

YSLETA DEL SUR PUEBLO AND ALABAMA-COUSHATTA
TRIBES OF TEXAS EQUAL AND FAIR OPPORTUNITY SET-
TLEMENT ACT

JULY 22, 2019.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 759]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 759) to restore an opportunity for tribal economic development on terms that are equal and fair, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 759 is to restore an opportunity for tribal economic development on terms that are equal and fair.

BACKGROUND AND NEED FOR LEGISLATION

The Ysleta del Sur Pueblo, also known as the Tigua Tribe, is a federally recognized tribe located approximately thirteen miles from El Paso, TX. The Alabama-Coushatta Tribe of Texas is a federally recognized tribe located in Polk County, TX.

As part of Indian policy followed by the federal government from the 1940s through the 1960s, both tribes were terminated by an act of Congress. On August 23, 1954, President Dwight Eisenhower signed Public Law 83-627, 68 Stat. 768, therein terminating the trust relationship between the Alabama-Coushatta Tribe of Texas

and the United States. The Ysleta del Sur Pueblo became formally terminated on April 12, 1968, with the enactment of Public Law 90–287, 82 Stat. 93. Trusteeship of both tribes was transferred to the State of Texas, where it remained until August 1987.

On August 18, 1987, the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act was enacted into law, thereby restoring federal recognition to both tribes.¹ The Restoration Act was passed at a time when Indian gaming was just emerging and federal regulations had not yet been implemented, leaving states concerned about a possible lack of regulation of the Indian gaming industry. Therefore, the state of Texas insisted on language in the Restoration Act that effectively prevented the tribes from gaming by stipulating 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.”²

Just over a year later, Congress enacted the Indian Gaming Regulatory Act (IGRA). Among IGRA’s stated purposes were to establish a new nationwide regulatory framework for tribal gaming on Indian lands within a tribe’s jurisdiction and to promote “tribal economic development, self-sufficiency, and strong tribal governments.”³

When the Restoration Act was enacted in 1987, Texas law generally prohibited gaming with the exception of charitable bingo. However, those circumstances changed rapidly in the late 80s and early 90s. Texas now offers a variety of lottery games, including Powerball and Mega Millions, and allows horse and dog track operations. Since the change to Texas gaming law and the enactment of IGRA, both the Alabama-Coushatta Tribe and the Ysleta del Sur Pueblo have opened gaming facilities. However, the state of Texas has used the language in the Restoration Act to repeatedly stymie both tribes’ ability to lawfully game under IGRA. Furthermore, the only other federally recognized tribe in Texas—the Kickapoo Traditional Tribe of Texas—is allowed to game, and as such operates a successful gaming facility.⁴

H.R. 759 will bring parity to all the Texas tribes and allow the Ysleta del Sur Pueblo and the Alabama-Coushatta Tribe of Texas the ability to game under the IGRA in the same manner as the Kickapoo Traditional Tribe of Texas.

COMMITTEE ACTION

H.R. 759 was introduced on January 24, 2019, by Representative Brian Babin (R–TX). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On June 19, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by voice vote.

¹Pub. L. No. 100–89, 101 Stat. 666.

²Id. §§ 107, 207 (codified at 25 U.S.C. §§ 1300g–6, 737).

³25 U.S.C. § 2702(1).

⁴The tribe was recognized in 1983 through enactment of Pub. L. No. 97–429, 96 Stat. 2269. This statute makes no reference to gaming.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 759: full committee markup held on June 19, 2019.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 2019.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 759, the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes of Texas Equal and Fair Opportunity Settlement Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 759, Ysleta del Sur Pueblo and Alabama-Coushatta Tribes of Texas Equal and Fair Opportunity Settlement Act As ordered reported by the House Committee on Natural Resources on June 19, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	n.e.
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
n.e. = not estimated; * = between zero and \$500,000			

The Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act (Restoration Act) prohibits those two tribes from conducting gaming activities on their reservations—such as slot-machine gambling—if those activities are prohibited by the laws of Texas. That act could be in conflict with another federal law, the Indian Gaming Regulatory Act (IGRA), which generally provides that Indian tribes have the exclusive right to regulate gaming on their reservations so long as certain conditions are met. In March 2019, the Fifth Circuit Court of appeals upheld a federal district court ruling that the Restoration Act, not the IGRA, applies in determining whether the tribes may offer certain gaming activities in Texas.

