

## Calendar No. 720

111TH CONGRESS }  
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### INDIAN PUEBLO CULTURAL CENTER CLARIFICATION ACT

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DECEMBER 20, 2010.—Ordered to be printed

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

### R E P O R T

[To accompany H.R. 4445]

The Committee on Indian Affairs, to which was referred the bill (H.R. 4445) to amend Public Law 95-232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico, having considered the same, reports favorably thereon without an amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of H.R. 4445 is to amend Public Law 95-232 by repealing a restriction on treating an 11.2857 acre parcel of land held in trust by the United States for the 19 Indian Pueblos in New Mexico as Indian country.

#### BACKGROUND

The Indian Pueblo Cultural Center is located on an 11.2857 acre parcel of land located in Albuquerque, NM. This parcel of land was originally owned by the United States and was the site of the Albuquerque Indian School, which was administered by the Bureau of Indian Affairs (BIA). In the 1960's, the federal government determined that the lands and improvements of the Indian school property were no longer needed for Indian school purposes. Subsequently, the BIA conveyed the land in 1969 by quitclaim deed to the 19 Pueblos in New Mexico as tenants in common. The purpose of the conveyance was to enable the Pueblos to develop an Indian Pueblo Cultural Center on the property.

The All Indian Pueblo Council (AIPC) is comprised of the 19 New Mexico Pueblos and one Texan Pueblo (Ysleta del Sur became a

member of the AIPC in 2009). The AIPC meets monthly to discuss issues such as education, culture, and water and land rights. As co-owners of the 11.2857 acre parcel of property conveyed to them by the BIA in 1969, the Indian Pueblos, through the AIPC, sought to clarify the legal status of the property by requesting that the land be taken into trust by the United States for the benefit of the 19 Pueblos in New Mexico.

In 1978, Congress enacted Public Law 95-232, which directed the Secretary of the Interior to place the 11.2857 acre parcel of land into trust for the benefit of the 19 Pueblos in New Mexico. Section (b) of that Act states:

Such land shall be held in trust jointly for such Indian pueblos and shall enjoy the tax-exempt status of other trust lands, including exemption from State taxation and regulations. *However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code.* (italics added).

In 1997, the New Mexico Taxation and Revenue Department (NMTRD) sought to impose its gross receipts tax on a business owned by an enrolled tribal member and located at the Indian Pueblo Cultural Center (*In the Matter of the Protest of Val Tech & Associates*, NMTRD Decision and Order, No. 97-26).<sup>1</sup> In an administrative hearing, the NMTRD concluded that Congress intended to authorize the State of New Mexico to tax business activity on the 11.2857 acre parcel of trust land by providing in Public Law 95-232 that the land would "not be Indian country as defined in section 1151 of title 18, United States Code." The NMTRD held that while the 11.2857 acre parcel of trust property itself was exempt from state taxation, the business activity taking place on the property was subject to state taxation. The NMTRD decision was not appealed.

#### NEED FOR THE LEGISLATION

The Indian Pueblo Marketing, Inc. (IPMI) is a corporation chartered by the Secretary of the Interior, pursuant to 25 U.S.C. § 477, and is owned jointly by the 19 New Mexico Pueblos. IPMI has conducted retail business operations on the 11.2857 acre parcel of trust land since 1987. During that period, IPMI has never paid state taxes on its business operations at the Indian Pueblo Cultural Center, and the State of New Mexico has only assessed taxes against IPMI for its business operations at the Cultural Center one time.<sup>2</sup> This tax assessment occurred in 1998 when the NMTRD assessed cigarette and tobacco taxes against IPMI based on the *Val Tech* decision.

In 1999, however, the NMTRD entered into an agreement with IPMI withdrawing the assessments on cigarette and tobacco taxes against IPMI. The agreement was approved by the NMTRD and the State Attorney General and provided that Public Law 95-232 "does not reflect any intention by Congress that the Pueblos' activ-

<sup>1</sup>This administrative proceeding involved an enrolled member of the Pueblo of Laguna whose place of business was located at the Indian Pueblo Cultural Center. His business was to do private investigation, primarily background investigations for casinos owned and operated by the Pueblos of Acoma, Sandia, and San Felipe.

<sup>2</sup>Neither Bernalillo County nor the City of Albuquerque, in which the 11.2857 acre parcel of trust land is located, has attempted to impose any tax on IPMI or Pueblo members based on their activity on the property. Further, the County and City have never attempted to tax the property itself, or the substantial improvements on that land.

ity on the Cultural Center trust land would be subject to state taxation.”

