



To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder (Ken.Degenfelder@mail.house.gov) and Brandon Ashley (Brandon.Ashley@mail.house.gov)
Date: October 4, 2021
Subject: Legislative Hearing on five bills

The Subcommittee for Indigenous Peoples will hold a legislative hearing on five bills: H.R. 441 (Rep. Young), to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska; H.R. 2402 (Rep. Fortenberry), the Winnebago Land Transfer Act; H.R. 4881 (Rep. Grijalva), the Old Pascua Community Land Acquisition Act; H.R. 5221 (Rep. Grijalva), the Urban Indian Health Confer Act; and H.J.Res. 55 (Rep. Kahele), the Prince Jonah Kūhiō Kalanianaʻole Protecting Family Legacies Act; on **Tuesday, October 5, 2021, at 12:00 p.m. EDT** online via Cisco WebEx.

Member offices are requested to notify Brandon Ashley (Brandon.Ashley@mail.house.gov) by **4:30 p.m. on Monday, October 4, 2021**, if their Member intends to participate from his/her laptop in 1324 LHOB or from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- H.R. 441 would transfer by warranty deed 11 acres of federal land owned by the Department of Health and Human Services for the Tanana tribe to use for health related purposes.
- H.R. 2402 would transfer 1,600 acres of land seized by Army Corps of Engineers in the 1970's for the Snyder-Winnebago Oxbow Lake Recreation Complex project.
- Under current law, the Indian Health Service is the only Department of Health and Human Services agency required to establish an Urban Indian health organization confer policy. H.R. 5221 would amend current law to require all agencies within the Department of Health and Human Services to establish Urban Indian health organization confer policies.

II. WITNESSES

PANEL I

- **Representative Don Young**, Alaska, At-Large
- **Representative Jeff Fortenberry**, Nebraska, 1st District
- **Representative. Raul Grijalva**, Arizona, 3rd District
- **Representative Kaiali'i Kahele**, Hawaii, 2nd District

PANEL II

- **Mr. P. Benjamin Smith**, Deputy Director for Intergovernmental Affairs, Indian Health Service, Rockville, MD (H.R. 441, H.R. 5221)
- **Mr. Darryl LaCounte**, Director, Bureau of Indian Affairs, Washington, D.C. (H.R. 2402, H.R. 4881, H.J.Res.55)

PANEL III

- **The Hon. Lois Huntington**, First Chief, Native Village of Tanana, Tanana, AK [*Republican Witness*](H.R. 441)
- **The Hon. Victoria Kitcheyan**, Chairwoman, Winnebago Tribe of Nebraska, Winnebago, NE [*Republican Witness*] (H.R. 2402)
- **The Hon. Peter Yucupicio**, Chairman, Pascua Yaqui Tribe, Tucson, AZ (H.R. 4881)
- **The Hon. William J. Ailā, Jr.**, Chairman, Hawaiian Homes Commission, Department of Hawaiian Home Lands, Kapolei, HI(H.J.Res.55)
- **Mr. Walter Murillo**, President, National Council of Urban Indian Health, Washington, D.C. (H.R. 5221)

III. BACKGROUND

[H.R. 441, To provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska \(Rep. Young\)](#)

The Native Village of Tanana is located in interior Alaska, two miles west of the junction of the Tanana and Yukon Rivers and 130 miles west of Fairbanks, Alaska. Predominantly a rural community, the Village of 1,460 enrolled tribal members is governed by the Tanana Tribal Council (TTC). The community is only accessible by small plane or boat and snow machine during the winter. Residents often must travel to larger hub communities for medical

services, such as Fairbanks or Anchorage, which can be costly and at times prohibitive for residents needing medical care, especially when severe illness or injury requires a medivac.

