

Subcommittee on Indian, Insular and Alaska Native Affairs
Doug LaMalfa, Chairman
Hearing Memorandum

September 10, 2018

To: All Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: **Legislative hearing on H.R. 4985 (Rep. Brian Babin)**, To restore an opportunity for tribal economic development on terms that are equal and fair, and for other purposes.
September 13, 2018, at 2:00 p.m. in 1324 Longworth HOB

H.R. 4985 (Rep. Brian Babin), “Ysleta del Sur Pueblo and Alabama-Coushatta Tribes of Texas Equal and Fair Opportunity Settlement Act”

Summary of the bill

H.R. 4985 was introduced by Rep. Brian Babin (R-TX) on February 8, 2018. The bill would amend the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act¹ (“Restoration Act”) to permit the Ysleta del Sur Pueblo – also known as the Tigua Tribe – and the Alabama-Coushatta Tribes of Texas to operate casinos regulated under the Indian Gaming Regulatory Act (IGRA).² Currently, Section 207 of the Restoration Act applies all State of Texas prohibitions on gambling to the lands and reservations of these two tribes notwithstanding the authorization for gambling rights provided to tribes under IGRA.³

Cosponsors

Rep. Ruben Gallego (D-AZ), Rep. Bob Gibbs (R-OH), Rep. Vicente Gonzalez (D-TX), Rep. Paul Gosar (R-AZ), Rep. Gene Green (D-TX), Rep. Raul Grijalva (D-AZ), Rep. Will Hurd (R-TX), Rep. Eddie Bernice Johnson (D-TX), Rep. Doug LaMalfa (R-CA), Rep. Pete Olson (R-TX), Rep. Pete Sessions (R-TX), Rep. Marc Veasey (D-TX), Rep. Filemon Vela (D-TX), Rep. Randy Weber (R-TX), Rep. Roger Williams (R-TX), Rep. Don Young (R-AK), Michael Conaway (R-TX).

¹ P.L. 100-89

² 25 U.S.C. 2701 et. seq.

³ <https://www.gpo.gov/fdsys/pkg/STATUTE-101/pdf/STATUTE-101-Pg666.pdf>

Invited Witnesses

Mr. Darryl LaCounte
Acting Deputy Bureau Director
Office of Trust Services
Bureau of Indian Affairs
Department of the Interior
Washington, D.C.

Honorable JoAnn Battise
Chairwoman
Alabama Coushatta Tribe of Texas
Livingston, TX

Honorable Carlos Hisa
Governor
Ysleta del Sur Pueblo
El Paso, TX

Background

Ysleta del Sur Pueblo

The Tiguas of Ysleta del Sur Pueblo, descendants of Isleta Pueblo refugees from the Rio Grande Valley in New Mexico, are located just outside of El Paso, Texas on 2,700 acres of trust land.⁴ Originally under Spanish and Mexican rule, they came under rule of the State of Texas in 1848 with the passage of the Treaty of Guadalupe Hidalgo. They were officially recognized as a tribe by the state in May of 1967, and subsequently placed under the jurisdiction of the Commission of Indian Affairs. After a twenty-year wait, the Pueblo obtained federal recognition in 1987 under Public Law 90-287.⁵

Alabama Coushatta Tribes

The Alabama-Coushatta Reservation is home to two bands or tribes, but federally recognized as one “tribe”, the Alabama Coushatta tribes of Texas. Approximately 5,000 acres in size, the reservation is located about 70 miles northeast of Houston, bordered in the south by the Big Thicket National Preserve.⁶ Historically, the Alabama and Coushatta tribes were once separately organized tribes which inhabited adjacent areas near present day Montgomery, Alabama, but moved westward toward Texas with the movement of European settlers in the mid 1700’s.

⁴ Tiller’s Guide to Indian Country, third edition. Veronica E. Valarde Tiller at 716 (2015).

⁵ *Id.*

⁶ *Id.* at 713.

In 1918, the Department of the Interior had investigated the living conditions of both the Alabama and Coushatta Tribes, and in each case the Department concluded that the tribes' greatest needs were for more land and vocational education. The Secretary of the Interior recommended an appropriation of \$100,000 for the purchase of land, followed by an additional appropriation of \$25,000 for the purchase of livestock and agricultural equipment. Then, in 1928 the United States authorized the Secretary of the Interior to purchase land for the Alabama and Coushatta Tribes in Polk County.⁷

Termination

In 1954, Congress transferred responsibility for administering "trust duties" for the tribe to the State of Texas, thereby terminating federal responsibility for the Alabama-Coushatta. In 1983, the Texas Attorney General issued a legal memo where he determined the Constitution and laws of Texas forbade the state from exercising special authority over the Alabama-Coushatta, as doing so was a violation of the Equal Protection Doctrine.⁸ While this controversy went to litigation, then-Representative Ron Coleman (D-TX) introduced a restoration bill for the Alabama-Coushatta tribe that garnered broad support in Texas.

