

GAO

Fact Sheet for the Honorable
Phil Gramm, U.S. Senate

January 1987

INDIAN AFFAIRS

Proposal to Restore the Federal Trust Relationship with Two Indian Tribes



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Resources, Community, and
Economic Development Division

B-225258

January 7, 1987

The Honorable Phil Gramm
United States Senate

Dear Senator Gramm:

In your October 2, 1986, letter, and in subsequent discussions with your office, you asked us to address six questions concerning the proposed Indian Tribes of Texas Restoration Act, H.R. 1344, introduced in the Senate on December 16, 1985. Specifically, you asked:

- 1) How much private land is likely to be taken by the reservations?
- 2) How many tribal members would receive federal benefits and services and how many of their relatives, who are not tribal members, would be eligible to receive benefits and services?
- 3) Under this legislation, what federal, state and local programs, services and benefits will the tribal members be eligible to participate in and to receive?
- 4) What is the estimated annual cost to the federal government of providing services and benefits to eligible members of tribes of comparable size?
- 5) How will the recognition affect local and state tax collection?
- 6) To what extent would the tribes recognized under the legislation be subject to local and state ordinances and laws?

As you know, the purpose of H.R. 1344 is to restore the federal trust relationship with the Ysleta del Sur Pueblo Tribe (also known as the Tigua Indians) and the Alabama-Coushatta Indian Tribe. The federal trust relationship would provide permanent protection for their reservation lands and ensure the survival of their respective tribal governments. H.R. 1344 was not passed by the Senate before the Congress adjourned on October 18, 1986. Therefore, no further congressional action on the proposed act will occur, unless it is reintroduced for congressional consideration.

In summary, we found that:

--The extent of any private lands that might be taken cannot yet be determined;

--As of early November 1986, 1,974 Ysleta del Sur Pueblo and Alabama-Coushatta Indians were potentially eligible for federal benefits and services;

--As United States citizens, Indians have at least the same rights and privileges as non-Indians and may receive federal, state and local services and benefits for which they are eligible;

--Based on the average federal per-capita Indian funding cost, both tribes could have received as much as \$7.1 million in fiscal year 1985 services and benefits;

--No changes in state and local tax collections would occur as a result of providing federal recognition to the tribes, unless some private land is taken; and

--The state would exercise civil and criminal jurisdiction on the reservations.

The federal trust relationship with the Ysleta del Sur Pueblo and the Alabama-Coushatta Tribes was terminated by acts of Congress in 1967 and 1954, respectively. Under both termination acts, the federal trust responsibility for the tribes was transferred to the state of Texas. Following acts of the Texas legislature, the governor accepted on behalf of the state the transfer of the trust responsibility for both tribes. The state administers its trust duties through the Texas Indian Commission, which provides a superintendent for each reservation, manages the reservations' lands for the tribes' benefit, and provides administrative and economic development funding for the tribes.

On March 22, 1983, the Texas attorney general issued an opinion (JM-17) regarding the enforcement authority of the Texas Parks and Wildlife Department within the boundaries of the Alabama-Coushatta Reservation; among other issues, the opinion questioned the trust relationship between the state and the Alabama-Coushatta Tribe. The opinion concluded that as a result of the 1954 termination of federal supervision over the property of the Alabama-Coushatta Tribe, the tribal lands no longer constituted a legally meaningful designation as an "Indian reservation." The attorney general also concluded that the tribe's trust relationship with the state violated the 1972 Equal Rights Amendment to the Texas Constitution. Under the amendment, the state cannot discriminate either in favor of or against people simply because they are Indian. According to the House Report (99-440) on H.R. 1344, the lands of both tribes, heretofore protected by state law, as well as continued state funding

for tribal government and management of the reservations, are seriously threatened.

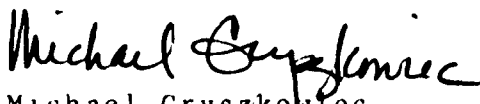
The Alabama-Coushatta Tribe challenged the attorney general's opinion in the United States District Court for the Western District of Texas (Alabama-Coushatta Indian Tribe vs. Jim Mattox, Attorney General of Texas, et al, Civil No. A-84-CA-410). The court ruled in favor of the Alabama-Coushatta Tribe on July 21, 1986. As of November 17, 1986, an appeal by the Texas Attorney General was pending before the Fifth Circuit Court of Appeals. Therefore, the issue of whether the tribal lands legally constitute an "Indian reservation" is still in litigation, as is the issue of how Texas' 1972 Equal Rights Amendment affects the tribes' trust relationship with the state.