In 1995, TTC assumed responsibility for health care services from the Indian Health Service (IHS) under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA).¹ The parcel of land that the Tribe is requesting under H.R. 441, encompasses a portion of a former IHS hospital site. The original plot of land encompassed 20.56 acres. Under the Alaska Native Land Claims Settlement Act (ANCSA),² 9.31 acres was transferred to Tozitna, Limited, Tanana's Village Corporation. The Tribe has requested transfer of the remaining 11.25 acres by warranty deed. TTC intends to use the 11.25 acres of land for a future health clinic, family wellness center, and an after care treatment center. The TTC is also considering expanding their elder care and developing nursing home services on the land that would be transferred under H.R. 441. *Staff contact: Ken Degenfelder (x62090)*

H.R. 2402, the Winnebago land transfer Act (Rep. Fortenberry)

The Winnebago Tribe of Nebraska is one of the federally recognized tribes of the Ho-Chunk people, with the reservation encompassing approximately 117,000 acres of land located in Thurston and Dixon Counties in Nebraska, and Woodbury County in Iowa. The tribe has approximately 5,300 enrolled members.

The Treaties of 1865³ and 1874⁴ between the Winnebago Tribe and the U.S. government set aside land in Nebraska and Iowa for the occupation and future home of Winnebago Indians. In 1970, the Army Corps of Engineers (Corps of Engineers), condemned certain land on the eastern boundary of the reservation and Missouri River in Nebraska and Iowa through eminent domain for the Snyder-Winnebago Oxbow Lake Recreation Complex project.⁵ In response, the tribe challenged the Corps of Engineers condemnation in federal court, both in Iowa and Nebraska. During the proceedings in the District Court of Nebraska, the tribe was successful in reclaiming the land as the court held that the Corps of Engineers was without authority to take tribal lands by eminent domain.⁶

In the Iowa proceedings, the tribe's attorney entered into a stipulation in the District Court of Iowa, which conceded that the state of Iowa owned the land that was condemned by the Corps of Engineers. In return the tribe would receive a separate land selection or \$45,000. According to the tribe, thier attorney was not authorized to enter into the stipulation. Additionally, the tribe neither received a different land selection or monetary compensation.

¹ 25 USC 5301 et seq.

² 43 USC 1617 et seq.

³ 14 Stat. 671.

⁴ 18 Stat. 170.

⁵ The federal land acquisition for this project was for construction of a protective levee and water control structure that would allow for greater control of the water levels and sediment control of the Oxbow lakes in Iowa and Nebraska, as well as a public recreation area for fishing and wildlife purposes.

<https://www.nwo.usace.army.mil/mrrp/site-Snyder-Winnebago-Complex/>.

⁶ United States v. Winnebago Tribe of Nebraska. 542 F.2d 1002, 1006 (8th Cir. 1976).

The tribe then appealed the ruling to the Eighth Circuit Court of Appeals, which held that the Corps of Engineers illegally condemned the land in Iowa and that the land could only be taken by an Act of Congress and voided the stipulation. However, the court also held that because the tribe failed to properly preserve the right to appeal in the Iowa District Court proceedings, the court could not order the return of the land.⁷ These tracts are referred to as Tracts 119 and 210 in H.R. 2402 and encompass approximately 1,500 acres.

H.R. 2402 would place tracts 210 and a portion of 119 into trust for the tribe to be made part of the reservation. In addition, a formerly privately owned 60-acre tract of land that was also condemned by the Corps of Engineers, would be placed into trust under the bill because it would be landlocked by the other tracts placed into trust under the bill. A map of the tracts can be found [here](#). **Staff contact: Ken Degenfelder (x62090)**

[H.R. 4881, the Old Pascua Community Land Acquisition Act \(Rep. Grijalva\)](#)

The Pascua Yaqui Reservation is located in southern Arizona, 15 miles southwest of Tucson. In 1952, the original 40-acre Pascua Village was annexed by the City of Tucson. In 1964, Congressman Morris K. Udall introduced a bill to transfer 202 acres of desert land southwest of Tucson to the Yaquis.⁸ The bill was later signed into law and the deed to the land was transferred to the recently formed Pascua Yaqui Association, a nonprofit Arizona corporation.

