

AUBURN INDIAN RESTORATION AMENDMENT ACT

OCTOBER 6, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

[To accompany H.R. 1805]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1805) to amend the Auburn Indian Restoration Act to establish restrictions related to gaming on and use of land held in trust for the United Auburn Indian Community of the Auburn Rancheria of California, 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. 1805 is to amend the Auburn Indian Restoration Act to establish restrictions related to gaming on and use of land held in trust for the United Auburn Indian Community of the Auburn Rancheria of California.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1805, the Auburn Indian Restoration Amendment Act, would impose various new Federal, State and local limitations, zoning requirements, and restrictions on the gaming and non-gaming activities of the United Auburn Indian Community (Community).

The Committee on Resources notes that this legislation would impose many limitations and restrictions upon the Community which present a significant reduction in the sovereign powers of the Community. However, the Committee on Resources also notes that those Members of Congress who were the leading sponsors and supporters of the enactment of the Auburn Indian Restoration Act which extended Federal recognition to the Community in 1994,

acted with the full assurance by the Community that it would not engage in gaming.

The Committee on Resources acted favorably upon H.R. 1805 only because of the unique circumstances surrounding the recognition of the Community and because the Community Chairperson, Jessica Tavares, in a letter dated September 15, 1997, stated that the "United Auburn Indian Community has thoroughly reviewed H.R. 1805 (Doolittle) and wishes to inform the Committee that we have no opposition to this bill. Indeed, we believe that the measure sets fair standards and a workable mechanism for the resolution of any differences between the Tribe and Placer County where the Tribe resides."

H.R. 1805 includes numerous provisions which are contrary to the spirit, if not the letter, of the 1988 Indian Gaming Regulatory Act.

In particular, this bill includes, among other requirements, provisions which: (1) would prohibit gaming on certain parcels of Community trust land in Placer County, California; (2) would grant law enforcement and judicial authority to the State of California over Community gaming operations; (3) would prohibit all gaming in the future if the Community is found to have established gaming which is determined by the State of California to be illegal in the State or not within the parameters of a compact established with the Governor of California; and (4) would remove the Community's sovereign immunity in certain circumstances.

H.R. 1805 also prohibits any land from being taken into trust for non-gaming purposes for the Community until the Community has entered into a binding compact with the local government of the political jurisdiction in which the land is located. All provisions of the aforementioned compact are to be negotiated in good faith. Also included in these compacts are to be provisions relating to the location and permissible use of the land to be taken into trust, environmental studies, law enforcement jurisdictional responsibilities, building and design standards for any structures proposed to be built on the land, and the abandonment of its sovereign immunity by the Community in certain circumstances.

The Committee on Resources notes that this legislation is not in any way intended to be a model to be imposed upon any other tribe or local political jurisdiction anywhere in the Nation. On the contrary, the Committee would strongly oppose any legislation applicable to any other Indian tribe which might contain any of the provisions of H.R. 1805.

COMMITTEE ACTION

H.R. 1805 was introduced on June 5, 1997, by Congressman John T. Doolittle (R-CA). The bill was referred to the Committee on Resources. On September 17, 1997, the Resources Committee met to consider H.R. 1805. The bill was then ordered favorably reported to the House of Representatives without amendment by voice vote in the presence of a quorum.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 1805.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1805. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1805 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1805.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1805 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1997.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1805, the Auburn Indian Restoration Amendment Act.

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

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.R. 1805—Auburn Indian Restoration Amendment Act

H.R. 1805 would amend the Auburn Indian Restoration Act to establish restrictions relating to gaming and nongaming activities on land to be taken into trust for the United Auburn Indian Community. The bill would require that the tribe adhere to various state and local limitations, zoning requirements, and other guidelines specified in the bill. CBO estimates that the costs associated with taking the land into trust would be minimal and that enacting the bill would have no other impact on the federal budget.

Enacting H.R. 1805 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill would impose no new private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA).

