THE REPUBLICAN STUDY COMMITTEE
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Legislative Bulletin……..……..……December 1, 2014

Contents:

H. R. 5683 – Ensuring Access to Justice for Claims Against the United States Act
(Rep. DeSantis, R-FL)

Order of Business: The bill is scheduled to be considered on December 1, 2014, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority for passage.

Summary: H.R. 5683 amends Title 28, Section 1500 of the United States Code to permit the United States Court of Federal Claims jurisdiction over a pending civil action against the United States, even if the dispute in question is also filed in another United States federal court and is arising from essentially the same facts. A claim for monetary compensation against the United States is filed before the Court of Federal Claims whereas a claim on the validity of the dispute in question is filed in one of the United States District Courts.

Under current law, the United States Court of Federal Claims may not be a court of jurisdiction for a claim filed against the United States that has also been filed in another federal court. This requires plaintiffs to choose whether to file a claim before the Court of Federal Claims or another federal court. Under changes in H.R. 5683, a plaintiff may file a claim before either the Court of Federal Claims or a United States District Court. This permits plaintiffs from having to potentially choose between monetary compensation and a ruling on the merits.

H.R. 5683 permits the Court of Federal Claims to initially hear a pending civil action against the United States that has also been filed in another federal court, provided that it has been filed first in the Court of Federal Claims. If a claim has been filed in either the Court of Federal Claims or

another court first, the court of later filing will stay the pending claim until the matter is no longer pending before the first-filed court. The stay permits plaintiffs to file in either court well within the statute of limitations and retain an opportunity for redress before either court.

The first-filed status is determined pursuant to the date the claim in question is filed. If a claim is filed on the same day with the Court of Federal Claims and another federal court, the claim filed with the Court of Federal Claims will be considered to have been filed first. A stay in either court may be waived by agreement of the parties and on motion by any party if the stay will compromise evidence or result in irreparable prejudice to a party.

Additional Information: The United States Court of Federal Claims was recreated in 1982 as a court of jurisdiction for plaintiffs to file claims of monetary compensation against the United States. The court hears matter pertaining to disputes involving the Fifth Amendment Takings Clause, the environment, government contracts, tax disputes, etc. Claims of non-monetary redress against the United States may be filed in the United States District Courts.

H.R. 5683 is supported by the Administrative Conference of the United States, the National Congress of American Indians, and the American Bar Association.

A similar bill, S.2769, was introduced in the Senate on July 31, 2014 and referred to the Senate Committee on the Judiciary. No further action has been taken on S.2769.

Committee Action: The bill was introduced on November 12, 2014, and was referred to the House Committee on the Judiciary. A committee mark-up session was held on November 13, 2014 and was passed by the full committee by voice vote.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office (CBO) estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO estimate is available.

Constitutional Authority: "The constitutional authority on which this legislation is based is found in article I, section 8, clause 9; article III, section 1, clause 1; and article III, section 2, clause 2, of the Constitution, which grant Congress authority over federal courts."

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H.R. 4924 - Bill Williams River Water Rights Settlement Act of 2014, as amended — (Gosar, R-AZ)

Order of Business: H.R. 4924 is scheduled for consideration on December 1, 2014, under a suspension of the rules, which requires a two-thirds majority vote for passage.

Summary: This bill directs the Secretary of the Interior to authorize, ratify, and confirm the Big Sandy River-Planet Ranch Water Rights Settlement Agreement between the Hualapai Tribe, the Department of the Interior, the Arizona Game and Fish Commission, the Arizona Department of Water Resources, and the Freeport Minerals Corporation. The purpose of the bill is to remove objections to the applications for the severance and transfer of certain water rights and to provide confirmation to those water rights. In addition, the bill secures a long-term lease for a portion of Planet Ranch for use in the Conservation Program to bring the leased portion of Planet Ranch into public ownership for the long-term benefit of the Conservation Program. The bill also secures non-Federal contributions from the Freeport Minerals Corporation to support a tribal water supply study necessary for the advancement of settlement claims of the Hualapai Tribe for rights to Colorado River water.

