

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Bill Mason at 1:35 p.m. on April 3, 2003 in Room 313-S of the Capitol.

All members were present except: Representative Tom Burroughs

Committee staff present: Russell Mills, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees:

Proponents: Charley Laman, General Counsel, Kickapoo Native American Tribe
Ron Hein, General Counsel, for Prairie Band Potawatomi Nation

Others attending: See Attached

Representative Cox made the motion that the February 18th, March 18th, 19th, 20th, 24th, and 25th minutes be approved. Representative Wilson seconded the motion and the motion carried.

SB 9 - Native American tribal law enforcement officers: jurisdiction

The Chairman called attention to a letter from Attorney General Phill Kline, regarding what affect **SB 9** had on the ability of tribes to successfully have land taken into trust (Attachment 1).

Staff explained the proposed substitute bill for **SB 9** (Attachment 2).

In response to a question, Representative Hutchins gave an explanation of the bill, citing increased costs and expenses, due to additional court cases and an anticipated increase in jail usage, for which counties will be responsible.

Discussion followed regarding where defendants would appear for court cases. Charles Laman, General Counsel for the Kickapoo Native American Tribe clarified that the statute a person is arrested under, determines the court, the crime dictates the court. He explained the current system is very ineffective and gave examples of the lengthy processes required of the officers. He clarified other points in the bill.

Representative Hutchins made a motion to table **SB 9**. Representative Edmonds seconded the motion and the motion failed 9-11.

Representative Novascone made a motion to amend the proposed substitute into **SB 9**. Representative Rehorn seconded. The motion carried

Representatives for the tribes answered questions regarding the genesis of the substitute bill, jail facilities on the reservation, practices used in other states and taxes paid by the Native Americans. Police officers and representatives of the Pottawatomie, Kickapoo, Sac and Fox, and Iowa Tribes rose in support of the substitute bill.

The original motion to amend proposed substitute bill into **SB 9** carried.

Representative Rehorn moved that they recommend **SB 9**, as amended, favorable for passage, The motion was seconded by Representative Loganbill.

Representative Hutchins made a substitute motion to amend **SB 9** to strike the words *territorial boundaries* and insert *exterior limits*, page 1, section 3. The motion passed 11-9.

Representative Hutchins made a motion to amend **SB 9** to strike the word *territorial* and insert *exterior* on page 2, section (d) Representative Freeborn seconded. The motion carried 11-9.

Representative Hutchins made a motion to amend **SB 9** on page 5, to strike the second part of (e), starting

Representative Hutchins made a motion to amend SB 9 on page 5, to strike the second part of (e), starting with Indian Country, in order to keep the language consistent, throughout the bill. Representative Freeborn seconded. The motion carried 11-8.

Representative Hutchins made a conceptional motion that if upon implementation of this legislation the county courts or the jail do incur additional costs, the tribes would agree to fund any additional costs to the courts or jails. Representative Edmonds seconded the motion. The motion failed 8-10.

Representative Novascone called for the question. Representative Wilson seconded.

Representative Edmonds made a substitute motion to report the bill adversely. The motion was seconded and the motion failed 8-12.

The motion was made to move SB 9, as amended, out favorably. The motion carried 12-9, with Representative Hutchins voting no and Representative Loganbill voting yes.

The meeting adjourned at 2:40 p.m. No future meetings planned this session.



State of Kansas

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PHILL KLINE
ATTORNEY GENERAL

April 3, 2003

MAIN PHONE: (785) 296-2215
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The Honorable Bill Mason, Chairman
House Committee on Federal and State Affairs
State Capitol, Room 170-W
Topeka, Kansas 66612

Re: Senate Bill No. 9

Dear Chairman Mason and Committee Members:

It is my understanding that 2003 Senate Bill No. 9 will be before the House Committee on Federal and State Affairs this afternoon. Representative Hutchins has asked me to advise the Committee on what, if any, affect this bill may have on the ability of tribes to successfully have land taken into trust.

Two years ago, the Department of Interior published new regulations dealing with the Secretary's responsibility to make decisions regarding taking land into trust for Native American tribes. As currently written, one of the factors the Secretary will look at in determining whether to take into trust land that is outside a tribe's existing reservation is whether the tribe would be able to provide law enforcement services on the land being considered for trust status. 25 C.F.R. § 151.12(f)(2); 25 C.F.R. § 151(b)(3) (copies enclosed). There is nothing to indicate that this factor will be determinative, but it is clearly a factor that will be considered and could lead the Secretary to approve an acquisition in trust that she otherwise might not approve. Thus, depending on how the bill defines the parameters of the law enforcement authority, it may have an impact on the Secretary's decision when taking land into trust.

