indian blood that were previously contained in section 2 of the Stigler Act as originally enacted.

⁷ *Legislative Hearing to Receive Testimony on the Following bills: S. 2788, H.R. 2606, and H.R. 4032 Before the Sen. Comm. on Indian Affairs, 115th Cong. (2018)* (Statement of Darryl LaCounte, Acting Director of the Bureau of Indian Affairs, U.S. Dept of the Interior).

Section 3. Technical Amendments

Section 3 of the bill removes references to blood quantum in sections 5, 6, and 8, of the Stigler Act. Section 3 also provides clarification that interests in restricted and tax-exempt lands will continue to be tax-exempt if acquired by an Indian of the Five Civilized Tribes by purchases or acquisitions through partition sale, in addition to the various other means of acquisitions described in the original Stigler Act.

Section 4. Repeals

Section 4 repeals the first section of the Act of August 11, 1955 (69 Stat. 666, Chapter 768),⁸ which involves the continuation of restrictions and is no longer needed in light of the continuation of restrictions established by the bill. Section 4 also repeals section 2 of the Act of August 4, 1947 (61 Stat. 731, Chapter 458),⁹ which addresses determination of blood quantum and has already been incorporated in this bill.

COST AND BUDGETARY CONSIDERATIONS

On August 14, 2018, the Congressional Budget Office (CBO) prepared a cost estimate for H.R. 2606, as considered by the Committee on Natural Resources of the House of Representatives. The bill was not amended during consideration by the Committee on Indian Affairs of the Senate so that there should be no changes to affect the cost estimate. The subsequent cost estimate can be published in the Congressional Record. The Chairman of the Committee on Natural Resources of the House of Representatives received the following letter, and cost estimate, for H.R. 2606 from the Director of the CBO.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 14, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2606, The Stigler Act Amendments of 2018.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2606—Stigler Act Amendments of 2018

H.R. 2606 would amend the Act of August 4, 1947 (commonly known as the Stigler Act) to revise the qualifications that need to be met by a person who inherits land originally allotted to members of the Five Civilized Tribes of Oklahoma—Cherokee, Creek (Muscogee), Choctaw, Chickasaw, and Seminole Tribes—for that

⁸Pub. L. 84–348.

⁹Pub. L. 80–336.

land to remain in restricted status. Land in restricted status can only be conveyed or encumbered by an Indian owner with the approval of the Secretary of the Interior according to Indian land conveyance provisions and limitations found in the Code of Federal Regulations. The bill would not apply to individuals that have inherited property in restricted status prior to enactment.

Because the relevant land would remain privately owned whether it is held in restricted status or otherwise, CBO estimates that implementing the bill would have no federal cost.

Enacting H.R. 2606 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2606 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 2606 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enactment of H.R. 2606 will create only de minimis regulatory or paperwork burdens.

EXECUTIVE COMMUNICATIONS

The Committee has received no official communications from the Administration on the provisions of this bill.

CHANGES IN EXISTING LAW

In compliance with the Standing Rules of the Senate and the Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.