This bill authorizes and codifies two agreements: the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement and the Big Sandy River-Planet Ranch Water Rights Settlement Agreement. According to the sponsor, "The Big Sandy River-Planet Ranch Water Rights Settlement Agreement allows for certain water rights owned by Freeport on Planet Ranch to be severed and transferred to support the company's mine operation in Bagdad, Arizona. This agreement also allows Freeport to donate 3,400 acres of private land at Planet Ranch to the Arizona Game and Fish Department. The land will then be managed as part of the State's responsibility under the Multi-Species Conservation Program (MSCP) for the lower Colorado River." The second agreement, the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement, secures benefits for the Hualapai Tribe, including $1 million from the Freeport Minerals Corporation for water and infrastructure studies.

Additional Background: According to the sponsor of the bill, the Freeport Minerals Corporation, which owns and operates a large copper mine in Bagdad, Arizona, requires a dedicated source of water to support its operations. Due to an ongoing drought and competing demands for the water resources, there was a need for legislation to resolve disputes over the water rights.

Committee Action: This bill was introduced by Representative Gosar on June 20, 2014, and referred to the House Committee on Natural Resources. On November 11, 2014, the committee held a mark-up and the bill was ordered to be reported out, as amended, by unanimous consent.

Administration Position: No Statement of Administration Policy is available at this time.

Cost to Taxpayers: No CBO score is available at this time.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: This legislation is constitutionally appropriate pursuant to Article I, Section 8, Clause 3 (the Commerce Clause) which grants Congress the power to regulate Commerce with foreign Nations, and among several states and with the Indian Tribes; Article II, Section 2, Clause 2 (the

Treaty Clause) which gives the President the Power to make Treaties; Article IV, Section 3, Clause 2 (the Property Clause) which gives Congress the Power to make all Rules and Regulations respecting the Territory or other Property belonging to the United States.The Supreme Court, in Winters v. United States (1901), reasoned that an Indian Tribe's water rights are established when the reservation is created, regardless of whether the Tribe actually uses the water on that reservation at that time. The Act settles water right claims of the Hualapai Tribe and is thus constitutionally permissible.

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S.2040 - Blackfoot River Land Exchange Act of 2014 - (Sen. Crapo, R-ID)

Order of Business: S. 2040 is scheduled to be considered on December 1, 2014, under a suspension of the rules, which requires a two-thirds majority for passage.

Summary: This bill rectifies border changes and represents an agreement between the Shoshone-Bannock Tribes, allottees (heirs of original allottee of the Reservation), and non-Indian landowners. The purpose is to resolve the land ownership and land use disputes resulting from realignment of the Blackfoot River by the Corps of Engineers in 1964 and ensure a final and fair solution for all parties involved.

The bill releases claims relating to the boundary disputes caused by the realignment of the Blackfoot River. It places all non-Indian land into a trust held by the United States for the benefit of the Shoshone-Bannock Tribes. The disputed Indian land will be transferred by the Secretary for sale. Proceeds from the sale of the land will be given to non-Indian land owners for any net loss of land resulting from this Act.

It is important to note, nothing in this Act affects the original boundary of the Reservation, as established by Executive order in 1867 and confirmed by treaty in 1868.

Additional Background: The Shoshone-Bannock Tribes is a federally recognized tribe that is headquartered in Fort Hall, Idaho. In 1867, President Andrew Johnson designated by Executive order the Fort Hall Reservation for various bands of Shoshone and Bannock Indians. As designated by a treaty, the Blackfoot River (as it existed naturally) is the northern boundary of the reservation. In 1964, the Corps of Engineers completed a flood protection project on the river which required the building of levees, replacing irrigation diversion structures, replacing bridges, and channel realignment. The channel realignment resulted in Indian land being located north of the River and non-Indian land being located south of the River. According to the Senate Committee Report, "At issue are 25 parcels (approximately 37.04 acres) of Indian land formerly on the southern side of the river now on the northern side and 19 parcels (approximately 31.01 acres) of non-Indian land formerly on the northern side and now on the southern side and within the Reservation's boundary. Due to their inaccessibility, the non-Indian lands have remained unused for years."

