

SCIA Senate Bill 1439 Consultation
Rapid City, SD
9:25-2:00p
August 25, 2006

Alison Binney commences meeting. Explained the status of the bill, and how the bill reached the current consultation process and how Committee staff came to look for comments from Indian Country. We want to go over bill and bring comments to administration before September, and get passed in September if possible, so we need to get bill restructured to make it feasible. We will start with the easier sections, Titles V and VI.

Q: Does Title I have anything to do with the Black Hills land claims? We don't like the actual title of Title I, it might speak to other land claims when we think it shouldn't.

A: This has nothing to do with Black Hills land claims, but we will make sure that this doesn't affect those land claims.

David Mullon, on Titles V and VI:

Thanks for the invitation and please do give us your comments. Though time is short, if you can send in any comments to us with whatever means you have.

The reason we start with TV and TVI, is there are few objections from those other than the administrations. TV would reorganize the BIA and OST significantly. In terms of internal structure of BIA, in regional and agency offices, it wouldn't change. The Assistant Secretary of Indian affairs would be elevated to Under-Secretary of Indian Affairs. This person would report directly to the Secretary of the Interior. The OST would be phased out by the end of 2008. There would be no office of OST as of Jan 1, 2009. All the functions would be merged in Under Secretary's authority. There would be no separate office anymore, but the functions would still be carried out.

Q: Will the Bush admin propose this bill? Will the BIA office in Rapid City close?

A: They are actually opposing it, we are proposing it. That (office closing) would be up to the Under Secretary. If the transition isn't complete, there are provisions to extend the programs for one more year.

Comment: Resolutions of Oglala: Abolish BIA office here, the government treats us as wards and we are fed up with the way they treat us at Pine Ridge. (Resolutions dropped off to AB and DM)

DM: We propose that there be a new position in Inspector General's office, that of assistant inspector general that covers Indian Country.

Q: Sec. 503-the Under-Secretary appointment is made by president, but there is an exception to who can be appointed. Who is the assist secretary that might be in this position? Ross Swimmer?

A: It is unlikely, but possible. The President could place him in there. But the position (Assistant Secretary) is vacant right now.

Comment: Tribes ask for elevation of Assistant Secretary to Deputy, and be in charge of Indian Affairs. What the BIA has become is totally different than we wanted. Title V seems to only change the location of the duties leaving the problems still in place (social services, law and order, etc), this does nothing to restructure to the benefits to tribes. The other elements that we believe are essential trust functions must be considered in the process, and the responsibility to the tribes isn't being looked at. Where can we find those opportunities? Unless its word specific in bill, it isn't going to happen.

DM- The opportunity may lie in the person who is appointed to the position.

DM- Title VI. This would cause the inspector general to conduct an audit of Indian accounts. One of the changes would be that the department would have to devise and implement an accounts receivable system which is a key part in the problem for tracking funds. This is perceived as a flaw in the system. The audit would have to be approved and shown to GAO. Though this is a shorter title, the administration isn't too keen on this.

AB-This is a part of the Cobell lawsuit that the plaintiff asked for.

Q: How opposed is the admin to this?

A: Not sure, but we know they don't like it. It presents a lot of work; there is a lot of land and accounts. They have some arguments, but they don't seem to hold much water. We might have to give them the opportunity to gradually develop something, rather than make them change the next day. This accountability could help prevent this from happening again though, so it is necessary for them to see.

Q: Why was inspector general rather than Secretary given the contracting authority?

A: There is a little more independence in the office, and not directly tied to the department.

DM-Moving on to Title II:

This would set up a commission that would look at how DoI conducts Indian Trust. They would look at laws, structures, and regulations in government and really take a look at how they work and see if it needs change. There is no enforcement authority, the commission only makes recommendations. The commission would be comprised of experts. The report, given to Congress, would contain recommendations and proposals to change the way business is handled. The time frames would be short, and they would consult with tribes.

Standards would be placed, but there is some controversy in this. Broad standards might be a bad idea, though Cobell asks for it. This commission would essentially take a look at how business is run and if it needs to be changed.

TIII: Indian Trust Asset Management Demonstration Project.