Consideration of Restoration Legislation and Gaming Concerns

Beginning in the 99th Congress, the Interior & Insular Affairs Committee began consideration of a measure, H.R. 1344 (Coleman, D-TX), to restore the tribes' federal recognition. In a hearing on the bill, the Department of the Interior testified in opposition to it, preferring the tribe to document it could meet the administrative criteria for recognition under the Department's regulations codified in Part 83 of Title 25 of the Code of Federal Regulations. Many editorials, letters, and resolutions from various Texas newspapers and politicians were inserted in the Committee record all in support of the tribe.

On December 4, 1985, the Committee marked up and ordered the bill reported, with an amendment concerning gambling. The Committee's archives do not precisely indicate when concerns with gambling were raised, but they appear to have arisen after the hearing and before the markup. It should be noted that while IGRA was still three years from enactment, tribes operating high stakes bingo operations in various parts of the country were a growing topic of discussion.

The amendment adopted by the Committee required the tribe to enact gambling ordinances that were the same as Texas State laws concerning gambling (i.e., the tribe could not conduct any gambling unless it was conducted as a charitable bingo operation). However, a loophole provided that the tribe could submit any amendments to its gambling ordinances to the Secretary of the Interior, and if the Secretary approved the amendments, the ordinances (as amended) would take effect unless Congress provided otherwise by joint resolution within 60 days. On December 16, 1985, the House passed the bill (as amended) by voice vote, with no debate concerning gambling concerns.

⁷ *Handbook of Texas Online*, Howard N. Martin, "ALABAMA-COUSHATTA INDIANS," accessed September 10, 2018, <http://www.tshaonline.org/handbook/online/articles/bma19>.

⁸ Texas Attorney General Jim Mattox Opinion No. JM-17. March 22, 1983.

On March 18, 1986, Representative Coleman wrote a letter to the Chairman of the Senate Select Committee on Indian Affairs to express concern that objections to gambling by officials in Texas threatened Senate passage of the bill, and to request the Senate include an amendment to the House-passed bill to ban gambling. On September 24, 1986, the Senate passed H.R. 1344 by unanimous consent with an amendment containing language applying State of Texas prohibitions on gambling to the tribes. On September 25, 1986, however, the Senate vitiated previous passage by unanimous consent. The bill died upon adjournment of Congress.

Tribal Restoration in 1987

In the 100th Congress, H.R. 318 (Coleman, D-TX) was introduced to restore the tribes' federal recognition. The bill, as amended, passed the House and was further amended by the Senate. On August 3, 1987, the House agreed to the Senate amendments, and on August 18, 1987, it was signed by President Reagan and became Public Law 100-89 containing the gambling restrictions the tribe is today asking Congress to lift.

It should be noted that prior to enactment of the Restoration Act, the Alabama-Coushatta tribe passed a tribal resolution accepting the restriction on gambling.⁹

Litigation on Tribal Gambling in Texas

Beginning in 1992, a series of lawsuits were filed by the tribes seeking a federal court to rule that IGRA, as a subsequent enactment of law, supersedes the law's limitation on the tribes' right to run casinos. The U.S. Court of Appeals for the Fifth Circuit upheld the Restoration Act limitation and enjoined the tribes from operating casinos on their lands in violation of the laws of Texas.

More recently, in 2016 the Alabama-Coushatta Tribe began to operate a casino on its reservation, upon which the State of Texas initiated a contempt proceeding against the tribe on the grounds the tribe was violating the Court's injunction. In its brief, the State of Texas argued (among other things), that "[t]o secure passage of the Restoration Act, the Alabama Coushatta Tribe of Texas pledged before Congress in their Tribal Council Resolution No. TC-86- 07 that ' . . . the Alabama-Coushatta Tribe remains firm in its commitment to prohibit outright any gambling or bingo in any form on its Reservation.'"¹⁰

In February 2018, a U.S. District Court, expressing "understanding and sympathy for the Tribe's position," reaffirmed that the "plain language of the Restoration Act stands."¹¹ The District Court judgment is currently pending appeal in the Fifth Circuit.

⁹ Tribal Resolution No. T.C.-86-07

¹⁰ <https://turtletalk.files.wordpress.com/2018/02/74-texas-motion-for-contempt.pdf>, at 4.

¹¹ <https://turtletalk.files.wordpress.com/2018/02/129-dct-order.pdf>

Analysis of H.R. 4985

H.R. 4985 would amend the Restoration Act to allow the Alabama-Coushatta Tribes and the Tigua Tribe to open casinos regulated under IGRA, thereby nullifying the current federal requirement for the tribes to adhere to Texas law regulating gambling on their lands and reservations.

Cost

Unknown.

Administration Position

Unknown.

Ramseyer (effect on current law)

Showing Current Law as Amended by H.R. 4985

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

The Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act (Public Law 100-89)

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SEC. 301. RULE OF CONSTRUCTION.

“Nothing in this Act shall be construed to preclude or limit the applicability of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).