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## GENERAL MEMORANDUM 10-023

### Summary of 2009 Legislation and Regulations of Interest to Indian and Alaska Native Tribes and Organizations

This Memorandum summarizes key legislative and regulatory activity of specific interest to tribes and Indian organizations in the first session of the 111<sup>th</sup> Congress (2009). Any legislation not enacted into law by the end of the first session carries over into the second session (2010).

The result of the 2008 elections was that the Democrats controlled the White House, the House of Representatives and the Senate for the first time since 1994. President Obama laid out an ambitious agenda early in his Presidency, much of it focused on the nation's financial crisis.

The national economic recession provided Indian Country with the first glimpse of what was in store when the White House and Congress worked together to enact the American Recovery and Reinvestment Act (the economic stimulus bill) in February 2009, which ultimately provided over \$2.8 billion in direct and indirect funding as well as \$2.5 billion in bonding authority for Indian tribes and tribal organizations. The unprecedented spending surge included investments in Indian health care facilities, roads, bridges, schools, jails, housing, and telecommunications.

Two key Committees in Congress for Indian Country, the House Committee on Natural Resources and the Senate Committee on Indian Affairs remained in the hands of experienced Chairmen and staff. Senate Committee Chairman Byron Dorgan (D-ND) set his priorities on fighting domestic violence and crime, enhancing tribal jurisdiction, and improving tribal economic independence through energy. House Chairman Nick Rahall (D-WV) announced he would prioritize Indian health care, the federal recognition process, self-determination, and Indian water rights.

The House and Senate each approved the reauthorization of the Indian Health Care Improvement Act as part of National Health Care Reform legislation, only to see the bill stall once again. This is the sixth Congress which has tried to reauthorize the Act. The bill looked to safely make it out of conference until the Massachusetts special election for the late Senator Ted Kennedy's open seat which was won by Senator Scott Brown (R-MA). Brown's victory deprived the Democrats of the 60<sup>th</sup> vote they needed to move the Health Care Reform bill to the Senate floor. The fate of the national Health Care Reform bill remains in limbo. President Obama has attempted to restart the debate and his own proposal includes reauthorization of the Indian Health Care Improvement Act.

The Supreme Court struck a blow to tribes in February 2009 when it ruled in *Carcieri v. Salazar* that the benefit of being able to acquire new land in federal trust is available only to tribes who were "under federal jurisdiction" as of the date of enactment of the Indian Reorganization Act in 1934. A high priority for tribes and their friends in Congress is enactment this year of "Carcieri fix" legislation.

In November 2009, President Obama issued to Federal departments and agencies a Memorandum on Consultation with Indian Tribes, requiring "regular and meaningful" collaboration and consultation with tribes. The President established a 90-day time table for each agency to implement the provisions of Executive Order 13175 on tribal consultation – we are now beginning to see those agency implementation plans. Also in November were several days of meetings in Washington, D.C., among high level Administration officials and tribal leaders, culminating in a full-day summit at which President Obama spoke.

A major development was the announced settlement in December of the *Cobell v. Salazar* lawsuit regarding the Federal government's handling of Individual Indian Money accounts. The settlement, which must be approved by Congress, provides for a \$1.4 billion payment to the plaintiffs to settle claims; a \$2 billion fund for the voluntary buy-back of fractionated land interests; and the

establishment of a Secretarial Commission on Indian Trust and Reform. The deadline for Congress to approve the settlement has been extended twice – the current deadline is April 16, 2010.

President Obama has made key appointments of Indian people in the White House. Two such appointments are Jodi Archambault Gillette (Standing Rock Sioux) as an Associate Director for Intergovernmental Affairs and Kim Teehee (Cherokee) as Senior Policy Advisor for Native American Affairs at the Domestic Policy Council. Other appointments include Larry Echo Hawk (Pawnee) as Assistant Secretary for Indian Affairs in the Department of Interior; David Hayes as the Deputy Secretary of Interior; Hilary Tompkins (Navajo) as the Interior Department's Solicitor General; Dr. Yvette Roubideaux (Rosebud Sioux) as the Director of the Indian Health Service; Rhea Suh as the Interior Department's Assistant Secretary for Policy, Management and Budget; Michael Connor as the Commissioner of the Bureau of Reclamation; and Carmel Martin as the Department of Education's Assistant Secretary for Planning, Evaluation and Policy Development. The Chairman's position at the Nation Indian Gaming Commission (NIGC) is open due to the resignation of Phil Hogen, but Steffani Cochran (Chickasaw) has been named as Vice Chairman and Dan Little has recently been nominated to the Commission. Alex Skibine (Osage) is currently serving as the NIGC Acting Chairman. The nomination of Mary L. Smith (Cherokee Nation) to be Assistant Attorney General, Tax Division–Department of Justice is still pending due to holds placed by several Senators.

*LOOKING FORWARD.* Congress will now revisit the outstanding legislative priorities of Indian Country in 2010. But there are major hurdles for those priorities. In 2009, partisan gridlock gripped Congress and resulted in the failure to enact climate change legislation and health care reform as well the Employee Free Choice Act, which would have subjected tribes to employee card-check procedures under the National Labor Relations Act. With the Brown victory, the flood of Democratic retirements (including Chairman Dorgan and Representative Patrick Kennedy (D-RI)), and the increasingly low approval ratings of Congress, the result is that almost every vote taken this year will be taken through an election day lens.

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The following summaries cover actions taken by Congress in the first session of the 111<sup>th</sup> Congress (from January through December 2009) on selected legislation of significance to tribes. *Bills that were enacted into law are listed first, in the reverse chronological order of public law numbers assigned to them. Other measures that did not receive final clearance by the end of the session are listed by issue area and within that according to the latest congressional action.* Unless otherwise stated, Senate bills were referred to the Senate Committee on Indian Affairs and the House bills to the House Natural Resources Committee.

*In a few instances there was committee or floor action on a bill in 2009 followed by House or Senate passage in early 2010 – in these instances we have reported on the early 2010 action as well.*

## PUBLIC LAWS

- Native American Apology Resolution, PL 111-118. On December 19, 2009, President Obama signed into law the Native American Apology Resolution. The Apology Resolution was included as Section 8113 in the FY 2010 Defense Appropriations Act, Public Law 111-118. The Apology Resolution had originally been sponsored in the Senate by Senator Brownback (R-KS) as S.J. Res. 14. A companion measure, H.J. Res. 46, was also introduced in the House by Congressman Boren (D-OK). Senator Brownback added the Apology Resolution to the Defense Appropriations Act as an amendment on the Senate floor on October 1, 2009.

For additional information see our General Memorandum 09-157 (December 30, 2009).

- Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act, PL 111-90. On November 3, 2009, the President signed the Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act of 2009 as Public Law 111-90 (S 1818). The Act makes technical changes to PL 102-259 that established the Morris K. Udall Foundation to rename the Act, Foundation and related programs to include Stewart L. Udall. Stewart Udall was Morris K. Udall's brother and Secretary of Interior under President Kennedy. In addition, PL 111-90 authorizes grants to the Udall Center for Studies in Public Policy (located at the University of Arizona) for training, research and other activities related to the involvement of Native Americans and Alaska Native professionals in health care and public policy.

Senator Bingaman (D-NM) introduced S 1818 and Representative Grijalva (D-AZ) introduced the House version (HR 1035).

- Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, PL 111-84. On October 28, 2009, the President signed the FY 2010 Department of Defense - Authorization Act (HR 2647) as Public Law 111-84. Division E of the Act is the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which authorizes financial and non-financial assistance to states, tribes and local jurisdictions for the prosecution of hate crimes. Under the Act the Attorney General, at the request of a state/tribal/local law enforcement agency, may provide technical, forensic, prosecutorial, or other form of assistance in the criminal investigation or prosecution of a hate crime. The Act also authorizes \$5 million for each fiscal year 2010-2012 for Office of Justice Program grants to state/tribal/local programs to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

The underlying text for the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act was introduced as HR 1913 by Representative Conyers (D-MI), and as S 909 by the late Senator Kennedy (D-MA). HR 1913 was passed by the House on April 29, 2009 by 249-175 vote.

- Native American Heritage Day Act, PL 111-33. On June 26, 2009, President Obama signed into law the Native American Heritage Day Act of 2009 as Public Law 111-33 (H.J.Res. 40). The Act permanently established the Friday after Thanksgiving as "Native American Heritage Day." The Act also encourages Federal, state, and local governments and the public to honor Native Americans with activities and programs that observe Native American Heritage Day; the historical status of Native American tribal governments; present-day status of Native Americans; cultures, traditions, and languages of Native Americans; and Native American cultural legacy.

President Obama also signed Proclamation 8449 on October 30<sup>th</sup> declaring November 2009, as National Native American Heritage Month and recognizing November 27 as Native American Heritage Day. For additional information see our General Memorandum 09-140 (November 6, 2009).

- Family Smoking Prevention and Tobacco Control Act, PL 111-31. On June 22, 2009, the President signed into law the Family Smoking Prevention and Tobacco Control Act as Public Law 111-31 (HR 1256, H.Rpts. 111-58 Parts 1 and 2). The Act appoints the Food and Drug Administration as the primary regulatory authority with respect to manufacturing, marketing (advertising and promoting), and distributing tobacco products. The focus of the Act is on disclosure of accurate public health information, more stringent marketing and labeling standards to halt advertising that may make tobacco use attractive to minors, and setting higher tobacco product standards for the contents of cigarettes (tobacco additives and nicotine yield).

During Senate consideration of the bill, tribes and tribal advocates had to stave off an amendment proposed by Senator Coburn (R-OK) which would have removed a hard won provision that prohibits the Secretary of Health and Human Services from contracting with a state to exercise enforcement or records inspection authority within Indian Country without "the express written consent of the Indian tribe involved."

HR 1256 was introduced by Representative Waxman (D-CA) on March 3, 2009, and a companion measure (S 982) was introduced by the late Senator Kennedy on May 5, 2009.

- "Bennett Freeze" Repeal, PL 111-18. On June 18, 2009, the President signed as Public Law 111-18 legislation that would repeal the "Bennett Freeze" (S 39), a provision in PL 93-531 that prohibited the Navajo Nation from constructing or repairing homes situated on lands subject to a dispute with the Hopi Tribe. Because of a historical dispute over border land in the Black Mesa area of Arizona between the Navajo and Hopi Tribes, the Federal government imposed a construction freeze in 1966. Since the Navajo and Hopi have resolved their dispute, the Act repeals the freeze.

S 39 was sponsored by Senator McCain (R-AZ) and the House version (HR 1762) was sponsored by Representative Kirkpatrick (D-AZ).

- Edward M. Kennedy Serve America Act, PL 111-13. On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Act) as Public Law 111-13 (HR 1388, H.Rpt. 111-37). The Act, which was one of the

President's top priorities, expands both the size and scope of national service-learning and community programs, such as AmeriCorps, creating and expanding opportunities for tribes, Indian organizations, and individual American Indians and Alaska Natives. These programs are administered by the federal Corporation for National and Community Service. The Act requires a set-aside of at least one percent of AmeriCorps funding for tribes and authorizes the appointment of a Strategic Advisor for Native American Affairs. The Advisor's responsibilities include collecting information on the challenges facing tribes and increasing American Indian and Alaska Native participation in national and community service programs. For additional information see our General Memorandum 09-75 (June 12, 2009).

- Omnibus Public Land Management Act, PL 111-11. On March 30, 2009, President Obama signed the Omnibus Public Land Management Act (HR 146) as Public Law 111-11. The Act is a compilation of over 150 bills that designates millions of acres in new wilderness areas, wild and scenic rivers, and historic sites, and establishes protections for other federal lands.

A number of tribal specific bills were incorporated into HR 146. Among them are the placement of land into trust for the Washoe Tribe of Nevada and California (HR 763), the Tuolumne Band of Me-Wuk Indians (California) (HR 438), and the Shivwits Band of Paiute Indians (Utah). The Act establishes the water rights of the Shoshone-Paiute Tribes of the Duck Valley Reservation (Nevada), the Navajo Nation (HR 925), and the Jicarilla Apache Nation (New Mexico). It also authorizes funding of historic preservation programs and cultural resource protection for which tribes are eligible. Finally, the Act provides for a land exchange within the Izembek National Wildlife Refuge for the purpose of constructing a one-lane road between the Alaska Native Village of King Cove and Cold Bay, Alaska.

For additional information see our General Memorandum 09-74 (June 12, 2009).

- American Recovery and Reinvestment Act, PL 111-5. On February 17, 2009, President Obama signed HR 1, the American Economic Recovery and Reinvestment Act (Act) into law as Public Law 111-5. The Conference Report is H.Rpt. 111-16. The \$787 billion Act consists of about \$500 billion in new appropriations and the rest in tax credits and new federal bond limits—with the stated goals of providing a stimulus to the economy and generating job growth. Funds in the Act are not just authorizations for funds, but are actual appropriations.

Major sources of funding for tribes in PL 111-5 are in the areas of housing, IHS and BIA construction, roads, bonding, and energy. In addition, the Act includes five Medicaid provisions that were drawn from the Indian Health Care Improvement Act legislation from last Congress. For additional information see our General Memorandum 09-17 (February 24, 2009).

- Children's Health Insurance Program Reauthorization Act, PL 111-3. On February 4, 2009, President Obama signed HR 2, legislation reauthorizing and expanding the Children's Health Insurance Program (CHIP) as Public Law 111-3. The CHIP provides health care insurance for children whose families earn too much to qualify for Medicaid but cannot afford to purchase health insurance. The Act reauthorized CHIP through September 2013, and included amendments long sought by Indian Country including use of tribal enrollment documents as proof of U.S. citizenship for Medicaid and CHIP and provisions that encourage states to increase outreach and enrollment of Indians into these programs.

