



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Indian and Insular Affairs Subcommittee, Ken Degenfelder
(Ken.Degenfelder@mail.house.gov) and Jocelyn Broman
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Date: Friday, March 24, 2023
Subject: Legislative Hearing on two bills: H.R. 1246 and H.R. 1532

The Subcommittee on Indian and Insular Affairs will hold a legislative hearing on two bills, H.R. 1246 (Rep. Hageman), To authorize leases of up to 99 years for land held in trust for federally recognized Indian Tribes, and H.R. 1532 (Rep. Hageman), To authorize any Indian Tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian Tribe holds fee title without the consent of the Federal Government, and for other purposes on **Friday, March 24, 2023, 9:00 a.m. in Room 1324 Longworth House Office Building.**

Member offices are requested to notify Ransom Fox (Ransom.Fox@mail.house.gov) by 4:30pm on Thursday, March 23, 2023, if their member intends to participate in the hearing.

I. KEY MESSAGES

- H.R. 1246 would amend the Long-Term Leasing Act to authorize any federally recognized Indian tribe to lease its trust land for a period of up to 99 years.
- H.R. 1532 would exempt lands held in fee by any federally recognized Indian tribe from the limitations imposed by Indian Non-Intercourse Act, thus clarifying that any Indian tribe has the legal ability to lease, sell, convey, warrant or transfer any portion of the interest in real property not held in trust.
- Both H.R. 1246 and H.R. 1532 ensure that economic development tools currently available to certain Indian tribes will be available to all federally recognized tribes, should they so choose.
- Protections for Indian trust lands are not diminished nor affected by H.R. 1246 or H.R. 1532.
- Republicans are committed to pushing forward legislation that will support tribal self-determination and remove barriers pursue economic development.

II. WITNESSES

- **The Hon. Bryan Newland**, Assistant Secretary, Bureau of Indian Affairs, U.S. Department of the Interior, Washington D.C.
- **The Hon. Marcellus Osceola**, Chairman, Seminole Tribe of Florida, Hollywood, FL
- **The Hon. John Williams**, Vice Chairman, United Auburn Rancheria, Auburn, CA

III. BACKGROUND

[H.R. 1246 \(Rep. Hageman\), To authorize leases of up to 99 years for land held in trust for federally recognized Indian tribes](#)

H.R. 1246 would amend the Long-Term Leasing Act¹ (LTLA) authorize any federally recognized Indian tribe are able to lease land held in trust for the benefit of the tribe for up to 99 years, subject to approval of the Secretary of the Interior.

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 Indian tribes, and to lands title to which is subject to a restriction against alienation.

In 1955, Congress passed the LTLA, which generally authorizes any Indian lands held in trust or land subject to a restriction against alienation, to be leased by the Indian owner, subject to the approval of the Secretary of the Interior, for 25 years, except for grazing purposes.³ The original 1955 Act also specified that non-grazing leases may be renewed up to one additional term of 25 years, for a total of 50 years.⁴

Lease authority up to 99 years is often needed for long-term commercial leases and for some financing contracts. Ensuring tribes can negotiate effectively, and on the same playing field as other landholders, can clear the way for further economic development, especially in rural or extra rural areas. In 2022, the Confederated Tribes of the Chehalis Reservation testified specifically on how expanded leasing authority would bolster its economic development plans and how these activities can help fund its government programs and helps to diversify its economic interests.⁵

Congress has amended the LTLA more than 50 times to adjust the terms and conditions of leases of Indian lands, and to authorize specific Indian land or tribes to lease land for a term of up to 99 years, subject to approval of the Secretary of the Interior. Most recently, the LTLA was amended to provide additional leasing authority for the Confederated Tribes of the Chehalis Reservation,⁶

¹ 25 U.S.C. § 415.

² 25 U.S.C. §177.

³ P.L. 255. Ch. 615, Sec. 1, 69 Stat. 539.

⁴ *Id.*

⁵ <https://docs.house.gov/meetings/II/II24/20220914/115095/HHRG-117-II24-Wstate-PickernellH-20220914.pdf>.

⁶ P.L. 117-346.

the Navajo Nation,⁷ and the Pueblo of Santa Clara⁸ for terms up to 99 years. By proactively extending this authority to all federally recognized tribes, economic development plans can proceed on a more expedited path.

H.R. 1532 (Rep. Hageman), To authorize any Indian Tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian Tribe holds fee title without the consent of the Federal Government, and for other purposes

H.R. 1532 would exempt lands held in fee simple by any federally recognized Indian tribe from the limitations imposed by Indian Non-Intercourse Act,⁹ which restricts an Indian tribe from leasing or conveying any lands a tribe owns without federal approval in the form of a “treaty or convention.” 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.

The Non-Intercourse Act,¹⁰ 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, several 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 the Act itself has never been repealed.

In recent years, the Non-Intercourse Act has generally not interfered with the ability of a tribe to buy, sell, or lease land that it owns in fee simple. However, it 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 as antiquated and 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.”¹¹ In addition, some tribes have encountered interference with economic development and job creation, when title insurance companies have interpreted the Non-Intercourse Act¹² to apply to fee simple real estate owned by the tribes and would not grant title insurance.¹³

There is precedent for legislation to waive the Non-Intercourse Act,¹⁴ as H.R. 1532 does, for transactions of non-trust land generating out of an abundance of caution by both the tribal and non-tribal parties. From the 113th-115th Congresses, nearly identical bills were enacted into law allowing tribes in Florida, Minnesota, Oklahoma, and Oregon, to lease or transfer fee land the

⁷ P.L. 115-325.

⁸ P.L. 115-227.

⁹ 25 U.S.C. §177.

¹⁰ *Id.*

¹¹ *City of Sherill v. Oneida Indian Nation of New York*, 544 U.S. 197, 204 (2005).

¹² 25 U.S.C. §177.

¹³ <https://docs.house.gov/meetings/II/II24/20200924/111048/HHRG-116-II24-Wstate-OsceolaC-20200924.pdf>.

¹⁴ 25 U.S.C. §177.

tribe owned.¹⁵ Congress has also enacted several other pieces of legislation authorizing several tribes to sell or mortgage specific lands.¹⁶

IV. MAJOR PROVISIONS & SECTION-BY-SECTION

H.R. 1246 (Rep. Hageman), To authorize leases of up to 99 years for land held in trust for federally recognized Indian tribes

Section 1. *Federally Recognized Tribe Leasing Authority.* Amends second sentence of Subsection (a) of the Long-Term leasing Act by inserting “, land held in trust for any other Indian tribe included on the list published by the Secretary pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131” after “Chehalis Reservation”.

H.R. 1532 (Rep. Hageman), To authorize any Indian Tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian Tribe holds fee title without the consent of the Federal Government, and for other purposes

Section 1. *Federal Consent not Required for Real Property Transactions by Indian Tribes.* Clarifies that the Non-Intercourse Act does not apply to lands where an Indian tribe holds fee title. These lands can be freely encumbered without federal approval. Section 1 also states that this clarification does not affect lands held in trust by the federal government and defines Indian tribe as tribes listed as federally recognized tribes through the Federally Recognized Indian Tribe List Act of 1994.

V. CBO COST ESTIMATE

Unknown.

VI. ADMINISTRATION POSITION

Unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 1246](#)

¹⁵ See P.L. 113-88, P.L. 114-127, P.L. 115-179.

¹⁶ 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, P.L. 106-217.