The reservation was formally established in 1978 by an Act of Congress,⁹ which set forth that the members of Pascua Yaqui Association were federally recognized as the Pascua Yaqui Tribe (Tribe). Today, the Tribe has approximately 3,000 enrolled members and the Tribe owns and operates two gaming facilities in the Tucson metropolitan area, the Casino del Sol and Casino of the Sun.

On April 15, 2021, Arizona Governor Doug Ducey signed legislation that would extend the Tribal-State Gaming Compacts (Compact) for the next 20 years for all 22 Arizona tribes.¹⁰ Under the Compact, is the “Pascua Yaqui Third Facility” provision that would allow the Pascua Yaqui Tribe to open and operate a third gaming facility. The third gaming facility is to be located in Tucson, Arizona, inside the area highlighted in red (see below). The compact area is described in the compact as the area south of West Grant Road, east of Interstate 10, north of West Calle Adelanto, and west of North 15th Avenue in the City of Tucson, Arizona, as provided specifically in the Pascua Yaqui Tribe—State of Arizona Amended and Restated Gaming Compact signed in 2021.

⁷ Bear v. United States, 810 F.2d 153 (8th Cir. 1987).

⁸ Public Law 95-375.

⁹ *Id.*

¹⁰ “Amended Arizona Tribal/State Gaming Compact (2021)”

https://gaming.az.gov/sites/default/files/2021%20Amended%20and%20Restated%20Compact%20-%20EXEMPLAR%20COPY_0.pdf

The IHS's Urban Indian Health Program (UIHP) consists of 41 non-profit 501(c)(3) programs nationwide. The programs are funded through grants and contracts from the IHS, under the Indian Health Care Improvement Act.¹⁴ Urban Indian health organizations that participate in the program provide services such as information, outreach and referral, dental services, comprehensive primary care services, limited primary care services, community health, and others.¹⁵

Out of respect for the special status of Indian tribes, the United States and its agencies consult with Indian tribes on proposed actions that may affect their interests. This obligation was formalized in Executive Order 13175 (November 6, 2000), which contained instructions for agencies to establish procedures to ensure “meaningful consultation and collaboration with tribal officials with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes ...”¹⁶ The IHS established its consultation policy in 1997 and actively engages with tribes and tribal organizations.¹⁷

In 2010, as part of Patient Protection and Affordable Care Act, Congress reauthorized and amended the Indian Health Care Improvement Act by adding a requirement that the IHS confer, “to the maximum extent practicable, with [Urban Indian Organizations] UIOs in carrying out the IHCIA.”¹⁸ In 2014, the IHS established the policy “Conferring with Urban Indian Organizations,” consistent with the new IHCIA authority. According to the IHS, the policy serves as a guide when the Agency seeks input from UIOs on health matters.

According to the National Council of Urban Indian Health, other agencies within HHS that provide services to AI/ANs, such as the Centers for Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), and the Substance Abuse and Mental Health Services (SAMSHA), do not have policies regarding conferring with Urban Indian organizations. These agencies are only required to consult and confer with Indian tribes, consistent with Executive Order 13175.¹⁹

Throughout the COVID-19 pandemic, Urban Indian health organizations were provided no notice that they were required to make a selection for COVID-19 vaccine distribution until the day of the deadline imposed by the agency.²⁰ H.R. 5221 if enacted, would require all agencies within HHS to establish a UIO confer policy. ***Staff contact: Ken Degenfelder (x62090)***

¹⁴ *Id.*

¹⁵ <https://www.ihs.gov/urban/>

¹⁶ <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

¹⁷ <https://www.ihs.gov/dbh/consultationandconfer/>.

¹⁸ 25 U.S.C. § 1660d(b).

¹⁹ https://mcusercontent.com/97bf83f5514a3035e7978c5b2/files/9a779961-5442-d519-3c67-45a9d9c7de12/Urban_Confer_Fact_Sheet_NCUIH_D157_V8.pdf.