HR 2 was introduced by Representative Pallone (D-NJ) on January 13, 2009, and Senator Baucus (D-MT) introduced the Senate version (S 275) on January 16, 2009. For additional information see our General Memorandum 09-014 (February 6, 2009).

- Lilly Ledbetter Fair Pay Act, PL 111-2. On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act as Public Law 111-2 (S 181). The Act gives employees who are subject to wage discrimination more time to file lawsuits against their employers. The Ledbetter Act extends the statute of limitations for 180 days each time an employer issues a discriminatory paycheck to an employee. The Act amends Title VII of the Civil Rights Act of 1964, and in addition to sex discrimination, applies to discrimination based race, religion, national origin, disability or age. Indian tribes are exempt as employers from the employment practices provisions of Title VII of the Civil Rights Act.

Senator Mikulski (D-MD) introduced S 181 on January 8, 2009, and Representative Miller (D-CA) introduced a similar measure on January 6, 2009. For additional information see our General Memorandum 09-009 (January 30, 2009).

#### ADMINISTRATION ACTION/FINAL REGULATIONS

- Compliance Date Extension for Final Regulations Implementing the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA). On December 1, 2009, the Board of Governors of the Federal Reserve System and the Department of the Treasury (collectively the "Agencies") jointly published a notice to extend a compliance deadline set forth in the UIGEA. The final regulation requires "nonexempt participants in designated payment systems to establish and implement written policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act." In response to comments and petitioner arguments that small regulated entities do not have the resources necessary to develop and implement appropriate policies by the deadline, the compliance date was extended from December 1, 2009 to June 1, 2010.

- Tribal Consultation. On November 5, 2009, President Obama issued a Memorandum on Consultation with Indian Tribes to Federal Departments and Agencies which established a 90-day time table for each agency head to implement the provisions of Executive Order 13175 on tribal consultation and a 270-day time table for the submission of a progress report which is to recur annually. Executive Order 13175 (issued in 2000) has specific requirements for the development of "regulatory policies," legislative proposals, and the handling of tribal requests for waivers to statutory and regulatory provisions.

In addition, the Department of Interior in 2009 engaged in tribal consultation regarding land into trust issues in light of the *Carcieri* decision, and the development of a new tribal shares allocation formula which would be used to allocate funds to tribes who are or will contract or compact to operate real estate appraisal programs.

For additional information see our General Memoranda 09-141 (November 9, 2009) and 09-079 (June 18, 2009).

- Native American Heritage Month. On October 30, 2009, President Obama signed Proclamation 8449 declaring November 2009 as National Native American Heritage Month, and recognizing November 27 as Native American Heritage Day. The Proclamation recognized the contributions, accomplishments and sacrifices made by

Native Americans and the benefits the nation has derived from our indigenous population. For additional information see our General Memorandum 09-140 (November 9, 2009).

- NIGC Delays Effective Date of Class II Regulations. On October 9, 2009, the National Indian Gaming Commission (NIGC) announced a delay of the effective date of the Minimum Internal Controls ("MICS") for class II gaming for one year, from October 13, 2009, to October 13, 2010. The delay gives tribes until October 13, 2010, to comply with the new class II MICS. In order to make way for the new class II MICS, the NIGC had also provided that two existing provisions of the MICS would be removed on October 13, 2009. The announcement keeps these sections of the existing MICS (25 C.F.R. Parts 542.7 and 542.16) in place until October 13, 2010.

- NAHASDA Negotiated Rulemaking Committee. On September 23, 2009, the Department of Housing and Urban Development published a proposed membership of the Native American Housing Assistance and Self-Determination Act (NAHASDA) negotiated rulemaking committee, which "reflects a geographically diverse cross-section of small, medium, and large Indian tribes." The committee is charged with addressing regulatory changes required as a result of the amendments to the NAHASDA as enacted in 2008 by PL 110-411, the NAHASDA Reauthorization Act. The final membership list of 25 tribal representatives and two federal representatives was published January 5, 2010. For additional information see our General Memorandum 09-118 (September 25, 2009).

- Interior Department Climate Change Response Strategy. On September 14, 2009, Secretary of Interior Salazar issued Secretarial Order No. 3289, "Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources." The Order established a Climate Change Response Council comprised of the Secretary; Deputy Secretary; Counselor to the Secretary; all Assistant Secretaries; the Directors of all Department of Interior (DOI) Bureaus; and the Solicitor. This Council will oversee three DOI initiatives: (a) Climate Change Response Planning Requirements assigned to each DOI bureau and office, (b) DOI Regional Climate Change Response Centers, building on regional science centers developed by the U.S. Geological Survey, and (c) Landscape Conservation Cooperatives, to be developed in cooperation with state, local, and tribal governments to coordinate adaptation efforts at the regional level. For additional information see our General Memorandum 09-115 (September 18, 2009).

- Office of Assistant Secretary–Indian Affairs Realignment. On September 11, 2009, Assistant Secretary of Indian Affairs Larry Echo Hawk signed Assistant Secretary's Order No. 3 which instituted reorganization within the Office of Assistant Secretary of Indian Affairs (AS-IA). The Order, which became effective on the date of issuance, created new positions, titles and offices, and made changes to the reporting structure. The Order was described as being necessary to reassign non-Indian staff members currently holding positions within BIA and Offices of the AS-IA to new Offices because Indian Affairs does not currently have this authority. For additional information see our General Memorandum 09-125 (October 9, 2009).

- NIGC Introduces the Tribal Access Portal (TAP). On September 9, 2009, the NIGC announced the introduction of the Tribal Access Portal (TAP). TAP is an internet accessible database that is intended to serve as a new tool for tribal gaming regulators, allowing them access to archived background information concerning prospective gaming license applicants.

Features of the TAP include: (1) the ability to access inter-tribal licensing history, (2) access to information from the NIGC/FBI fingerprint service, and (3) 24-hour accessibility. Access is available only after applying to the NIGC ([www.nigc.gov](http://www.nigc.gov)) and obtaining authorized access credentials.

- Job Training Final Rule. On August 17, 2009, the Bureau of Indian Affairs published a final rule that governs the implementation of the Job Placement and Training Program. The final rule consolidated current regulations for the Employment Assistance Program and the Adult Vocational Training Program (25 CFR parts 26 and 27), programs which were already merged under the Indian Affairs' budgetary structure. The rule, published as 25 CFR Part 26, became effective September 16, 2009. For additional information see our General Memorandum 09-112 (August 21, 2009).

- NIGC Publishes Final Rule, Amendments to Various NIGC Regulations. On July 27, 2009, the NIGC promulgated a Final Rule amending various NIGC regulations that according to the NIGC will allow it "to better carry out its statutory duties." The Final Rule amended the following regulations: 25 C.F.R. Parts 502 (Definitions); 514 (Fees); 531 (Content of management contracts); 533 (Approval of management contracts); 535 (Post-approval procedures); 537 (Fees for background investigations); 539 (Appeals); 556 (Background investigations for primary management officials and key employees); 558 (Gaming licenses for key employees and primary management officials); 571 (Monitoring and investigations); and 573 (Enforcement). The Final Rule became effective on December 31, 2009, after extending it from the original date of August 26, 2009, "in order to extend the transition time."

- Recovery Act Lobbying Protocols. On July 24, 2009, Office of Management and Budget (OMB) Director Orszag issued a Memorandum updating previous instructions concerning how and when federally registered lobbyists and others may communicate with government officials with regard to competitive funding available under the American Recovery and Reinvestment Act (Recovery Act). The OMB's stated purpose is to increase transparency for contacts between lobbyists and government officials concerning Recovery Act funding decisions. The July 24 Memorandum superseded earlier policy and clarified the scope of the guidelines as they relate to lobbyists and non-lobbyists alike, and expanded the categories of persons covered by the lobbying restrictions while narrowing the time frame in which the restrictions apply. For additional information see our General Memorandum 09-103 (July 31, 2009).

- Medicaid Regulations Rescinded. On June 29, 2009, the Administration rescinded three Bush-era Medicaid regulations. Department of Health and Human Services Secretary Sebelius announced the rescission of the following regulations: 1) the rule published December 28, 2007, that would have eliminated reimbursement for school-based administrative costs and costs of transportation to and from schools, 2) the rule published November 7, 2008, that would have limited the outpatient hospital and clinic service benefit for Medicaid beneficiaries to the scope of services recognized as an outpatient hospital service under Medicare, and 3) portions of the rule published December 4, 2007, which would have restricted beneficiary access to case management services, a regulation which would have especially affected children in the child welfare system. Congress had delayed implementation of most of these final rules and, when the Obama Administration came in, the stage was set for their repeal.

- National Historic Preservation Act "Tribal Lands" Definition. On June 4, 2009, the National Park Service (NPS), by letter to several Tribal Historic Preservation Officers (THPOs), indicated that the Solicitor's Office at the Department of Interior had "re-examined" its stance on whether lands held in trust for tribes outside the boundaries of a

reservation (or within the boundaries of a former reservation) can be considered "tribal lands" under the National Historic Preservation Act (NHPA). For purposes of the THPO assuming State Historic Preservation Officer (SHPO) functions on tribal lands pursuant to section 101(d)(2) of the NHPA, the NPS had previously considered such trust lands to qualify under the "dependent Indian community" prong of the statutory definition of "tribal lands." The NPS letter stated that for purposes of assuming THPO responsibilities under the NHPA the Solicitor's Office would now require NPS to determine whether the trust lands actually "function as an Indian Community." This new interpretation would impose a particularly substantial burden on tribes that make the determination to administer a THPO on lands held in trust within the boundaries of a "former" reservation or where a tribe has no formal reservation and may preclude those tribes from assuming THPO functions over trust lands under the NHPA. It is our understanding that, since the date of that memorandum, NPS has backed away from this new interpretation. Accordingly, the NPS has approved several THPO program applications that were previously in question due to the new interpretation. However, neither the Solicitor's Office nor the NPS have publicly endorsed the alternative reasoning that such lands should be considered tribal lands under the "within reservation boundary" prong of the statutory definition. This alternative argument is supported by Supreme Court precedent standing for the proposition that land held in trust by the Federal government for a tribe should be regarded as an Indian reservation regardless of whether it has been formally declared to be a reservation. For additional information see our General Memorandum 09-081 (June 23, 2009).

- DOJ Sex Offender Registration and Notification Act Implementation Extension.

On May 26, 2009, Attorney General Holder issued Order No. 3081-2009 granting a one-year extension – until *July 27, 2010* – of the deadline for jurisdictions, including tribal governments, to implement the requirements of the Sex Offender Registration and Notification Act (SORNA, PL 109-248; 42 U.S.C. § 16924(a)) which is part of the Adam Walsh Child Protection and Safety Act. Under the SORNA tribes are allowed to request a one-year extension, but with the Order issued by the Attorney General there is no need for any jurisdiction who has not filed for an extension to do so. For additional information see our General Memorandum 09-072 (June 5, 2009).

- White House Office of Health Reform. On April 8, 2009, President Obama issued Executive Order 13507 establishing a White House Office of Health Reform (OHR). The OHR will provide leadership to the Executive Branch on policies, priorities and objectives for the Federal Government's comprehensive effort to improve access to and quality of health care and sustainability of the health care system. The OHR is also expected to coordinate with a variety of Executive Branch councils, departments and agencies as well as state, local and community policy makers and public officials "to expand coverage, improve quality and efficiency, and slow the growth of health care costs." Indian tribes were not specifically mentioned as among the entities with which OHR will coordinate. The Executive Order also directs the Secretary of Health and Human Services (HHS) to establish a similar office within HHS, which is to coordinate closely with OHR. For additional information see our General Memorandum 09-045 (April 17, 2009).

- NIGC Issues Bulletin on Unlawful Internet Gambling Enforcement Act of 2006. On March 9, 2009, the NIGC issued Bulletin 2009-3 on the applicability of the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA") to wide-area progressive systems ("WAPs") and networked, multi-site bingo games. In Bulletin 2009-3, the NIGC concluded that the UIEGA has no effect on multi-site bingo and WAPs because: the UIEGA does not change the status quo of what is legal and illegal gaming in the United States, and that Indian gaming that is legal under the Indian Gaming

Regulatory Act (IGRA) remains legal, WAPs and multi-site bingo systems do not fall within the UIGEA's definition of prohibited "unlawful Internet gaming" since they used closed proprietary communications networks, and both WAPs and multi-site bingo systems are permissible under the IGRA, and are therefore not unlawful.

The NIGC did not reach the question of the UIGEA's application to WAPs and multi-site bingo systems that do make use of the internet, which would implicate that the UIGEA's safe harbor provision permitting the use of the internet for gaming by tribes in certain circumstances. The NIGC did not intend to issue an opinion on the scope of the UIGEA's safe harbor provision until it consulted with tribes, other federal agencies and members of the industry.

## ECONOMIC DEVELOPMENT AND TAX RELATED LEGISLATION

### HOUSE OR SENATE PASSAGE

• Native American Business Development Enhancement Act, HR 1834. On November 19, 2009, the House approved HR 1834, the Native American Business Development Enhancement Act, by a margin of 343-55. Prior to its independent passage in the House, it was included under Title III of a package of seven bills, HR 2352, Job Creation Through Entrepreneurship Act, and approved by the House by a margin of 406-15 on May, 20, 2009. Because the broader bill appears to be stymied in the Senate, the House decided to take up some portions of it, including HR 1834, as free-standing legislation. If enacted, the legislation would:

- Create a new Office of Native American Affairs (Office) in the Small Business Administration;
- Charge the Office with establishing a Tribal Business Information Centers Program to provide Native Americans with business and entrepreneurship training;
- Expand the SBA's Small Business Development Center (SBDC) Program to specifically target and fund Native Americans in Indian Country.

