

**TESTIMONY
OF
DARRYL LACOUNTE
ACTING DIRECTOR
BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUB-COMMITTEE ON INDIAN, INSULAR, AND ALASKA NATIVE AFFAIRS
HOUSE OF REPRESENTATIVES
ON
H.R. 5244, THE “MASHPEE WAMPANOAG TRIBE RESERVATION REAFFIRMATION ACT”**

JULY 24, 2018

Chairman LaMalfa, Ranking Member Gallego, and Members of the Subcommittee, I am Darryl LaCounte, Acting Director of the Bureau of Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department’s views on H.R. 5244, the “Mashpee Wampanoag Tribe Reservation Reaffirmation Act.” This bill would ratify and confirm the action of the Secretary of the Interior to take certain lands into trust for the benefit of the Mashpee Wampanoag Tribe of Massachusetts (Tribe).

Background

In 2007 the Tribe was federally acknowledged and submitted a fee-to-trust application to the Department. In September 2015, the Assistant Secretary - Indian Affairs issued a decision approving the Tribe’s request to acquire 151 acres in trust in the City of Taunton, Massachusetts for gaming purposes and 170 acres in trust in the Town of Mashpee, Massachusetts for tribal governmental purposes. The Assistant Secretary’s decision found that the Tribe was eligible under the second definition of “Indian” in the Indian Reorganization Act of 1934 (IRA) for having resided on a “reservation” in 1934. The Department acquired the parcels in trust on November 10, 2015.

Although the City of Taunton supported the trust acquisition, residents of Taunton challenged the Assistant Secretary’s decision in federal court. On July 28, 2016, the Federal District Court for the District of Massachusetts held that the second definition in the IRA incorporates the first definition of “Indian” and remanded to the Department to determine whether the Tribe might be eligible under the IRA’s first definition as having been “under federal jurisdiction” in 1934. The Tribe is pursuing an appeal, which the First Circuit stayed pending resolution of remand proceedings. The Department is holding the parcels in trust pending the ongoing review on remand.

H.R. 5244

H.R. 5244 provides that the action taken by the Department to place lands into trust for the Tribe as described in the final notice of the Reservation Proclamation published at 81 Fed. Reg. 948 (Jan. 8, 2016) is ratified and confirmed.

The Department recommends the legislation refer to the Fee to Trust final notice along with the Reservation Proclamation. Citing the Fee to Trust final notice (80 Fed. Reg. 57848 (September 25, 2015)) would legislatively ratify the Secretary's decision, alleviating any uncertainty concerning the acquisition.

H.R. 5244 also provides that federal court action related to the Reservation Proclamation shall not be filed or maintained in a federal court and any current action would be dismissed, and that all laws, including the IRA, shall be applicable to the Tribe and its members. In 2018, the Supreme Court in *Patchak v. Zinke* narrowly rejected a constitutional challenge to almost identical statutory language regarding a trust acquisition for the Gun Lake Tribe. In light of that litigation, the Department would appreciate the opportunity to work with the Committee, along with the Department of Justice, to clarify the language in Sections 2(b) and 2(c).

Conclusion

Administering trust lands is an important responsibility that the United States undertakes on behalf of Indian tribes. Where Congress has provided authority, such as the IRA, through which the Department administers its trust responsibilities for tribes, clarity and equitable treatment are extremely important. We welcome the opportunity to work with the bill sponsor, the Committee, and Congress to improve this legislation.

This concludes my statement and I would be happy to answer questions.

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ON
S. 607
JULY 24, 2018**

Chairman LaMalfa, Ranking Member Gallego, and Members of the Subcommittee, I am Darryl LaCounte, Acting Director of the Bureau of Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department's views on S. 607, the Native American Business Incubators Program Act. The Department's review of S. 607 aligned with another bill, H.R. 4506, which the Department testified on before this Subcommittee on January 17, 2018. The Department, similar to our position on Title II of H.R. 4506, restates its support of the underlying goals of S. 607, which, similar to H.R. 4506, would serve to facilitate the development of healthy economies in Native communities. Since Title II of H.R. 4506 and S. 607 are nearly identical, the Department still has a few concerns about some provisions in S. 607, and continues to recommend further engagement with the bill sponsor to address these issues.