²⁰ *Id.*

H.J. RES. 55, the Prince Jonah Kūhiō Kalanianaʻole Protecting Family Legacies Act (Rep. Kahele)

The Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by Congress in 1921 as a homesteading program to place native on lands in Hawaii designated for that purpose.²¹ The Act required an individual to contain 50 percent or more Hawaiian blood to be eligible.

Approximately 200,000 acres were defined as “available lands” under the HHCA. The Hawaiian Statehood Act in 1959 conveyed title to the “available lands” to the new State of Hawaii, and generally placed responsibility for the administration of the Hawaiian Homes Commission Act in the State.²²

Section 4 of the Hawaiian Statehood Act provides that the HHCA is to be included in the Constitution of the new State as a “compact” with the United States, and that, with certain exceptions, the HHCA can be amended by the State “only with the consent of the United States.”²³ The exceptions are amendments relating to administration and to the powers and duties of certain State officers. Section 4 contains other restrictions as well: the qualifications to lessees cannot be changed, certain encumbrances on Hawaiian Home Lands cannot be increased, and the benefits to lessees cannot be diminished without United States consent.

In 2017, the State of Hawaii passed Act 080 amending the native Hawaiian blood quantum requirements for successorship qualification of a lessee’s spouse, brother, sister, child, or grandchild from one-quarter to one thirty-second, under the HHCA. Congress must approve these measures for the native Hawaiian blood quantum requirements to be changed.

Congress has consented to amending the HHCA with [P.L. 99-557](#), [P.L. 102-398](#), and [P.L. 105-21](#). In 1997, the native Hawaiian blood quantum was changed from one-half to one-quarter, with passage of P.L. 105-21. *Staff contact: Brandon Ashley (x69725)*

IV. MAJOR PROVISIONS & ANALYSIS

H.R. 441, the Southeast Alaska Regional Health Consortium Land Transfer Act (Young)

Section 1(a). *Conveyance Of Property To The Tanana Tribal Council*. Section 1 directs the Secretary of HHS no later than 180 days after the date of enactment of this Act, to convey by warranty deed certain property described in Section 2 for use in connection with health and social services related programs. The Conveyance of the property shall also be subject to four conditions which are:

²¹ 42 Stat. 108.

²² Public Law 86-3, 73 Stat. 4.

²³ *Id.*

- Conveyance must be made by warranty deed
- No consideration made by TTC for the property will be given
- No obligation, term, or conditions will imposed on TTC
- No allowance for any revisionary interest by the U.S. in the property

Subsection (b). *Property Described*. Subsection (b) describes the property and location which encompasses 11.25 acres located in the village of Tanana, AK.

Subsection (c). *Environment Liability*. Subsection (c) provides that notwithstanding any other provision of Federal law, as of the date of conveyance, TTC shall not be liable for any soil, surface water, groundwater, or other contamination resulting from the disposal, release or presence of any environmental contamination, including any oil or petroleum product, any hazardous waste pollutant, toxic substance, solid waste, or any other environmental contamination or hazard as defined in any Federal or State law, on the property described in subsection (b).

This section also grants the Secretary any reasonably necessary easement or access to the property to satisfy any retained obligation or liability of the United States. Finally, this section provides that the Secretary shall comply with Section 120(h)(3)(A) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

H.R. 2402, Winnebago Land Transfer Act of 2021 (Fortenberry)

Section. 1. *Short Title*.

Section. 2. *Land to be Taken into Trust*.

Subsection (a). Provides that all right, title, and interest of the United States in and to the Federal lands described in subsection (b) shall be held in trust for the benefit of the Winnebago Tribe of Nebraska and declared to be part of the reservation as established by the Treaty of March 8, 1865.

Subsection (b). *Federal Lands Described*. The lands that will be taken into trust for the Winnebago Tribe of Nebraska are described as a portion of Tract No. 119, Tract 210 in the state of Iowa, and Tract 113 in the state of Iowa.

H.R. 4881, Old Pascua Community Land Acquisition Act (Grijalva)

Section 1. *Short Title*.

Section 2. *Definitions*.

