

CATAWBA INDIAN NATION LANDS ACT

AUGUST 13, 2021.—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

[To accompany H.R. 1619]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1619) to clarify the status of gaming conducted by the Catawba Indian Nation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1619 is to reaffirm the action taken by the Secretary of the Interior on July 10, 2020, to place approximately 17 acres of land located in Cleveland County, North Carolina, into trust on behalf of the Catawba Indian Tribe (Catawba or Tribe), for the purpose of conducting Indian gaming subject to the provisions of the Indian Gaming Regulatory Act of 1988.

NEED FOR LEGISLATION

Section 14 of the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993¹ (1933 Settlement Act) prohibits the Tribe from utilizing the Indian Gaming Regulatory Act² (IGRA)

¹Pub. L. No.103-116, <https://www.govinfo.gov/content/pkg/STATUTE-107/pdf/STATUTE-107-Pg1118.pdf>, 107 Stat. 1118 (1993), <https://uscode.house.gov/statviewer.htm?volume=107&page=1118> (codified as amended at various, see https://uscode.house.gov/table3/103_116.htm).

²Pub. L. No. 100-497, 102 Stat. 2467 (1988), <https://uscode.house.gov/statviewer.htm?volume=102&page=2467> (codified as amended at various, see https://uscode.house.gov/table3/100_497.htm) (statutory compilation as amended through P.L. 109-221 at <https://www.govinfo.gov/content/pkg/COMPS-1405/pdf/COMPS-1405.pdf>).

and conducting gaming activities within their lands.³ The Tribe is subject to state gaming law and regulations, which prohibit all major forms of gambling.

Under current state law, South Carolina allows casino style gaming that occurs on casino cruises that originate in South Carolina ports and is conducted at least three miles from South Carolina's shores. The Tribe sued in South Carolina state court to assert a right to game on its reservation under that law,⁴ but the Supreme Court of South Carolina rejected the Tribe's argument that allowing casino cruises conferred a right to gaming under Section 14 of the Settlement Act.⁵ The court also held that South Carolina authorized gaming only outside of its boundaries (beyond the three-mile limit) and not within the state,⁶ effectively foreclosing the Tribe's right to conducting gaming in South Carolina under the casino cruises law.

Consequently, the Tribe is seeking legislative action to reaffirm the action by the Secretary of the Interior to place lands located outside of the state in neighboring North Carolina into trust for the purposes of conducting class III gaming under IGRA. North Carolina allows for gaming through its state lottery and the Eastern Band of Cherokee Indians in North Carolina conduct class III gaming under IGRA.

BACKGROUND

History of the Federal Relationship with Catawba. The history of the Catawba Tribe is similar to many "first contact" tribal nations located in the southern and eastern parts of the United States. The "first contact" with early settlers' attempts to lay claim to the "New World" was subject to multijurisdictional treaties. At first, these treaties were ratified between an Indian Tribe and another sovereign, such as the King of England. However, these treaties would then be renegotiated with the newly formed colonial governments and eventually affirmed by the newly founded United States of America. These early treaties between various sovereigns and Indian Tribes included terms that recognized territorial boundaries, hunting and fishing rights, access to commerce, and other inherent tribal rights.

From "first contact" to present day, many colonial-era tribes attempted to resolve or amend ambiguities in the earlier treaties with different sovereigns that transitioned into the role of "treaty partners" with those tribes. The U.S. Supreme Court recognized this transition of sovereigns and that the exclusive right of the British government to the lands occupied by the Indians passed to the United States.⁷

³ Section 14 of the 1993 Settlement Act states: (1) IGRA shall not apply to the Tribe, and (2) The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State [of South Carolina] Act with respect to the conduct of games of chance and that otherwise all laws, ordinances, and regulations of the state and its subdivisions shall control regarding gaming conducted by the Tribe on and off the Reservation. 107 Stat. at 1136.

⁴ *Catawba Indian Nation v. South Carolina*, 756 S.E. 2d 900 (S.C. 2014).

⁵ *Id.* at 910.

⁶ *Id.* at 909–10.

⁷ *Johnson v. McIntosh*, 21 U.S. 543, 568, 584 (1823).

In an effort to resolve these centuries-old disputes, Congress passed the Act of August 13, 1946⁸ that created the Indian Claims Commission (ICC). The purpose of the ICC was to hear claims from any Indian Tribe, band, or other identifiable group of American Indians against the United States. Tribes brought claims against the United States through the ICC and sought compensation for the loss of “aboriginal title” to their lands.

In 1978, the ICC adjourned and transferred its pending cases to the United States Court of Claims.⁹ These land claim suits became land claim settlements that involved the aggrieved Indian Tribe, the federal government, and any states that may have been a party to the original claim. Executed land claim settlements would often result in the extinguishment of tribal claims to aboriginal title. Since the ICC’s adjournment, Congress, which has sole and plenary authority to extinguish aboriginal title, is required to ratify these settlements in statute.