H.R. 1805 contains intergovernmental mandates as defined in UMRA. It would impose various restrictions on gaming activities undertaken by the Auburn Indian Tribe and on the use of any land taken into trust for the tribe for gaming or other purposes. The bill would allow certain types of gaming activities on only one parcel of tribal land and only then if the tribe complies with other new requirements.

Based on information provided by tribal officials, CBO estimates that these mandates would impose no costs on the tribe. They have already reached an agreement with the appropriate state and local officials under which the tribe would acquire one parcel of land for gaming and another for residential development. This agreement would satisfy the conditions that would be imposed by H.R. 1805. The bill would impose no other costs on the state, local or tribal governments.

The CBO staff contacts for this estimate are Lisa Daley (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 1805 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

AUBURN INDIAN RESTORATION ACT

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SEC. 202. RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES.

(a) * * *

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(g) *GAMING.*—

(1) Class II and class III gaming activities shall be lawful only on one parcel of land, which shall be taken into in trust for the Tribe pursuant to section 204(a)(1), but only if—

(A) prior to the time such parcel is taken into trust, the Tribe and the local government of the political jurisdiction in which the parcel is located have entered into a compact as required by section 204(e);

(B) the gaming facility and related infrastructure on such parcel of land are located at least 2 miles from any church, school, or residence which was constructed in a residential zone and which existed on the date of the introduction to the House of Representatives of the Auburn Indian Restoration Amendment Act (June 5, 1997);

(C) such parcel of land is specifically taken into trust for class II and class III gaming activities; and

(D) such parcel of land is not part of the land identified in section 204(b).

(2) If the State of California finds that class III gaming activities have been established in violation of the requirements of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on land held in trust for the Tribe, the State may institute an action in a court of competent jurisdiction for injunctive relief to enjoin all class II and class III gaming activities. If a court of competent jurisdiction determines, by a preponderance of the evidence, that Class III gaming activity has been established in violation of the requirements of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on land held in trust for the Tribe, all Class II and Class III gaming activities shall be unlawful on land held in trust for the Tribe and any such activities may be enjoined by such court. The Tribe shall not raise sovereign immunity as a defense to any such action or to the enforcement or execution of a judgment resulting from such action.

(3) Except as provided herein, nothing in this Act shall negate or diminish in any way the Tribe’s obligation to comply with all provisions of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

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SEC. 204. TRANSFER OF LAND TO BE HELD IN TRUST.

[(a) LANDS TO BE TAKEN IN TRUST.—The Secretary may accept any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims on such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe’s service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).]

(a) *LANDS TO BE TAKEN INTO TRUST.*—(1) Upon request of the tribe, the Secretary shall accept forthwith for the benefit of the Tribe any real property located in Placer County, California, if—

(A) the property is conveyed or otherwise transferred to the Secretary;

(B) at the time of the conveyance or transfer pursuant to subparagraph (A), there are no adverse legal claims on such property, including outstanding liens, mortgages, or taxes owed; and

(C) prior to the Secretary accepting the property the Tribe was in compliance with section 202(g)(1) and 202(g)(3), and subsections (d) and (e) of this section.

(2) The Secretary may accept, subject to the provisions of this Act, any additional acreage in the Tribe's service area pursuant to the authority of the Secretary, for nongaming related activities or non-residential purposes under the Act of June 18, 1934 (25 U.S.C. 461 et seq.), provided that the primary function of such additional acreage shall not be the furtherance of gaming activities.

* * * * *

(d) *USE OF LAND TAKEN INTO TRUST FOR NONGAMING PURPOSES.*—(1) A parcel of real property taken into trust for the Tribe pursuant to the provisions of section 204(a) (1) or (2), for purposes other than class II or class III gaming activities, may only be used and developed in a manner consistent with and in compliance with all general and community plans and zoning ordinances of the local government of the political jurisdiction in which the land to be taken into trust is located which are in effect at the time that the land is taken into trust, and any other provisions agreed to in the compact required by subsection (e).

(2)(A) In addition to the former trust lands referred to in subsection (b), the Tribe may acquire one parcel of land for residential purposes pursuant to section 204 (a)(1) and (d)(1).