Representative Hutchins thought it wise to let you know of this possible ramification. If you have any questions or concerns with regard to this matter, please feel free to contact me.

Very truly yours,

Phill Kline
Kansas Attorney General

PK:JLM:jm

Hs Federal & State Affairs

Date: 4-3-03

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TLAA if we determine that the application facilitates tribal self-determination, economic development, Indian housing, land consolidation or natural resources protection; except that

(b) Notwithstanding a determination in paragraph (a) of this section, we may not approve the application and accept transfer of title into trust for land inside a reservation or inside an approved TLAA if the approval of the acquisition will result in severe negative impact to the environment or severe harm to the local government. Evidence of such harm must be clear and demonstrable and supported in the record.

§ 151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?

An individual Indian or a tribe, including individual Indians and tribes in Oklahoma, may acquire land in trust on another tribe's reservation, or inside another tribe's approved TLAA, if the recognized tribe's governing body consents in writing. No consent is required if:

- (a) An individual Indian or tribe already owns an undivided fractional trust or restricted interest in the parcel of land to be acquired; or
- (b) The proposed acquisition is inside a reservation or an approved TLAA that is shared by two or more tribes, and the acquisition is for one of these tribes, or one of these tribes' members.

Subpart C—Discretionary Acquisitions of Title Off-Reservation

§ 151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land outside a reservation boundary and outside an approved TLAA, must include:

- (a) A complete description, or a copy of, the statutory authority that authorizes the United States to accept land in trust and any limitations contained in the authority;

(b) An explanation of the need of the individual Indian or tribe for land in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved. The request must explain:

- (1) Why the present land base is not appropriate or adequate for the activity contemplated in the request;
- (2) Why the applicant needs the land to be in trust for the proposed use; and
- (3) How trust status will benefit the applicant's economic and/or social conditions.

(c) A description of how the applicant will use the land. This description must include an explanation of:

- (1) The past uses of the land;
- (2) The present use of the land;
- (3) The anticipated future uses of the land;
- (4) The cultural or historical interest in the land;
- (5) The objectives that the individual Indian or tribe hopes to attain; and
- (6) If the acquisition is for housing:
 - (i) The projected number of units to be built; and
 - (ii) The number of members who will benefit.
- (7) If the applicant is acquiring the land for business purposes, the tribe must provide a business plan that specifies the anticipated economic benefits of the proposed use.

(d) As complete a description as is possible of the following:

- (1) The location of the land relative to State boundaries;
- (2) The distance of the land from the boundaries of the tribe's reservation;
- (3) The distance of the land from the Bureau's nearest agency or area office;
- (4) The location of roads and rights-of-way that provide access to the land; and
- (5) The location of land in relation to the tribe's other trust lands.

(e) A description of the effect on the State and its political subdivisions of removing the land from tax rolls. Describe any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

- (1) The amount of annual taxes currently assessed by the local government(s);

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- (2) The amount of annual revenue lost from special assessments to the local government(s), if any;
- (3) The amount of annual revenue lost from mineral receipts to the local government(s), if any; and
- (4) The local government's ability to provide public safety services for the land.
- (f) A description of any jurisdictional and land use infrastructure issues that might arise. The description must address each of the following issues.
- (1) Zoning, including:
- (i) The current zoning of the land;
- (ii) Any proposed use conflicts with current zoning; and
- (iii) Any tribal zoning ordinances.
- (2) Law enforcement and cross-deputizing, including:
- (i) Who currently provides law enforcement services for the land;
- (ii) If the applicant is a tribe, whether the tribe already has its own law enforcement;
- (iii) Who will supply law enforcement if the land is approved for trust status; and
- (iv) Any additional resources required to provide adequate law enforcement and how they will be funded.
- (3) Safety factors, including:
- (i) Who supplies fire protection service for the land;
- (ii) Who supplies emergency medical service for the land; and
- (iii) Whether the land is in a flood area or flood control area.
- (4) Traffic, roads, and streets, including:
- (i) A description of existing access to the land;
- (ii) Description and quantification of increased traffic in the area anticipated from the proposed use; and
- (iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.
- (5) Sanitation, including whether:
- (i) The land is served by a city sewage system;
- (ii) The land is served by an some other type of sewage system that is adequate to meet applicable standards;
- (iii) Trash pickup service or another method of trash disposal is available for the land;
- (iv) The city or another facility supplies services to the land;
- (v) There is an adequate water supply for the proposed use and any future anticipated uses; and
- (vi) Whether the applicant tribe has water rights to the available water supply.
- (6) Utilities, including:
- (i) Whether a city or a rural electric company supplies electricity to the land; and
- (ii) The source of heating for any structures located on or to be located on the land, such as: natural gas, propane, oil, coal, wood, electric, or solar.
- (7) Whether there are any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.
- (8) Whether the applicant has made any provisions to compensate the State or local governments for revenue lost because of the removal of the land from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)
- (g) Whether there is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U.S. Department of Justice. The evidence will be examined to determine if the applicant has marketable title. Copies of the standards are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004.
- (h) The documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, write to the Department of Interior, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 4513-MIB, Washington, DC 20240). Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.
- (i) If the request is for an individual Indian, documentation demonstrating

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that the applicant's request meets one of the criteria described in § 151.13.