Committee Action: This legislation was introduced on February 25, 2014, by Senator Crapo, and was referred to the Committee on Indian Affairs. On May 21, 2014, the committee met to consider the bill. No amendments were offered, and the bill was ordered to be reported favorably to the Senate by voice vote. On September 18, 2014, this bill passed Senate with an amendment by Unanimous Consent.

Administration Position: No Statement of Administration Policy is available at this time.

Cost to Taxpayers: CBO estimates that implementing the legislation would have no significant effect on the federal budget. Enacting S. 2040 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: By requiring the exchange of lands through federal statute, S. 2040 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on tribal and nontribal land owners. The bill would terminate rights to certain parcels of land surrounding the Blackfoot River, and extinguish any past, present, or future claims on that land. The cost of the mandates would be the forgone compensation for damages that could have been collected through legal actions related to clarifying title to the property, and the net value of the land being exchanged by the federal government. Any forgone damages are unlikely to be significant. In a market study used by DOI, the value of the land is estimated to be less than $500,000. Therefore, CBO estimates that the aggregate cost of the mandates would fall well below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates ($76 million and $152 million, respectively, in 2014, adjusted annually for inflation).

Constitutional Authority: Senate rules do not require the inclusion of a constitutional authority statement.

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H.R. 5050 – May 31, 1918 Act Repeal Act - (Simpson, R-ID)

Order of Business: H.R. 5050 is scheduled to be considered on December 1, 2014, under a suspension of the rules, which requires a two-thirds majority for passage.

Summary: This bill repeals the 1918 Act which authorizes the Department of the Interior (DOI) to reserve land for a town site within the Fort Hall Indian Reservation in Idaho for the benefit of the Shoshone-Bannock Tribes. In addition, it gives the Shoshone-Bannock Tribes the right of first refusal to purchase – at fair market value – any land within the Fort Hall Townsite offered for sale. The United States will hold in a trust, for the benefit of the Tribes, any land owned or acquired in the Fort Hall Township both prior to and after enactment of this bill.

Additional Background: The Fort Hall Townsite consist of approximately 120 acres and was the land that was taken out of trust by being set aside or set apart under the 1918 Act on the Fort Hall Reservation

Committee Action: This legislation was introduced on July 9, 2014, by Representative Simpson and was referred to the House Committee on Natural Resources. On September 18, 2014, the committee met in mark-up, and the bill was ordered to be reported out by unanimous consent.

Administration Position: No Statement of Administration Policy is available at this time.

Cost to Taxpayers: CBO estimates that implementing H.R. 5050 would have no significant effect on the federal budget. None of this land is federally owned and the cost to hold it in trust for the tribes would be minimal. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 5050 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, which grants Congress the power to regulate Commerce with the Indian Tribes.

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H.R. 2455 – Nevada Native Nations Lands Act, as amended - (Amodei, R-NV)

Order of Business: H.R. 2455 is scheduled to be considered on December 1, 2014, under a suspension of the rules, which requires a two-thirds majority for passage.

Summary: Title I of this bill directs the Secretary of the Interior to convey approximately 275 acres of land for fair market price to Elko, Nevada. The conveyed land may only be used for a motocross, bicycle, off-highway vehicle, or a stock car racing area. The Secretary will require the county to pay all survey costs and other administrative costs necessary for the preparation and completion of any patents for, and transfers of title to, the land.

Title II details several conveyances of land to be held in trusts for certain Indian tribes, including the following:

- 373 acres of BLM administered land in trust for the Te-moak Tribe of Western Shoshone Indians of Nevada.

- 19,094.16 acres of land located near highway 95 south of McDermitt, Nevada, in Humboldt County, Nevada, in trust for the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation.
- 82 acres of National Forest System land in Owyhee, Nevada for the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.
- 941 acres of land managed by BLM to be held in trust for the benefit of the Summit Lake Paiute Tribe.
- 13,434 acres of land managed by BLM to be held in trust for the benefit of the Reno-Sparks Indian Colony.
- 11,719 acres of land managed by BLM to be held in trust for the benefit of the Pyramid Lake Paiute Tribe.

