



# The Beat *in DC*

July 2015

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## *Budget*

### **House Interior Appropriations Bill Stalls on the Floor**

Full House consideration of the Interior, Environment, and Related Agencies appropriations bill for Fiscal Year (FY) 2016 (H.R. 2822) has stalled over whether to allow the display and sale of Confederate flags in national parks. On July 7<sup>th</sup>, a series of Democratic amendments to the bill restricting Confederate flags on federal lands were approved by voice vote on the House floor. Then, late on July 8<sup>th</sup>, Republicans announced a roll call vote on an amendment that would allow the flag to be displayed on federal grave sites in some circumstances. Controversy over the late-night amendment lead House leadership to pull the Interior Appropriations bill from the Floor. At press time, the House had not resumed consideration of the bill.

Both the House and Senate Appropriations Subcommittees on Interior, Environment, and Related Agencies have successfully reported out Fiscal Year (FY) 2016 funding bills. The topline spending of both Subcommittees was restricted by the House and Senate Budget resolutions, which cut topline spending in accordance with the Budget Control Act of 2011.

On June 16<sup>th</sup>, the full House Appropriations Committee advanced an appropriations bill that provides \$4.78 billion in funding for the Indian Health Service (IHS), including \$936 million for Purchased/Referred Care and \$466 million for facilities. Overall, this is an increase of \$145 million, but \$315 million less than the President's request of \$5.1 billion. Additionally, the bill funds the Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) at \$2.76 billion, including \$2.5 billion for Indian Programs and \$133 million for BIE school construction. Overall this is an increase of \$165 million over FY 2015 levels, but \$159 million below the President's request. Many BIA/BIE budget line items would be funded at the fiscal year 2015

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enacted level, except contract support costs, road maintenance, tribal grant support costs, elementary and secondary programs, tribal courts, the Indian Energy Service Center which all received increases. BIE school construction also received a \$58 million increase in line with the President's request.

USET continues to monitor the status of both the House and Senate versions of the bill and will provide additional information as it becomes available.

- [USET Testimony to House Interior Appropriations on FY 2016 Funding](#)
- [Detailed Table of House Funding Recommendations](#)
- [House Bill](#)
- [House Summary](#)

## *Culture & Heritage*

### **USET Submits Comments on National Park Service Proposed Rule on Traditional Gathering**

On July 20th, USET submitted comments regarding the National Park Service's (NPS) proposed rule on, "Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes." In the comments, USET expresses support for the intent of the rule, which is to lift the regulatory ban on the gathering or removal of traditional plants and plant parts on NPS lands. However, USET provides recommendations to the Agency that include ensuring agreements between the NPS and Tribes respect Tribal sovereignty and are not overly burdensome, expanding gathering permissions to include other traditional materials and limited commercial use, and protection of information related to the location of traditional items.

- [USET Comments](#)
- [Proposed Rule](#)

## *Education*

### **Senate, House Pass ESEA Reauthorizations**

On July 16th, by a vote of 81-17, the Senate passed S. 1177, the *Every Child Achieves Act of 2015*, legislation to reauthorize the Elementary and Secondary Education Act (ESEA). The legislation provides a long overdue update to ESEA, which hasn't be reauthorized since 2001. Notably, it contains a number of crucial Tribal provisions, including:

- **Language Immersion:** A Native language grant program in the Indian Education Title (Title VII) has been added - a key victory for our membership and partners. The new program would also allow for the development of curriculum and assessments that align with state or tribal academic standards.
- **Consultation:** State Education Agencies (SEAs) and Local Education Agencies (LEAs) would be required to consult with tribes in their area in the development of their plans
- **STEP Reauthorization:** The State Tribal Education Partnership Program (STEP) would be reauthorized

- **Indian Community-Based Organizations:** Indian community-based organizations may apply for grants if LEAs and tribal organizations and consortiums do not apply for Title VII grants
- **Indian Child Determination:** Once a child is determined to be an Indian for the purposes of Title VII grants, this determination will not have to be made again in subsequent years

A number of Tribal provisions were also added via the amendment process during consideration on the Senate floor. For more information on Tribal amendments, please click [here](#).