Title is meant to be available to do different things, regionally, in Indian Country. We upped number of projects to 50 participatory tribes. TIII would be a title that could service tribes from self-governance to direct-service. It is the tribe's choice what they

wanted to do. They (direct service tribes) could negotiate an agreement that would change the distribution and prioritize trust money funds and services. It would engage tribes in reservation-wide land-use planning. Any trust activity resources can be reallocated.

Q: Here you are giving tribes authority over individual allotted land. We want the sovereignty, but we don't want land owners abused by bully tribal government.

A: We understand that and agree. Secretary isn't given authority to approve any agreement, it can't be unfair to allottees. Secretary would have to ensure that a due process would be in place for allottees, so they could go to the Secretary if they were being discriminated against. There is no clear path for due process now.

Q: What about federal employees leasing and utilizing the land? Used to be policy that the employees couldn't do business on own land, a conflict of interest, but it runs rampant now.

A: This title doesn't address this directly. There is a leasing provision there...the conflict of interest is noted and was accounted for. We will look into the issue further, but please feel free to provide us any suggestions on how to deal with this situation.

Q: Tribal applications are first-come, first-served. Have you considered any other selection criteria?

A: We bumped the number up to 50. But you don't need an expensive lawyer to get in the door, you just need a simple notice of intent. But the plan would need to be more extensive after initial intent. We thought about including different criteria, but felt that would encourage/require to have to hire attorneys or other experts to draft the initial application, and we wanted to make it easy for tribes interested in this program to apply for it.

Q: How about other criteria such as land base, # of IIM accounts.

A: The problem is that time would come into play and would make the process much more competitive, and perhaps give an unfair advantage to tribes with more monetary resources available to hire professionals to draft their proposals. A simple notice would allow all tribes, regardless of economic status and availability, equal opportunity to participate in the project.

Comment from audience:

Tribes that don't have highly fractionated land or large numbers of allottees are controlling the current system and we don't want that.

A: We want to keep the process semi-generic and give space to create the right program for each reservation. If you think there should be some preference in the program, please let us know.

1. Response: We thought this project would be best served for larger, land based tribes who have less money and resources. There should be preference for tribes who need the help the most.

Q: RE: Due process of individual Indians, and how they can petition to secretary. To what degree is this overkill, that this allows the asst secretary to exert authority over internal tribal matters. Might be a dangerous mechanism that could allow the BIA into tribal procedures. The petition process allows for this. Individuals who think the tribe is overstepping their bounds, and then they might be able to go all the way to Secretary of Interior who can directly affect tribal laws.

Q: There may be instances where tribal courts are not organized in a manner that will adequately protect the due process rights of individuals. Why not have sec designate forum rather than tribal court?

A: We want individuals to have some power and ensure that their rights are protected, and this is where a lot of the concern comes from. This is a good opportunity for individuals (allottees) to get a due process procedure.

Suggestion: Interior (Indian) court of appeals- add in 'A' in , after federal laws (Sec 304 (c) (A) applicable laws, standards, trust responsibility)

-Why not have it go through negotiated rule-making? Reg-Neg. The plan must have an independent forum, because it is a business.

Comment:

-Under 304, leasing authority: it does burden direct service tribes. If you are making an assessment under 3, two isn't necessary.

DM: Direct service tribes wouldn't want to take this on, at least we assumed this.

Under 305-the 'failure to promulgate' that this needs to be done under neg rulemaking.

DM: it can be a good thing, but if there is disagreement than this process will drag on indefinitely.

If this can be crafted toward neg rulemaking, that would be good...

Sec 308a- gov't should not be released from liability.

DM: gov't only released from actions of tribes. If they are liable, then they want decision making authority, which is what we got now. The government doesn't want to be responsible for bad decisions tribes may make. Thus, the government will be liable for the decisions it makes, and tribes will be liable for decisions made by the tribe.

Comment: though neg rulemaking can be burdensome, there have been some good things that come out of it in the end.

DM: hard to predict if neg rulemaking will go smoothly. But I feel that it may.

Title IV: Fractionation

The Administration strongly feels that the problem of fractional interests needs to be addressed under the umbrella of trust reform. The requirement is fairly straightforward: if there is going to be a settlement, then the bill needs to include some changes to the fractionation issue. Need to clean up one of the sources that caused Cobell. This also goes to economic concerns, and leasing concerns. Resources are being consumed by the BIA in dealing with fractionation: probate, whereabouts unknown, etc. As far as

appropriations are concerned, administering some of these highly fractionated lands is not cost effective.

