

election under subsection (a) of this section, a copy of the proposed constitution and bylaws of the tribe, as drafted by the Interim Council, along with a brief and impartial description of the proposed constitution and bylaws. The members of the Interim Council may freely consult with members of the tribe concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of the election.

(c) Majority vote for adoption

In any election held pursuant to subsection (a) of this section, a vote of a majority of those actually voting shall be necessary and sufficient for the adoption of a tribal constitution and bylaws.

(d) Election of tribal officials pursuant to constitution and bylaws; ballot requirements

Not later than one hundred and twenty days after the tribe adopts a constitution and bylaws, the Interim Council shall conduct an election by secret ballot for the purpose of electing the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted.

(Pub. L. 96-227, § 6, Apr. 3, 1980, 94 Stat. 319.)

§ 766. Tribal reservation

(a) Transfer of real property to Secretary; existing rights applicable and status of property subsequent to transfer; taxation

The Secretary, within one year following April 3, 1980, shall accept the real property of members of the tribe or bands if conveyed or otherwise transferred to him, and real property held for the benefit of members of the tribe or bands if conveyed or otherwise transferred to him by the owner or owners of such land held for the benefit of the bands. Such property shall be subject to all valid existing rights including, but not limited to, liens, outstanding taxes (local and State), and mortgages. The land transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Utah. Subject to the conditions imposed by this subsection, the land transferred shall be taken in the name of the United States in trust for the tribe or bands to be held as Indian lands are held, and shall be part of their reservation. The transfer of real property authorized by this section shall be exempt from all local, State, and Federal taxation. All real property transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

(b) Exercise of civil and criminal jurisdiction by Utah

The State of Utah shall exercise civil and criminal jurisdiction with respect to the reservation and persons on the reservation as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the

Act of April 11, 1968 (82 Stat. 79), and pursuant to sections 63-36-9 through 63-36-21 of the Utah State Code.

(c) Plan for enlargement of reservation; negotiation; development; scope and approval

Inasmuch as the Kanosh, Koosharem and Indian Peaks Bands of Paiute Indians lost land which had been their former reservations and the Cedar Band of Paiute Indians had never had a reservation, the Secretary shall negotiate with the tribe or bands, or with representatives of the tribe chosen by the tribe or bands, concerning the enlargement of the reservation for the tribe established pursuant to subsection (a) of this section and shall within two years after April 3, 1980, develop a plan for the enlargement of the reservation for the tribe. The plan shall include acquisition of not to exceed a total of fifteen thousand acres of land to be selected from available public, State, or private lands within Beaver, Iron, Millard, Sevier, or Washington Counties, Utah. Upon approval of such plan by the tribal officials elected under the tribal constitution and bylaws adopted pursuant to section 765 of this title, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress.

(d) Notification and consultative requirements for enlargement plan

To assure that legitimate State and local interests are not prejudiced by the enlargement of the reservation for the tribe, the Secretary, in developing the plan under subsection (c) of this section for the enlargement of the reservation for the tribe, shall notify and consult with all appropriate officials of the State of Utah, all appropriate local government officials in the affected five county area in the State of Utah and any other interested parties. Such consultation shall include the following subjects:

- (1) the size and location of the additions to the reservation;
- (2) the effect the enlargement of the reservation would have on State and local tax revenues;
- (3) the criminal and civil jurisdiction of the State of Utah with respect to the reservation and persons on the reservation;
- (4) hunting, fishing, and trapping rights of the tribe, and members of the tribe, on the reservation;
- (5) the provision of State and local services to the reservation and to the tribe and members of the tribe on the reservation; and
- (6) the provision of Federal services to the reservation and to the tribe and members of the tribe and the provision of services by the tribe to members of the tribe.

(e) Contents of enlargement plan

Any plan developed under this section for the enlargement of the reservation for the tribe shall provide that—

- (1) the enlargement of the reservation will not grant or restore to the tribe or any member of the tribe any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such addition to the reservation;
- (2) the Secretary shall not accept any real property in trust for the benefit of the tribe or

bands unless such real property is located either within Beaver, Iron, Millard, Sevier, or Washington Counties, State of Utah;

(3) the transfer of any real property to the Secretary in trust for the benefit of the tribe or bands as an addition to the reservation shall be exempt from all Federal, State, and local taxation, and all such real property shall, as of the date of such transfer, be exempt from Federal, State, and local taxation; and

(4) the State of Utah shall exercise civil and criminal jurisdiction with respect to the addition to the reservation and persons on such lands as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79), and pursuant to sections 63-36-9 through 63-36-21 of the Utah State Code.

