

TESTIMONY
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUB-COMMITTEE ON INDIAN, INSULAR, AND ALASKA NATIVE AFFAIRS
HOUSE OF REPRESENTATIVES
ON
H.R. 4985, THE “YSLETA DEL SUR PUEBLO AND ALABAMA-COUSHATTA TRIBES OF TEXAS
EQUAL AND FAIR OPPORTUNITY SETTLEMENT ACT”

SEPTEMBER 13, 2018

Chairman LaMalfa, Ranking Member Gallego, and Members of the Subcommittee, I am Darryl LaCounte, Acting Director of the Bureau of Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department’s views on H.R. 4985, the “Ysleta del Sur Pueblo and Alabama-Coushatta Tribes of Texas Equal and Fair Opportunity Settlement Act.” This bill would amend the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act, P.L. 100-89 (101 Stat. 666) to no longer preclude or limit the applicability of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) The Department supports H.R. 4985.

Background

Congress passed the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act (Restoration Act) in August of 1987. The Act restored the Tribes to federal recognition and provided that:

All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas.

The Act also states that nothing in the section of the Act addressing gaming activities “shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.”

Later that same year, in October of 1987, Congress then passed the Indian Gaming Regulatory Act or IGRA. IGRA provides that Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State that does not, as a matter of criminal law and public policy, prohibit such gaming activity.

The State of Texas permits certain forms of gaming, including a state lottery, bingo and pull tabs. Read together, the two federal statutes raised questions as to whether the Ysleta del Sur Pueblo

and Alabama-Coushatta Tribe of Texas (Tribes) were limited to conducting only those types of gaming allowable by State law in Texas. While IGRA was enacted more recently, the Restoration Act is more specific in its application to the Tribes. The Tribes and the State of Texas underwent years of litigation regarding whether the Tribes could conduct gaming in Texas and what types, which levied a large financial toll on the Tribes.

Ultimately, the Fifth Circuit Court of Appeals determined that congressional intent was that IGRA did not repeal the Restoration Act and that therefore the Restoration Act — and not IGRA — applies to the Tribes' gaming activity. The Fifth Circuit suggested that the only way for the Tribe to conduct gaming under IGRA would be to petition Congress to amend or repeal the Restoration Act.

H.R. 4985

H.R. 4985 amends the Restoration Act by inserting a rule of construction stating, “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.)” In other words, this amendment would clarify that nothing in the Restoration Act prevents the applicability of IGRA on the Tribes' lands. As additional clarification and to remove any doubt as to the intent of the revision, we would recommend that the amendment also strike the language in the Restoration Act that states, “all gaming activities prohibited by the laws of the State of Texas are prohibited on the reservation and on lands of the tribe. Violations of the prohibition are subject to civil and criminal penalties provided by the laws of the State of Texas.”

The Department supports an amendment as both necessary and important. An amendment is clearly necessary as, even after years of litigation, there are still varying interpretations between the judicial branch and NIGC on how the two federal statutes interact.

An amendment is important because it would restore the Alabama-Coushatta Tribe and the Ysleta del Sur Pueblo to the same footing as other federally recognized Indian tribes in the United States, including the Kickapoo Traditional Tribes in the State of Texas. IGRA provides a federal statutory basis for the operation of gaming by Indian tribes. IGRA's framework accounts for State law and input, but also provides a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. An amendment would clarify that IGRA's framework applies to the Tribes just as it applies to other federally recognized Tribes.

Conclusion

The Department believes that, if further revised to remove existing language in the Restoration Act regarding gaming, H.R. 4985 would clarify existing law and therefore is supportive of this bill. This concludes my statement and I would be happy to answer questions.