Section 1 of this fact sheet provides our responses to your questions, including several that concern the consequences of the proposed act. Events that have not yet occurred are based upon the federal government's historic experience in providing benefits and services to Indian tribes, as well as applicable provisions of the proposed act and other best available information. We obtained information from the Department of the Interior's Bureau of Indian Affairs (BIA) and the Office of Management and Budget (OMB) headquarters' offices in Washington, D.C.; the Texas Attorney General's office and the Texas Indian Commission's Executive Director in Austin, Texas; the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes' Superintendents, and from the December 16, 1985, House Interior and Insular Affairs Committee Report on H.R. 1344 and the June 25, 1986, hearings of the Senate Select Committee on Indian Affairs on H.R. 1344. We performed our review in October and November 1986 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce the contents of this fact sheet earlier, we plan no further distribution until 30 days from the date of this letter. At that time we will send copies to the Department of the Interior's Assistant Secretary for Indian Affairs, the Director, OMB, the Attorney General for Texas, the Texas Indian Commission, and the Ysleta del Sur Pueblo and the Alabama-Coushatta Tribes and make copies available to others on request. Should you need further information, please contact me on (202) 275-7756.

Major contributors are listed in Appendix II.

Sincerely yours,


Michael Gryszkowiec
Associate Director

SECTION 1
RESPONSES TO QUESTIONS
REGARDING H.R. 1344

Question 1: How much private land is likely to be taken by the reservations?

Answer 1: The amount of private land taken by the reservation depends on a series of negotiations by the Secretary of the Interior, as well as congressional approval of an expansion plan. Therefore, the extent of any private lands to be taken cannot be determined.

Under Title I, Section 105(g), the Secretary of the Interior is authorized to negotiate with the Ysleta del Sur Pueblo Indian Tribe of Texas concerning the enlargement of their 97-acre reservation. Under this section the Secretary has 2 years to develop a plan for the enlargement of the reservation from the time the act is approved by the Congress. The Secretary's plan shall, according to the proposed act, include provisions for the acquisition of land to be selected from available public, state, and private lands within El Paso and Hudspeth Counties, Texas. Upon approval of the plan by the tribe, the proposed act requires that the plan must be submitted to the Congress in the form of proposed legislation.

The proposed act does not, however, in itself authorize the enlargement of the Ysleta del Sur Pueblo Reservation. Also, there are no provisions in the proposed act for the enlargement of the 4,600 acre Alabama-Coushatta Indian reservation.

Question 2: How many tribal members would receive federal benefits and services and how many of their relatives, who are not tribal members, would be eligible to receive benefits and services?

Answer 2: According to information provided by the tribal superintendents, under provisions of the proposed act, a total of 1,974 Ysleta del Sur Pueblo and Alabama-Coushatta Indians would be potentially eligible to receive federal services and benefits,

(See our response to question 3 on page 6.) Title I, Section 103(c) and Title II, Section 203(c) of the proposed act, authorizes the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes and their members to receive all federal benefits and services furnished to federally recognized Indian tribes, notwithstanding any other provision of law.

Section 108(a) of the proposed act limits membership into the Ysleta del Sur Pueblo Tribe because Interior was concerned that it could be required to provide services to increasing numbers of tribal members, according to the Interior Department's Assistant Secretary for Indian Affairs. As a result, Interior recommended that the Congress place some limit on the potential service population of the tribe. Section 108 states that for a period of 3 years after its enactment Ysleta del Sur Pueblo's tribal membership shall only consist of (1) the individuals listed on the tribal membership roll approved by the Tribe's Resolution No. TC-5-84 approved December 18, 1984, and approved by the Texas Indian Commission's Resolution No. TIC-85-005 adopted on January 16, 1985; and (2) a descendant of an individual listed on that roll if the descendant has one-eighth degree or more of Tigua-Ysleta del Sur Pueblo Indian blood, and is enrolled (accepted for membership) by the tribe.

Under the above membership criteria, 1,124 Ysleta del Sur Pueblo Indians were potentially eligible to receive federal Indian services and benefits as of November 3, 1986, according to the Ysleta del Sur Pueblo Superintendent. Of these, 801 tribal members reside on or near the reservation. The tribe's membership roll was closed in December 1982 and the only new members added to the roll are the newborn, the superintendent noted.

In addition, 850 Alabama-Coushatta Indian tribal members, would also be potentially eligible to receive federal Indian services and benefits as of November 1, 1986, according to the Alabama-Coushatta tribal roll secretary. Of these, 480 tribal members reside on or near the reservation, according to the tribal superintendent. Tribal membership may be extended to a person who has some Indian blood (no minimum degree required) and who is either

(1) a descendant of an individual listed on the tribal roll, or (2) a direct relation (such as the wife or husband) of a tribal member, according to the superintendent. The proposed act does not include tribal membership criteria for the Alabama-Coushatta Tribe.

Question 3: Under this legislation, what federal, state and local programs, services and benefits will the tribal members be eligible to participate in and to receive?

Answer 3: The Congress extended United States citizenship in 1924 to all Indians born in the territorial limits of the United States. Indians, therefore, have at least the same rights and privileges as all citizens. For example, Indians are eligible for assistance under the Social Security Act including Aid to Families with Dependent Children and Supplemental Security Income benefits, on the same basis as non-Indians.

