

Obama Official Says Congress Faces More Work Without Carcieri Fix

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[Tony Batt, Gambling Compliance](#)

Congress will face a daunting task reviewing numerous applications from tribes seeking land for gaming and other purposes unless the authority of the Department of the Interior to take land into trust for tribes is restored, the Obama administration's top Indian official told a U.S. House subcommittee on Tuesday.

"This could be a lot of work for Congress if there isn't a Carcieri fix soon," said [Kevin Washburn](#), the assistant secretary of Indian affairs at the Interior Department.

A so-called Carcieri fix would reverse a February 2009 [decision by the U.S. Supreme Court](#) prohibiting the federal government from acquiring land for tribes which came under federal jurisdiction after 1934.

"We did an administrative fix that we think helps a little bit under the so-called [Patchak Patch](#), but you all have a lot more power than we do, and so a Carcieri fix would go a long way further to really solving this problem," Washburn told the House Natural Resources subcommittee on Indian and Alaska Native Affairs.

Under the so-called "Patchak Patch", the Interior Department no longer gives the public 30 days notice before taking land into trust for tribes.

Washburn crafted the rule last year in response to [a June 2012 decision by the Supreme Court](#) that allowed a Michigan man, David Patchak, to pursue his lawsuit to close a tribal casino near his neighborhood.

"The problem is that, before the Patchak case was decided, everyone was under the belief that once land went into trust for an Indian tribe, it was in trust forever," Washburn told the subcommittee.

"Basically, what Patchak said, is that it's OK in certain circumstances for people who are upset about that decision to sue the United States about taking land into trust for that tribe," Washburn said.

"It makes every land-into-trust application potentially subject to litigation, and they're subject to litigation for up to six years because that's the length of the statute of limitations under the Administrative Procedure Act."

An example of the additional work thrust upon Congress by the Supreme Court decisions in *Carcieri* and *Patchak* is [S. 1603](#), a bill that would nullify Patchak's lawsuit and ensure future operations at the Gun Lake Casino.

Introduced by Democrat Debbie Stabenow, a U.S. senator from Michigan, the bill passed the Senate by unanimous consent on June 19 and was referred to the House subcommittee five days later.

Washburn said the Obama administration supports Stabenow's bill and urged the subcommittee to pass it. But he also noted that bills like Stabenow's would not be necessary if Congress passes a Carcieri fix, restoring the federal government's authority to take land into trust for all recognized tribes.

The House subcommittee considered but did not vote on the Stabenow bill and three other tribal bills unrelated to gaming during Tuesday's hearing.

The next step for Stabenow's bill will be a vote by the full committee, but that has not yet been scheduled, according to a subcommittee spokesman.

Although members of the subcommittee seemed receptive to Washburn's arguments, there is little evidence to suggest Congress is eager to deal with the Carcieri issue.

Republican Tom Cole of Oklahoma, one of only two registered Native Americans in Congress, and Democrat Edward Markey, now a U.S. senator from Massachusetts, introduced "Carcieri fix" bills in the House early in 2013.

Both bills were referred to the same subcommittee which heard Washburn's testimony on Tuesday, but neither has been scheduled for a hearing. Cole's bill has 32 co-sponsors and Markey's has 33.

On June 11, the Senate Indian Affairs Committee approved by voice vote a "Carcieri fix" bill introduced by Senator Jon Tester, a Montana Democrat who is the committee chairman.

But Tester's bill, which has ten co-sponsors, has not yet been scheduled for a vote on the Senate floor.

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Rep. Young offers explanation for inaction on land-into-trust fix

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[Rep. Don Young](#) (R-Alaska) today reaffirmed his support for a bill to fix the [U.S. Supreme Court](#) decision in [Carcieri v. Salazar](#) but he indicated that the matter is out of his hands for now.

Young serves as chairman of the [House Subcommittee on Indian and Alaska Native Affairs](#). The panel has jurisdiction over Indian issues and has two Carcieri fixes -- [H.R.666](#) and [H.R.279](#) -- before it.

During the 112th Congress, Young held hearings on the bills to fix the decision. But he said his Republican superior on the [House Natural Resources Committee](#) is calling the shots in the 113th Congress.

"I support the fix for Carcieri but I am not chairman of the full committee," Young said today. "If you ever get a chance to be in the majority again you will find out what I'm talking about."

Young's comments came after [Rep. Raul Ruiz](#) (D-California) questioned why the subcommittee hasn't held a hearing on H.R.666 and H.R.279. He noted that the measures have bipartisan support.

"Any member of Congress that is in favor of economic certainty and job creation must be in favor of solving the problems the Carcieri decision created," Ruiz said.

[Rep. Doc Hastings](#) (R-Washington) serves as chairman of the House Natural Resources Committee but is retiring at the end of the 113th Congress. When he was in the minority during the 111th Congress, he [raised concerns](#) about prior versions of the Carcieri fix.

In February 2009, the Supreme Court held that the [Indian Reorganization Act](#) only allows the [Bureau of Indian Affairs](#) to approve land-into-trust applications for tribes that were "under federal jurisdiction" in 1934, the year the law was passed. The meaning of that phrase, however, was not defined so the decision has created uncertainty and has spawned more than a dozen new lawsuits.

Fixing the decision is relatively simple but efforts to address the ruling have been clouded by gaming and other controversies. In the meantime, the Supreme Court further muddied the ground with its June 2012 decision in [Salazar v. Patchak](#).

The court opened the door for just about anyone -- state and local governments or private citizens -- to sue over a land-into-trust decision. They can even do so long after land has been placed in trust -- in the [Big Lagoon Rancheria case](#), the state of California challenged a trust acquisition from 1994.

[S.1603](#), the Gun Lake Trust Land Reaffirmation Act, addresses the situation for the [Match-E-Be-Nash-She-Wish Band of Pottawatami Indians](#) of Michigan, the tribe that was at the center of the Patchak case. The bill reaffirms the status of the tribe's existing trust lands to prevent further litigation.

The [Senate](#) passed the bill by unanimous consent on June 19. But unlike the Carcieri fix, Young indicated there is no holdup on this measure.

"As far as the Gun Lake Tribe, we're going to move that pretty quick and solve that problem," Young said today.

The discussion about the Carcieri fix can be found on the [Indianz.Com Sound Cloud](#). Ruiz speaks at approximately 6.27 and Young responds at approximately 7.42.

Committee Notice:

[Legislative Hearing on H.R. 3229, H.R. 4546, H.R. 4867, and S. 1603](#) (July 15, 2014)

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