Despite the 1999 agreement, the NMTRD denied requests by IPMI in 2000, 2004, and 2008 to issue a written ruling confirming that IPMI’s business activity on the 11.2857 acre parcel of trust land is exempt from taxation by the State of New Mexico. Without a written ruling by the NMTRD, it is unclear if the NMTRD has the authority to impose state taxes based on the *Val Tech* decision, notwithstanding the 1999 agreement.

Since 1978, Congress has enacted the *Santa Fe Indian School Act*, Public Law 106–568, and the *Albuquerque Indian School Act*, Public Law 110–453. These two public laws declared that the lands identified in each Act would be held in trust for the 19 Pueblos in New Mexico. However, neither Act included a provision stating that the lands to be placed in trust would not be Indian country, as PL 95–232 did for the 11.2857 acre parcel of trust property containing the Indian Pueblo Cultural Center. Enacting H.R. 4445 would clarify that the 11.2857 acre parcel of trust land containing the Indian Pueblo Cultural Center maintains the same legal status as these other lands jointly held in trust for the 19 New Mexico Pueblos.

#### LEGISLATIVE HISTORY

On January 13, 2010, Representative Heinrich, for himself and Representatives Lujan and Teague, introduced H.R. 4445. The bill was referred to the House Natural Resources Committee. On April 21, 2010, the Natural Resources Committee held a hearing on the bill, at which the Department of Interior, the State of New Mexico, and the Indian Pueblos of New Mexico testified in favor of the bill. On June 28, 2010, the Natural Resources Committee reported the bill out of Committee, as amended. On June 30, 2010, the House of Representatives passed H.R. 4445, as amended, by unanimous voice vote. The bill was received in the Senate and referred to the Senate Indian Affairs Committee. On November 18, 2010, the Indian Affairs Committee held an open business meeting where H.R. 4445 was considered and favorably reported by a voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section provides that this Act may be cited as the “Indian Pueblo Cultural Center Clarification Act.”

##### *Section 2. Repeal of restriction on treating as Indian Country certain lands held in trust for Indian Pueblos in New Mexico*

This section of the bill amends Public Law 95–232, by striking the provision in that law which prohibits the parcel of land from being treated as “Indian Country” as defined in section 1151 of title 18 of the United States Code.

##### *Section 3. Prohibition on gaming*

This section adds language to Public Law 95–232 prohibiting gaming from occurring on the parcel that is held in trust jointly for the 19 Pueblos of New Mexico.

## COMMITTEE RECOMMENDATION

On November 18, 2010, the Indian Affairs Committee convened a business meeting to consider H.R. 4445 and other measures. The Committee, by a voice vote, ordered the bill reported to the full Senate with the recommendation that the bill do pass.

## COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated December 1, 2010, was prepared for H.R. 4445:

DECEMBER 1, 2010.

Hon. BYRON L. DORGAN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4445, the Indian Pueblo Cultural Center Clarification Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 4445—Indian Pueblo Cultural Center Clarification Act*

H.R. 4445 would eliminate a provision of current law that prohibits certain land, located in New Mexico and held in trust by the federal government for the New Mexico Pueblos, from being considered Indian Country, as defined by federal law. Because the federal government is responsible for certain law enforcement activities in Indian Country, enacting the legislation could increase the workload of certain federal law enforcement agencies. Based on information from the Department of the Interior, CBO estimates that any costs associated with additional law enforcement activities would be insignificant and subject to the availability of appropriated funds. Enacting H.R. 4445 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4445 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting gaming on some land held in trust for the Pueblos in New Mexico. Because the Pueblos are not currently operating gaming activities on this land nor do they have plans to do so in the future, CBO estimates that the cost, if any, would be small and well below the annual threshold established in UMRA (\$70 million in 2010, adjusted annually for inflation).

This bill contains no new private-sector mandates as defined in UMRA.

On June 25, 2010, CBO transmitted a cost estimate for H.R. 4445 as ordered reported by the House Committee on Natural Resources on June 16, 2010. The House and Senate versions of the legislation are similar, and the CBO cost estimates are the same.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Melissa Merrell (for the state, local, and tribal im-

pact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 4445.

#### REGULATORY AND PAPERWORK 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 and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of H.R. 4445 should be de minimis.

#### CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 4445, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter printed in italic):

#### PUBLIC LAW 95-232

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(b) Upon approval by the Secretary of the Interior, the Secretary shall accept such conveyances on behalf of the United States. Such land shall be held in trust jointly for such Indian pueblos and shall enjoy the tax-exempt status of other trust lands, including exemption from State taxation and regulation. [However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code.] The Secretary shall cause a description of such trust land to be published in the Federal Register.

\* \* \* \* \*

*(e) PROHIBITION ON GAMING.—Gaming, as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), shall be prohibited on land held in trust pursuant to subsection (b).*