

Prepared Statement of the Honorable Harry Pickernell, Sr.

Chairman, Confederated Tribes of the Chehalis Reservation

Legislative Hearing on S. 3060, a bill “to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands”

Senate Committee on Indian Affairs

July 18, 2018

Good afternoon Chairman Hoeven, Vice Chairman Udall, and members of the Committee. My name is Harry Pickernell and I am the Chairman of the Confederated Tribes of the Chehalis Reservation (the “Tribe”), a federally recognized Indian tribe located in southwest Washington State. I am pleased to be here today to testify in support of S. 3060, a bill that would repeal an antiquated nineteenth century law that has become an obstacle to the Tribe’s economic development.

The Chehalis Reservation was created by Executive Order in 1864 and is located between the confluence of the Chehalis River and the Black River. Much of the Tribe’s 4,800 acre land base is in a flood plain and the Tribe has very little land suitable for economic development.

Southwest Washington has long been an economically depressed area lacking in businesses and jobs for Tribal members and non-Indians alike. The Tribe operates a casino but is always looking for ways to diversify its economic base to continue to support its education, health, housing, safety and other programs for its members. Approximately 40 percent of Tribal members are under the age of 21 and will need jobs in the future.

With the assistance of the Department of the Interior, the Tribe, in partnership with the Great Wolf Company, also developed a Great Wolf Lodge on the Tribe’s reservation land in Grand Mound, Washington. This is the only indoor waterpark in Washington State and the only Great Wolf Lodge on an Indian reservation.

Currently, the Tribe is planning to develop a stand-alone brewery and a stand-alone distillery, both of which will be on-reservation and 100 percent owned and operated by the Tribe. Each of these enterprises is intended to both provide

new skills and training to Tribal members and non-Indians, but also provide skilled jobs on the Reservation.

In 1953, Congress enacted 18 U.S.C. section 1161 (“Section 1161”), which excludes application of various federal liquor prohibitions in Indian country provided the activities conform to state law and are conducted by tribes under liquor ordinances approved by the Bureau of Indian Affairs (“BIA”). When Congress established this regulatory regime, however, it missed one virtually unremembered law that prohibits distilleries in Indian country.

That law, which is now codified at 25 U.S.C. section 251 (“Section 251”), was enacted on June 30, 1834, and reads:

Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of \$1,000; and the superintendent of Indian affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

The apparent intent of Section 251 was to prevent non-Indian traders from avoiding taxation by setting up distilleries in Indian country and also to prevent non-Indian traders from selling liquor to Indians who were the wards of the United States.

As far as the Tribe has been able to ascertain, Section 251 has never been enforced and has only been mentioned in passing once since its enactment 184 years ago. The one time Section 251 has even been mentioned in a federal court decision was in a footnote in a Ninth Circuit Court of Appeals opinion in 1983. That court identified Section 251 as one of the outdated statutes that were resolved by Section 1161. In reversing the decision, the U.S. Supreme Court identified Section 1161 as “abolishing federal prohibition, and as legalizing Indian liquor transactions as long as those transactions conformed both to tribal ordinance and state law,” but the Court failed to identify Section 251 in its decision.¹

By allowing the Tribe’s project to move forward, repealing Section 251 will create jobs both for Tribal members and the surrounding communities and provide an economic return to the Tribe for use to support its tribal programs. These will

¹ The Ninth Circuit’s footnote is in *Rehner v. Rice*, 678 F.2d 1340, 1333 n.6 (9th Cir. 1982), and the U.S. Supreme Court’s subsequent decision is *Rice v. Rehner*, 463 U.S. 713 (1983).

include jobs constructing the distillery, learning the distillery production trade, and addressing the marketing and distribution of the Tribe's products.

By repealing Section 251, S. 3060 will not disturb or otherwise affect the requirements established by Section 1161 that the Tribe (and other tribes) must (1) comply with state liquor laws and regulations and (2) have a BIA-approved liquor ordinance for on-reservation liquor sales. This bill will similarly not affect the ability of the State of Washington or other states to collect liquor taxes under that same authority. Rather, S. 3060 will simply remove an antiquated and nearly forgotten federal prohibition on the construction and operation of distilleries in Indian country.

The United States' current policy is to support tribal self-determination and self-sufficiency. The Chehalis Tribe and other tribes must provide for their members and support surrounding communities through economic development. Although the Tribe has no reason to believe that the Department is inclined to enforce Section 251, the law presents a risk that the BIA could "destroy and break up" the Tribe's distillery after the Tribe begins construction.

Time is of the essence for this legislation. The Tribe has its building permits in hand, has completed the full design of the project, purchased some of the equipment, and needs to continue to expend additional funds for development of this project. The Tribe will also require additional financing to complete the project and Section 251 serves as a barrier to obtaining that financing.

The Tribe urges swift consideration and passage of S. 3060. I would be happy to answer any questions the Committee may have at this time.
