

Breaking Developments in Indian Law
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Senate Introduces Legislation to Fix *Carcieri* Fee-to-Trust Problem

Senator Byron Dorgan has introduced legislation to fix the problem created by the United States Supreme Court's February 24, 2009, opinion in *Carcieri v. Salazar*. In that case, the Supreme Court narrowly interpreted the Department of Interior's authority to take land into trust for Indian tribes, and called into question the ability of tribes around the country to place land into trust and keep land in trust that had been placed there in recent years.

In *Carcieri*, the Supreme Court interpreted the Department of Interior's authority under the Indian Reorganization Act ("IRA") to be limited to taking land into trust for just those tribes that were "under federal jurisdiction" in 1934, when the IRA was passed. Without any clear definition of the term "under federal jurisdiction," it was unclear whether tribes that had not been federally-recognized prior to 1934 could place land into trust under the IRA. The legislation introduced by Senator Dorgan would clarify that under the IRA, the Department of Interior can take land into trust for "any federally-recognized Indian tribe." This change should remove the uncertainty created by *Carcieri* on this issue so crucial to tribes. However, it is likely that the legislation will face opposition from state and local governments that lose tax revenues whenever property in their jurisdiction is placed into trust for tribes.

A copy of the legislation can be found [here](#), and a copy of the Introductory Floor Statement accompanying the legislation can be found [here](#).

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