Q: Under ILCA, spending a lot of money in lands that aren't tribal lands, so where is the savings? You are treating the lands, moving them to another ownership status, but still administering them the same. If you transferred them to tribal lands, then it would decrease the money that you spend on the land.

DM: The costs of the administration. If you unify title, it would be easier to deal with it. We aren't proposing to stick with the current situation.

Comment: what this would do (land buyout), is take away land from Indians who might not have anything else. Go back to termination act. How about Dawes Act, have government go back and buy land and give back to Indians.

A: We don't want Indian land moved to non-Indians. But how do you change the land ownership problem? Termination Act was the first item discussed. The problem is that the price to administer the land interests only rises and takes away from other Indian programs.

DM: to deal with multiple ownerships, a potential solution is a cooperative. The core purpose being the consolidation of interests. Title would be unified, and shareholders would receive revenues from the lands in the cooperative. Or, exchange your shares to own individual tracts of land. This is one of the ideas that came out of a recent brainstorming session on the matter (see NCAI write up).

Comment: I support this idea, it could cure a lot of problems of fractional interest. This is a good way for families to retain ownership, we could get support for this. There are many reasons for this, a lot of people who live off-reservation would still have connection to the land. We could do this as a family corporation as well. How about looking at partitioning lands that are out there that are less desirable?

DM: Take a look at the American Indian Probate Reform Act, and the family trust provision in there. Admin didn't like it, it was a good idea but it wasn't done to a depth that it could have been. It could be a great vehicle to maintain individual connection to land while being able to work with land. We would prefer this idea to buying out tracts to tribe.

Comments:

-We, as tribes, don't think this way (fractionation, individual land ownership, etc), you need to be able to think about the way we are/were.

-Don't forget the tribal governing bodies. Let them figure out how to deal with fractionation.

-we aren't solving the problem. And everything that was in this bill, and the 1934 IRA, didn't have enough regulation.

-a pattern we see, is that are so many different tensions, and we are working with a limited land base...we need to think about the dynamic way of expanding our land base and solutions to do so.

- We need to take on the opportunity (e.g. cooperative) to step out of poverty, and need to move to the future. We respect our heritage, but we need to be able to take these steps and work to preserve our culture through evolution.
- why should one have to buy their own land back? If relatives agree, is there a problem? Set up the ability to transfer lands.
- we, as Indian people, want an easy process to put land into trust. Can we put that into the bill, make it a part of the agreement?
- We need to get authority at the local level, too much bureaucracy in DC is slowing things down near tribes.
- You would get broader support if there were mechanisms to get land into trust easier.

Title I: Settlement

There are two funds: one for accounting and funds mismanagement claims, one for land mismanagement claims. Who is and who isn't a claimant, we haven't decided that. So, who is going to receive funds here? This is part of the challenge here. One thought is: distribution would go to anyone who is a beneficiary of an IIM account. We don't propose that, but it's a possibility. The issues are multi-faceted, and tough to corner.

Q: What about having multiple names? This doesn't help those that turned land in, how do you benefit them?

A: We are aware of the problem, sometimes it was intentionally done by the BIA, sometimes not. Some are covered, but need to look it ITM.

Looking back at who is, and who isn't, covered in class. Here is a scenario: the people who should get distribution, anyone who was a beneficiary of an IIM account, and all those who are heirs of them. You would have an enormous class of individuals and you couldn't figure out who they all were. This is one of the theoretical endpoints, and much more complicated than we want. So, we have to draw lines, and there will be people on each side of the line. If you have expectations of distribution on being an heir, you might be disappointed depending on time. So, going back to 1985 to present, if you had an IIM account open from 1985 on, you would receive a distribution. If you are deceased, your heirs would receive a distribution as well. So, we need to make this simpler to make distribution feasible. Who is in the class? Some are obvious, the rest aren't.

Q: What is the 1985 date?

A: Beginning of the electronic era. It's when records turned over to electronic, and record keeping should be better.

Comment: Time isn't of essence, take the time to do what is right. Indian Time can wait. (Dennis King, Lakota). We are more concerned with doing what should be done, not pushing this bill through.

-When the government comes to us like this, the first thing we think about is what do they want to take from us??

Adjourned at 2pm.