In 1760 and 1763, the Catawba Tribe entered into treaties with the Crown of England. Through these agreements, the Tribe ceded vast portions of its aboriginal territory in current day North and South Carolina for the guarantees of being settled on a 144,000-acre reservation.¹⁰

In 1943, the United States entered into an agreement with the Tribe and South Carolina to provide services to the Tribe and its members. South Carolina purchased 3,434 acres of land and conveyed it to the Secretary of the Interior in trust for the Tribe. The Tribe also organized under the Indian Reorganization Act.

Congress took subsequent action in 1959 by enacting the Catawba Tribe of South Carolina Division of Assets Act (the 1959 Act).¹¹ This Act released the federal government of its obligation under the 1943 agreement, thus terminating the federal trust relationship with the Tribe and disestablishing the Tribe’s reservation.

In 1980, the Tribe sued in federal court to regain possession of their original treaty reservation. At that time, the Tribe argued that their treaty rights were preserved under the 1959 Act. To resolve the lawsuit brought by the Tribe, Congress passed the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 (1993 Settlement Act).

The 1993 Settlement Act restored and extended federal recognition, rights, and services to the Tribe by repealing the original 1959 Act that terminated the Tribe. The 1993 Settlement Act also authorized settlement appropriations for the Tribe, ratified prior extinguishment of the Tribe’s claim to aboriginal lands, set forth procedures for organizing the Tribal government and its membership, and established a fund for acquiring more lands for the Tribe. Notably, the 1993 Settlement Act made IGRA inapplicable to the Tribe but permitted games of chance as provided under South Carolina law.

⁸ Ch. 959, 60 Stat. 1049 (1946), <https://uscode.house.gov/statviewer.htm?volume=60&page=1049> (previously codified as amended at various, see https://uscode.house.gov/table3/1946_959.htm).

⁹ See Pub. L. No. 94-465, 90 Stat. 1990 (1976), <https://uscode.house.gov/statviewer.htm?volume=90&page=1990> (providing for the dissolution of the ICC).

¹⁰ See 107 Stat. at 1118, of which the above text and the account that follows is largely excerpts.

¹¹ Pub. L. No. 86-322, 73 Stat. 592 (1959), <https://uscode.house.gov/statviewer.htm?volume=73&page=592> (codified at 25 U.S.C. §§ 931-38).

Indian Gaming Under South Carolina State Law. Section 14 of the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 provides that: (1) IGRA shall not apply to the Tribe; and (2) all laws, ordinances, and regulations of the state of South Carolina and its political subdivisions shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.

Agency Action. On March 12, 2020, Assistant Secretary—Indian Affairs (AS–IA) Tara Sweeney published in the *Federal Register* that the Department of the Interior (Department) made the final agency determination to acquire 16.57 acres, more or less, of land in trust for the Catawba Indian Nation for gaming and other purposes.¹² As part of this agency action, the Department used newly established guidance¹³ from Department Solicitor Daniel H. Jorjani to determine whether the Secretary of the Interior had authority to take land into trust for an Indian Tribe under the authority of the Indian Reorganization Act of 1934. On July 10, 2020, this agency action was made final, and the land was placed into trust on behalf of the Tribe.

On March 25, 2021, the U.S. Department of Interior approved the Tribal-State Compact with the state of North Carolina.¹⁴

OVERVIEW

This legislation, H.R. 1619, amends the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 to:

Reaffirm the Catawba Indian Nation’s right to own and operate a gaming facility on lands described in the bill, which are located in Cleveland County, North Carolina;

Mandate that the facility located on the newly acquired lands be regulated in accordance with the Indian Gaming Regulatory Act (IGRA), except for section 20, which will not apply to the lands described in this bill;¹⁵

Reaffirms the action taken by the Secretary of the Interior on July 10th, 2020, to take land into trust on behalf of the Catawba Tribe for the purpose of conducting gaming;

Reserve the rights of all entities that are a party to the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993; and

Provide that the land taken into trust by the Secretary of Interior on July 10th, 2020 for the benefit of the Catawba Nation shall:

¹²Land Acquisitions; Catawba Indian Nation, Kings Mountain Parcel, North Carolina, 85 Fed. Reg. 17,093 (Mar. 12, 2020), <https://www.govinfo.gov/content/pkg/FR-202003-26/pdf/2020-06325.pdf>.

¹³Daniel H. Jorjani, Solicitor, U.S. Dep’t of the Interior, Procedure for Determining Eligibility for Land-into-Trust under the First Definition of “Indian” in Section 19 of the Indian Reorganization Act (Mar. 10, 2020), available at https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/Solicitors_Procedures_for_Determining_Eligibility_for_Land_into_Trust_under_Category1.pdf. The Committee notes that this guidance is the subject of ongoing litigation.