On July 8<sup>th</sup>, the House’s ESEA reauthorization, H.R. 5, the *Student Success Act*, passed by a vote of 218-213. The bill maintains the Indian education title, via Title V, the *Federal Government’s Trust Responsibility to American Indian, Alaska Native, and Native Hawaiian Education*, but does not contain additional Tribal provisions.

The bills will now go to conference in order to resolve differences. USET will continue to monitor progress within the conference committee and provide updates as they become available.

- [USET SPF Alert](#)
- [USET Letter to HELP](#)

## *Health*

### **USET Submits Comments on CMS’ Proposed Rule on Medicaid Managed Care**

On July 27<sup>th</sup>, USET submitted comments in response to the Centers for Medicare and Medicaid Services’ proposed rule, “Medicaid and Children’s Health Insurance Program (CHIP) Programs: Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions related to Third Party Liability.” USET’s comments express concern over a lack of consultation with Tribes during the development of the proposed rule. In addition, USET provides recommendations on revisions to managed care regulations that seek alignment with laws that protect American Indians from compulsory enrollment in Medicaid managed care, as well as promote productive interaction with the Indian Health System. The USET comments also offer suggestions that would improve the experience of Tribal members enrolled in Medicaid managed care and the Medicaid program in general.

The USET comments follow an April 15<sup>th</sup> USET and the Northwest Portland Area Indian Health Board (NPAIHB) letter to CMS requesting Tribal consultation in advance of the release of the proposed rule.

- [USET Comments](#)
- [USET/NPAIHB Letter](#)
- [CMS Managed Care Proposed Rules](#)

## **Legislation Introduced to Provide Tribal Relief from ACA Employer Mandate**

On July 15<sup>th</sup>, Rep. Kristi Noem (R-SD) and Sen. Steve Daines (R-MT) introduced legislation that would provide relief to Tribal employers from the Affordable Care Act's (ACA) employer mandate, which requires that "large employers" (with 50 or more full-time equivalent employees) offer health insurance or pay a penalty. The *Tribal Employment and Jobs Protection Act* (H.R. 3080 and S. 1771) would exempt Tribal employers, including Tribal governments and Tribal organizations, from the mandate.

For Tribal employers employing Tribal members, the mandate is inconsistent with the federal trust responsibility and denies many Tribal members the opportunity to take advantage of the benefits and protections designed for them in the ACA's health insurance Marketplaces. The cost of health insurance also proves unaffordable for many Tribal employers. If fully implemented in Indian Country, many Tribes will be forced to choose between the expense of providing coverage, likely resulting in a reduction to vital governmental services, or using scarce federal resources to pay the substantial IRS penalties if they do not comply.

USET has been consistently committed to comprehensive advocacy, outreach, and education on ACA for Member Tribes over the last 3 years, providing over 50 in-person trainings, technical assistance, and outreach materials, as well as numerous comments on federal regulations. With regard to the employer mandate, USET recently partnered with National Indian Health Board to send two letters to the White House requesting relief from the mandate and a meeting to further discuss the issue. To date, the letters have gone unanswered.

- [Bill Text](#)
- [NIHB Fact Sheet](#)
- [USET SPF Alert](#)
- [USET-NIHB Joint Letter to the White House, February 2015](#)
- [USET-NIHB, Other Orgs Letter to the White House, June 2015](#)

## **Labor**

### **Tribal Labor Sovereignty Act Advances in House, Bills Ready for Consideration in Both Chambers**

On July 22<sup>nd</sup>, the House Committee on Education and the Workforce marked-up and successfully reported out H.R. 511, the *Tribal Labor Sovereignty Act of 2015* by voice vote. The legislation would confirm that all Tribal enterprises, like the enterprises of state and local governments, are exempt from the National Labor Relations Act. The Senate version of the bill, S. 248, was successfully approved by the Senate Committee on Indian Affairs in June.

Approval by Committee paves the way for consideration of both bills by their respective chambers. Tribes are working to encourage a vote on the legislation this September when Congress returns from its August recess.

In 2004, the National Labor Relations Board (NLRB) reversed decades of its own precedent and established “a new standard for determining the circumstances under which the Board will assert jurisdiction over Indian owned and operated enterprises.” The NLRB ruled that Tribal governments are subject to the NLRA when acting more “commercially” than “governmentally.” The NLRB has never applied this standard to the enterprises of state or local governments, which are explicitly exempt from the NLRA.