H.R. 759 would amend the Restoration Act to clarify that the act shall not be construed to preclude or limit the applicability of the IGRA. The bill would effectively make the IGRA the controlling federal statute concerning gaming matters with regard to the Ysleta del Sur Pueblo and the Alabama-Coushatta tribes in Texas. If the legislation is enacted, it could result in an expansion of gaming on those tribal reservations in Texas, depending on the outcome of negotiations between the tribes and state.

Using information from the Bureau of Indian Affairs, CBO expects that the agency's Office of Indian Gaming could incur a small increase in administrative costs to review and approve any tribal-state gaming compacts, tribal revenue allocation plans, and determinations of eligibility for gaming on lands acquired in trust. CBO estimates that those costs would not exceed \$500,000; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill is to restore an opportunity for tribal economic development on terms that are equal and fair.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic):

**YSLETA DEL SUR PUEBLO AND ALABAMA AND
COUSHATTA INDIAN TRIBES OF TEXAS RESTORATION
ACT**

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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.).

ADDITIONAL VIEWS

The consideration of bills like H.R. 759, which authorizes the Alabama-Coushatta Tribe and the Ysleta del Sur Pueblo (also called the Tigua Tribe) to open casinos through a preemption of Texas law, is never easy. Federal legislation to preempt the jurisdiction of non-consenting States and create Indian casinos has rarely been considered in Congress. Perhaps the last time a similar bill was enacted was in the Omnibus Indian Advancement Act of 2000 (Public Law 106-568). In that bill, an infamous “Midnight Rider” sponsored by the former Ranking Democratic Member of the Committee was airdropped in the “Miscellaneous Technical Provisions” part of the suspension text. The provision waived the National Environmental Policy Act and ordered the Secretary of the Interior to acquire land in trust for a casino in San Pablo, California, without the consent of the California Governor. It is unclear if the Governor of California, not to mention the two U.S. Senators from the Golden State, had been aware of the rider until the Act in which it was buried was signed into law.

News of the casino rider blew up in the Bay Area, forming a cloud over all future casino legislation. Hence, the rarity of measures such as H.R. 759.

It must be said that H.R. 759 is refreshingly transparent in that it is a straightforward bill and it has undergone hearings (in prior Congresses, not the current one) and a Committee markup. The legislation also enjoys bipartisan support in the Tribes’ home state of Texas, including several bipartisan Members of the Texas Delegation (beginning with Representatives Babin and Hurd, who represent the Tribes in the House) and various local government officials, businesses, and private citizens. For many Members, the argument that the two Tribes are not on equal footing with another tribe in Texas that has Indian Gaming Regulatory Act (IGRA) gambling rights, is persuasive.

I would like to support H.R. 759, but I cannot. H.R. 759 is opposed by the Governor of Texas. The Governor argues the bill violates a broad ban on gambling contained in the Texas Constitution and in Texas state law. The House has been reluctant to approve measures that modify or eliminate State jurisdiction to create Indian casinos without the consent—or at a minimum, the non-objection—of the affected State. This is particularly the case where gambling is concerned, as many see the vice as a kind of tax on the poor.

In matters reserved to State regulation under the 10th Amendment, preempting State or local law without the consent of the affected State is a troubling precedent to set, even when it’s for the benefit of tribes. Moreover, the Alabama Coushatta and Tigua Tribes had agreed to be subject to State of Texas gambling restrictions in the first place.

The following is an overview of how the gambling ban H.R. 759 would reverse was put in place, and why I think the scale is tipped in favor of the Governor's stance when weighed against the impressive display of support from several bipartisan Members of the Texas Delegation.

The "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act" (Public Law 100-89) prohibit the two Texas Tribes from conducting any gambling that is prohibited under the laws of Texas. The gambling restriction was an accident. It was the product of a compromise necessary to enable Senate passage of the bill to restore the Tribes' federal recognition.¹ The two Tribes even memorialized their pledge not to conduct gaming that is prohibited under Texas law through passage of tribal resolutions.

Previous versions of the restoration act had died over concern from within Texas over the potential for the Tribes to operate unregulated bingo.

The restoration act can thus be reasonably characterized as a compromise—a deal—between the State of Texas and the two Tribes. But the only parties to the deal supporting H.R. 759 are the Alabama Coushatta Tribe and the Tigua Tribe. In the last year, Governor Abbott has affirmed in writing opposition to this bill and the bill's identical predecessor in the 115th Congress.