(f) Statement appended to enlargement plan respecting implementation of notification and consultative requirements

The Secretary shall append to the plan a detailed statement describing the manner in which the notification and consultation prescribed by subsection (d) of this section was carried out and shall include any written comments with respect to the enlargement of the reservation for the tribe submitted to the Secretary by State and local officials and other interested parties in the course of such consultation.

(Pub. L. 96-227, § 7, Apr. 3, 1980, 94 Stat. 320; Pub. L. 109-126, § 4, Dec. 7, 2005, 119 Stat. 2547.)

REFERENCES IN TEXT

Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79), referred to in subsecs. (b) and (e)(4), probably means section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 590, which was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 90-284, title IV, § 403(b), Apr. 11, 1968, 82 Stat. 79. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109-126 substituted “Cedar” for “Cedar City”.

TRANSFER OF LAND INTO TRUST FOR SHIVWITS BAND OF PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 111-11, title I, § 1982, Mar. 30, 2009, 123 Stat. 1093, provided that:

“(a) DEFINITIONS.—In this section:

“(1) PARCEL A.—The term ‘Parcel A’ means the parcel that consists of approximately 640 acres of land that is—

“(A) managed by the Bureau of Land Management;

“(B) located in Washington County, Utah; and

“(C) depicted on the map entitled ‘Washington County Growth and Conservation Act Map’ [meaning the “Washington County Growth and Conservation Act Map”, dated November 13, 2008].

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(3) TRIBE.—The term ‘Tribe’ means the Shivwits Band of Paiute Indians of the State of Utah.

“(b) PARCEL TO BE HELD IN TRUST.—

“(1) IN GENERAL.—At the request of the Tribe, the Secretary shall take into trust for the benefit of the Tribe all right, title, and interest of the United States in and to Parcel A.

“(2) SURVEY; LEGAL DESCRIPTION.—

“(A) SURVEY.—Not later than 180 days after the date of enactment of this Act [Mar. 30, 2009], the

Secretary, acting through the Director of the Bureau of Land Management, shall complete a survey of Parcel A to establish the boundary of Parcel A.

“(B) LEGAL DESCRIPTION OF PARCEL A.—

“(i) IN GENERAL.—Upon the completion of the survey under subparagraph (A), the Secretary shall publish in the Federal Register a legal description of—

“(I) the boundary line of Parcel A; and

“(II) Parcel A.

“(ii) TECHNICAL CORRECTIONS.—Before the date of publication of the legal descriptions under clause (i), the Secretary may make minor corrections to correct technical and clerical errors in the legal descriptions.

“(iii) EFFECT.—Effective beginning on the date of publication of the legal descriptions under clause (i), the legal descriptions shall be considered to be the official legal descriptions of Parcel A.

“(3) EFFECT.—Nothing in this section—

“(A) affects any valid right in existence on the date of enactment of this Act [Mar. 30, 2009];

“(B) enlarges, impairs, or otherwise affects any right or claim of the Tribe to any land or interest in land other than to Parcel A that is—

“(i) based on an aboriginal or Indian title; and

“(ii) in existence as of the date of enactment of this Act; or

“(C) constitutes an express or implied reservation of water or a water right with respect to Parcel A.

“(4) LAND TO BE MADE A PART OF THE RESERVATION.—Land taken into trust pursuant to this section shall be considered to be part of the reservation of the Tribe.”

CONVEYANCE OF LAND HELD IN TRUST FOR PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 109-126, Dec. 7, 2005, 119 Stat. 2546, provided that:

“SECTION 1. LAND CONVEYANCE TO CITY.

“(a) AUTHORIZATION FOR CONVEYANCE.—Not later than 90 days after the Secretary receives a request from the Tribe and the City to convey all right, title, and interest of the United States and the Tribe in and to the Property to the City, the Secretary shall take the Property out of trust status and convey the Property to the City.

“(b) TERMS AND CONDITIONS.—The conveyance under subsection (a) shall be subject to the following conditions:

“(1) TRIBAL RESOLUTION.—Prior to conveying the Property under subsection (a), the Secretary shall ensure that the terms of the sale have been approved by a tribal resolution of the Tribe.

“(2) CONSIDERATION.—Consideration given by the City for the Property shall be not less than the appraised fair market value of the Property.

