

House Subcommittee on Indian, Insular and Alaska Native Affairs

Don Young, Chairman

Hearing Memo

July 13, 2015

To: Natural Resources Committee Members

From: Majority Staff, Subcommittee on Indian, Insular, and Alaska Native Affairs

Subject: Legislative hearing on H.R. 2684 (Rep. Don Young), the “*Alabama-Coushatta Tribe of Texas Equal and Fair Opportunity Settlement Act.*”

The Subcommittee will hold a Legislative Hearing on H.R. 2684, the “*Alabama-Coushatta Tribe of Texas Equal and Fair Opportunity Settlement Act*” on **Wednesday, July 15, 2015, at 2:00 p.m. in 1324 Longworth HOB.**

Summary of the bill

H.R. 2684 was introduced by Rep. Don Young on June 4, 2015 and has been referred to the Subcommittee on Indian, Insular and Alaska Native Affairs. The bill would repeal section 207¹ of the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act.² Section 207 of the Restoration Act placed a ban on gaming activities prohibited under Texas state law. As a result, the bill authorizes the tribe to conduct gaming under the Indian Gaming Regulatory Act. As declared in Section 2(b) of the bill, the purpose of authorizing the tribe to conduct gaming is to increase the tribe’s economic development opportunity in compensation for provisions in the legislation to extinguish aboriginal claims the tribe asserts against the United States, the State of Texas, and other landowners

A Ramseyer report for H.R. 2684 can be found attached to this memorandum.

Cosponsors

Reps. Brian Babin (TX-36), Joe Barton (TX-6), Paul Cook (CA-8), Jeff Denham (CA-10), Doug LaMalfa (CA-1), Raul Grijalva (AZ-3), Raul Ruiz (CA-36), Tony Cardenas (CA-29), Gene Green (TX-29), and Alan Lowenthal (CA-47).

Witnesses:

Mr. Michael Smith, Deputy Director,
Bureau of Indian Affairs,
U.S. Department of the Interior,
Washington, D.C.

¹ See 25 U.S.C. §737.

² See P.L. 100-89.

The Honorable Nita Battise, Tribal Council Chairwoman
(Accompanied by Mr. Ronnie Thomas, Tribal Council Vice Chairman)
Alabama-Coushatta Tribe of Texas
Livingston, TX

Background

The Alabama-Coushatta Reservation is home to two bands or tribes, but federally recognized as one “tribe,” the Alabama and Coushatta tribes of Texas. Approximately 5,000 acres in size, the reservation is located approximately 70 miles northeast of Houston, bordered in the south by the Big Thicket National Preserve. 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.

In 1918, the Department of 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 purchased of land and an additional appropriation of \$25,000 for the purchase of livestock and agricultural equipment.

Ten years later, on May 29, 1928, the United States authorized the Secretary of the Interior to purchase land for the Alabama and Coushatta Tribes in Polk County.

Termination

In 1954, Congress transferred responsibility for administering “trust duties” for the tribe to the State of Texas, thereby terminating federal responsibility for Alabama-Coushattas. In 1983, the Texas Attorney General issued a legal memo in which he determined that the Constitution and laws of Texas forbade the state from exercising special authority over or granting special privileges to the Alabama-Coushatta’s because doing so was a violation of the Equal Protection doctrine. While this controversy went to litigation, Rep. Ron Coleman-TX introduced a restoration bill for the Alabama-Coushatta tribe with what he and several colleagues including Rep. Joe Barton-TX characterized as 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 to restore the tribe’s federal recognition, H.R. 1344. In a hearing on the bill, the Department of the Interior opposed 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. A number of 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 gaming. 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 the Indian Gaming Regulatory Act of 1988 (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 to the restoration bill required the tribe to enact gambling ordinances that were exactly 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 ordinances to the Secretary of the Interior, and if the Secretary approved the amendments, they would take effect unless Congress provided otherwise by joint resolution within 60 days. On December 16, 1985, the House passed the bill (as amended in Committee) by voice vote, with no discussion of gambling.