Concerns remain as to language which would limit the definition of Indian Lands in such a way as to leave out Alaska Native Village or regional corporation lands as well as lands in Hawaii.

For additional information see our General Memoranda 09-050 (May 1, 2009) and 09-073 (June 12, 2009).

• Prevent All Cigarette Trafficking (PACT) Act, HR 1676/S 1147. On May 21, 2009, the House approved HR 1676, the Prevent All Cigarette Trafficking (PACT) Act by a margin of 397-11. On November 21, 2009, a companion measure, S 1147, was reported favorably by the Senate Committee on the Judiciary. The primary focus of the PACT Act is to amend the Jenkins Act in order to enhance restrictions on mail order tobacco business and ensure that sellers of tobacco products pay applicable state and federal taxes (or face increased criminal and civil penalties).

A key change from previously introduced versions of the legislation is a section which clarifies that a sale is considered to have occurred in the location where the shipment is *delivered* rather than the location where the shipment *originates*. It is important to note that this clarification does include exceptions (see Section 5: *Exclusions Regarding Indian Tribes and Tribal Matters*) for instances when current tribal-state tobacco compacts are deemed to apply.

### Bills Introduced

- Employment Credit and Accelerated Depreciation Extension, HR 474/S 288 as contained in The Tax Extenders Act of 2009, HR 4213. On December 9, 2009, the House passed, by a margin of 241-181, the Tax Extenders Act of 2009 (HR 4213). HR 4213 contains provisions included in a previously introduced, Indian-exclusive bill: HR 474/S 288, to amend the Internal Revenue Code of 1986 to permanently extend the Indian employment credit and the depreciation rules for property used predominantly within an Indian reservation. HR 4213 would provide only a one year respite – the expiration date for both provisions would be changed to December 31, 2010. The Senate is scheduled to consider the bill, or a version of it, in the near future.

Representative Boren (D-OK), introduced HR 474 on January 13, 2009. The Senate companion version, S 288, was introduced on January 21, 2009, by Senator Inhofe (R-OK). The bills were referred to the Ways and Means and Finance Committees.

- Alaska Native Conservation Parity Act, HR 3568/S 1673. On September 15, 2009, Representative Young (R-AK) introduced legislation (HR 3568) which would allow ANSCA corporations to receive tax credits for donations of land conservation easements. Currently private land owners, including farmers and ranchers, are able to receive tax credits for qualified donations. The intent of the original tax deduction was to protect important habitats and encourage conservation easement gifts. Senator Murkowski (R-AK) along with Senator Begich (D-AK) introduced similar legislation (S 1673) which was referred to the Committee on Finance. HR 3568 was referred to the Ways and Means Committee.

- Indian Reservation Bank Branch Act, S 1316. On June 22, 2009, Senator Inouye (D-HI), introduced S 1316, the Indian Reservation Bank Branch Act. The legislation would amend the Federal Deposit Insurance Act to modify requirements relating to the establishment and location (branching) of both State and National banks on Indian reservations, encouraging economic development by increasing tribes' access to a wider array of banking services and capital. The bill was referred to the Committee on Banking, Housing, and Urban Affairs. For additional information see our General Memorandum 09-096 (July 10, 2009).

- Improving Access to Mainstream Financial Institutions Act, S 786. On April 2, 2009, Senator Akaka (D-HI), introduced S 786, Improving Access to Mainstream Financial Institutions Act. The legislation includes provisions that would authorize a grant program to provide for expanded access for Indian tribal organizations, Alaska Native Corporations, Native Hawaiian organizations as well as other entities to mainstream financial institutions and low cost alternatives to pay day loans. The bill was referred to the Committee on Banking, Housing, and Urban Affairs.

- National Labor Relations Act (Card Check), S 560/HR 1409. On March 10, 2009, Senator Kennedy (D-MA), introduced S 560, the Employee Free Choice Act (EFCA). Representative George Miller (D-CA) introduced a companion measure (HR 1409). The EFCA would amend the National Labor Relations Act by allowing workers to join unions under the so-called "card check" process, a procedure which would apply to tribes. The EFCA would have a direct impact on tribal casino operations, which to date have been the major target of union campaigns. On June 1, 2009, Senator Inouye wrote to Senate Committee on Health, Education, Labor, and Pensions Chairman Kennedy requesting him to consider an amendment that would define Indian tribes as governments and thus exempt them from the NLRA. The bills were referred to the

Senate Committee on Health, Education, Labor, and Pensions and the House Subcommittee on Health, Employment, Labor, and Pensions. The House passed similar card-check legislation in 2008 but it died in the Senate. The House appears to have the votes to pass card check again, but Speaker Pelosi is waiting for the Senate to act first where the ability of the Democrats to muster the 60 votes necessary to overcome a GOP filibuster is in doubt. For additional information see our General Memoranda 09-025 (March 13, 2009) and 09-102 (July 24, 2009).

- Tribal Labor Sovereignty Act, HR 1395. On March 9, 2009, Representative Kline (R-MN), introduced HR 1395, Tribal Labor Sovereignty Act of 2009, a bill which would exempt all tribal enterprises from the scope of the National Labor Relations Act (NLRA). As was the case in the previous Congress, it is unlikely that the bill will make it out of the House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions. For additional information see our General Memorandum 09-025 (March 13, 2009).

- Permanent Extension of Elective Tax Treatment for Alaska Native Settlement Trusts, HR 1381/S 798. On March 6, 2009, Representative Young (R-AK) introduced HR 1381, legislation that would remove the December 31, 2010, expiration date of Section 646 of the tax code. Section 646 provides for an elective regime for Alaska Native settlement trust that: (i) provides for a trust level tax at various rates ranging up to ten percent in lieu of beneficiary level taxes; (ii) allows contributions to be made to these trusts on a tax favored basis; and (iii) streamlines administrative reporting for these trusts. When adopted, this elective treatment initially provided significant incentives to the use of settlement trusts to further the ANCSA settlement, and Alaska Native Corporations utilized this provision to provide benefits through Alaska Native settlement trusts. On April 2, 2009, Senator Murkowski (R-AK), introduced an identical version in the Senate. The bills were referred to the House Committee on Ways and Means and by the Senate Committee on Finance.

- Indian Development Finance Corporation Act, S 439/HR 1607. On February 13, 2009, Senator Inouye (D-HI) introduced S 439, the Indian Development Finance Corporation Act. The legislation would promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian-owned business enterprises in an attempt to stimulate the development of the private sector of Indian tribal economies. The House version (HR 1607) was introduced by Delegate Faleomavaega (D-AS) on March 19, 2009.

## **EDUCATION LEGISLATION**

### **HOUSE OR SENATE PASSAGE**

- Iron Working Training Program for Native Americans, HR 1129. On July 7, 2009, the House passed by a vote of 329-75 legislation that would authorize the Secretary of Interior to make a grant to an eligible entity to provide an iron worker training program for Native Americans (HR 1129). The iron-worker training program, under the Bureau of Indian Affairs, has received annual appropriations but has not been specifically authorized by law, which would be provided by enactment of this bill. In the House-passed version, an entity eligible to apply for funds must have demonstrated successful experience in operating such a program and the facilities to provide the services. Representative Lynch (D-MA) introduced HR 1129 in February 2009.

The Senate Committee on Indian Affairs amended HR 1129 before favorably reporting it on September 30, 2009 (S.Rpt. 111-84). The Committee amendment made

federally recognized tribes and tribal colleges also eligible to apply for the grants to provide the training program. In both versions, funds are authorized to the extent appropriations are made available.

- 21<sup>st</sup> Century Green High-Performing Public School Facilities Act, HR 2187. On May 14, 2009, the House of Representatives passed by a vote of 275-155 the "21<sup>st</sup> Century Green High-Performing Public School Facilities Act" (HR 2187, H.Rpt. 111-100). The bill would provide funds to build "green" schools, and also provide for the reconstruction and renovation of schools damaged by the hurricanes of 2003. Funds could be used for modernization, renovation, and repair projects designed to improve the teaching and learning climate, student and staff health and safety, energy efficiency, and the environment. HR 2187, introduced by Representative Chandler (D-KY), reserves two percent of the allocation for assistance to Indian schools and the outlying areas, and five percent for local educational agencies that serve geographic areas with significant economic distress and those recovering from a natural disaster.

#### BILLS INTRODUCED

- New Jobs for America Act, HR 4355. On December 16, 2009, Representative Jackson-Lee (D-TX) introduced legislation that would authorize a "compensated employment training grants" program (HR 4355). The "New Jobs for America" bill would authorize the Secretary of Labor to award grants for purposes that include training in emerging markets, retraining unemployed individuals whose prior job skills are in a "faltering or dying industry," provide participants access to public healthcare, or provide training programs for ex-offenders. Indian tribes would be among the eligible recipients and "such sums as necessary" to carry out the program would be authorized. HR 4355 was referred to House Committee on Education and Labor.

- Preventing Harmful Restraint and Seclusion in Schools Act, HR 4247/S 2860. On July 14, 2009, legislation entitled "Preventing Harmful Restraint and Seclusion in Schools Act" was introduced that would establish minimum Federal standards to prevent school personnel from the inappropriate use of mechanical, chemical or physical restraints on students (HR 4247, S 2860). The bills, which are similar but not identical, are in response to the findings reported by the Government Accountability Office in GAO-09-719T, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, which found many cases of the inappropriate use of seclusion or restraint, and that a disproportionate number of victims were students with disabilities.

Under the bills, the Secretary of Education would promulgate regulations preventing use of restraint and seclusion (except in cases of imminent danger of physical injury to the student or others) in all schools that receive federal funding from the Department of Education, require state and local education agencies (LEAs) to have a sufficient number of personnel certified in a state-approved training program (inclusive of CPR, first aid, behavioral supports, as well as prevention and safe use of physical restraint and seclusion), and require schools to report to parents on the use of restraint or seclusion on the day of such occurrence. The bills would also authorize such sums as necessary for a competitive grant program that would provide awards to states and subgrants to LEAs for the purpose of establishing, implementing and enforcing the necessary policies to comply with the federal standards. The Secretary of Health and Human Services (HHS) would be under similar directive to develop standards for the Head Start program and funds would be provided to the HHS to make competitive grant awards for development of the necessary policies and procedures to comply with the restraint and seclusion requirements.

Representative Miller (D-CA) and 35 co-sponsors introduced the House version (HR 4247), which was referred to House Committee on Education and Labor. Senator Dodd (D-CT) introduced S 2860, which was referred to the Senate Committee on Health, Education, Labor, and Pensions.

- Land-In-Trust Schools and Local Governments Equitable Compensation Act, HR 3208/S 1456. On July 14, 2009, legislation was introduced to authorize full compensation to local educational agencies and local governments for loss of tax revenues when land is taken into trust on or after October 1, 2008, for a federally recognized tribe or an individual Indian. The compensation amount may be waived, reduced or adjusted if all applicable parties agree to do so. Compensation amounts would be paid annually from funds transferred to the Department of Interior from the general fund of the Treasury (not appropriated).

Representative Arcuri (D-NY) introduced the House version (HR 3208). Senator Schumer (D-NY) introduced S 1456, which was referred to the Senate Committee on Energy and Natural Resources.

- School Accountability Improvements Act, S 1430. On July 9, 2009, Senator Murkowski (R-AK) introduced legislation that would amend the Elementary and Secondary Education Act (ESEA) – currently called the No Child Left Behind Act – to address issues related to certain staffing, accountability, and other requirements, particularly in small, rural and remote school locations. Of interest to tribal schools and American Indian/Alaska Native students is that S 1430 would allow schools with Native American language programs some flexibility in determining Adequate Yearly Progress (AYP) if the state assessment test at the third grade level cannot be administered in that Native language.

S 1430 would also: 1) provide greater flexibility to a local educational agency's highly qualified teacher requirements by allowing use of a Highly Qualified teacher through distance delivery if assisted by an on-site teacher Highly Qualified in another subject area; 2) allow states to use the "growth model" for calculating AYP; 3) prohibit the restructuring of a school or district if failure to achieve AYP is attributable to results for limited English proficient students and/or students with disabilities, and the school shows by growth model results that those subgroups are on track to being proficient; and 4) expand the use of funds currently provided for training and recruitment of teachers and principals to allow use for the development of parent engagement strategies and training for education personnel in effective communications with parents.

The bill was referred to the Senate Health, Education, Labor, and Pensions Committee.

- Indian School Bus Route Safety Reauthorization Act, S 759/ HR 3645. On April 1, 2009, Senator Bingaman (D-NM) introduced legislation (S 759) that would reauthorize through FY 2015 a federal program that provides funds to counties in New Mexico, Arizona, and Utah for road maintenance and construction on non-reservation roads that carry Indian children to and from school or a Head Start program. A companion measure (HR 3645) was introduced by Representative Kirkpatrick (D-AZ) in September 2009. The bills would increase the authorized funding level from \$1.8 million to \$2 million for this program.

S 759 was referred to Committee on Environment and Public Works and HR 3645 to the House Committee on Transportation and Infrastructure-Subcommittee on Highways and Transit.

- Hopi School Replacement Act, HR 1122. On February 23, 2009, Representative Franks (R-AZ) introduced HR 1122, the Hopi School Replacement Act. This legislation would replace the 125 year-old Hopi Day School and Hotevilla Bacavi Community School with a single facility. The bill would not authorize any funds but would require the Secretary of Interior to complete the project within three years of funds being appropriated. HR 1122 was referred to the House Education and Labor Subcommittee on Early Childhood, Elementary, and Secondary Education.