§ 151.13 Can an individual Indian acquire land outside his or her own reservation?

Except as provided in paragraphs (a) and (b) of this section, we will not accept title to land in trust outside an individual Indian's reservation. We may approve acquisitions of land outside an individual Indian's reservation if:

(a) The individual Indian already owns an undivided fractional trust or restricted interest in the property being acquired; or

(b) The individual Indian has sold trust or restricted interest in land and the money received from the sale is re-invested in other land selected and purchased with these funds, or the individual Indian is purchasing land with funds obtained as a result of a sale of trust or restricted land under 25 U.S.C. 409a.

§ 151.14 What criteria will BIA use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?

Upon receipt of the information required under § 151.12 and upon a determination that the application is complete:

(a) We will approve the application to accept land into trust outside a reservation or outside an approved TLAA only if the application shows that the acquisition is necessary to:

(1) Facilitate tribal self-determination, economic development, Indian housing, land consolidation or natural resource protection; and

(2) We determine that the acquisition provides meaningful benefits to the Tribe that outweigh any demonstrable harm to the local community.

(b) Notwithstanding a determination in paragraph (a) of this section that the acquisition is necessary to facilitate tribal self-determination and that the benefits of the acquisition to the tribe outweigh any harm to the local community, we may disapprove an application to accept land into trust outside a reservation or outside an approved TLAA if the acquisition will result in:

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(1) Severe negative impacts to the environment, or

(2) Significant harm to the local community. Evidence of such harm must be clear and demonstrable and supported in the application record; or

(3) The inability of the Bureau of Indian Affairs to adequately handle the additional law enforcement and other responsibilities that would result from the acquisition of the land into trust status.

(c) When making a determination under paragraph (a) or (b) of this section to approve or deny an application, we will consider the location of the land relative to the state boundaries, and its distance from the boundaries of the tribe's reservation and whether that distance is reasonable based on the following:

(1) If the land is in a different state than the tribe's reservation, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny

(2) As the distance between the tribe's reservation or approved TLAA and the land to be acquired increases, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny

(3) As the distance between the tribe's reservation or approved TLAA and the land to be acquired increases, the concerns raised by the state and local governments will be given greater weight.

Subpart D—Mandatory Acceptance of Title

§ 151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will BIA process the request?

(a) To help us determine whether we are mandated by legislation to accept trust title to a specific tract of land, we require submission of the following documentation:

(1) A complete description, or a copy of, the statutory authority that directs the Secretary to place the land in trust, and any limitations contained in that authority;

(2) Title insurance or an abstract of title that meets the *Standards for the*

Proposed HOUSE Substitute for SENATE BILL NO. 9

By Committee on Federal and State Affairs

AN ACT concerning jurisdiction of certain law enforcement officers; relating to Native American tribal law enforcement officers; amending K.S.A. 2002 Supp. 22-2401a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 22-2401a is hereby amended to read as follows: 22-2401a. (1) Law enforcement officers employed by consolidated county law enforcement agencies or departments and sheriffs and their deputies may exercise their powers as law enforcement officers:

(a) Anywhere within their county; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers:

(a) Anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(3) Law enforcement officers employed by a Native American Indian Tribe may exercise powers of law enforcement officers anywhere within the territorial boundaries of the reservation of the tribe employing such tribal law enforcement officer, subject to the following:

(a) The provisions of this subsection (3) shall be applicable only if such Native American Indian Tribe has entered into a valid and binding agreement with an insurance carrier to provide liability insurance to cover the acts, errors and omissions of such tribal law enforcement agency or officer while providing assistance pursuant to this section. Such insurance policy shall be in an amount not less than \$500,000 for any one person and \$2,000,000 for any one occurrence for personal injury

and \$1,000,000 for any one occurrence for property damage. Such insurance policy shall be subject to verification by the attorney general. Such insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy set forth herein.

