

American Indian Law Review

Volume 41 | Number 2

2017

Continuing to Work for Indian Country in the 115th Congress

T. Michael Andrews

Follow this and additional works at: <https://digitalcommons.law.ou.edu/air>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

T. Michael Andrews, *Continuing to Work for Indian Country in the 115th Congress*, 41 AM. INDIAN L. REV. 361 (2017), <https://digitalcommons.law.ou.edu/air/vol41/iss2/5>

This Federal Indian Law in the New Administration is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

CONTINUING TO WORK FOR INDIAN COUNTRY IN THE 115TH CONGRESS

*T. Michael Andrews**

Today, much work is still ahead of us to assist with the needs of American Indians and Alaska Natives. Based upon both treaty and federal law, the United States shares a unique government-to-government relationship with tribes and has a trust responsibility for Native communities. The social and economic problems that plague Indian Country have grown worse over the last several decades, and Congress is working hard to support real change for Indian Country. As John Barrasso (R-WY), former Chairman of the Senate Committee on Indian Affairs, said, “The best solutions come from Indian Country, not Washington.”

With that creed, almost all of the successful legislative solutions have come via Indian Country’s involvement. The Senate Committee on Indian Affairs (“Committee”) is truly the only committee in the United States Congress whose sole mission is to study the unique problems of Indian Country, and to be the lead Indian law and policy expert for the Senate. The Committee has earned a strong reputation for being a bipartisan committee, with Republicans and Democrats often supporting major legislation for the good of Indian Country.

In the 114th Congress, Indian Country saw twenty-two bills signed into law by President Obama. I will highlight a few of these bills. One of these laws involves trust modernization through the Indian Trust Asset Reform Act of 2016.¹ This act will chart the path for tribes to propose Indian trust asset management plans.² It also sunsets the Office of Special Trustee and transfers many of its functions to the new position of Under Secretary for Indian Affairs.³

Two of the bills signed into law strengthen protections for Native children. The Native American Children's Safety Act will now provide additional safeguards for Native children by requiring background checks for all adults living in a foster care home prior to the placement of a Native

* Majority Staff Director and Chief Counsel, Senate Committee on Indian Affairs & John Stennis Fellow for the 115th Congress.

1. Pub. L. No. 114-178, 130 Stat. 432 (codified in scattered sections of 25 U.S.C.).

2. *Id.* §§ 203-204, 130 Stat. at 433-36.

3. *Id.* § 304, 130 Stat. at 441.

child.⁴ Additionally, the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act established a comprehensive study of federal, state, local, and tribal programs that serve Native children.⁵ The Commission will evaluate the impact of concurrent jurisdiction on child welfare systems; barriers Indian tribes face in using public and private grant resources; obstacles to nongovernmental financial support for programs benefitting Native children; issues relating to the validity and statistical significance of data on Native children; and barriers to the development of sustainable, multidisciplinary programs designed to assist high-risk Native children and their families.⁶

In addition to ensuring stronger protections for Native children, Congress also focused on natural resources upgrades to water infrastructure and road safety for tribal communities. In the previous Congress, President Obama signed into law the Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Their Economies Act⁷ (“IRRIGATE Act”); the Dam Repairs and Improvements for Tribes Act of 2016⁸ (“DRIFT Act”); and several provisions from the Tribal Infrastructure and Roads Enhancement and Safety Act (“TIRES Act”), which were included in the Fixing America’s Surface Transportation Act (“FAST Act”).⁹ These strong infrastructure bills will finally finance, build, and repair Indian Country projects.

Finally, in the 114th Congress, the President signed nearly fourteen land-into-trust bills that will allow Indian communities to continue to advance economic development on their own land, and also finalized two major water settlements involving the Blackfeet Nation of Montana and the Pechanga Band of Luiseno Mission Indians of California.¹⁰

The 115th Congress has signaled to provide for an even more robust agenda. Although the leadership at 1600 Pennsylvania Avenue has changed from President Obama to President Trump, and the Committee leadership has changed from Chairman John Barrasso (R-WY) and Vice Chairman Jon

4. Pub. L. No. 114-165, 130 Stat. 415 (2016) (codified at 25 U.S.C. § 3207).

5. Pub. L. No. 114-244, 130 Stat. 981 (2016).

6. *Id.* § 3(e), 130 Stat. at 983-87.

7. Water Infrastructure Improvements for the Nation Act (WIIN Act), Pub. L. No. 114-322, §§ 3211-3216, 130 Stat. 1628, 1749-50 (2016); *see also* S. REP. NO. 114-245 (2016).

8. *Id.* § 3101, 130 Stat. at 1740-49; *see also* S. 2717, 114th Cong. (2016).

9. Fixing America’s Surface Transportation Act (FAST Act), Pub. L. No. 114-94, § 1121, 129 Stat. 1312, 1359-68 (2015); *see also* S. REP. NO. 114-217 (2016).

10. WIIN Act, §§ 3401-3413, 130 Stat. at 1755-71 (Pechanga); *id.* §§ 3604-3608, 130 Stat. at 1793-814 (“Miscellaneous Provisions”); *id.* §§ 3701-3724, 130 Stat. at 1914-45 (Blackfeet).