- Indian School Construction Act, HR 727. On January 27, 2009, Representative Pomeroy (D-ND) introduced the Indian School Construction Act (HR 727). The bill would authorize the Secretary of Interior to establish a pilot program enabling tribal governments to issue a qualified tribal school modernization bond for the repair, renovation or construction of a BIA-funded school, including advance planning and design. The Qualified Tribal School Modernization Bonds program would have a loan limit of \$200 million each year in FYs 2009–2011.

HR 727 was referred to the Committees on Ways and Means, Education and Labor, and Natural Resources.

#### **ENERGY LEGISLATION** HOUSE OR SENATE PASSAGE

- Clean Energy Legislation, HR 2998/S 1733. On June 26, 2009, the House, by a narrow 219-212 margin, passed the American Clean Energy and Security Act, HR 2998. HR 2998 replaced the previous House version of the bill HR 2454(H Rpt. 111-137, H.Rpt. 111-185). The bill is divided into four titles, *Clean Energy*; *Energy Efficiency*; *Reducing Global Warming Pollution*; and *Transitioning to a Clean Energy Economy*. Provisions in the bill would create a regulatory and implementation plan for "cap and trade" polices as well as invest significant amounts of money in renewable energy production and energy efficiency measures. Tribes are included and explicitly cited as eligible for some programs and measures (in some cases receiving a set percentage or tribal set aside) but not for others.

The Senate version of clean energy legislation, S 1733, the Clean Energy Jobs and American Power Act, was introduced on September 30, 2009, and favorably reported with amendments by the Senate Committee on Environment and Public Works on February 2, 2010 (S.Rpt. 111-121). It is expected that Senators Kerry (D-MA), Lieberman (I-CT) and Graham (R-SC) will soon introduce another clean energy bill which addresses issues of reducing carbon emissions on an industry by industry basis (electric utilities, transportation, and manufacturing).

For additional information see our General Memoranda 09-083 (June 26, 2009) and 09-090 (July 2, 2009).

#### BILLS INTRODUCED

- Surface Mining Control and Reclamation Act Amendments, S 2830. On December 3, 2009, Senator Bingaman (D-NM) introduced S 2830, a bill which would amend the Surface Mining Control and Reclamation Act of 1977 to "correct" the

interpretation caused by amendments which were enacted in 2006. The proposed amendment would restore the availability of funding for non-coal reclamation projects to pre-2006 levels. The bill was referred to the Senate Committee on Energy and Natural Resources.

- FAIR CREDIT Act, S 802/HR 2982. On April 2, 2009, Senator Johnson (D-SD) introduced S 802, legislation that would amend the section of the tax code which details the extent to which renewable energy production credits can be transferred and portioned between tribal co-owners of a facility which produces renewable energy. S 802 was referred to the Senate Committee on Finance. The House companion bill, HR 2982, otherwise known as the FAIR CREDIT Act (Fair Allocation of Internal Revenue Credit for Renewable Electricity Distribution by Indian Tribes) was introduced by Representative Grijalva (D-AZ) on June 19, 2009, and referred to the House Committee on Ways and Means.

- Federal Oil, Condensate, and Natural Gas Royalties Act Study, HR 1462. On March 12, 2009, Representative Maloney (D-NY) introduced HR 1462. The bill would direct the Secretary of Interior, with the assistance of the National Academy of Engineering, to conduct a study to test ways to improve the accuracy of instruments which measure the volume of oil and gas production per month on leased Federal lands and which subsequently determine royalty payments. The bill also contains provisions which would adjust payments retroactively if major discrepancies were determined to have occurred due to imprecise measuring equipment. Onshore Indian lands are included in the list of 'covered lands' in the study.

- Public Utility Regulatory Policies Act Amendments, S 433. On February 12, 2009, Senator Tom Udall (D-NM) introduced S 433. The legislation would set an annually increasing, renewable energy standard (RES) for the base quantity of electricity to be generated from renewable energy resources by a retail electric supplier each year. The time frame for the implementation of this legislation begins with the year 2012 (six percent renewable required) to 2039 (25 percent renewable required). The standard for issuing renewable energy credits is set at *one Federal renewable energy credit* for each kilowatt hour of electric energy generated by the use of a renewable energy resource and *two Federal renewable energy credits* if the facility is located on Indian land. The bill was referred to the Senate Committee on Energy and Natural Resources. While there is no House companion measure, components of the bill have been incorporated into HR 2998 and S 1733 (see above) but there has been recent pressure from some Republicans for an amendment that would change the "renewable" standard to a "clean" standard – one that includes electricity derived from nuclear and "clean coal" power generation facilities.

## ENVIRONMENT AND NATURAL RESOURCES LEGISLATION

### HOUSE OR SENATE CONSIDERATION

- Water Quality Investment Act, HR 1262. On March 12, 2009, the House passed by a vote of 317-101 legislation that would reauthorize the Clean Water State Revolving Fund (HR 1262, H.Rpt. 111-26). The Clean Water State Revolving Fund provides grants and loans to communities to build and maintain wastewater treatment facilities. Among other things, HR 1262 would authorize \$300 million each year in FYs 2010-2014 for state management assistance; \$100 million in annual grants to nonprofit organizations to provide technical and management assistance to improve wastewater treatment systems in rural areas, small municipalities and tribal communities; \$500 million/year for grants to fund projects that would prevent sewer overflow; and

\$50 million/year in grants for pilot programs that test alternative methods for enhancing water supplies as wastewater reclamation and reuse.

Specific to tribal programs, section 1402 of the bill would increase the authorized set-aside from state revolving loan funding for Indian Programs from the one-half of one percent allowed under current law to "not more than 1.5 percent of the total Federal appropriation" for the state revolving funds.

HR 1262 was introduced by Representative Oberstar (D-MN) in March 2009.

#### COMMITTEE ACTION

- Arctic Ocean Research and Science Policy Review Act, S 1562. On December 17, 2009, the Senate Committee on Commerce, Science and Transportation approved an amended version of S 1562, a bill that would authorize funding for the National Research Council to undertake a comprehensive study of existing research regarding the U.S. Arctic Ocean. The Council would be charged with making recommendations regarding priorities and coordination of research as well as developing a long-term research and monitoring plan with applied emphasis on climate impacts and adaptation. Senator Begich (D-AK) is the bill's sponsor.

- Public Lands Service Corps Act, HR 1612/S 1442. On October 23, 2009, the House Natural Resources Committee amended and approved legislation that would expand programs authorized under the Public Lands Corps Act of 1993 to provide job training and other incentives for youth to work in national parks, forests, wildlife refuges and on other public lands (HR 1612, H.Rpt. 111-312 Part I). The bill, introduced by Representative Grijalva (D-AZ), would direct the Secretaries of the Interior and Agriculture to create coordinating offices for the job-training program and adds authority for the National Oceanic and Atmospheric Administration to participate in the program. HR 1612 would expand the scope of allowable projects that could be undertaken by Corps participants and reduce the cost-sharing match requirement from 25 percent to 10 percent.

Senator Bingaman (D-NM) introduced a similar measure (S 1442) on July 10, 2009. His bill, however, would provide service-learning opportunities not only on public lands but also in Indian Country, and would authorize funding for an Indian Youth Service Corps which would carry out projects on Indian lands that are determined to be priorities by tribes and surrounding tribal communities. S 1442 includes a specific provision clarifying that the bill's definition of "public lands" does not include any Indian lands.

S 1442 was referred to the Senate Committee on Energy and Natural Resources. For additional information see our General Memorandum 09-098 (July 26, 2009).

- Water Infrastructure Financing Act, S 1005. On May 14, 2009, the Senate Energy and Public Works Committee approved the Water Infrastructure Financing Act of 2009 (S 1005, S.Rpt. 111-47). Unlike HR 1262 reported above, this measure would reauthorize the State Revolving Fund (SRF) programs under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). These two SRFs are the major sources of funding for investments in wastewater and drinking water infrastructure. States use grants from these programs to capitalize revolving funds from which they make loans to local governments for construction of wastewater treatment plants and public water systems. The CWA program currently has a 0.5 percent set-aside for the Environmental Protection Agency (EPA) to make grants to tribes, and the SDWA authorizes the EPA, in

its discretion, to set aside up to 1.5 percent for tribes. The SDWA also authorizes the EPA to provide technical assistance for small community public water systems, with a three percent set-aside for tribes.

S 1005 would make programmatic changes to the SRFs and would improve related grant and technical assistance programs and authorize some new programs, i.e., new flexibility for states in providing assistance to disadvantaged communities; create incentives for states to increase the use of cost saving water treatment and energy efficiency improvements; establish a new research program at the Environmental Protection Agency focused on water conservation, efficiency and reuse; and establish a demonstration grant program to promote innovative water treatment and conservation technologies. Some of the tribal specific provisions would retain the existing set-asides in the SDWA SRF and technical assistance, but increase the tribal CWA SRF allocation to 1.5 percent.

The Water Infrastructure Financing Act was introduced by Senator Cardin (D-MD) in May 2009. For additional information see our General Memorandum 09-105 (July 31, 2009).

#### BILLS INTRODUCED

Alaska Arctic Bills. On August 3, 2009, Senator Begich (D-AK) introduced seven bills designed to address a range of issues facing the Alaska Arctic region, which have been exacerbated by climate change. One of the bills, the Arctic Ocean Research and Science Policy Review Act (S 1562), was marked up by a Senate committee so it is under the "Committee Action" portion of this section. The others are described below.

- Arctic Climate Adaption Act, S 1566. This bill would establish a program in the Department of Commerce to award grants to repair, replace or maintain public infrastructure in a coastal or remote Alaska village damaged or threatened by the effects of climate change which is not associated with normal seasonal effects. The Denali Commission would select, administer and coordinate projects awarded these grants. The Commission would establish an Advisory Committee to advise it regarding this grant program. The Advisory Committee would include a representative from the Alaska Federation of Natives, the Inter-Tribal Council, various Alaska State entities, the Army Corps of Engineers, and organized labor. Such sums as are necessary would be authorized for this grant program. The bill would also authorize \$5 million for the Denali Commission to conduct research on best practices for climate related adaptation. S 1566 was referred to the Environment and Public Works Committee.

- Better Health in the Arctic Act, S 1565. This bill would authorize funding for the Arctic Research Commission, in collaboration with Federal health agencies, to prepare a study regarding the science base, gaps in knowledge, and strategies for the prevention and treatment of health problems in the Arctic, with a focus on Alaska. The bill would also direct the National Institutes of Health, in collaboration with other governmental agencies, private non-profit entities and the Canadian Institutes of Health Research on Indigenous Arctic People, to develop a national Arctic health science policy and establish a Desk for Arctic Health. S 1565 was referred to the Health, Education, Labor and Pensions Committee.

- Arctic Oil Spill Research and Prevention Act, S 1564. The Coast Guard would be directed to conduct risk assessment and mitigation of oil spills which may occur as energy development expands in the Outer Continental Shelf. In consultation with other agencies, the National Research Council and the Coast Guard would be tasked with these

responsibilities. S 1564 was referred to the Commerce, Science and Transportation Committee.

- United States Ambassador at Large for Arctic Affairs Act, S 1563. This bill would establish within the Department of State an Ambassador at Large for Arctic Affairs. S 1563 was referred to the Committee on Foreign Relations.
- Arctic Marine Shipping Assessment and Implementation Act, S 1561. This bill concerns the infrastructure for traffic in the Arctic Ocean and Bering Sea. The Coast Guard would be tasked with myriad assessments and studies designed to ensure safe, secure and reliable maritime shipping. The bill envisions a year-round harbor at St. George Island, two new polar class icebreakers, and Coast Guard bases in Barrow, Nome and St. Paul Island. S 1561 was referred to the Commerce, Science and Transportation Committee.
- Alaska Adjacent Zone Revenue Sharing Act, S 1560. This bill would provide for the sharing of certain Outer Continental Shelf revenues from oil and gas leases in the Alaska Adjacent Zone. S 1560 would grant Alaska 37.5 percent of: bonus bids paid for leasing rights, lease rental and lease royalty payments, proceeds from the sale of royalties taken in kind by the Secretary, and any other revenues from a bidding system.

From this incoming revenue, S 1560 would allocate 20 percent to Coastal Political Subdivisions, 33 percent to Regional Corporations as established by the Alaska Native Claims Settlement Act, and seven percent to Indian tribes defined as "an Alaska Native entity recognized and eligible to receive services from the Bureau of Indian Affairs, the headquarters of which is located within a 300-mile radius of the geographical center of any leased tract." The geographic location requirement would apply to the other receiving entities as well. S 1560 was referred to the Energy and Natural Resources Committee.

## FEDERAL RECOGNITION LEGISLATION

### HOUSE OR SENATE CONSIDERATION

- Native Hawaiian Government Reorganization Act, HR 2314, S 1011. On February 23, 2010, the House passed the Native Hawaiian Government Reorganization Act by a margin of 245-164. The Senate version of the bill, S 1011, was reported favorably by the Committee on Indian Affairs on December 17, 2009. The Obama Administration has indicated support for the bill. Primary objections to the bill fall along party lines; Republicans claim the bill would create a "race based government" and would be a civil rights violation.

If enacted, the legislation would recognize Native Hawaiians as a distinct indigenous group; create an Office for Native Hawaiian Relations and a temporary commission within the Department of Interior to assist with the process of reorganization. An interim governing council would set criteria for citizenship in the Native Hawaiian government and define its powers and authorities. After the council's ratification and approval from the Department of Interior, the Native Hawaiian government could proceed to enter into government-to-government negotiations with both the State of Hawaii and the Federal government on issues relating to land, resources, jurisdiction, delegation of powers, and assertions of historical wrong perpetrated against Native Hawaiians.