“(3) NO FEDERAL COST.—The City shall pay all costs related to the conveyance authorized under this section.

“(c) PROCEEDS OF SALE.—The proceeds from the conveyance of the Property under this section shall be given immediately to the Tribe.

“(d) FAILURE TO MAKE CONVEYANCE.—If after the Secretary takes the Property out of trust status pursuant to subsection (a) the City or the Tribe elect not to carry out the conveyance under that subsection, the Secretary shall take the Property back into trust for the benefit of the Tribe.

“SEC. 2. TRIBAL RESERVATION.

“Land acquired by the United States in trust for the Tribe after February 17, 1984, shall be part of the Tribe’s reservation.

“SEC. 3. TRUST LAND FOR SHIVWITS OR KANOSH BANDS.

“If requested to do so by a tribal resolution of the Tribe, the Secretary shall take land held in trust by

the United States for the benefit of the Tribe out of such trust status and take that land into trust for the Shivwits or Kanosh Bands of the Paiute Indian Tribe of Utah, as so requested by the Tribe.

“SEC. 4. CEDAR BAND OF PAIUTES TECHNICAL CORRECTION.

“The Paiute Indian Tribe of Utah Restoration Act (25 U.S.C. 761 [et seq.]) is amended by striking ‘Cedar City’ each place it appears and inserting ‘Cedar’. Any reference in a law, map, regulation, document, paper, or other record of the United States to the ‘Cedar City Band of Paiute Indians’ shall be deemed to be a reference to the ‘Cedar Band of Paiute Indians’.

“SEC. 5. DEFINITIONS.

“For the purposes of this Act:

“(1) CITY.—The term ‘City’ means the City of Richfield, Utah.

“(2) PROPERTY.—The term ‘Property’ means the parcel of land held by the United States in trust for the Paiute Indian Tribe of Utah located in Section 2, Township 24 South, Range 3 West, Salt Lake Base and Meridian, Sevier County, Utah and more particularly described as follows: Beginning at a point on the East line of the Highway which is West 0.50 chains, more or less, and South 8° 21′ West, 491.6 feet from the Northeast Corner of the Southwest Quarter of Section 2, Township 24 South, Range 3 West, Salt Lake Base and Meridian, and running thence South 81° 39′ East, perpendicular to the highway, 528.0 feet; thence South 26° 31′ West, 354.6 feet; thence North 63° 29′ West, 439.3 feet to said highway; thence North 8° 21′ East, along Easterly line of said highway 200.0 feet to the point of beginning, containing 3.0 acres more or less.

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(4) TRIBE.—The term ‘Tribe’ means the Paiute Indian Tribe of Utah.”

RESERVATION OF PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 98-219, Feb. 17, 1984, 98 Stat. 11, as amended by Pub. L. 109-126, § 4, Dec. 7, 2005, 119 Stat. 2547, provided that:

“SECTION 1. (a) Subject to subsection (d), all right, title, and interest of the United States in the lands described in subsection (b) (including all improvements thereon and appurtenances thereto) are declared to be held in trust by the United States for the benefit of the respective bands of the Paiute Indian Tribe of Utah, as provided in subsection (b), and are declared to be part of the reservation of the Paiute Indian Tribe of Utah.

“(b) The lands subject to this section are parcels 1 through 5 of the lands depicted on the maps contained in the draft document entitled ‘Proposed Paiute Indian Tribe of Utah Reservation Plan’, dated January 24, 1982, and published by the United States Department of the Interior, Bureau of Indian Affairs. Upon enactment of this Act [Feb. 17, 1984], the Secretary shall publish in the Federal Register the legal description of the lands so depicted. The Secretary is authorized to correct any technical errors in the descriptions of the subject lands. Such lands shall be held as follows:

“(1) To be held in trust for the Kanosh Band of the Paiute Tribe of Utah: Parcel numbered 2, figure 5, page 95, containing approximately five hundred and sixty acres; parcel numbered 3, figure 6, page 99, containing approximately five hundred and two acres.

“(2) To be held in trust for the Koosharem Band of the Paiute Tribe of Utah: Parcel numbered 4, figure 7, page 105, containing approximately five hundred and twenty acres; parcel numbered 5, figure 8, page 111, containing approximately seven hundred and fifteen acres.

“(3) To be held in trust for the Cedar Band of the Paiute Tribe of Utah: That portion of parcel numbered 1, figure 4, page 85, containing approximately two thousand forty-four acres.

