

Calendar No. 452

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
110-208

TO AMEND THE OMNIBUS INDIAN ADVANCEMENT ACT TO MODIFY THE
DATE AS OF WHICH CERTAIN TRIBAL LAND OF THE LYTTON
RANCHERIA OF CALIFORNIA IS DEEMED TO BE HELD IN TRUST AND TO
PROVIDE FOR THE CONDUCT OF CERTAIN ACTIVITIES ON THE LAND

OCTOBER 26, 2007.—Ordered to be printed

Mr. DORGAN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1347]

The Committee on Indian Affairs, to which was referred the bill (S. 1347) to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust and to provide for the conduct of certain activities on the land, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE

The purpose of S. 1347 is to require the Lytton Rancheria of California to go through the administrative process set forth in the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et. seq. ("IGRA"), before engaging in class III gaming on land acquired in trust for the Lytton Rancheria of California in the City of San Pablo, California pursuant to Public Law 106-568.

BACKGROUND

A. THE LYTTON RANCHERIA

The Lytton Rancheria of California is a federally recognized Indian tribe. During the termination policy era of the 1950's, Congress attempted to terminate its federal trust relationship with the Lytton Rancheria of California and transferred title to the Tribe's land to individual tribal members. Subsequently, the land was conveyed to non-Indians.

In the 1980's, the Lytton Rancheria of California joined a lawsuit against the Bureau of Indian Affairs challenging its termination.

Finding that the government did not meet the conditions called for in the termination statute to make termination effective, a federal court approved a settlement of the case in 1991.

The settlement restored the Lytton Rancheria of California to its pre-termination status, but failed to return the Tribe's original lands or give the Tribe any other land. The settlement also required that any gaming the Lytton Rancheria of California conducted in the area around their original Rancheria be in conformance with the Sonoma County general plan for land use.

B. PUBLIC LAW 106-568, SECTION 819

The Sonoma County general plan for land use prohibited the Lytton Rancheria of California from conducting gaming in the area of the Tribe's original reservation. Thus, the Tribe sought land elsewhere for the development of a gaming facility. The Tribe acquired an existing card room and the nine and one-half acre property it was located on, in the City of San Pablo, California, twenty miles from the city of San Francisco. Since acquiring the land, the Tribe has significantly remodeled the card room into a gaming facility at which the Tribe conducts class II gaming activities. Elected officials in the City of San Pablo supported and continue to support, the Tribe's gaming facility.

In 2000, a provision sought by Congressman George Miller, whose district includes the city of San Pablo, was included in the Omnibus Indian Advancement Act of 2000 (P.L. 106-568). The provision directed the Secretary of the Interior to take the land acquired by the Lytton Rancheria of California in the city of San Pablo into trust, and deem the land to have been held in trust prior to October 17, 1988 (the date IGRA was enacted). IGRA restricts gaming on lands acquired after October 17, 1988.

LEGISLATIVE HISTORY

S. 1347 was introduced on May 9, 2007 by Senator Feinstein and was referred to the Committee on Indian Affairs. On September 27, 2007, the Committee held an open business meeting at which it voted to favorably report S. 1347 to the full Senate with a recommendation that the bill do pass.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 27, 2007, the Committee on Indian Affairs convened a business meeting to consider S. 1347 and other measures, and voted to have the bill favorably reported to the full Senate, without amendment, with recommendation that the bill do pass.

SUMMARY OF MAJOR PROVISIONS

S. 1347 would modify the date when certain tribal lands of the Lytton Rancheria of California were deemed to have been taken into trust status. The bill amends the statutory language contained in the Omnibus Indian Advancement Act of 2000, which deemed that certain lands of the Lytton Rancheria of California were held in trust and part of the reservation prior to the adoption of the Indian Gaming Regulatory Act (IGRA) in 1988.

S. 1347 amends this language to state that for class II gaming purposes, the land owned by the Tribe in San Pablo is deemed to

be held in trust prior to October 17, 1988. Accordingly, with this new designation, the Tribe does not have to go through the administrative process to have lands taken into trust in order to conduct class II gaming on the land pursuant to IGRA.

However, S. 1347 states that for class III gaming purposes, the land owned by the Tribe in San Pablo is deemed to have been acquired by the Tribe on October 9, 2003. Therefore, the Tribe would have to go through the administrative process pursuant to IGRA before it could conduct class III gaming on its lands. This is because the land would be deemed to have been acquired after the enactment of IGRA.