- Lumbee Recognition, HR 31/S 1735. On June 3, 2009, the House approved by a vote of 240–179 the Lumbee Recognition Act (HR 31, H.Rpt. 111-103). The bill, sponsored by Representative McIntyre (D-NC), would legislatively provide for Federal recognition of the Lumbee Tribe, providing its members all services and benefits provided to Indians. It would require the Secretaries of Interior and the Health and Human Services to each submit a statement of the Tribe's needs and budget. HR 31 would prohibit lands taken into trust for the Tribe to be used for gaming purposes.

On October 22, 2009, the Senate Committee on Indian Affairs approved a companion bill (S 1735, S. Rpt. 111-116). Senator Burr (R-NC) is the bill's sponsor.

- Virginia Tribes Federal Recognition Act, HR 1385/S 1178. On June 3, 2009, the House passed the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009 (HR 1385/H.Rpt. 111-104). The bill would extend federal recognition to six State-recognized tribes in Virginia—the Chickahominy Indian Tribe; Chickahominy Indian Tribe-Eastern Division; Upper Mattaponi Tribe; Rappahannock Tribe, Inc.; Monacan Indian Nation; and Nansemond Indian Tribe. It would also provide for lands to be taken into trust on behalf of the Tribes but would prohibit gaming under the IGRA on those lands. Representative Moran (D-VA) is the bill's sponsor.

On October 22, 2009, the Senate Committee on Indian Affairs approved similar legislation (S 1178, S.Rpt. 111-113). Senator Webb (D-VA) is the bill's sponsor.

#### Bills Introduced

- Indian Tribal Federal Recognition Administrative Procedures Act, HR 3690. On October 1, 2009, Delegate Faleomavaega (D-AS) introduced legislation, HR 3690, to reform the Federal recognition process for tribes. Under the proposal the responsibility for the Federal recognition process would be transferred from the BIA to a newly established Independent Commission on Recognition of Indian Tribes. The seven-member Commission would be appointed by the President and would be subject to Senate confirmation.

In addition to the avenue of Federal recognition through the Commission, the recognition or restoration of an Indian tribe could occur via federal law, reorganization under the Indian Reorganization Act or the Alaska Indian Reorganization Act, and any final decision of a U.S. Court.

The bill would apply the Indian Reorganization Act to all tribes recognized by the Commission, regardless of whether they were under Federal jurisdiction on June 18, 1934.

- Alexander Creek Village Recognition, HR 3229. On July 15, 2009, Representative Young (R-AK) introduced legislation (HR 3229) to amend the Alaska Native Claims Settlement Act to recognize Alexander Creek as a Native village. The bill would direct the Secretary of Interior to enter into negotiations to attempt to conclude a land exchange to acquire the surface estate in lands not within any conservation system unit from the State of Alaska or the Matanuska-Susitna Borough to enable Alexander Creek to select additional public lands within its original withdrawal area in Alaska.

- Little Shell Tribe Restoration, HR 3120/S 1936. On July 7, 2009, Representative Rehberg (R-MT) introduced legislation (HR 3120) that would restore recognition of the Little Shell Tribe of Chippewa Indians of Montana. On October 27, 2009, Senator Tester (D-MT) introduced companion legislation (S 1936).

The bills would extend Federal recognition to the State-recognized tribe, which has pursued Federal recognition since the 1930's and whose petition for recognition was filed in 1978 and denied in October 2009. In addition to restoring rights, Federal services and benefits, the bills would direct the Secretary to acquire trust title to 200 acres of the Tribe's service area lands, and would provide that additional lands may be acquired in accordance with the Indian Reorganization Act.

- Chinook Nation Restoration Act, HR 3084. On June 26, 2009, Representative Baird (D-WA) introduced legislation to restore recognition to the Chinook Nation—comprised of the Lower Chinook; Wahkiakum; Cathlamet; Clatsop; and Willapa Tribes. The Chinook Nation Restoration Act would provide eligibility for Federal services, establish a service area (consisting of Pacific; Wahkiakum; Cowlitz and Clark Counties, Washington; and Clatsop and Columbia Counties, Oregon) and require the Secretary to negotiate with the Nation's governing body on a plan for establishing a reservation and to consult with state and local officials and landowners of property adjacent to the proposed reservation. Ceremonial hunting and fishing would be allowed pursuant to Washington State regulations. The bill would also authorize funding for carrying out the Act. An earlier version of the bill (HR 2576) contained some tax exemption provisions which led to its referral to the House Ways and Means Committee. HR 3084 is the same as HR 2576 except that it does not contain the tax-related provisions and was referred solely to the House Natural Resources Committee.

- Local Government Notification of Petitions for Recognition, HR 2973. On June 19, 2009, Representative Campbell (R-CA) introduced a bill (HR 2973) that would establish a process for local governments to be notified regarding petitions for Federal recognition and lands to be taken into trust as a result of such petition. The bill would also prohibit the Secretary of Interior from taking land into trust for a tribe after the date of enactment unless it is statutorily mandated.

- Duwamish Tribal Recognition Act, HR 2678. On June 3, 2009, Representative McDermott (D-WA) introduced legislation (HR 2678) that seeks to override a 2001 negative determination of the Duwamish Tribe's recognition petition, which had overturned a proposed positive determination for acknowledgment of the Tribe made in the final days of the Clinton Administration. The bill would establish a service area and provide that lands within the service area may be taken into trust on behalf of the Tribe.

- Unrecognized Southeast Alaska Native Communities Recognition Act, HR 2018/S 784. On April 2, 2009, Senator Murkowski (R-AK) introduced legislation (S 784) which would amend the Alaska Native Claims Settlement Act (ANCSA) to allow the communities of Haines; Ketchikan; Petersburg; Tenakee and Wrangell, Alaska, to organize as Urban Corporations and receive land, start-up funds and other appropriate compensation. These "landless communities" were not permitted to form villages or urban corporations when ANCSA was passed even though they were similar to other communities in Southeast Alaska that were able to do so. On April 21, 2009, Representative Young (R-AK) introduced companion legislation (HR 2018).

- Reaffirmation of Burt Lake Band, HR 1358. On March 5, 2009, Representative Stupak (D-MI) introduced HR 1575, the Burt Lake Band of Ottawa and Chippewa Indians Reaffirmation Act. The bill would reaffirm federal recognition for the Burt Lake Band, their eligibility for federal services, and require the Secretary to acquire certain lands in trust as the initial reservation of the Tribe. It would also set evidentiary requirements for the initial membership of the Tribe.

- Muscogee Nation of Florida Recognition, HR 1899/S 530. On March 5, 2009, Senator Bill Nelson (D-FL) introduced S 530, legislation that would extend federal recognition to the state-recognized Muscogee Nation of Florida. The bill would establish a service area and provide that the Secretary may take lands into trust for the Nation. The membership role would be determined in accordance with the criteria established in the Nation's Ordinance 04-01-100 of February 4, 2004. On April 2, 2009, Representative Boyd (D-FL) introduced companion legislation (HR 1899).

- Federal Petition for Lumbee Indians, HR 839. On February 3, 2009, Representative Shuler (D-NC) introduced legislation (HR 839) which would provide authority for the Lumbee Indians of Robeson and adjoining counties and other Indian groups in North Carolina to petition for Federal recognition. Gaining Federal recognition through the Department of Interior process has been denied to the Lumbees. The Secretary would be required to publish a finding regarding the petition within 18 months.

## GAMING LEGISLATION

### HOUSE OR SENATE CONSIDERATION

- Lytton Rancheria Amendment, S 338. On March 12, 2009, the Senate passed, as it did in the 110<sup>th</sup> Congress, legislation that would modify the date on which certain lands of the Lytton Rancheria of California was deemed to be held in trust for the purposes of gaming (S 338). The legislation would hold the land in trust as pre-1988 land eligible for gaming pursuant to IGRA for class II gaming, but would consider the land to be acquired in 2003 for class III gaming. This designation would force the Tribe to go through the administrative process to have land taken into trust for class III gaming under IGRA if it chose to pursue class III gaming there.

The bill, introduced by Senator Feinstein (D-CA), would also prohibit the Tribe from expanding its class II gaming facilities beyond the size on the date of enactment of S 338, and limits applicability of the bill to the lands referenced in the bill and not other lands held by the Lytton Tribe or other tribes.

### BILLS INTRODUCED

- Internet Poker and Game of Skill Regulation, Consumer Protection, and Enforcement Act, S 1597/HR 2267. On August 6, 2009, Representative Menendez (D-NJ) introduced the Internet Poker and Games of Skill Regulation, Consumer Protection, and Enforcement Act of 2009 (S 1597), legislation that is similar to HR 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act. S 1597, however, allows a much narrower scope of gaming than HR 2267 as it is restricted to "internet games-of-skill" (which means "an internet based game in which success is predominantly determined by the skill of the players ...") and includes some unique provisions.

S 1597, like HR 2267, would legalize the operation of internet gambling by a licensed operator in any state or tribal jurisdiction that does not opt-out of the provisions of the bill, and gives the Secretary of the Treasury jurisdiction over internet gambling. Both provide that whether or not a state decides to allow internet gaming, or decides to opt-out, that state decision will have no effect on "the ability of an Indian tribe to offer any class of gambling activity pursuant to" the IGRA.

S 1597 would expressly prohibit the establishment and operation of "places of public accommodation, clubs, and similar establishments for the *primary purpose* of

allowing the public or members access to Internet bets or wagers;" require the Director of the Financial Crimes Enforcement Network (FinCEN) to create a list of "unlawful Internet gambling enterprises" and distribute that list to the Secretary of the Treasury, as well as state and tribal gaming regulators; and would create a "State and Indian Tribal Government Trust Fund" funded by monthly fees, held in trust by the Treasury Department, and paid "to each qualified State and Indian tribal government."

Other similarities between HR 2267 and S 1597 are that each would require licensed operators to ensure that the individual placing the bet is not a minor and is physically located in a jurisdiction that permits internet gaming. Licensed operators would also have to ensure compliance with other requirements including provisions to protect compulsive gamblers and to ensuring that the gambling is operated fairly. The licensing process for "internet game-of-skill facilities" and the discretionary use by the Treasury Department of state and tribal gaming regulators to perform suitability determinations are also similar.

S 1597 was referred to the Senate Finance Committee. HR 2267, introduced by Representative Frank (D-MA), was referred to the House Committees on Financial Services, Energy and Commerce, and Judiciary. On December 3, 2009, the House Financial Services Committee held a hearing on the measure.

- Internet Gambling Regulation and Tax Enforcement Act, HR 2268. On May 6, 2009, Representative McDermott (D-WA) introduced legislation that would legalize, license and tax Internet gambling (HR 2268). The bill would allow for the collection of tax revenues from licensed gambling businesses and gamblers who use them; impose a two percent tax on deposits into online wagering accounts; and provide consumer protections, including prohibiting access to minors and requiring operators to provide limitations and self-exclusion options for compulsive gamblers. HR 2268 was referred to the House Committee on Ways and Means.

- Reasonable Prudence in Regulation Act, HR 2266. On May 6, 2009, Representative Frank (D-MA) introduced legislation (HR 2266) that would extend from December 1, 2009, to December 1, 2010, the deadline for compliance with specified regulations prohibiting the funding of unlawful Internet gambling promulgated under the Unlawful Internet Gambling Enforcement Act of 2006. HR 2266 was referred to the House Committee on Financial Services, which held a hearing on the bill on December 3, 2009.

## HEALTH AND HUMAN SERVICES LEGISLATION

### HOUSE OR SENATE CONSIDERATION

*The bills below were introduced as free-standing legislation but then included in Senate and/or House approved Health Care Reform bills:*

- *Indian Health Care Improvement Act/Health Care Reform, HR 2708/S 1790/HR 3962/HR 3590*. On December 24, 2009, and November 7, 2009, the Senate and House, respectively, approved health care reform bills. The fate of reauthorization of the Indian Health Care Improvement Act (IHCIA) is tied to the efforts to enact national health care reform legislation. House and Senate-passed health care reform bills include differing IHCIA provisions.

*House*. On June 4, 2009, Representative Pallone (D-NJ) introduced HR 2708, a comprehensive IHCIA reauthorization bill. The bill was referred to the Natural

Resources and the Energy and Commerce Committees, both of which held hearings on the legislation. It was also referred to the Ways and Means Committee. Negotiations among those Committees on HR 2708 resulted in an amended version being included in the House health care reform bill, HR 3962 (Affordable Health Care for America Act). HR 3692 was approved by the House on November 7, 2009, by a vote of 220-215.

*Senate.* On October 15, 2009, Senator Dorgan (D-ND) introduced S 1790, an IHCA reauthorization bill that is narrower in scope than HR 2708, but which contains some provisions advocated by tribes which are not in the House version (see our General Memorandum 09-132 (October 16, 2009)). Negotiations among the Senate Committee on Indian Affairs (which approved S 1790 on December 3, 2009), the Finance and the Health, Labor, Pensions Committees led to the inclusion of an amended version of S 1790 in the Senate health care reform bill, HR 3590 (Patient Protection and Affordable Care Act). HR 3590 was approved by the Senate on December 24, 2009, by a vote of 60-39. (NOTE: The Senate used the vehicle of HR 3590, a bill that as introduced concerned homeownership tax credits, for its health provisions.)

As of this writing there is no final agreement on how to continue the process toward enactment of health care reform legislation.

- *7<sup>th</sup> Generation Promise: Indian Youth Suicide Act, S 1635.* Included in the Senate-passed health care reform bill is the text of S 1635, 7<sup>th</sup> Generation Promise: Indian Youth Suicide Act of 2009. The bill was introduced on August 6, 2009, by Senator Dorgan (D-ND). S 1635 was subsequently incorporated into S 1790, IHCA reauthorization, and then into HR 3590, the health care reform bill which was approved by the Senate on December 24, 2009.