“(4) To be held in trust for the Indian Peaks Band of the Paiute Indian Tribe of Utah: That portion of

parcel numbered 1, figure 4, page 85, containing approximately four hundred and twenty-four acres.

“(c) Nothing in this section shall deprive any person of any existing legal right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the lands described in subsection (b).

“(d) Pursuant to the Act of June 14, 1934 (48 Stat. 985) [probably means section 5 of act June 18, 1934, 25 U.S.C. 465], the Secretary shall acquire, to the extent available, easements to and water rights for the lands described in subsection (b) as necessary for their use.

“(e) The Secretary shall consult with the town council of Joseph, Utah, and other appropriate local governmental entities prior to permitting the introduction of any point source of contamination pursuant to any proposed development on parcel numbered 4 as described in subsection (b)(2). The Secretary shall require a minimum of one thousand five hundred feet distance be maintained from the town well of the town of Joseph and any such point source of contamination and may, if he determines it is necessary to prevent contamination of said well, require the installation of an appropriate waste water disposal system as part of any proposed development on parcel 4.

“(f) Upon the effective date of this Act [Feb. 17, 1984], all valid leases, permits, rights-of-way, or other land use rights or authorizations, except mining claims, existing on the date of enactment of this Act [Feb. 17, 1984] in the lands described in subsection (b), including the right to receive compensation for use of the lands, shall cease to be the responsibility of, or enure to the benefit of, the United States, and shall become the responsibility of the Paiute Indian Tribe which shall succeed to the interests of the United States and shall continue to maintain them under the same terms and conditions as they were maintained by the United States.

“(g) All improvements on the lands described in subsection (b) in existence on the effective date of the Act [Feb. 17, 1984], under the authority of the land use rights or authorizations described in subsection (c), shall remain in the same status as to ownership and right of use as existed prior to the date of enactment of this Act [Feb. 17, 1984].

“(h) Nothing in this Act shall be construed as terminating any valid mining claim existing on the date of enactment of this Act [Feb. 17, 1984] on the lands described in subsection (b).

“(i) The mining claims described in subsection (c) shall carry all the rights incident to mining claims, including the rights of ingress and egress over the land described in subsection (b). Such mining claims shall carry the right to occupy and use so much of the surface of the land within their boundaries as is required for all purposes reasonably necessary to mine and remove the minerals, including the removal of timber for mining purposes. Such mining claims shall terminate when they are determined invalid under subsection (j) or are abandoned.

“(j) As soon as possible after enactment of this Act, the Secretary of the Interior shall determine the validity of the mining claims described in subsection (h) as of the date of enactment of this Act [Feb. 17, 1984]. Those mining claims which the Secretary determines to be valid shall be maintained thereafter in compliance with the mining laws of the United States but the holders of such claims shall not be entitled to a patent.

“(k) Nothing in this Act shall prevent the Paiute Indian Tribe from negotiating the accommodation of land use rights or authorizations described in this section through any method acceptable to the parties.

“SEC. 2. The lands which are declared to be held in trust for the benefit of the tribe or bands under this Act shall be subject to the laws of the United States relating to Indian land to the same extent and in the same manner as the lands comprising the reservation of the tribe or bands on the day before the date of the enactment of this Act [Feb. 17, 1984].

“SEC. 3. (a) The Secretary of Agriculture shall not deny the tribe or any member of the tribe the right to

use and occupy, on a nonexclusive basis, the national forest land described in subsection (b) for religious and ceremonial purposes for such periods of time and under such reasonable terms and conditions as the Secretary may prescribe: *Provided*, That the Secretary shall permit the tribe to use and occupy, on an exclusive basis, so much of the national forest land in subsection (b) abutting Fish Lake as is necessary for such religious and ceremonial purposes during and including the second and third weeks of June and the first and second weeks of September of each year, under such reasonable terms and conditions as the Secretary may prescribe.

“(b) The land referred to in subsection (a) is the parcel of land depicted on the map contained in the document entitled ‘Proposed Paiute Indian Tribe of Utah Reservation Plan’, dated January 24, 1982, and published by the United States Department of the Interior, Bureau of Indian Affairs, as follows: Parcel numbered 6: Fish Lake; figure 9, page 117.

“SEC. 4. (a) There is hereby established in the Treasury of the United States a fund to be known as the Paiute Indian Tribe of Utah Economic Development and Tribal Government Fund. This Fund shall be held in trust for the benefit of the tribe and administered in accordance with this Act.