We appreciate the intent of S. 607, which would provide on-site support to Native entrepreneurs in remote areas of Indian Country. Ideally, such incubators could provide Native businesses and entrepreneurs with one-on-one counseling on key issues, such as how to apply for financing, prepare and present a financial statement and business plan, manage the financial operations of a business, identify contract opportunities, and negotiate a contract.

This particular kind of assistance is not generally available in Indian Country. Some tribal colleges and non-profits deliver business start-up training and financial education, but often lack the resources and experience. For this reason in particular, the Department supports language authorizing cooperation and coordination with institutions of Higher Education.

There are over seventy Native Community Development Financial Institutions (Native CDFIs) across the country that primarily serve Native Communities that have been certified by the Treasury Department's CDFI Fund. Native CDFIs focus largely on providing access to capital and credit for affordable housing and economic development activities, including job creation and business development initiatives. Last year, Native CDFIs reported the origination of more than \$100 million loans and investment, of which nearly \$68 million was for business and microenterprise development. However, according to CDFI Fund research there remains a great need for the type of business development assistance and finance envisioned by the legislation.

The six American Indian Procurement Technical Assistance Centers (AIPTACs), which Congress authorized under the Procurement Technical Assistance Program in 1985 and which are administered by the Department of Defense, are dedicated exclusively to helping Native businesses with federal procurement matters. They do not offer financial education, primary guidance on starting and running a business, or obtaining credit.

With regard to Section 5 of S. 607, which provides no more than 180 days for the promulgation of program regulations, we recommend that timeline be increased to 300 days, due to the extensive tribal consultations that would be required for the development of such regulations.

The Department continues to welcome the opportunity to work with this Subcommittee, the bill's sponsor, and cosponsors to attain the goal of increasing economic opportunity on Indian reservations. Thank you for the opportunity to provide the Department's views on S. 607. I am happy to answer any questions you may have.

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ON
S. 1116
JULY 24, 2018**

Chairman LaMalfa, Ranking Member Gallego, and Members of the Subcommittee, I am Darryl LaCounte, Acting Director of the Bureau of Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department's views on S. 1116, the Indian Community Economic Enhancement Act of 2018. On January 17, 2018, the Department testified before this Subcommittee on a similar bill: H.R. 4506. With the testimony today on S. 1116, the Department restates its support of the underlying goal to facilitate the development of healthy economies in Native communities. However, we have a number of concerns similar to the concerns we expressed on Title I of H.R. 4506 about some provisions in S. 1116, particularly those that are duplicative of existing law or extend beyond our existing authorities, and we continue to recommend further engagement with the bill sponsor to address these issues.

S. 1116 would codify many of the activities the Department is already required to do under the Buy Indian Act, including conducting outreach to Indian industrial entities and aggregating compliance data. The Buy Indian Act has enabled Native businesses to participate in the expansive federal contracting market, created jobs for Native employees, and provided needed revenue to Native communities. We would caution that language in S. 1116, which is similar to language in H.R. 4506 and appears to be intended to increase and improve robust reporting under the Buy Indian Act, creates additional challenges. Specifically, we have concerns regarding our ability to gather some of the data as well as in the accuracy of data contemplated in S. 1116. The data is voluminous and, in certain instances, it is often difficult to ascertain what is or is not an Indian economic enterprise.

The legislation also dictates the alignment of procurement procedures between the Department and at the Department of Health and Human Services (HHS), and dictates reporting requirements as part of implementation of S. 1116. The procurement office in Indian Affairs has an ongoing dialogue with the current Indian Health Service Procurement Chief to discuss avenues for both the Bureau of Indian Affairs and the Indian Health Service to better coordinate procurement under the Buy Indian Act. Additionally, the Department and HHS would need to further explore other issues raised by S. 1116 including the expansion of the Buy Indian Act at HHS as it currently only applies to the Indian Health Service.

The Department welcomes the opportunity to work with this Subcommittee, the bill's sponsor, and cosponsors to attain our mutual goal of increasing economic opportunity on Indian reservations. Thank you for the opportunity to provide the Department's views on S.1116. I am happy to answer any questions you may have.