S 1635 is a revised version of a bill from the 110<sup>th</sup> Congress (S 322), The Indian Youth Telemental Health Demonstration Project Act of 2007. S 1635 would broaden one of the grant eligibility requirements from being an emphasis on serving Alaska Native areas to tribal areas with a documented disproportionately high rate of suicide. Other changes include encouragement for tribes to obtain the services of predoctoral psychiatry and psychology interns and a provision that would give tribes priority consideration for Substance Abuse and Mental Health Services Administration (SAMHSA) grants. The text of this bill was included in the Senate-passed health care reform bill.

For additional information on S 1635, see our General Memorandum 09-114 (September 4, 2009).

- *Early Support for Families Act, HR 2667.* Included in the Senate and House-passed health care reform bills (HR 3962, HR 3590) are provisions that would fund evidence-based voluntary early childhood home visitations programs for families with young children and families expecting children. The goal is to improve parenting, prevent child abuse and neglect, and keep families in tact.

The home visitation provisions would amend Title IV-B (Child Welfare) of the Social Security Act. Funding would be a capped entitlement and thus not subject to the appropriations process. While both bills would allocate three percent of funds for tribes, the Senate bill would result in more funding for tribes – \$49.8 million versus \$20.6 million in the House bill over a five-year period.

The House language is the text of HR 2667, the Early Support for Families Act, which was introduced on June 2, 2009, by Representative McDermott (D-WA) and referred to the Ways and Means Committee.

- *Medicare Part D Prescription Drug Out-of-Pocket Threshold, HR 2777/S 1201*. Included in the Senate and House-passed health care reform bills is language from HR 2277 and S 1201, which would count costs incurred by the Indian Health Service and AIDS drug assistance programs toward the out-of-pocket Part D Prescription Drug program. The bills were introduced by Representative Holt (D-NJ) and Senator Bingaman (D-NM).

- *Eliminate the Sunset for Some Medicare Part B Reimbursements, HR 4313*. The Senate-passed health care reform bill contains a provision that would strike statutory provision which eliminated, as of December 31, 2009, the ability for certain Indian hospitals and clinics to collect reimbursement for some Medicare Part B services. This provision is not in the House-approved health care reform bill, but on December 15, 2009, Representative Don Young (R-AK) introduced legislation, HR 4313, that would do the same thing.

- *Exclusion From Gross Income of Medical Care Provided for Indians, HR 3608*. HR 3608, introduced on September 21, 2009, by Representative Xavier (D-CA), would exempt from income tax the value of health benefits supplied by a tribe to its members. The House and Senate-approved health care reform bills also call for this exemption.

- Caregivers and Veterans Omnibus Health Services Act, S 1963/S 658. On November 19, 2009, the Senate approved by a 98-0 vote, S 1963, the Caregivers and Veterans Omnibus Health Services Act of 2009. Included in this wide-ranging bill is the text of S 658, the Rural Veterans Health Care Improvement Act sponsored by Senator Tester (D-MT).

Section 307 of S 1963 is specific to Indian veterans. The Secretary of the Department of Veterans Affairs would be directed to establish American Indian health coordinators at the ten VA Medical Centers that serve the greatest number of Indian veterans per capita. The Medical Centers are to be surveyed from time-to-time with regard to updating the Indian veteran count. The Indian Veterans Health Care Coordinator is to engage in outreach to tribal communities, coordinate Indian veterans needs with the VA and the IHS, act as an ombudsman for Indian veterans enrolled in the VA health care system, and advocate for the incorporation of traditional medicine in the VA system. The bill envisions the integration of VA and IHS electronic health records and authorizes the VA to transfer to the IHS surplus VA medical and information technology. Within one year after enactment the VA and IHS are to submit a joint report to Congress on the feasibility and advisability of the joint establishment and operation by the VA and the IHS of health clinics on Indian reservations to serve veterans – Indian and non-Indian.

Section 512 of S 1963 is designed to assist tribal organizations in increasing domiciliary care, nursing home care, and hospital care for veterans. The bill would amend 38 U.S.C. § 8138 to allow a tribal health facility or certain beds in a facility to be treated as a state home and thereby be eligible for financial assistance through certain Department of Veterans Affairs programs. It also authorizes the VA Secretary to make grants to tribal organizations for construction or remodeling of facilities to provide domiciliary or nursing home care to veterans, adult day care, or in-home care to veterans. The provisions of Section 512 are the same as S 3000, the Native American Veterans Access Act of 2008, introduced by Senator Akaka in the 110<sup>th</sup> Congress.

On July 27, 2009, the House approved veterans health care legislation (HR 3155), the Caregivers Assistance and Resource Enhancement Act. It is not as expansive as the Senate bill and does not contain the tribal provisions described above. A House-Senate conference has not yet occurred on this legislation; the House could include other veterans' health bills in the conference negotiations.

House companion bills to S 658 are HR 2879 and HR 4006, both introduced by Representative Kirkpatrick (D-AZ).

#### COMMITTEE ACTION

- Tribal Health Promotion and Tribal Colleges and Universities Advancement Act, S 633. On December 3, 2009, the Senate Committee on Indian Affairs amended and approved S 633, legislation designed to bring increased health resources to tribal communities through the system of tribal colleges. S 633, introduced by Senator Tester (D-MT), would authorize DHHS to make grants to tribal colleges and/or enter into a cooperative agreement with the American Indian Higher Education Consortium for annual community-based health and wellness fairs at the tribal colleges. The bill would authorize an array of programs for the tribal colleges to expand public health degree and health research programs and to work with tribes on health promotion and disease prevention capacity. S 633 would also authorize a Tribal College and University Rural Health Equity Endowment Fund which would be used by the tribal colleges to endow a health professions workforce development program and the Native Prosperity Program which would focus on economic development in native communities.

#### BILLS INTRODUCED

- Rural Telemedicine Enhancing Community Health (TECH) Act, S 2741. On November 5, 2009, Senator Tom Udall (D-NM) introduced S 2741, the Rural Telemedicine Enhancing Community (TECH) Act of 2009. The bill is designed to improve and expand the use of telemedicine in rural areas, including Indian Country. It would authorize three telehealth pilot projects, expand access to telehealth services for strokes, and improve access to shared telehealth services. S 2741 was referred to the Senate Finance Committee. For additional information, see our General Memorandum 09-143 (November 20, 2009).

- Special Diabetes Program for Indians, HR 3668. On September 29, 2009, Representative DeGette (D-CO) introduced HR 3668, legislation to reauthorize the Special Diabetes Program for Indians (SDPI) and the Special Diabetes Program for Type I Diabetes. The bill would provide additional funds for both programs.

Under HR 3668 the SDPI would receive entitlement funds in the amount of \$200 million per year for fiscal years 2012 through 2016, which is \$50 million more than the current annual funding level. The existing SDPI authorization extends through fiscal year 2011. HR 3668 was referred to the Energy and Commerce Committee. For additional information see our General Memorandum 09-123 (October 2, 2009).

- Eliminating Disparities in Diabetes Prevention Access and Care Act, HR 1995/S 844. On April 21, 2009, Representative DeGette (D-CO) and Senator Lautenberg (D-NJ), introduced, respectively, HR 1995 and S 844, legislation designed to reduce the high incidence of diabetes within racial and ethnic minority groups, including American Indians and Alaska Natives. The National Institutes of Health and the Centers for Disease Control and Prevention would engage in a wide range of activities including conducting and coordinating research with respect to pre-diabetes, diabetes, and

treatment of diabetes in minority populations. Inclusion of minority health professionals in diabetes research and mentoring of minority health care professionals would be encouraged. The Health Resources and Services Administration (HRSA) would undertake a variety of education-related activities. The legislation would provide for increased health promotion and prevention diabetes programs and increased participation of minority populations in clinical trials. HRSA would be instructed to work through the Indian Health Service and in collaboration with other Federal agencies, to coordinate "the collection of data on ethnic and culturally appropriate diabetes treatment, care, prevention, and services by health care professionals to the American Indian population."

HR 1995 was referred to the Energy and Commerce Committee and S 844 was referred to the Health, Education, Labor and Pensions Committee.

- White House Conference on Children and Youth in 2010 Act, HR 618/S 938. On January 21, 2009, Representative Fattah (D-PA) introduced HR 618, legislation that calls for a White House Conference on Children and Youth in 2010. The 2010 White House Conference would be preceded by tribal, state and local conferences designed to encourage improvements in child welfare systems. Conferences on Native American child welfare issues would be designed to identify conditions that adversely affect Native American children in the child welfare system, to propose solutions to ameliorate such conditions, and provide for the exchange of information regarding delivery of services to Indian children and families who are in or at risk of entering the child welfare system.

On April 30, 2009, Senator Landrieu (D-LA) introduced companion legislation (S 938) which was referred to the Senate Health, Education, Labor and Pensions Committee. HR 618 was referred to the House Committee on Education and Labor.

## HOUSING LEGISLATION

### BILLS INTRODUCED

- Indian Veterans Housing Opportunity Act, HR 3353. On September 9, 2009, Representative Kirkpatrick (D-AZ) introduced legislation that would exclude veterans benefits from being counted as income for purposes of establishing whether an applicant is "low-income" for purposes of NAHASDA eligibility (HR 3353). Such a change would make more Indian veterans eligible for NAHASDA programs. The bill was referred to the House Committee on Financial Services.

- Public and Indian Housing Crime and Drug Elimination Program Reauthorization Act, S 1327. On June 23, 2009, Senator Johnson (D-SD) introduced legislation (S 1327) to reauthorize the Public and Indian Housing Drug Elimination Program (PIHDEP). The PIHDEP, operated by HUD, provided funds to fight drug use and drug-related crimes in public and Indian housing areas but was eliminated under the Bush Administration. Public housing authorities, tribally designated housing entities, and Indian housing authorities would be eligible to apply for PIHDEP grants; applications would be developed in coordination with local law enforcement agencies. Among the allowable funding uses would be providing access to treatment programs, after school activities, capital improvements and improved security.

S 1327 would reauthorize the program for five years and authorize \$240 million in FY 2010, rising incrementally to \$310 million in FY 2014. The bill was referred to the Senate Banking, Housing, and Urban Affairs Committee.

- HEARTH Act, HR 2523. On May 20, 2009, Representative Heinrich (D-NM) introduced legislation that would amend the long-term Indian land lease statute to allow tribes to take over the leasing review and approval function from BIA for tribal lands (HR 2523). Current law allows only the Navajo Nation the ability to lease restricted lands without the approval of the Secretary of Interior in specified circumstances. The bill, Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH) Act, was the subject of an October 21, 2009, hearing by the House Committee on Natural Resources.

- Hawaiian Homeownership Opportunity Act, S 72/HR 709. On January 6, 2009, Senator Inouye (D-HI) introduced the Hawaiian Homeownership Opportunity Act (S 72). This legislation would reauthorize Title VIII of the Native American Housing and Self-Determination Act (NAHASDA). S 72 would continue authorization of funding for construction of low-income housing for Native Hawaiians, and provide access to the loan guarantee program for construction of housing for Native Hawaiians. This standalone legislation was necessitated when Title VIII had to be dropped due to Senate Republicans objections in order for the NAHASDA reauthorization to move forward to enactment in 2008.

Representative Abercrombie (D-HI) introduced a companion measure (HR 709) on January 27, 2009, which was referred to the House Committee on Financial Services.

## JUSTICE LEGISLATION

### HOUSE OR SENATE CONSIDERATION

- Witness Security and Protection Grant Program Act, HR 1741. On June 9, 2009, the House passed by a 412-11 vote legislation that would establish a grant program to better protect witnesses in state and local cases (HR 1741, H.Rpt. 111-138). Currently state and local agencies are required to reimburse the federal witness protection program for eligible non-federal witnesses. Under HR 1741, states, tribes, and local governments could apply for competitive grants to establish short-term witness protection programs in cases involving homicide, a serious violent felony or serious drug offense. Priority would be given to applications from communities with an average of 100 murders annually for the past five years. The bill would also authorize assistance to state and local programs from the U.S. Marshals Service, which protects witnesses as part of the Federal Witness Security Program. The bill would authorize \$30 million each year for FYs 2010–2014 for the grant program. Representative Cummings (D-MD) is the bill's sponsor.

On February 25, 2010, the Senate Judiciary Committee approved an amended version of HR 1741.

- Managing Arson Through Criminal History (MATCH) Act, HR 1727/S 1684. On September 30, 2009, the House passed the Managing Arson Through Criminal History (MATCH) Act (HR 1727). The legislation would establish a national criminal arsonist and bomber registry; require jurisdictions, including federally recognized Indian tribes, to establish and maintain jurisdiction-wide criminal arsonist and bomber registries. Information from those registries would be fed into a national registry that would be maintained by the Attorney General. An Indian tribe would have to either carry out the provisions of the bill or enter into a cooperative agreement with another jurisdiction (such as a state) to carry out the MATCH Act mandates; failure to comply with the requirements could result in ten percent of Department of Justice Edward Byrne funds being withheld.

Representative Bono Mack (R-CA) sponsored HR 1727. Senator Feinstein (D-CA) introduced companion legislation, S 1684, which was referred to the Judiciary Committee. For additional information see our General Memorandum 09-126 (October 9, 2009).

- Indian Arts and Crafts Amendments Act, HR 725/S 151. On January 19, 2010, the House passed under suspension the Indian Arts and Crafts Amendments Act (HR 725, H.Rpt. 111-397 Part I). The Senate passed an identical version (S 151) on July 24, 2009. The bills would change current law that provides that the Federal Bureau of Investigation is the only law enforcement agency authorized to investigate the production and sale of counterfeit American Indian arts and crafts products. Instead, S 151/HR 725 would expand that authority to any federal law enforcement officer, and also provides that instead of criminal proceedings, an investigation could result in a recommendation that civil actions be brought – by the relevant tribe or federal government behalf of the tribe. The bills would also change the penalties for individuals or groups found guilty of knowingly selling counterfeit American Indian arts or crafts.

