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MEMORANDUM

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TO: TRIBAL HOUSING CLIENTS

FROM: 
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RE: *NAIHC Legislative Committee Meeting*

This memorandum provides brief report on a business meeting and hearing today by the Senate Committee on Indian Affairs (SCIA).

I. NAHASDA Reauthorization

The business meeting portion of the SCIA focused solely on the NAHASDA reauthorization bill previously introduced, S. 2264. Chair Schatz (D-HI) and Vice-Chair Murkowski (R-AK) both spoke strongly about the need to pass reauthorization, noting that NAHASDA expired in 2013 and has not been reauthorized since. The SCIA voted unanimously to send S. 2264 to the floor for a vote. As we have previously reported, S. 2264 has many of the reauthorization provisions that tribes and TDHEs have been seeking over the past several Congressional sessions. It has strong bi-partisan support. However, it also contains the provisions for Native Hawaiian housing that has led a couple of Senators (Lee, R-UT, and Cruz, R-TX) to withhold unanimous consent, meaning it has to be scheduled for a floor debate. Given the already-packed Senate schedule, including the upcoming Supreme Court nomination and related hearings, and the fact that it is a mid-term election year, scheduling this bill for a floor vote will be very difficult.

II. Tribal Trust Land Homeownership Act

The hearing concerned four bills, three of which involved land and treaty rights issues for three specific tribes. The fourth bill, and the one that got the most attention, was S. 3381, the Tribal Trust Land Homeownership Act of 2021 (copy attached). S. 3381 is aimed at getting the Bureau of Indian Affairs (BIA) to process title status reports and leasehold mortgage approvals in a much more timely and transparent manner. It would set specific timelines for various actions related to mortgage packages, require BIA to provide an explanation when they miss those deadlines, authorize “read-only” access for tribes and other agencies of data in the Trust Asset and Accounting Management System (TAMS) maintained by the BIA, require an annual report by the BIA and a Government Accountability Office study, and create the position of a Realty Ombudsman. This bill has bi-partisan support, and is sponsored by Senator Thune (R-SD), Senator Tester (D-MT), Senator Smith (D-MN), and Senator Rounds (R-SD).

It was clear from the hearing that the bill has strong support among the members of the SCIA. Both the Chair and the Vice-Chair made strong statements about the need for reform of the BIA process, because the delays in the processing of Title Status Reports (TSRs) and mortgage packages has resulted in delays, denials, and/or increased borrowing costs for tribal members trying to obtain financing to build or buy homes located on trust lands.

Two of the witnesses on the panel addressed the bill. The first was Kathryn Isom-Clause, Deputy Assistant Secretary (DAS) for the office of Indian Affairs. She testified that the timelines in the bill track the timelines that the BIA has already built into their mortgage processing manual. BIA generally supports the bill, though they have some concerns about the access to TAMS, and they are willing to provide technical assistance to resolve those concerns. DAS Isom-Clause was asked a series of tough questions by several members of the SCIA, including the Chair and Vice-Chair. Chair Schatz in particular pressed her on why the BIA takes so long in processing these packages and TSRs, and noted that he didn't want to just pass a bill without also understanding the reason for the delays. DAS Isom-Clause ultimately did not have an answer for that question, other than saying BIA recognizes the importance of timely processing and has these timelines set out in its manual. She promised to gather more information and submit a report to the SCIA. She was also pressed on the TAMS access issue, and in particular the nature of BIA's concerns. She also promised to provide the Committee with additional information.

The other witness was Sharon Vogel, Executive Director of the Cheyenne River Housing Authority and Chair of the United Native American Housing Association (UNAHA). Ms. Vogel testified on the strong need for this legislation and for the need to hold BIA accountable to the timelines and to transparency. SCIA members also asked her a number of questions regarding the scope of the problem, the length of the delays, and the problems caused by the delays. She indicated that her tribe and UNAHA both strongly supported the bill.

The hearing was only to hear testimony about the legislation, so there was no vote. The Committee will leave the hearing record open for two weeks for anyone who wants to submit additional testimony. ***Please let us know if you would like to submit testimony on this bill and if you would like our assistance in doing so. The deadline is March 2, 2022.***

Conclusion

If you have any questions, please do not hesitate to contact Ed Clay Goodman at EGoodman@hobbsstrauss.com or by phone at (503) 242-1745.