Tester (D-MT) to Chairman John Hoeven (R-ND) and Vice Chairman Tom Udall (D-NM), a seamless transition has occurred.

Today the Committee is focused on getting the unfinished work from the 114th Congress to the President's desk. This Congress, the Committee is tackling issues with off-reservation land into trust, reforming the Indian Health Service, upgrading the Bureau of Indian Education, reauthorizing the Indian Housing Block Grant program, reauthorizing the Tribal Law and Order Act,¹¹ and bringing parity to Indian governments by passing the Tribal Labor Sovereignty Act.¹² The Committee is focused more than ever to pass the Tribal Indian Energy Development and Self Determination Act Amendments of 2017.¹³ A similar bill passed the Committee and the Senate twice last Congress. The tribal energy bill will streamline the permitting process for tribes to conduct energy business on Indian land.¹⁴ I am hopeful to finally move this bill on to the President for his signature.

With regard to tribal economies, the Committee is also focused on jobs and the economy. Chairman Hoeven has recently introduced the Indian Community Economic Enhancement Act ("ICE Act"). This bill will break down barriers to economic development, so that industry can do business in Indian Country.¹⁵ In addition, Vice Chairman Udall has reintroduced the Native American Business Incubators Program Act, which will establish a program at the Office of Indian Energy and Economic Development at the Department of the Interior to provide financial assistance in the form of competitive grants to eligible applicants for business incubators that serve reservation communities.¹⁶

Finally, the Committee will also focus on bringing parity to crime victims. It is no surprise that under the Victims of Crime Act¹⁷ ("VOCA"), tribes are required to work through state governments to receive critical funds for victim assistance services and programs.¹⁸ According to federal government data, it is estimated that no more than .7% of the Crime Victims Fund, which goes to states to administer grants for crime victim

11. 25 U.S.C. §§ 2801-2815 (2012); see S. 2920, 114th Cong. (2016).

12. S. 63, 115th Cong. (2017).

13. S. 245, 115th Cong. (2017).

14. *Id.*

15. S. 1116, 115th Cong. (2017).

16. S. 3261, 114th Cong. (2016).

17. 42 U.S.C. § 20101 (Westlaw through Pub. L. No. 115-51).

18. *Collaborating and Consulting with Tribal Victim Service Providers*, NCJA CTR. FOR JUST. PLAN., <http://www.ncjp.org/tribal-collaboration/victim-services> (last visited Sept. 24, 2017).

assistance, reaches Indian tribes.¹⁹ Under the Securing Urgent Resources Vital to Indian Victim Empowerment Act (“SURVIVE Act”), tribes will receive 5% of the \$2.57 billion dollar Crime Victims Fund.²⁰ This will finally bring the much needed resources to Indian Country and start the process of healing tribal victims.

Additionally, President Trump has signaled that his priorities include fixing America’s infrastructure as well as tax reform. The Committee welcomes helping America grow, especially in Native communities. Already in this Congress, the Committee has held a bipartisan, bicameral roundtable to discuss emerging infrastructure issues such as water and sewer, transportation, broadband, and community development upgrades. We are hopeful these enhancements will become part of a larger legislative and finance package.

The Committee also has oversight and investigatory authority over Indian programs. The Committee will focus on the over-regulation of tribal governments, duplication of services, and identifying the parity gaps of programs for Native Americans to participate. According to a Heritage Foundation study conducted last year, in the prior eight years over 20,000 regulations were enacted by the executive branch that generated a loss to the U.S. economy of roughly \$22 billion.²¹ As a result, Congress has rolled back thirteen rules under the Congressional Rule Act, a majority of which involved the energy sector.

Additionally, last year we saw the horrible economic destruction caused by the Gold King Mine spill, where millions of gallons of sludge went into the Animas River that flows through the Southern Ute Tribe of Colorado and the Navajo Nation. The Environmental Protection Administration ironically caused this catastrophe;²² the same agency responsible for protecting the environment actually caused significant damage to both Indian communities that rely on the river for ranching and growing.

This Congress will focus on improving the quality of life for Native Americans by examining the Indian Health Service and the Bureau of Indian Education. Both offices within their respected agency have seen an

19. S. REP. NO. 114-272, at 3 (2015).

20. S. 1704, 114th Cong. (2015).

21. James Gattuso & Diane Katz, *Red Tape Rising 2016: Obama Regs Top \$100 Billion Annually*, HERITAGE FOUND. (May 23, 2016), <http://www.heritage.org/government-regulation/report/red-tape-rising-2016-obama-regs-top-100-billion-annually>.

22. Julie Turkewitz, *Environmental Agency Uncorks Its Own Toxic Water Spill at Colorado Mine*, N.Y. TIMES (Aug 10, 2015), <https://www.nytimes.com/2015/08/11/us/durango-colorado-mine-spill-environmental-protection-agency.html>.

increase in funding, but improvements in the quality of health care and education over the years have not matched the financial investments. Perhaps it is time to re-examine both health care and the method of educating Native children. Is it time to give families more choices when it comes to their health care and children's education? Should the money actually flow to the patients and students, instead of Washington bureaucrats directing the costs?

In closing, the Committee is like no other in Congress. We handle everyday Native issues that reach across the many different congressional committees. We are truly a committee of one that is dedicated to helping our first peoples.