Representative Pastor (D-AZ) introduced HR 725. S 151 was sponsored by Senator McCain (R-AZ).

- COPS Improvements Act, HR 1139/S 167. On April 23, 2009, the House passed by a vote of 342-78 the COPS Improvements Act (HR 1139, H.Rpt. 111-78). The Community Oriented Policing Services (COPS) grant program, first authorized in 1994, provides grants to state, local and tribal governments to hire additional law enforcement officers and prosecutors. The bill would expand the authorized uses for funds in a number of ways, including: hiring or training officers to perform intelligence, anti-terror, or homeland security duties; hire school resource officers and establish local partnerships to combat crime, gangs, drug activities, etc., around elementary/secondary schools; hire forensic analysts and laboratory personnel; and a Troops to Cops program. HR 1139, sponsored by Representative Weiner (D-NY), would increase authorization for the COPS grant program from \$1.05 billion annually to \$1.8 billion per year for FYs 2009–2014. It would also authorize up to \$350 million per year for grants to law enforcement agencies to obtain or upgrade equipment and hiring forensic analysts and laboratory personnel.

Senator Kohl (D-WI) introduced a related measure (S 167), which was referred to the Senate Judiciary Committee.

#### COMMITTEE ACTION

- Juvenile Justice and Delinquency Prevention Reauthorization Act, S 678. On December 17, 2009, the Senate Judiciary Committee approved an amended version of the Juvenile Justice and Delinquency Prevention (JJDP) Reauthorization Act (S 678). The bill, introduced by Senator Leahy, would reauthorize the JJDP programs through FY 2015 at an authorized funding level of \$322.8 million in FY 2011 that would rise incrementally to \$525.2 million by FY 2015.

Among the bills provisions are: addition as grant purposes truancy prevention and reduction activities and mentoring; establishment of a grant program (authorized at \$23 million for FYs 2011-2013, \$8 million in FY 2014 and \$3 million for FY 2015) for qualified youth and family-serving organizations to provide services and programs for the prevention, control or reduction of juvenile delinquency; modification of provisions relating to the detention of juveniles awaiting trial in adult criminal court; and establishment of the National Commission on Public Safety Through Crime Prevention

that will conduct a comprehensive study of the effectiveness of certain crime and delinquency prevention and intervention strategies. Of interest to tribes is that S 678 would eliminate the requirement that Indian tribes applying for a JJDP grant provide evidence of performing law enforcement functions (Sec. 207).

- Tribal Law and Order Act, S 797/HR 1924. On September 10, 2009, the Senate Committee on Indian Affairs amended and approved the Tribal Law and Order Act (S 797, S.Rpt. 111-93), introduced by Senator Dorgan (D-ND). The Committee-approved bill reflects months of hearings and significant compromise among Committee members, the Administration, and tribal officials. Among the provisions of S 797 as approved are: requirement that the Department of Justice (DOJ) report on the disposition of cases; federal officials are not required to disclose "confidential or privileged or statutorily protected communication, information, or source[s]" to tribal officials; federal option (not required) to "coordinate with the appropriate tribal law enforcement officials about the use of evidence;" increased sentencing authority for tribal courts and clarification that tribal courts could charge offenders with multiple crimes and require consecutive sentences where the elements of the crime are different; and would allow use of Community Oriented Policing Services (COPS) program funds to cover indirect costs.

The House companion bill (HR 1924) was introduced by Representative Herseth Sandlin (D-SD) in April 2009, and referred to House Committees on Judiciary; Natural Resources; Energy and Commerce; and Education and Labor. For additional information see our General Memoranda 09-116 (September 18, 2009); 09-86 (July 1, 2009); and 09-41 (April 10, 2009).

#### BILLS INTRODUCED

- Justice for Survivors of Sexual Assault Act, S 2736. On November 5, 2009, Senator Franken (D-MN) introduced legislation (S 2736) designed to help survivors of sexual assault and bring their assailants to justice. The bill specifically addresses the issue of the huge backlog of DNA evidence collected in rape kits which have not undergone forensic analysis, also referred to as "untested" rape kits. S 2736 would penalize state and local governments, via reduction of Department of Justice (DOJ) Edward Byrne grants, for failure to clear up their rape kit backlog and reward them for making progress in this area. Lost monies could be reclaimed upon showing of significant progress. Law enforcement agencies would be required to report on their reductions of rape kit backlogs, and the DOJ would annually report on the number of untested rape kits collected by tribal and other law enforcement agencies.

The bill would require coordination with regional health care providers to notify victims of sexual assault of the availability of rape exams at no cost. The Violence against Women Act and the Omnibus Crime Control and Safe Streets Act would be amended to include training of health professionals to administer rape kit exams.

Senator Franken, in his introductory statement, noted the disproportionately high amount of sexual violence against Native American women, and included in the bill a required study by the Comptroller General on the availability of sexual assault nurse examiners and trained examiners at IHS facilities operated pursuant to Indian Self-Determination agreements. The study, to be completed within one year, is to make recommendations regarding increasing the availability of sexual assault nurse examiners and trained examiners in the IHS system. S 2736 was referred to the Judiciary Committee.

- Criminal Code Modernization and Simplification Act, HR 1772. On March 26, 2009, Representative Sensenbrenner (R-WI) introduced the Criminal Code Modernization and Simplification Act (HR 1772). Representative Sensenbrenner has noted that HR 1772 is similar to the criminal code reform bills he introduced in the 109<sup>th</sup> and 110<sup>th</sup> Congresses in that it would reduce the criminal code by over one-third; reorganize the code to make it more user-friendly; consolidate criminal offenses from other titles so that Title 18 includes all major criminal provisions; create a uniform set of definitions for the entire criminal code; and eliminate criminal offenses that have not been used in the last 30 years or are subsumed by other criminal offenses. Chapter 27 (Crimes Related to Federal Government Responsibilities), Subchapter C—Indians, covers the following:

- Sec. 871. Indian Country defined.
- Sec. 872. Laws governing.
- Sec. 873. Offenses committed within Indian Country.
- Sec. 874. State jurisdiction over offenses committed by or against Indians in Indian Country.
- Sec. 875. Embezzlement and theft from Indian tribal organizations.
- Sec. 876. Theft from gaming establishments on Indian lands.
- Sec. 877. Theft by officers or employees of gaming establishments on Indian lands.
- Sec. 878. Reporting of child abuse.
- Sec. 879. Illegal trafficking in Native American human remains and cultural items.

Other sections of the bill reference tribes, tribal law, Indian Country, etc., including, but not limited to, those under Domestic Violence, Theft and Related Crimes, and Child Support. HR1772 was referred to the House Judiciary Committee.

### **TRIBAL AND ALASKA NATIVE SPECIFIC LEGISLATION** HOUSE OR SENATE CONSIDERATION

- White Mountain Apache Tribe Water Rights Quantification Act, HR 1065/S 313. On January 21, 2010, the House approved HR 1065, legislation that would authorize, ratify and confirm the White Mountain Apache Tribe Water Rights Quantification Agreement. The Findings section of the bill states that pending court action on the water rights would take many years, be very expensive, and impair the long-term economic well-being of all involved parties. Included in the bill are provisions directing the Secretary of Interior to enter into a contract with the Tribe for water rights in certain counties and develop a rural water system for the Tribe. The Secretary is to provide funding to the Tribe for the completion of various lake projects and conduct a study on how to improve forest management practices and use of timber productions on the Reservation.

The House Natural Resources Committee approved HR 1065 on January 12, 2010 (H.Rpt. 111-391) and the Senate Committee on Indian Affairs approved S 313 on September 10, 2009 (S.Rpt. 111-119). Both committees approved a significant number of amendments to the legislation in response to Department of Interior concerns.

- Aamodt Litigation Settlement Act, HR 3342/S 1105). On January 21, 2010, the House approved by a vote of 249-153 legislation (HR 3342) that would ratify the Aamodt Settlement, which deals with the agreements reached by the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque with the State, city, county and the United States regarding water rights and interests of the various parties. The bill would also address

development and implementation of a regional water system and would establish the Aamodt Settlement Pueblos Fund, authorized at \$57.5 million.

The Senate companion bill (S 1105), sponsored by Senator Bingaman (D-NM), was approved by the Senate Committee on Indian Affairs on September 10, 2009 (S.Rpt. 111-115). Representative Lujan (D-NM) is the sponsor of the House bill.

- Taos Pueblo Indian Water Rights Settlement Act, HR 3254/S 965. On January 21, 2010, the House approved by a vote of 254-158 legislation (HR 3254) to ratify the Taos Pueblo Indian Water Rights Settlement between the United States, Taos Pueblo, New Mexico, and other affected parties. Elements of the agreement describe, among other things, Taos Pueblo water rights, financial assistance to be provided for water infrastructure and eligibility of non-Pueblo entities for certain projects. The bill would provide for the establishment of the Taos Pueblo Infrastructure and Watershed Fund (\$30 million), Taos Pueblo Water Development Fund (\$58 million), and Mutual-Benefit Projects Funding (\$33 million).

The House Natural Resources Committee marked up HR 3254 on September 30, 2009 (H.Rpt. 111-395). The Senate companion measure (S 965), sponsored by Senator Bingaman (D-NM), was approved by the Senate Committee on Indian Affairs on September 10, 2009 (S. Rpt. 111-117). Representative Lujan (D-NM) is the sponsor of the House bill.

- Tule River Tribe Water Development Act, HR 1945/S 789. On July 8, 2009, the House approved by a margin of 417-3 legislation (HR 1945) that would require the Bureau of Reclamation to complete a feasibility study to evaluate alternatives for a domestic, commercial, municipal, industrial, and irrigation water supply for the Tule River Indian Tribe of California. Water supplies would be prohibited for projects constructed relative to the feasibility study from being used for the Tribe's current and future casino and facilities that support a casino. Representative Nunes (R-CA) is the bill's sponsor.

Companion legislation, S 789, was introduced by Senator Feinstein (D-CA). On July 23, 2009, the Senate Energy and Natural Resources Subcommittee on Water and Power held a hearing on the bill.

- Cocopah Lands Act, HR 326. On March 2, 2009, the House passed the Cocopah Lands Act (HR 326). The bill, introduced by Representative Grijalva (D-AZ), would require the Secretary of Interior to take land previously purchased by the Tribe into trust for the Tribe. The land is to be considered part of the Tribe's original reservation but would not be eligible for use for gaming purposes. HR 326 would require that the lands for which the titles are to be taken into trust must have no adverse legal claims, including liens, mortgages, or owed taxes. In addition, as requested by the Department of Interior, the lands at the time of transfer must have "no recognized environmental conditions or contamination related concerns." On April 2, 2009, the Senate Committee on Indian Affairs held a hearing on this legislation.

#### Committee Action

- Salmon Lake Land Selection Resolution Act, S 522/HR 2340. On December 16, 2009, the Senate Energy and Natural Resources Committee approved an amended version of S 522, legislation introduced by Senators Murkowski (R-AK) and Begich (D-AK) which would ratify an agreement among the Secretary of Interior, the State of Alaska and the Bering Straits Native Corporation. The agreement reached in

2007 would resolve conflicting land selections between the State and Corporation in the area around Salmon Lake, which is 38 miles north of Nome. The window for ratifying this agreement closes after 2011. Representative Young (R-AK) introduced companion legislation (HR 2340).

- Hoh Indian Tribe Safe Homeland Act, S 443/HR 1061. On October 21, 2009, the House Natural Resources Committee approved legislation (HR 1061, H.Rpt. 111-306) that would take into trust for the Hoh Tribe certain non-federal lands now held by the Tribe and 37 acres which are currently administered by the National Park Service. The Tribe is working to obtain contiguous pieces of land from various sources that will be outside the flood zone of their Reservation. Currently 90 percent of the Reservation is in a flood zone. The bill would prohibit the placement of buildings, logging, hunting, and gaming on the Park Service lands that are to be held in trust for the Tribe. The Committee adopted amendments to the bill as introduced concerning the repair and maintenance of the access road on the land that is being transferred. Additionally an amendment was adopted that requires an environmental assessment on the State and private lands acquired by the Tribe prior to their being taken into trust for the Tribe. Representative Dicks (D-WA) is the sponsor of HR 1061.

On August 6, 2009, the Senate Committee on Indian Affairs approved companion legislation (S 443) introduced by Senator Murray (D-WA).

- Spokane Tribe Grand Coulee Dam Equitable Compensation Settlement Act, S 1388/HR 3097. On September 10, 2009, the Senate Committee on Indian Affairs approved S 1388, legislation introduced by Senator Cantwell (D-WA) that would provide compensation to the Spokane Tribe for the use of land associated with the Grand Coulee project. The legislation would provide a \$99.5 million fund for the Tribe over the next five years. Within the total, \$5 million would be earmarked for the Spokane Tribe to build and maintain a Cultural Resource Repository and Interpretive Center. The bill would also provide for a transfer of land from the Bureau of Reclamation (BOR) to the Tribe of BOR lands within the Spokane Tribe's boundaries, although National Park lands would not be transferred. S 1388 would settle the Tribe's claims over a portion of the revenue produced by the Dam.

On June 26, 2009, Representative Inslee (D-WA) introduced companion legislation (HR 3097).