Thus, S. 1347 would allow the Tribe to continue class II gaming on its lands in San Pablo, but require the Tribe to go through the administrative process required by IGRA before it could conduct class III gaming on the lands.

S. 1347 also prohibits the expansion of the exterior physical measurements of any facility on the Lytton Rancheria in use for class II gaming activities on the date of enactment of this paragraph.

S. 1347 is only applicable to certain lands held in trust by the Lytton Rancheria of California and has no impact on other lands owned by the Tribe or lands owned by other Indian tribes.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated October 11, 2007, was prepared for S. 1347:

S. 1347—A bill to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust and to provide for the conduct of certain activities on the land

This bill would amend the Omnibus Indian Advancement Act (Public Law 106-568) that ordered the Department of the Interior (DOI) to take land into trust for the Lytton Rancheria of California. That legislation contained a provision that deemed the trust status of that land to be retroactive, effectively permitting the tribe to install electronic bingo machines or slot machines without meeting the conditions imposed by section 20 of the Indian Gaming Regulatory Act (IGRA). Section 20 requires additional regulatory review and approval by DOI and the appropriate governor as well as consultation with local communities. S. 1347 would delete that provision of the 2000 act, authorize certain gaming activities on the trust land, restrict the tribe's ability to expand the current facility, and make the tribe subject to section 20 of IGRA if it chooses to pursue other types of gambling.

Based on information from DOI and the National Indian Gaming Commission, CBO estimates that implementing S. 1347 would have no significant impact on the federal budget. Enacting the bill would not affect revenues or direct spending.

S. 1347 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would make the Lytton Band of Indians subject to additional requirements under federal law in order to have certain gaming activities on tribal trust lands. However, based on information from tribal representatives, CBO expects that the costs to comply with that man-

date, if any, would be small and would not exceed the threshold established in UMRA (\$64 million in 2007, adjusted annually for inflation).

By making the Lytton Rancheria land subject to section 20 of IGRA, this bill would significantly affect the Rancheria's gaming operations only if the tribe intended to expand its current facility or pursue other types of gambling on the trust land. Tribal representatives indicate, however, that they currently have no such plans to expand or pursue new operations. If S. 1347 is enacted, the tribe would be allowed to continue operating its existing facility; thus, it would not lose revenue as a result of the mandates contained in this bill.

The bill contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), and Melissa Merrell (for the impact on state, local, and tribal governments). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1347.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 1347 should be de minimis.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1347, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to be added in italic, existing law to which no change is proposed is shown in roman):

OMNIBUS INDIAN ADVANCEMENT ACT

* * * * *

SEC. 819. LAND TO BE TAKEN INTO TRUST.

[Notwithstanding] (a) *ACCEPTANCE OF LAND.*—*Notwithstanding* any other provision of law, the Secretary of the Interior shall accept for the benefit of the Lytton Rancheria of California the land described in that certain grant deed dated and recorded on October 16, 2000, in the official records of the County of Contra Costa, California, Deed Instrument Number 2000–229754.

[The Secretary] (b) *DECLARATION.*—*The Secretary* shall declare that such land is held in trust by the United States for the benefit of the Rancheria and that such land is part of the reservation of such Rancheria under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 467).

【Such land shall be deemed to have been held in trust and part of the reservation of the Rancheria prior to October 17, 1988.】

(c) *TREATMENT OF LAND FOR PURPOSES OF CLASS II GAMING.—*

(1) *IN GENERAL.—Subject to paragraph (2), notwithstanding any other provision of law, the Lytton Rancheria of California may conduct activities for class II gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. §2703) on the land taken into trust under this section.*

(2) *REQUIREMENT.—The Lytton Rancheria of California shall not expand the exterior physical measurements of any facility on the Lytton Rancheria in use for class II gaming activities on the date of enactment of this paragraph.*

(d) *TREATMENT OF LAND FOR PURPOSES OF CLASS III GAMING.—Notwithstanding subsection (a), for purposes of class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. §2703)), the land taken into trust under this section shall be treated, for purposes of section 20 of the Indian Gaming Regulatory Act (25 U.S.C. §2719), as if the land was acquired on October 9, 2003, the date on which the Secretary took the land into trust.*