The land taken into trust is not eligible for class II or class III gaming.

Committee Action: This legislation was introduced on June 6, 2013, by Representative Amodei and was referred to the House Committee on Natural Resources. On June 19, 2014, the committee met in mark-up, and the bill was ordered to be reported out, as amended, by unanimous consent.

Administration Position: No Statement of Administration Policy is available at this time.

Cost to Taxpayers: CBO estimates that implementing the legislation would have no significant effect on the federal budget. The affected lands are expected to generate receipts for the federal government from grazing fees and leases under current law. Thus, CBO estimates that conveying those lands would reduce offsetting receipts (which are treated as increases in direct spending); however, we estimate that such losses would be minimal. Because enacting H.R. 2455 would affect direct spending, pay-as-you-go procedures apply. Enacting H.R. 2455 would not affect revenues.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 2455 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Constitutional Authority: The constitutional authority of Congress to enact this legislation is provided by Article I, Section 8 of the United States Constitution, specifically clause 1 (relating to providing for the general welfare of the United States) and clause 18 (relating to the power to make all laws necessary and proper for carrying out the powers vested in Congress), and Article IV, Section 3, Clause 2 (relating to the power of Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States).

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H.R. 3572 – To revise the boundaries of certain John H. Chafee Coastal Barrier Resources System units in North Carolina, as amended- (McIntyre, D-NC)

Order of Business: H.R. 3572 is scheduled to be considered on December 1, 2014, under a suspension of the rules, which requires a two thirds majority for passage.

Summary: This bill revises the boundaries of certain Coastal Barrier Resources System (CBRS) units near Wilmington, North Carolina. The revisions in this bill would, according to CBO, add 764 acres of land to the CBRS. The modified maps would exclude certain private acreage, which would enable owners of about 30 structures to purchase federal flood insurance.

Committee Action: This legislation was introduced on November 21, 2013, by Representative McIntyre and was referred to the House Committee on Natural Resources. On July 16, 2014, the committee met in mark-up, and the bill was ordered to be reported out, as amended, by unanimous consent.

Administration Position: No Statement of Administration Policy is available at this time.

Cost to Taxpayers: CBO estimates that implementing the legislation would have no significant effect on the federal budget. Because H.R. 3572 could affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that any net change in direct spending would be negligible over the 2015-2024 period. Enacting the bill would not affect revenues.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 3572 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: This bill is enacted pursuant to the power granted to Congress under Article I, Section 8, Amendment XVI, of the United States Constitution.

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H. R. 5629 – Strengthening Domestic Nuclear Security Act of 2014, as amended (Rep. Meehan, R-PA)

Order of Business: The bill is scheduled to be considered on December 1, 2014, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority for passage.

Summary: H.R. 5629 would amend the title XIX of the Homeland Security Act of 2002 to require the Director for Domestic Nuclear Detection to provide support for planning, organization, equipment, training, exercises, and operational assessments to Federal, State, local, territorial, and tribal entities to assist in implementing radiological and nuclear detection capabilities in the event of a radiological or nuclear act of terror or other attack.

The Director for Domestic Nuclear Detection is required to establish the "Securing the Cities" (STC) program to enhance, through Federal, State, local, tribal, and private entities, the ability of the United States to detect and prevent a radiological or nuclear act of terror or other attack in high-risk urban areas. The Director is also mandated to notify Congress not later than 30 days after any additions or changes are made to the jurisdictions participating in the STC program.

The Government Accountability Office (GAO) is required to submit to Congress an assessment which would include an evaluation of the effectiveness of the STC program.

In the event of an acquisition of a new system for a component of the Department of Homeland Security or any associated end-user, the head of such component shall complete and sign a Mission Need Statement and Operational Requirements Document, in accordance with relevant Department Acquisition Management Directives.

The amount of $291,000,000 for each of fiscal years 2015 and 2016 is authorized to be appropriated to carry out the bill. H.R. 5629 would also amend section 1907 of the Homeland Security Act of 2002 by requiring a biennial interagency review of global nuclear detection architecture.