On March 18, 1986, the sponsor of H.R. 1344, Rep. 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 so Rep. Coleman wanted the Senate to include an amendment to the House-passed bill to ban gambling. On September 25, 1986, the Senate vitiated previous passage by unanimous consent. The bill died upon the adjournment of Congress.

Tribal Restoration in 1987

In the 100th Congress, H.R. 318 was introduced by Rep. Coleman to restore the tribes with the gambling prohibition the tribe is now asking to delete. No hearing was held on the bill, and it was reported with an amendment by the Interior Committee on April 1, 1987, and passed by voice vote under suspension on April 21, 1987.

On August 3, 1987, the House agreed to the Senate amendments by UC, and on August 18, 1987, it was signed by the President Reagan and became Public Law 100-89.

Analysis of H.R. 3822 and Tribe's Land Claims

H.R. 2684 would repeal section 207 of the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act. The repeal of this section would allow the Alabama-Coshatta Tribe to conduct gaming operations under the Indian Gaming Regulatory Act. One purpose of the bill, as described in Section 2(b), is to authorize it to conduct gaming in order to compensate the tribe for the dismissal of land claims under Sections 4 and 5 of the bill.

The Tribe's Land Claims

In 2000, the U.S. Court of Federal Claims issued a decision in a claim brought by the tribe pursuant to a congressional reference that had been passed in 1983 by the U.S. House of

Representatives³. The congressional reference (which is not a bill but a simple resolution that may be passed by one house of Congress) authorized the Alabama Coushatta tribe to bring in the Court a claim the tribe had been barred by Congress from filing. The Chief Judge of the Court resolved the tribe's claims by finding the federal government had failed in its trust duties to protect the loss of 2.85 million acres of aboriginal lands to non-Indian settlers after 1845. The Court determined the tribe should be paid the sum of \$270.6 million in compensation. However, a judgement arising from this kind of congressional reference is non-binding on Congress and is, in effect, the equivalent of the authorization of appropriations. Congress has not appropriated any money pursuant to this non-binding decision.

In more recent years, the tribe filed a lawsuit in U.S. District Court for the Eastern District of Texas against the United States alleging, among other things, violations of the Administrative Procedures Act and federal common law. The tribe argued that it held unextinguished aboriginal title to 400,000 acres of land in Texas that today includes the Davy Crockett and Sam Houston National Forests and the Big Thicket National Preserve, and that the government failed in its duty to protect the tribe's aboriginal interest in the land through authorizing federal mineral leasing and private mineral development, and the sale of timber from such lands. The tribe sought equitable relief to halt any further use and development of these lands until the government provided an accounting of the resources that had been exploited, and to require the government to accommodate the tribe's aboriginal title.

The district court granted the Government's motion to dismiss the lawsuit on the grounds that the government's program to manage the National Forests and Preserve was not reviewable. The dismissal was affirmed by a 3-judge panel of the U.S. Court of Appeals for the Fifth Circuit in July 2014.

Under H.R. 2684, Section 4 requires the tribe and the United States to dismiss pending lawsuits pertaining to the tribe's aboriginal claims. Section 5 extinguishes any claim the tribe purports to have against the United States, the State of Texas, and any landowner relating to damages for trespass, use and occupancy of the tribe's historic lands.

³ H. Res. 69 (Rep. John Breaux, 98th Congress), a resolution to refer the bill, H.R. 1232, to the Chief Judge of the U.S. Claims Court. H.R. 1232, a private bill for the relief of the leaders and enrolled members of the Alabama and Coushatta tribes, contained the matter for the Court of Claims to resolve.

RAMSEYER REPORT

Section 207 of the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (25 U.S.C. §737) as amended by H.R. 2684

~~25 U.S.C §737~~

~~Gaming activities~~

~~(a) In general~~

~~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 provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C. 86-07 which was approved and certified on March 10, 1986.~~

~~(b) No State regulatory jurisdiction~~

~~Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.~~

~~(c) Jurisdiction over enforcement against members~~

~~Notwithstanding section 736(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.~~