(b) If a claim is brought against any tribal law enforcement agency or officer for acts committed by such agency or officer while providing assistance pursuant to this section and while such agency or officer is outside the jurisdiction of such agency or officer, such claim shall be subject to disposition as if the tribe was the state pursuant to the Kansas tort claims act, provided that such act shall not govern the tribe's purchase of insurance. The tribe shall waive its sovereign immunity solely to the extent necessary to permit recovery under the liability insurance, but not to exceed the policy limits.

(c) Nothing in this subsection (3) shall be construed to prohibit any agreement between any state, county or city law enforcement agency and any Native American Indian Tribe.

(d) Nothing in this subsection (3) shall be construed to affect the provision of law enforcement services outside the territorial boundaries of reservations so as to affect in any way the criteria by which the United States department of the interior makes a determination regarding placement of land into trust.

(e) Neither the state nor any political subdivision of the state shall be liable for any act or failure to act by any tribal law enforcement officer.

~~(3)~~ (4) University police officers employed by the chief executive officer of any state educational institution or municipal university may exercise their powers as university police officers anywhere:

(a) On property owned or operated by the state educational institution or municipal university, by a board of trustees of the state educational institution, an endowment association, an athletic association, a fraternity, sorority or other student

group associated with the state educational institution or municipal university;

(b) on the streets, property and highways immediately adjacent to the campus of the state educational institution or municipal university;

(c) within the city where such property as described in this subsection is located, as necessary to protect the health, safety and welfare of students and faculty of the state educational institution or municipal university, with appropriate agreement by the local law enforcement agencies. Such agreements shall include provisions defining the geographical scope of the jurisdiction conferred, circumstances requiring the extended jurisdiction, scope of law enforcement powers and duration of the agreement. Any agreement entered into pursuant to this provision shall be approved by the governing body of the city or county, or both, having jurisdiction where such property is located, and the chief executive officer of the state educational institution or municipal university involved before such agreement may take effect; and

(d) additionally, when there is reason to believe that a violation of a state law, a county resolution, or a city ordinance has occurred on property described in ~~subsection (3)(a) or (b)~~ paragraph (a) or (b) of subsection (4), such officers with appropriate notification of, and coordination with, local law enforcement agencies or departments, may investigate and arrest persons for such a violation anywhere within the city where such property, streets and highways are located. Such officers also may exercise such powers in any other place when in fresh pursuit of a person. University police officers shall also have authority to transport persons in custody to an appropriate facility, wherever it may be located. University police officers at the university of Kansas medical center may provide emergency transportation of medical supplies and transplant organs.

~~(4)~~ (5) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2),

law enforcement officers of any jurisdiction within Johnson or Sedgwick county may exercise their powers as law enforcement officers in any area within the respective county when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants.

{5} (6) In addition to the areas where university police officers may exercise their powers pursuant to subsection {3} (4), university police officers may exercise the powers of law enforcement officers in any area outside their normal jurisdiction when a request for assistance has been made by law enforcement officers from the area for which assistance is requested.

{6} (7) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson county may exercise their powers as law enforcement officers in any adjoining city within Johnson county when any crime, including a traffic infraction, has been or is being committed by a person in view of the law enforcement officer. A law enforcement officer shall be considered to be exercising such officer's powers pursuant to subsection (2), when such officer is responding to the scene of a crime, even if such officer exits the city limits of the city employing the officer and further reenters the city limits of the city employing the officer to respond to such scene.

{7} (8) As used in this section:

(a) "Law enforcement officer" ~~has--the--meaning--ascribed thereto~~ means: (1) Any law enforcement officer as defined in K.S.A. 22-2202, and amendments thereto; or (2) any tribal law enforcement officer who is employed by a Native American Indian Tribe and has completed successfully the initial and any subsequent law enforcement training required under the Kansas law enforcement training act.

(b) "University police officers" means university police officers employed by the chief executive officer of: (1) Any

state educational institution under the control and supervision of the state board of regents; or (2) a municipal university.

(c) "Fresh pursuit" means pursuit, without unnecessary delay, of a person who has committed a crime, or who is reasonably suspected of having committed a crime.

(d) "Native American Indian Tribe" means the Prairie Band Potawatomi Nation, Kickapoo Tribe in Kansas, Sac and Fox Nation of Missouri and the Iowa Tribe of Kansas and Nebraska.

(e) "Reservation" means: (1) That portion of a Native American Indian Tribe's reservation described in the gaming compact entered into between the tribe and the state of Kansas; and (2) Indian country, as defined in subsection (b) of 18 U.S.C. 1151 (1949), located within the boundaries of the city of Reserve, Kansas.

Sec. 2. K.S.A. 2002 Supp. 22-2401a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.