

WORKERS RIGHTS

Senate bill would end union rights for Indian casino workers

Oregon Democrat Kurt Schrader joined Greg Walden and 215 other Republicans in voting for it

A bill in Congress that passed the House of Representatives in January would eliminate federally protected union rights for an estimated 600,000 workers in Indian tribal enterprises. The Tribal Labor Sovereignty Act would impact not just casinos, but mines, power plants, smoke shops, saw mills, construction companies, ski resorts, hotels, spas, and high-tech firms — any commercial enterprise owned by federally recognized tribes.

The bill aims to overturn a 2004 decision by the National Labor Relations Board (NLRB) in which the agency ruled that tribe-owned enterprises are subject to the National Labor Relations Act if they're similar in nature to other commercial enterprises and aren't providing core government functions.

The controversy arises from the fact that when the National Labor Relations Act was passed

in 1935 spelling out federally protected union rights, it specifically exempted state, local and federal government employees, but said nothing about tribal government employees. Until 2004, the NLRB interpreted the Act to say that it had no jurisdiction over employers on tribal land. But in a 2004 case involving the San Manuel Indian Bingo and Casino in Southern California, the NLRB determined that the Act can apply to tribe-owned enterprises under some circumstances, like when it's a commercial enterprise that employs non-Native Americans and caters to non-Native American customers.

Congressman for sale

Since then, gambling interests have appealed to Congress to overturn that decision. They found a champion in Indiana Republican Todd Rokita. Rokita's district doesn't include any recognized Native American tribes, and in his first four years in office he got only one campaign donation from the industry. But

since 2015, the year he introduced the Tribal Labor Sovereignty Act, he's become the House's top recipient of campaign contributions from Native American gambling interest groups — more than \$160,000.

The bill passed the House in 2015, but failed to get a vote in the Senate.

Then on Jan. 10, 2018, Rokita introduced his bill as an amendment to an already-passed Senate bill fixing some technical issues on Apache water rights. It passed 239-173, mostly on party lines, except that 15 Republicans voted against it, and 23 Democrats voted for it. [One of them was Oregon Democrat Kurt Schrader; he voted for it in 2015 as well.]

After the vote, UNITE HERE — which represents about 100,000 casino workers — declared it won't be contributing to the campaigns of House members who voted for the bill.

Because the House amended the Senate Bill, the bill now goes back to the Senate for a second time.

If the bill passes the Senate and is signed by the president, it would be Congress' first change to the National Labor Relations Act since 1974, and only the fourth change since it passed in 1935. Workers at tribal enterprises would still have a legally protected right to unionize where tribal governments allow it, such as the Navajo Nation. But most tribes haven't legislated workers' right to unionize. And the odds are low that they would do so — given the money at stake, and the fact that the vast majority of tribal casino workers aren't tribal members and therefore have no voice in setting tribal policy.

In fact, tribal casinos are a fairly new development: The first was a high-stakes bingo hall opened in December 1979 in Florida by the Seminole Tribe. Today there are 484 Indian gambling facilities owned by 244 federally recognized tribes in 28 states, and they took in \$31.2 billion in gross revenue in 2016. [Oregon has nine; Washington has 32.]

The Tribal Labor Sovereignty

Act seems to pit the right of workers to unionize against the right of Indian nations to run their own affairs. But the national AFL-CIO says that's a false choice.

"The AFL-CIO supports the principle of sovereignty for tribal governments, but does not believe that employers should use this principle to deny workers their collective bargaining rights and freedom of association," AFL-CIO government affairs director Bill Samuel wrote to members of Congress in January. "Where the enterprise employs mainly Native American employees with mainly Native American customers, and involves self-governance or intramural affairs, leaving the matter to tribal governments may be appropriate. However, where the business employs primarily non-Native American employees and caters to primarily non-Native American customers, there is no basis for depriving employees of their rights and protections under the National Labor Relations Act."



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