



S. 108, To authorize the Seminole Tribe of Florida to lease or transfer certain land, and for other purposes.

S. 108 would exempt lands owned in fee by the Seminole Tribe of Florida from the limitations imposed by the Indian Non-Intercourse Act, 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 an interest in real property not held in trust.

Background

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 prevents 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. Subsequent laws 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in trust for Indians have had the effect of superseding the Non-Intercourse Act even though this Act has never been repealed.

The Act generally does not interfere with the ability of a tribe to buy, sell, or lease land that it owns in fee simple since there is precedent for tribes to seek legislation to waive the Indian Non-Intercourse Act. However, the Act has generated litigation and confusion. In 2005, the Supreme Court said the Act “remain[s] substantially in force today,...[and] bars sales of tribal land without the acquiescence of the Federal Government.”

At the request of the Seminole Tribe of Florida, Senator Rubio introduced S. 108 in response to real estate investment issues the tribe encountered. In previous Congresses, nearly identical bills were enacted into law allowing tribes in Minnesota, Oklahoma and Oregon to lease or transfer fee land owned by the tribe.

The Committee favorably reported the House companion bill to S. 108, H.R. 164 (Soto), by Unanimous Consent on May 26, 2021.

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