Congress Passes the HEARTH Act: An Opportunity to Strengthen Tribal Sovereignty

On July 17, the Senate passed HR. 205, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011 (HEARTH Act) by a unanimous vote. The House of Representatives previously approved the Act by a vote of 400-0 in May. The President will sign the bill into law shortly.

Under the Long Term Leasing Act of 1955, 25 U.S.C. § 415, all leases of tribal trust land must be approved by the Bureau of Indian Affairs (BIA). While the BIA has attempted to defer to tribal governments in most cases, the approval requirement has inevitably added cost and delay to the leasing process. The HEARTH Act amends Section 415 to provide that:

• Tribes that adopt leasing regulations approved by the Secretary of the Interior (Secretary) will no longer need BIA approval for non-mineral leases;

• Tribal leasing regulations may provide for the lease of lands for business or agriculture for up to 25 years, with an option to renew for up to two additional 25-year terms;

• Tribal leasing regulations may provide for the lease of lands for public, religious, educational, recreational, or residential purposes for up to 75 years;

• The Secretary is required to approve or disapprove tribal leasing regulations within 120 days; the Secretary “shall” approve tribal regulations that:
  ○ are consistent with regulations issued by the Secretary under Section 415(a);
  ○ require the identification and evaluation of any significant effects of the proposed action on the environment;
  ○ require that the public be informed of, and have a reasonable opportunity to comment on, any significant environmental impacts of the proposed lease; and
  ○ require the tribe to respond to relevant and substantive public comments on any such impacts before the lease is approved;

• Where the federal government has undertaken an environmental review process in connection with a federally funded activity, the tribe can rely on the federal environmental review; and

• Tribes issuing leases under approved tribal leasing regulations are required to provide BIA with copies of the leases issued so that BIA can carry out its Land Titles and Records Office’s responsibilities.
The HEARTH Act represents a major shift of authority over tribal lands from the federal government to tribes. On a more practical level, the Act will enable tribes to pursue economic development more expeditiously and better meet the home ownership needs of their members. The Act also requires that BIA report to Congress on means by which tribes can assume control over the records relating to their lands.

Godfrey & Kahn assists tribes in drafting leasing regulations that are consistent with BIA regulations and which also address circumstances and concerns unique to the tribal community. For assistance, or more information, contact Brian Pierson, chair of Godfrey & Kahn’s Indian Nations Law Practice Group at 414.287.9456 or bpierson@gklaw.com.