- Crow Tribe Water Rights Settlement Act, S 375/HR 3563/HR 845. On September 10, 2009, the Senate Committee on Indian Affairs approved legislation that would ratify a water rights compact between the Crow Tribe and the State of Montana (S 375, S.Rpt. 111-118). The bill, introduced by Senator Tester (D-MT), would set forth the Tribe's water rights or allocation from the Bighorn River; grant the Tribe exclusive rights to a water development project on the Yellowtail Afterbay Dam; establish requirements that the Bureau of Reclamation must meet regarding the Crow Irrigation Project and a water delivery system to service communities, businesses and rural homes throughout the entire reservation; and authorize funding for the Crow Settlement Fund (\$197 million), the Crow Irrigation Project (\$160 million) and design and construction of the MR&I system (\$200 million). The Committee made a number of amendments to the bill as introduced, partly in response to concerns expressed by Senator Barrasso (R-WY) regarding the bill's potential impact on Wyoming.

Representative Rehberg (D-MT) introduced two Crow Tribe water settlement bills, HR 845 on February 4, 2009, and HR 3563 on September 15, 2009. There was a

Natural Resources Subcommittee on Water and Power hearing on these bills on September 22, 2009.

### Bills Introduced

- Kalispel Puyallup, and Swinomish Tribes Leases, HR 4401/S 2906. On December 16, 2009, legislation (HR 4401) was introduced by Representative Adam Smith (D-WA) that would amend the Act of August 9, 1955 (25 U.S.C. § 415(a) and (b)) regarding leases for the Kalispel, Puyallup and Swinomish tribes. Companion legislation (S 2906) was introduced on December 18, 2009, by Senator Cantwell (D-WA).

- Utah Navajo Trust Fund Act, HR 4384. On December 16, 2009, Representative Matheson (D-UT) introduced legislation (HR 4384) which would establish a Utah Navajo Trust Fund Commission. Commission members would be elected by the Utah Navajo Chapters. A Trust Fund Administrator would be chosen by the Commission. Within 90 days after the selection of a Trust Administrator, the State of Utah is to prepare an audit and accounting of the Trust assets in the Utah Navajo Trust Fund as established and administered by the State of Utah prior to enactment of this bill.

- Pechanga Band of Luiseno Mission Indians Water Rights Settlement Act, HR 4285/S 2956. On December 11, 2009, Representative Bono Mack (R-CA) introduced legislation (HR 4285) to implement a water rights settlement among the Pechanga Band of Luiseno Mission Indians and several California water districts. The legislation would guarantee the Tribe 4994 acre-feet of water per year and establish the Pechanga Settlement Fund consisting of \$6.9 million for a Water Infrastructure Account, \$17.9 million for a Delivery Capacity Account and \$25 million for a Water Fund Account. The bill would require the Tribe to develop a water code regarding the regulation of water uses and requirements and limitations relating to the storage, recovery and use of water.

On January 26, 2010, Senator Boxer (D-CA) introduced companion legislation (S 2956).

- Confederated Tribes of the Siletz Lease, HR 4010. On November 3, 2009, Representative Schrader (D-OR) introduced legislation (HR 4010) that would amend the Act of August 9, 1955 (25 U.S.C. 415(a)) to authorize the Confederated Tribes of the Siletz Indians to obtain 99-year lease authority for trust land.

- Transfer of Authority and Resources to the Utah Dineh Corporation, S 1690. On September 21, 2009, Senator Bennett (R-UT) introduced legislation (S 1690) which would designate the Utah Dineh Corporation as the new trustee of the Utah Navajo Trust Fund. At a Senate Committee on Indian Affairs hearing on December 9, 2009, the Navajo Nation testified in strong opposition to the bill while the Utah Dineh Corporation spoke in favor of it.

- Tribal Leases, S 1448. On July 14, 2009, Senator Merkley (D-OR) introduced legislation (S 1448) that would amend the Act of August 9, 1955 (25 U.S.C. § 415(a)) to authorize the Coquille Indian Tribe; Confederated Tribes of Siletz Indians; Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw; Klamath Tribes; and the Burns Paiute Tribe to obtain 99-year lease authority for trust land.

- Ft. Peck Reservation Rural Water System, HR 3143. On July 9, 2009, Representative Rehberg (R-MT) introduced legislation (HR 3143) to extend through

FY 2015 the authorization of appropriations for the Assiniboine and Sioux Rural Water System and the Dry Prairie Rural Water System.

- Pine River Indian Irrigation Project, S 1264/HR 3061. On June 15, 2009, Senator Mark Udall (D-CO), introduced legislation (S 1264) that would direct the Secretary of Interior to conduct a study assessing the irrigation infrastructure of the Pine River Indian Irrigation Project in Colorado. The Secretary would develop a prioritized list, in consultation with the Southern Ute Indian Tribe, of recommended repair-rehabilitation-reconstruction projects that could be performed over a ten-year period. The bill would authorize \$10 million per year in each of FYs 2010-2015 to be provided via grants or cooperative agreements to the Tribe for implementation of the recommended projects. Also authorized is \$4 million for the study required by the legislation.

Representative Salazar (D-CO) introduced companion legislation (HR 3061) on June 25, 2009.

- Cherokee Nation Termination, HR 2761. On June 8, 2009, Representative Watson (D-CA) and several members of the Congressional Black Caucus introduced legislation to sever the Federal governmental relationship with the Cherokee Nation. HR 2761 is a response to the position of the Cherokee Nation that it possesses the right to determine its membership, including the right to terminate membership of the lineal descendants of persons enrolled on the "Freedmen" rolls of the Cherokee Nation during the allotment process in the early 1900's. The "Freedmen" are descendants of slaves owned by Cherokees prior to the Civil War. These former slaves were given tribal citizenship under the U.S.-Cherokee Treaty of 1866. This and related issues regarding Federal approval authority over tribal constitutional amendments are under consideration by the Bureau of Indian Affairs and the Department of Justice as well as two pending federal lawsuits and a Cherokee tribal court case. On April 30, 2009, six House Chairmen and Congressional Black Caucus members wrote Attorney General Eric Holder asking him to investigate the Freedmen dispute. To date, the Department of Justice has not launched an official investigation.

HR 2761 would provide a "conditional" termination, based on the requirement that if the Tribe allowed full tribal citizenship to the Freedmen, the governmental relationship would be reinstated. The bill would require every agency to cut any Federal assistance to the Cherokee Nation, require an annual report from each agency to the Congress confirming that the Nation had been "cut off," and would also revoke the Nation's right to conduct gaming or "administer any funds from gaming." See our General Memoranda 09-068 (June 2, 2009) and 07-090 (July 3, 2007) for additional information.

- Southeast Alaska Native Land Entitlement Finalization Act, HR 2099/S 881. On April 23, 2009, Representative Young (R-AK) introduced legislation (HR 2099) which would allow Sealaska, the regional corporation for Southeast Alaska, to select its remaining land entitlement under Section 14 of the Alaska Native Claims Settlement Act (ANCSA) from designated Federal land in Southeast Alaska. The legislation would authorize Sealaska to select its remaining ANCSA land entitlement, around 78,000 acres, from a pool of land outside the existing withdrawal areas established in ANCSA, a majority of which is on Forest Service lands which has second-growth timber land. This bill was slightly altered from previous legislation to reflect comments and concerns of communities in Southeast Alaska. Senator Murkowski (R-AK) introduced companion legislation (S 881) which was referred to the Energy and Natural Resources Committee.

- Land into Trust for Samish Indian Nation, HR 2040. On April 22, 2009, Representative Larsen (D-WA) introduced legislation (HR 2040) that would direct the Secretary of Interior to process as on-reservation acquisitions certain property in Skagit County, Washington, to be held in trust for the Samish Indian Nation. The land could not be used for gaming purposes. On June 3, 2009, the House Natural Resources Committee held a hearing on the bill.
- Fountainhead Property Land Transfer Act, HR 1554. On March 17, 2009, Representative Boren (D-OK) introduced the Fountainhead Property Land Transfer Act (HR 1554). The bill would authorize the Secretary of Interior to take into trust 18 acres of Federal land in McIntosh County, Oklahoma, for the Muscogee (Creek) Nation. The legislation provides that the Tribe would pay to the Secretary the fair market value of the property and would also pay for the land survey and all other expenses associated with the transfer of property.
- Lower Brule and Crow Creek Tribal Compensation Act, HR 1562/S 617. On March 17, 2009, Representative Herseth Sandlin (D-SD) and Senator Johnson (D-SD) introduced the Lower Brule and Crow Creek Tribal Compensation Act (HR 1562 and S 617). The legislation would provide final settlements payments to the Tribes for damages from the Pick-Sloan Missouri River Basin Program. The Lower Brule Tribe would receive \$129.82 million and the Crow Creek would receive \$69.22 million under the settlement.
- Rio Grande Pueblos Irrigation Infrastructure Improvement Act, HR 924. On February 12, 2009, Representative Lujan (D-NM) introduced legislation (HR 924) that would rehabilitate and repair the Pueblo irrigation infrastructure in the Rio Grande Basin. The bill would require the Bureau of Reclamation to conduct a study assessing irrigation infrastructure and develop a prioritized list of recommended repair, rehabilitation and reconstruction projects that could be performed over a ten-year period. The bill would authorize \$4 million for the infrastructure study. An additional \$6 million each year in FYs 2010-2019 would be authorized for grants to the 18 Pueblos of the Rio Grande Basin for implementation of the recommended projects.
- World War II Alaska Territorial Guard Military Retirement Benefits, HR 744/S 342. On January 28, 2009, Representative Young (R-AK) introduced legislation (HR 744) which would treat as active service membership in Alaska's Territorial Guard (ATG) during World War II in determining military retirement benefits. The Department of Defense's decision to suspend ATG retirement benefits to 26 elder Native Alaskans created controversy and spurred this legislation. Senator Murkowski (R-AK) and Senator Begich (D-AK) introduced identical legislation (S 342) which was referred to the Senate Committee on Armed Services. HR 744 was referred to the House Committee on Armed Services.
- Crow Tribe Land Restoration Act, S 280. On January 16, 2009, Senator Baucus (D-MT) introduced the Crow Tribe Land Restoration Act (S 280). The bill is designed to address the growing problem of fractionalization of land. It would direct the Secretary of Interior to establish a loan program to assist the Crow Tribe in purchasing from eligible individuals land and interests in land within the Crow Reservation. Purchased land would be held in trust for the benefit of the Crow Tribe and allow the Tribe to assume management of the land and interests in the land.

## OTHER LEGISLATION

### HOUSE OR SENATE CONSIDERATION

- Honoring Geronimo Resolution, H.Res. 132. On February 23, 2009, the House passed a resolution that honors Apache leader Geronimo, and recognizes the 100<sup>th</sup> anniversary of his death. H.Res. 132 was introduced by Representative Grijalva (D-AZ).

### COMMITTEE ACTION

- "Carcieri Fix" Legislation, S 1703/HR 3697/HR 3742. On December 17, 2009, the Senate Committee on Indian Affairs approved an amended S 1703, legislation that would amend the Indian Reorganization Act (IRA) to ensure that the DOI can take land into trust for all federally recognized tribes, regardless of when they were recognized. The bill (aka "Carcieri Fix") is intended to remedy the U.S. Supreme Court decision in *Carcieri* which held that tribes recognized after 1934 are not eligible for land in trust under the IRA, 25 U.S.C. § 461, unless they were "under Federal jurisdiction" as of 1934. S 1703 was introduced by Senator Dorgan (D-ND) in September 2009.

House versions of the "Carcieri Fix" legislation were introduced by Representative Cole (R-OK) as HR 3697 on October 1, 2009, and HR 3742 by Representative Kildee (D-MI) on October 7, 2009. The House Natural Resources Committee held a hearing November 4, 2009, on HR 3697 and HR 3742.

For additional information, see our General Memoranda 09-20 (March, 4, 2009) and 09-122 (October 2, 2009).

### BILLS INTRODUCED

- Department of Interior Tribal Self-Governance Act, HR 4347. On December 16, 2009, Representative Boren (D-OK) introduced legislation (HR 4347) to amend Title IV of the Indian Self-Determination and Education Assistance Act, which governs Self-Governance agreements with the DOI. Tribes have long sought amendments to Title IV to ensure consistency with Title V, the Self-Governance authority under the Department of Health and Human Services to broaden and clarify the scope of compactable programs—particularly with the non-BIA agencies within the DOI, and to establish clear timelines and criteria for consideration of tribal proposals.

Other amendments would prohibit agency attempts to impose unauthorized terms in compacts or funding agreements, and provide an appeal process and burden of proof for tribes challenging an agency decision.

- National American Indian Veterans, Inc., HR 3349/S 1520. On July 27, 2009, Representative Herseth Sandlin (D-SD) and Senator Johnson (D-SD) introduced HR 3349 and S 1520, respectively, which would provide for the establishment of and grant a Federal charter to National American Indian Veterans, Incorporated. The organization would promote the social welfare of and advocate on behalf of American Indian, Alaska Native and Native Hawaiian veterans and their families. It would engage in outreach to tribes in regions without veterans committees and in training of Tribal Veterans Service Officers. The bills were referred to the Judiciary Committees.

- Honoring Lois Burton, H.Res. 253. On March 17, 2009, Representative Boren (D-OK) introduced House Resolution 253 that would, in honor of Women's History Month, recognize the contributions of Lois Burton of the Choctaw Nation. Ms. Burton

was lauded for her "dedication to the Choctaw Nation, to the State of Oklahoma, and to the improvement of health care and education services in [Oklahoma]."

- House Committee on Indian Affairs, H.Res. 48. On January 9, 2009, Representative Rehberg (R-MT) introduced legislation that would amend the Rules of the House of Representatives to establish a Committee on Indian Affairs. H.Res. 48 was referred to the House Committee on Rules.

Please let us know if we may provide additional information regarding legislation reported on in this Memorandum.

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