In addition to Committee action, both the House and Senate Labor, Health & Human Services, and Education Appropriations bills contain provisions that would prevent NLRB from exercising jurisdiction over Tribes.

USET continues to sign onto Inter-Tribal letters circulated by the U.S. Chamber of Commerce’s Native American Enterprise Initiative, advocate on Capitol Hill, and provide information, as well as template support letters to member Tribes.

- [US Chamber Letter to the Senate](#)
- [US Chamber Letter to the House](#)
- [USET Template Letter](#)
- [USET Resolution 2015:019 Support for Tribal Parity in NLRA](#)
- [USET President Brian Patterson ICT Statement](#)

## *Land*

### **Senator Barrasso Introduces *Carcieri* Fix Legislation**

On July 28<sup>th</sup>, Senator John Barrasso (R-WY), Chairman of the Senate Committee on Indian Affairs, introduced the *Interior Improvement Act* (S. 1879), legislation that would correct the 2009 Supreme Court decision in *Carcieri v. Salazar*. While the text of this legislation differs from what has been previously introduced (see Sen. Tester’s S. 732, Rep. Cole’s H.R. 249, and Rep. McCollum’s H.R. 407), it accomplishes the two objectives that a *Carcieri* fix requires: 1. Reaffirming the status of existing trust lands, and 2. Restoring the Secretary of the Interior’s authority to take future lands into trust on behalf of Tribes. Moreover, it is free of Tribal carve outs, gaming provisions, and veto power for counties.

In addition, the legislation seeks to codify parts of existing land-into-trust regulations and while it encourages intergovernmental agreements between Tribes and local governments, it ensures that absence of an agreement does not penalize a land-into-trust application. USET is encouraging Board members to review the legislative language and provide any comments or concerns to USET.

- [DRAFT Bill Text](#)
- [Section-by-Section](#)
- [One-pager](#)

## **Reps. Cole and McCollum Introduce Land Reaffirmation Legislation**

On July 21<sup>st</sup>, Co-Chairs of the Congressional Native American Caucus, Reps. Tom Cole (R-OK) and Betty McCollum (D-MN), introduced H.R. 3137, legislation that would provide certainty for Tribes by reaffirming all lands that have been taken into Trust by the Secretary of the Interior. Since the 2009 decision in *Carcieri v. Salazar*, Tribes and the federal government have faced an ever increasing number of highly destructive legal challenges to lands currently held in trust. These include the *Match-E-Be-Nash-She-Wish Band of Pottawatomis v. Patchak*, which allowed retroactive challenges to land into trust decisions, and *Big Lagoon Rancheria v. California*, in which the Ninth Circuit held, in a case involving land taken into trust 20 years ago, that there is essentially no time limit on bringing such challenges. Although the decision in *Big Lagoon* was recently reversed, there are currently more than a dozen legal cases concerning proposed and existing trust acquisitions. The economic uncertainty resulting from *Carcieri* threatens Tribal businesses, reservation contracts and loans, and discourages businesses from investing in Tribal economies. H.R. 3137 would stop the bleeding in Indian Country by ending lawsuits challenging the status of existing trust lands.

- [Bill Text](#)
- [USET Resolution](#)

## ***Trust Modernization***

### **USET Secretary, Brenda Lintinger, Testifies at Senate Indian Affairs Trust Modernization Hearing**

On July 8<sup>th</sup>, USET Secretary, Brenda Lintinger testified at a Senate Committee on Indian Affairs (SCIA) hearing entitled, “A Path Forward: Trust Modernization and Reform for Indian Lands.” USET’s testimony focused on support for broad modernization of the trust relationship between the United States and Tribes, including S. 383 the *Indian Trust Asset Reform Act*. In addition, Secretary Lintinger called upon SCIA to reform Indian lands by fixing the Supreme Court decision in *Carcieri v. Salazar*.

- [USET Testimony](#)
- [Hearing Webcast](#)

For more information on these and other USET Policy and Legislative Affairs initiatives, please contact Liz Malerba, USET Policy and Legislative Affairs Director, at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).