Additional Information: More information on the Domestic Nuclear Detection Office can be found here. Information on the Department of Homeland Security's "Securing the Cities" program can be found here.

Committee Action: The bill was introduced on September 18, 2014, and was referred to the House Committee on Homeland Security.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office (CBO) estimate is available. See summary above for amounts authorized.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO estimate is available.

Constitutional Authority: No constitutional authority is available.

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H.R. 3410 – Critical Infrastructure Protection Act, as amended (Rep. Franks, R-AZ)

Order of Business: The bill is scheduled to be considered on December 1, 2014, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority for passage.

Summary: H.R. 3410, the "Critical Infrastructure Protection Act", would amend the Homeland Security Act of 2002 by requiring the Secretary of Homeland Security to:

- Include in national planning scenarios the threat of electromagnetic pulse (EMP) events; and
- Conduct outreach to educate owners and operators of critical infrastructure, emergency planners, and emergency responders at all levels of government of the threat of EMP events;

H.R. 3410 would further direct the Department of Homeland Security's Under Secretary for Science and Technology to conduct research and development to mitigate the consequences of EMP events including:

- An objective scientific analysis of the risks to critical infrastructures from a range of EMP events;
- A determination of the critical national security assets and vital civic utilities and infrastructures that are at risk from EMP events;
- An evaluation of emergency planning and response technologies that would address the findings and recommendations of experts, including those of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack; and
- The restoration and recovery capabilities of critical infrastructure under differing levels of damage and disruption from various EMP events.

The bill requires the Secretary of Homeland Security prepare and submit to Congress not later than one year after the bill's enactment:

- A recommended strategy to protect and prepare the critical infrastructure of the American homeland against EMP events, including from acts of terrorism; and
- Biennial updates on the status of the recommended strategy.

The Secretary is also required to submit a report to Congress not later than 180 days after the bill's enactment that would include:

- EMP threats in national planning scenarios;
- Research and development;
- Development of the comprehensive plan; and
- Outreach to educate owners and operators of critical infrastructure, emergency planners and emergency responders at all levels of government regarding the threat of EMP events.

Nothing in H.R. 3410 would be construed to grant any regulatory authority. The bill may only be carried out by using funds appropriated under the authority of other laws.

Additional Information: EMP is defined in the bill as an electromagnetic pulse caused by intentional means, including acts of terrorism and a geomagnetic disturbance caused by solar storms or other naturally occurring phenomena. Information from the House Committee on Homeland Security's hearing "Electromagnetic Pulse (EMP): Threat to Critical Infrastructure" can be found here. More information from the Washington Free Beacon on the threat of an EMP attack on the electrical grid can be found here. A 2008 Congressional Research Service report on threats related to an EMP attack can be found here. A Dear Colleague from the H.R. 3410's sponsor can be found here. A list of cosponsors to H.R. 3410 can be found here.

Committee Action: The bill was introduced on October 30, 2013, and was referred to the House Committee on Homeland Security.

Administration Position: No Statement of Administration Policy is available. As noted in the summary, the bill may only be carried out by using funds appropriated under the authority of other laws.

Cost to Taxpayers: No Congressional Budget Office (CBO) estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO estimate is available.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clause 1 of the United States Constitution which states that Congress shall have power to … provide for the common defense.

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H.R. 3438 – National Laboratories Mean National Security Act (*Rep. Swalwell*, D-CA)

Order of Business: The bill is scheduled to be considered on December 1, 2014, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority for passage.

Summary: H.R. 3438 would amend the Homeland Security Act of 2002 to allow the recipient of grants under the Urban Area Security Initiative and the State Homeland Security Grant Program to work in conjunction with a National Laboratory to achieve target capabilities related to preventing, preparing for, protecting against, and responding to acts of terrorism, consistent with a state homeland security plan.

Additional Information: More information on the Department of Homeland Security's preparedness grant programs including the Urban Areas Security Initiative and the State Homeland Security Program can be found here.

Committee Action: The bill was introduced on October 30, 2013, and was referred to the House Committee on Homeland Security.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office (CBO) estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO estimate is available.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clauses 1 and 18; Article I, Section 9, Clause 7.

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