¹⁴Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of North Carolina, 86 Fed. Reg. 15,958 (Mar. 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-25/pdf/2021-06111.pdf>.

¹⁵Section 20 of IGRA prohibits gaming on trust lands acquired after the 1988 passage of IGRA, unless an exception outlined in this section applies. The main exceptions are: (1) the Secretary of the Interior and the governor of the state affected by the gaming proposal must agree that a gaming establishment on newly acquired lands would be in the best interest of the Indian Tribe and its members, and that gaming establishment would not be detrimental to the surrounding community; (2) the land taken into trust is part of a “land claim settlement”; (3) the land taken into trust is part of a newly recognized Tribe’s initial reservation; or (4) the land taken into trust is part of the restoration of lands for an Indian Tribe that is has been restored to federal recognition. (25 U.S.C. 2719 (1988)).

(1) Be part of the Catawba reservation and administered in accordance with the laws for an Indian Tribe; and

(2) Be deemed to have been acquired and taken into trust as part of the restoration of lands for an Indian Tribe that is restored to federal recognition pursuant to Section 20(b)(1)(B)(iii) of the Indian Gaming Regulatory Act.

The bill also clarifies that nothing in this bill shall enhance nor diminish the existing rights of the Catawba Nation.

COMMITTEE ACTION

H.R. 1619 was introduced on March 8, 2021, by Majority Whip Jim Clyburn (D–SC). 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 May 26, 2021, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered. The bill was adopted and ordered favorably reported to the House of Representatives by voice vote.

HEARINGS

For the purposes of clause 3(c)(6) of House Rule XIII, the following hearing was used to develop or consider this measure: full committee markup held on May 26, 2021.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 2. Application of current law. Section 2 affirms the application of Section 14 of the Catawba Indian Tribe of South Carolina Claims Settlement Act of 1993, which requires the State of South Carolina to approve Catawba gaming within the state. Section 2 also clarifies that gaming conducted by the Catawba tribe outside the State of South Carolina shall be subject to the Indian Gaming Regulatory Act.

Section 3. Reaffirmation of status and actions. Section 3 reaffirms the action by the U.S. Department of the Interior to take the land into trust on behalf of the Catawba Tribe and confirms that nothing else within the Catawba Indian Tribe of South Carolina Claims Settlement Act of 1993, including water rights, rights of way, or future authority to take land into trust, will be diminished by this legislation. Finally, this section also affirms that the parcel taken into trust meets the section 20(b)(1)(B)(iii) “restored lands” exception of the Indian Gaming Regulatory Act.

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 22, 2021.

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. 1619, the Catawba Indian Nation Lands 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. 1619, Catawba Indian Nation Lands Act			
As ordered reported by the House Committee on Natural Resources on May 26, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
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 2032?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1619 would affirm the status of approximately 17 acres of land in North Carolina that were taken into trust in 2020 by the Department of the Interior (DOI) for the benefit of the Catawba Indian Nation. The bill also would make gaming activities conducted on that land subject to the Indian Gaming Regulatory Act. Using information provided by the Bureau of Indian Affairs, CBO estimates that the administrative costs to implement H.R. 1619 would not be significant; any spending would be subject to the availability of appropriated funds.

H.R. 1619 would impose an intergovernmental mandate as defined by the Unfunded Mandates Reform Act (UMRA) on the Eastern Band of Cherokee Indians and the Cherokee Nation, by restricting their existing right of action to pursue a case against DOI under the Administrative Procedures Act. The Eastern Band of Cherokee Indians is challenging how the DOI applied its procedures to transfer land into trust for the Catawba Indian Tribe. The United States District Court for the District of Columbia denied

the challenge motion, but the case is currently before the U.S. Circuit Court of Appeals—D.C. Circuit. There are no costs associated with the mandate because there is no loss to be made whole by compensatory damages to the plaintiffs in the court of appeals.

H.R. 1619 does not contain private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Jon Sperl (for federal costs) and Lilia Ledezma (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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 are to reaffirm the action taken by the Secretary of Interior on July 10, 2020, to place approximately 17 acres of land located in Cleveland County, North Carolina, into trust on behalf of the Catawba Indian Tribe, for the purpose of conducting Indian gaming subject to the provisions of the Indian Gaming Regulatory Act of 1988.

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

According to CBO, H.R. 1619 would impose an intergovernmental mandate as defined by the Unfunded Mandates Reform Act (UMRA) on the Eastern Band of Cherokee Indians and the Cherokee Nation, by restricting their existing right of action to pursue a case against DOI under the Administrative Procedures Act. CBO's full analysis is reproduced above.

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

If enacted, this bill would make no changes to existing law.

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS
None.

