

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
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TO THE MEMBERS OF THE UNITED STATES CONGRESS:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, urges the Senate and the House of Representatives to work together in passing critical legislation important towards facilitating economic development and tribal sovereignty in Indian Country before this Congress concludes.

A *Carciari* Fix: Much effort has been made in both chambers to address the economic drag and uncertainty—not to mention the significant expending of resources related to litigation—in Indian Country relative to the status of trust land. Senator John Barrasso (S. 1879), Representative Tom Cole (H.R. 249), and Representative Betty McCollum (H.R. 407) have all introduced bills this Congress that seek to rectify this problem. Absent a “clean” fix, a bipartisan path forward to provide relief to tribes via a partial fix is Rep. Cole's provision offered during the Department of the Interior, Environment, and Related Agencies Appropriations Act debate. The Chamber urges Congress to not allow the perfect to be the enemy of the good in this situation, and adopt a compromise similar to that of Rep. Cole.

Indian Energy: Both the House and Senate passed their versions of an Indian energy bill this Congress. Sen. Barrasso's bill, S. 209, would streamline and clarify how a tribe applies for, and how the Department of Interior approves, Tribal Energy Resource Agreements, thereby “granting authority to [a] tribe to review, approve, and manage leases, business agreements, and rights-of-way for energy development on tribal lands, without the approval of the Secretary of the Interior.”¹ Because the current process for obtaining a TERA is so unclear, no tribe has submitted an application for one since they were authorized in 2005.

In the House, Rep. Don Young's H.R. 538 seeks to return much of the decision-making regarding land appraisals and fracking back to the tribes, while additionally setting forth provisions for the judicial review of a cause of action related to energy development on Indian lands. Both S. 209 and H.R. 538 would put the tribes in the driver's seat relative to energy development, and the Chamber is confident that the House and Senate can come to a compromise in short order.

¹ <http://teeic.indianaffairs.gov/abouttera/>

Tribal Labor Sovereignty: Another overwhelming priority of Indian Country is the Tribal Labor Sovereignty Act (TLSA). Introduced in the House by Rep. Todd Rokita (H.R. 511) and in the Senate by Sen. Jerry Moran (S. 248), the House-passed bill currently awaits action in the Senate. House passage of TLSA enjoyed bipartisan support, which is likewise expected in the Senate. This bill's intent is clear in seeking to ensure tribal sovereigns are treated in a manner coincident with any other public employer in the United States. As with a *Carcieri* fix and Indian Energy, Senate passage of TLSA is nothing more than the return of labor decision-making to the tribes—an affirmation of their sovereignty.

Economic Development: Sen. Barrasso's S. 3234, which seeks to promote business and economic development in Indian Country by disciplining federal agency activities and providing tribes with financing and tax tools already available to the states, also would empower Indian Country. Among other things, S. 3234 would define the essential governmental test of an Indian tribe for purposes of financing as "includ[ing] any function that may be performed or financed by a State or unit of local government with local taxing authority;" would require interagency coordination to provide tools for economic success to Indian Country; and would elevate to the Office of the Secretary the Office of Native American Business Development in the Department of Commerce.

Much of the aforementioned legislation has already been passed by one chamber or the other, or has been included as provisions of larger bills. Regardless of passing as a standalone bill or within another, larger bill, it is imperative for each of these issues to be addressed definitively before adjournment of the 114th Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most prominent parts.

R. Bruce Josten