(B) Any additional real property taken into trust for the Tribe for residential purposes pursuant to section 204 (a)(2) and (d)(1) shall be contiguous to the initial parcel.

(C) Except as provided in subsection (b), the Secretary shall not take any real property into trust for residential purposes for individual members of the Tribe.

(e) *COMPACT REQUIRED.*—(1) After the date of the enactment of the Auburn Indian Restoration Amendment Act, the Secretary shall not take any land into trust for the Tribe until the Tribe and the local government of the political jurisdiction in which the land to be taken into trust is located have entered into a written compact, which the parties shall negotiate in good faith and in a timely manner, and which shall include provisions relating to—

(A) location and permissible use of the land to be taken into trust;

(B) an agreed upon environmental study which provides for the mitigation of any environmental impacts of the proposed development and uses of the land to be taken into trust, and that any mitigation required shall be similar in scope and content to that which would be required of other non-tribal applicants in the local government of the political jurisdiction;

(C) law enforcement jurisdictional responsibilities and other public services to be provided on the land, consistent with other

Federal laws, including any reasonable compensation to the local government of the political jurisdiction for the services and impacts;

(D) the impact of the removal of the land from the tax rolls;

(E) building and design standards for any structures proposed to be built on the land, including provisions that such structures shall be built in accordance with standards similar in scope and content to those required of non-tribal applicants in the local jurisdiction; and

(F) such additional matters as the parties may agree.

(2) The local government of the political jurisdiction in which the land to be taken into trust is located shall—

(A) provide notice of the Tribe's proposal and the terms of the local compact to the public, the State, and the governing bodies of any other local governments in Placer County, California;

(B) provide the recipients of the notice given under subparagraph (A) with a period of 45 days in which to provide comments; and

(C) take comments provided under subparagraph (B) into consideration and address them before entering into a local compact.

(3) The Tribe and the local jurisdiction shall negotiate the compact required by this subsection in good faith.

(f) BINDING ARBITRATION.—(1) If a dispute arises regarding—

(A) the non-compliance of the Tribe or the local jurisdiction with subsection (e)(3);

(B) the terms of a compact negotiated pursuant to subsection (e); or

(C) the alleged violation of a compact negotiated pursuant to subsection (e),

the Tribe or the local government of the political jurisdiction in which the real property relevant to the dispute is located may submit the dispute to binding arbitration under the United States Arbitration Act (9 U.S.C. 1 et seq.). The Tribe shall not raise sovereign immunity as a defense to arbitration or the enforcement of any arbitration award or any judgment based thereon, and all parties expressly agree to comply with such awards and judgments.

(2) If the Tribe or the local government of the political jurisdiction in which the real property relevant to the dispute is located elects to submit a dispute to arbitration pursuant to paragraph (1), an arbitration board shall be established to conduct the arbitration and shall consist of—

(A) one independent member selected by the Tribe;

(B) one independent member selected by the local government of the political jurisdiction in which the land relevant to the dispute is located; and

(C) one member selected by the members selected pursuant to subparagraphs (A) and (B). If the members selected pursuant to subparagraphs (A) and (B) are unable to agree upon a third member within 20 days after selection of the other members, the presiding judge of the Placer County Superior Court shall select the third member.

(3) *The costs of an arbitration proceeding under this subsection, not including attorneys' fees, shall be awarded to the prevailing party in the arbitration as determined by the arbitration board.*

(4) *The decision of the arbitration board shall be final and implemented subject only to judicial review as provided for in the United States Arbitration Act (9 U.S.C. 1 et seq.).*

(g) **TERMS ENFORCEABLE.**—*The terms of subsections (d) and (e) are specifically enforceable in a court of competent jurisdiction by the Tribe and the local government of the political jurisdiction in which the land relevant to a dispute is located against the other. The Tribe shall not raise its sovereign immunity as a defense to such an action or the enforcement or execution of any judgment resulting from such action.*

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SEC. 208. DEFINITIONS.

For purposes of this title:

(1) * * *

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(8) *The term "class II gaming" has the meaning given that term in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).*

(9) *The term "class III gaming" has the meaning given that term in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).*

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