The Tribes have long sought to override the deal they made (since 1992) through litigation. Failing in the courts, they're asking Congress to change the deal.

The gambling restrictions placed on the two Tribes are neither unique nor unfair. The right of tribes to operate casinos is not absolute. IGRA itself imposes certain limits on the power of tribes to run casinos without the consent of their States. For example, Indian gambling is completely prohibited in my State of Utah.

Another example is in the act passed by this Committee, the full House, the Senate, and signed into law by the President to ban six Virginia tribes from conducting any gambling under IGRA on their lands.² Similarly, the Democratic-led House in the 110th and 111th Congress passed a bill to extend federal recognition to the Lumbee Tribe of North Carolina with provisions explicitly barring the Tribe from conducting gambling under IGRA.³

Nearly all fee-to-trust and other tribal bills considered in Congress are passed only when there are clear bans on gaming included.

This is a tough call for me because I respect the wish of the sponsor of H.R. 759 to enact legislation specifically affecting the district he was elected to represent. I also recognize the support of various local governments, citizens groups, and bipartisan members co-sponsoring H.R. 759.

¹Letter from Representative Coleman (D-TX) to the Chairman of the Senate Select Committee on Indian Affairs, March 18, 1986, expressing concern that objections to gambling by officials in Texas threatened Senate passage of H.R. 1344, the tribes' restoration bill. The letter is available in the 99th Congress Natural Resources Committee archive for H.R. 1344 (99th Congress).

²"Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017" (Public Law 115-121).

³See H.R. 65 (110th Congress) and H.R. 31 (111th Congress).

However, because of the unambiguous opposition of the Governor of Texas and my concern with federally preempting State jurisdiction without the consent of the State, I cannot support H.R. 759.

ROB BISHOP.

DISSENTING VIEWS

Chairman Grijalva, Ranking Member Bishop, and Members of the Committee, thank you for the opportunity to submit comment on H.R. 759, the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes of Texas Equal and Fair Opportunity Settlement Act (Babin, R-TX). I write this opinion of dissent to H.R. 759 to voice concerns of myself, and those of my constituents, whose livelihoods are greatly impacted by gaming operations. Due to the heavy presence of gaming in Nevada, it is important to my constituents that any and all gaming operations established in America are established and regulated in a fair way, that shows parity with the regulations faced by casinos in my district. I believe the casinos established by H.R. 759 will have an unfair advantage over the casinos in my State, which is why I ask Congress to oppose this legislation.

It is important that all gaming operations conducted on trust lands respect the original intent of the Indian Gaming Regulatory Act (IGRA), which was passed by Congress in 1988 to establish the legal framework to regulate gaming on Indian Reservations. IGRA was passed to regulate gaming on tribal lands as a means to ensure that gaming on tribal lands occurred to the benefit of Indian tribes and their sovereignty. At a time when Indian Tribes were being taken advantage of and abused, often by organized crime entities and other people looking to use Indian Tribes' sovereign power for their economic gain, the IGRA was a much-needed bill to protect the sovereignty of Indian Tribes and allow them to engage in gaming that would benefit the tribe, and only tribe. *This foundational intent of IGRA is an integral part of federal law that I wholeheartedly support.*

However, since the passage of the IGRA, I believe that the original intent of IGRA has been extended to allow Tribes to regulate gaming operations that were not originally envisioned by Congress. Specifically, I fear that the gaming now allowed under Class II gaming, which Indian Tribes and the Federal Government have the sole authority to regulate, has greatly exceeded the original intent of Congress when it passed IGRA. The gaming now allowed under Class II closely mirrors that of Class III, the gaming operations found in my state that are subject to heavy regulations and approval from State and local governments. As such, H.R. 759 allows the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes to set up gaming operations that were not originally intended in IGRA and are opposed by the state of Texas. Prior to passing any legislation to allow more Native American Tribes to establish casinos against the wishes of the states in which they lie, Congress must revisit the definition of Class II gaming and provide updated clarification addressing the types of gaming Tribes can regulate on their own. I hope the Committee hears my concerns and I look forward to op-

posing H.R. 759 and working with my colleagues to develop updated gaming regulations.

STEVEN HORSFORD.