Section 3. *Land to be Held in Trust*. Directs the Secretary of the Interior to accept and take into trust, for the benefit of the Pascua Yaqui Tribe, certain land for the purposes of gaming.

Section 4. *Application of Current Law.* Land taken into trust shall be subject to the Indian Gaming Regulatory Act, including criminal provisions.

Section 5. *Reaffirmation of Status and Actions.* Directs that the land taken into trust shall be administered in accordance with the laws and regulations generally applicable to land held in trust by the United States for an Indian Tribe. Section 5 also directs that the land taken into trust for the Pascua Yaqui Tribe of Arizona shall be part of the Pascua Yaqui Reservation and shall be deemed to have been acquired and taken into trust on the date the Pascua Yaqui Tribe of Arizona was granted federal recognition.

Section 5 also affirms that the bill shall be construed in a manner that does not enlarge, impair, or otherwise affect the Tribe's interest in land, or any right or claim of the Tribe to land, water, right-of-way, or right-of-use in existence before the date of the enactment of the bill. Section 5 also confirms that the bill does not alter or diminish the right of the Tribe to seek to have additional land taken into trust.

H.R. 5221 (Rep. Grijalva), the Urban Indian Health Confer Act (Grijalva)

Section 1. *Short Title*

Section 2. *Urban Indian Organization.* Amends section 514 (b) of the Indian Health Care Improvement Act to require the Secretary of Health and Human Services confer with Urban Indian organizations to maximum extend practicable with carrying out Indian health care policies of the agency.

H.J. Res. 55, the Prince Jonah Kūhiō Kalanianaʻole Protecting Family Legacies Act (Rep. Kahele)

Section 1. *Short Title.*

Section 2. *Consent to Amendments.* The United States consents to Act 080, as adopted by the State of Hawaii, amending native Hawaiian blood quantum requirements for the Hawaiian Homes Commission Act.

V. COST

H.R. 441 (Young)

A Congressional Budget Office (CBO) score for the legislation in the 117th Congress has not been completed. However, the CBO estimated that a substantially similar senate companion bill S. 549, would not have an impact on the federal budget.²⁴

²⁴ <https://www.cbo.gov/system/files/2021-03/s549.pdf>.

H.R. 2402 (Fortenberry)

A CBO score for the legislation in the 117th Congress has not been completed.

H.R. 4881 (Grijalva)

A CBO score for the legislation in the 117th Congress has not been completed.

H.R. 5221 (Grijalva)

A CBO score for the legislation in the 117th Congress has not been completed.

H.J.Res.55 (Kahele)

A CBO for the legislation in the 117th Congress has not been completed.

VI. ADMINISTRATION POSITION

H.R. 441 (Young)

Unknown. However in the 114th Congress, the IHS testified that it supported the purposes of the bill but had concerns with transferring the property by warranty deed as liabilities could arise. The IHS also expressed concern that the legislation did not retain a revisionary interest in the land for the federal government.

H.R. 2402 (Fortenberry)

Unknown.

H.R. 4881 (Grijalva)

Unknown.

H.R. 5221 (Grijalva)

Unkown.

H.J.Res.55 (Kahele)

Unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

Showing Current Law as amended by H.R. 5221 (Grijalva)

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 514(b) of the Indian Health Care Improvement Act (25 U.S.C. 1660d)

§1660d. Conferring with urban Indian organizations

(a) *Definition of confer*

In this section, the term "confer" means to engage in an open and free exchange of information and opinions that-

- (1) leads to mutual understanding and comprehension; and
- (2) emphasizes trust, respect, and shared responsibility.

(b) *[Requirement]*

The Secretary shall ensure that the Service confers, to the maximum extent practicable, with urban Indian organizations in carrying out this chapter.]

REQUIREMENT.—The secretary shall ensure that the Service and the other agencies and offices of the Department confer, to the maximum extent practicable, with urban Indian organizations in carrying out—

- (1) this Act; and
- (2) other provisions of law relating to Indian health care.