Specific federal benefits and services that members of the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes may receive can only be determined on an individual basis. According to OMB, there were 12 federal departments or agencies that provided benefits and services to Indians during fiscal year 1985 (see app. I). There is no automatic payment to a person because he or she is Indian; to be designated as eligible for these services and benefits, an Indian must meet the eligibility criteria established under each federal program. For example, to receive BIA assistance an individual must be a member of a tribe of Indians recognized by the federal government and, for some purposes, be of one-fourth or more Indian ancestry. Most BIA services and programs are also limited to eligible Indians who reside on or near a reservation.

In some states, including Texas, eligible Indians living on reservations also receive general assistance from their county department of public welfare, in other states, general assistance is not made available to Indians on reservations.

Question 4: What is the estimated annual cost to the federal government of providing services and benefits to eligible members of tribes of comparable size?

Answer 4: Estimating the annual cost of providing federal services and benefits to a selected group of Indian reservations is difficult because each reservation has unique characteristics. Therefore, the combination of federal services and benefits received by each reservation may differ, according to BIA and OMB budget officials. For example, the BIA administers and manages land (about 53 million acres) held in trust for Indians. Developing forest lands, leasing mineral rights, directing agricultural programs and protecting water and land rights are included in this responsibility. Educational programs, to supplement those of public and private schools, are also provided by the BIA. Other BIA programs provide assistance for Indian college students, vocational training, and adult education. The BIA also works with tribal governments to help provide a variety of services typically provided by local governments, including road construction and maintenance, social services, police protection, economic development efforts, and special assistance to develop governmental and administrative skills. In determining the extent--and the costs--of federal benefits and services that may be provided to the reservations, various factors must be considered, according to a BIA budget official. These factors including the availability of tribal resources, the responsibilities assumed by the state and local government agencies, differences in local customs and attitudes, and the degree to which tribal institutions are effective.

Because the extent and amount of federal assistance to specific Indian reservations can vary significantly, an average per-capita cost estimate of total federal funding for the entire Indian population served by the federal government is, according to OMB, preferential to estimating the average federal costs from a selected sample of reservations. OMB's estimated per-capita Indian costs are based on BIA's estimate that about 800,000 Indians receive federal services and benefits. Since the total fiscal year 1985 government-wide expenditures for these services and benefits was about \$3 billion, the average per-capita cost was about \$3,600. Applying this average cost of total

government-wide services and benefits to all of the 1,974 potentially eligible members of the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes would mean that in fiscal year 1985 the tribes could have received as much as \$7.1 million (\$3,600 x 1,974) in federal services and benefits. OMB, which tracks budget authority and expenditures for government-wide Indian programs and services, provided the actual fiscal year 1985 costs (most recent actual costs available) presented in appendix I.

Question 5: How will the recognition affect local and state tax collection?

Answer 5: According to BIA, Indians pay the same taxes as other citizens, with the following exceptions: (1) they do not pay federal income taxes on income derived from trust lands, held for them by the United States; (2) they do not pay state income tax on income earned on a federal reservation; (3) they do not pay state sales taxes on transactions occurring on a federal reservation; and (4) they do not pay local property taxes on reservation or trust lands.

Under Texas' Annotated Civil Statute (Article 5421Z) and State Tax Code (Title II, Sec. 151.337), there would be no change in the tax liability status of the Ysleta del Sur Pueblo and Alabama-Coushatta Tribes if the federal trust relationship is restored, according to the Executive Director of the Texas Indian Commission. Under state law Indian tribes in Texas are exempt, as they would be under the federal trust relationship, from paying state and local sales, income, school and water district, and property taxes, according to the executive director. Taxes would not be gained or lost by the state or local governments as a result of the proposed act, he added. However, if private lands are taken in the future, a tax change could occur.

Question 6: To what extent would the tribes recognized under the legislation be subject to local and state ordinances and laws?

Answer 6: Indians, like non-Indians, are generally subject to federal, state, and local laws when they are off reservation lands, according to BIA. Only federal and tribal laws apply on reservations,

unless the Congress has provided otherwise, as in this proposed act. Title I, Section 105(f) and Title II, Section 206(f) provide that the state shall exercise civil and criminal jurisdiction within the boundaries of the reservations. BIA also noted that the Assimilative Crimes Act of 1970 (18 U.S.C. 7(3), 13), makes any violation of state criminal law a federal offense on Indian reservations.

TOTAL INDIAN FUNDING
GOVERNMENT-WIDE

<u>Departments/ Agencies</u>	<u>Fiscal Year 1985</u>	
	<u>Budget Authority</u>	<u>Outlays</u>
	----(dollars in thousands)----	
Agriculture	\$ 74,828	\$ 80,482
Commerce	10,394	11,089
Education	324,961	353,941
Energy	500	356
Health and Human Services	957,691	961,009
Housing and Urban Development	320,151	128,749
Interior	1,079,384	1,145,255
Labor	75,419	77,700
Transportation	100,539	102,813
Treasury	11,212	11,212
Environmental Protection Agency	455	3,048
Small Business Administration	<u>2,600</u>	<u>1,300</u>
Total	<u>\$2,958,134</u>	<u>\$2,876,954</u>

Source: OMB

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