“(b)(1) One-half of the principal of the Fund shall be designated as the Economic Development Fund and the remaining one-half as the Tribal Government Fund. Each portion of the Fund shall be administered by the Secretary in accordance with reasonable terms established by the tribe and agreed to by the Secretary. The Secretary shall not agree to terms which provide for the investment of the Fund in a manner not in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037) [25 U.S.C. 162a], unless the tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment. Until such terms have been agreed upon, the Secretary shall fix the terms for the administration of any portion of the Fund as to which there is no agreement.

“(2) Under no circumstances shall any part of the principal of the Fund be distributed to the tribe, or to any member of the tribe, nor shall income accruing to the Fund be used for per capita payments to any member of the tribe.

“(3) The Secretary shall make available to the tribe in quarterly payments, without any deductions, any income received from the investment of each fund. The use of the income from the Tribal Government Fund shall be free of regulation by the Secretary. The use of the income from the Economic Development Fund shall be consistent with an economic development plan developed by the tribe and approved by the Secretary. The Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing the reasons for his disapproval. With the approval of the Secretary, the tribe may alter the economic development plan subject to the conditions set forth in this section.

“(c) There is authorized to be appropriated in fiscal year 1985 the sum of \$2,500,000, which shall be deposited in the Fund. Not more than 5 per centum of any amount appropriated to the Fund under this section may be obligated or spent by the tribe under any contract or agreement relating to the employment of legal counsel.

“(d) The transfer of the approximately four thousand seven hundred and seventy acres of land and the appropriation of the \$2,500,000 authorized by this Act shall be in complete fulfillment of the provisions of Public Law 96-227 [this subchapter] relating to the enlargement of the tribe’s reservation.

“SEC. 5. For purposes of this Act—

“(1) the term ‘tribe’ means the Cedar, Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute Indians of Utah; and

“(2) except where otherwise specified, the term ‘Secretary’ means the Secretary of the Interior.”

§ 767. Legal claims barred for lands lost through tax or other sales since September 1, 1954

Any legal claims for lands owned by the Shivwits, Kanosh, Koosharem, or Indian Peaks Bands of Paiute Indians of Utah and lost through tax sales or any other sales to individuals, corporations, or the State of Utah since September 1, 1954, are hereby barred.

(Pub. L. 96-227, § 8, Apr. 3, 1980, 94 Stat. 322.)

§ 768. Rules and regulations

The Secretary may make such rules and regulations as are necessary to carry out the purposes of this subchapter.

(Pub. L. 96-227, § 9, Apr. 3, 1980, 94 Stat. 322.)

SUBCHAPTER XXXIII—INDIAN TRIBES OF OREGON

§ 771. Enrollment of descendants; determination of eligibility

The Secretary of the Interior, hereafter referred to as the “Secretary”, is authorized and directed to prepare separate rolls of the Indians of the blood of the Molel or Molallalas Tribe of Oregon and of the Confederated Bands of the Umpqua Tribe of Indians and the Calappoias residing in the Umpqua Valley, and of the Tillamook, Coquille, Toootoney, and Chetco Tribes of Oregon, living on August 30, 1954. Applications for enrollment shall be filed within one year of August 30, 1954. The determination of the Secretary of the eligibility of an applicant for enrollment shall be final and conclusive. No person shall be entitled to be enrolled on more than one roll.

(Aug. 30, 1954, ch. 1085, § 1, 68 Stat. 979.)

§ 772. Per capita payments to tribal members; tax exemption

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the respective tribes or bands, including those funds appropriated by Public Law 253 (Eighty-second Congress) approved November 1, 1951, in satisfaction of judgments obtained by the tribes or bands in the cases of Alcea Band of Tillamook, et al., against United States (119 C. Cls. 835), and Rogue River Tribes of Indians, et al., against United States (116 C. Cls. 454), and to make appropriate and equitable per capita payments therefrom to each person whose name appears on said approved rolls: *Provided*, That any amounts paid to or for individual members, or distributed to or for the legatees or next of kin of any enrollee, as provided in this subchapter, shall not be subject to Federal tax.

(Aug. 30, 1954, ch. 1085, § 2, 68 Stat. 979.)

REFERENCES IN TEXT

Public Law 253 (Eighty-second Congress), referred to in text, is act Nov. 1, 1951, ch. 664, 65 Stat. 736, known as the Supplemental Appropriations Act, 1952, which was not classified to the Code.