

Maniilaq Association

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**WRITTEN TESTIMONY
SUBMITTED TO
THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES ON
H.R. 443, A BILL FOR THE CONVEYANCE OF CERTAIN PROPERTY FROM
THE UNITED STATES TO MANIILAQ ASSOCIATION
AND H.R. 2444, DEPARTMENT OF THE INTERIOR TRIBAL
SELF-GOVERNANCE ACT OF 2011.**

**IAN ERLICH, PRESIDENT/CHIEF EXECUTIVE OFFICER
MANIILAQ ASSOCIATION**

September 22, 2011

Introduction

My name is Ian Erlich and I am President and Chief Executive Officer of the Maniilaq Association, an Alaska Native regional non-profit organization representing twelve tribes in Northwest Alaska.¹ I am thankful for the opportunity to testify in support of H.R. 443, a Bill for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska. I will also make a few comments about H.R. 2444, the Department of the Interior Tribal Self-Governance Act of 2011, a bill which will strengthen Indian tribes' opportunities for Self-Governance by amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA). Unfortunately I will be on a previously scheduled business trip on September 22 and I will not be able to present my testimony in person. Paul Hansen, the Deputy Health Administrator for the Maniilaq Health Center, will be at the hearing in person and will present my testimony on my behalf.

H.R. 443

The Maniilaq Association has for many years carried out a range of health and social services programs in the Northwest Arctic Borough on behalf of its member Alaska Native villages under the Self-Governance provisions of the ISDEAA. Maniilaq Association carries out these programs in accordance with the Alaska Tribal Health Compact with the United States and Funding Agreements with the Indian Health Service.

H. R. 443 would require the Secretary of Health and Human Services to convey to the Maniilaq Association property located in Kotzebue, Alaska, for use in connection with these programs. The

¹ The Native Village of Ambler, the Native Village of Buckland IRA, the Native Village of Deering, the Native Village of Kiana, the Native Village of Kivalina IRA, Kobuk Traditional Council, the Native Village of Kotzebue, the Native Village of Noatak IRA, the Native Village of Noorvik IRA, Selawik IRA Council, the Native Village of Shungnak IRA, and the Native Village of Point Hope IRA.

Member Villages

Ivisaappaat, Nunatchiaq, Ipnatchiaq, Katyaak, Kivaliniq, Laugviik, Qikiqtagruk, Nautaaq, Nuurvik, Akuligaq, Isinnaq, Tikigaq, Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, Shungnak, Pt. Hope

property to be conveyed consists of three parcels of land including buildings and appurtenances on the land.

The first parcel is an 8.10 acre tract on which the Maniilaq Health Center is located and on which the Maniilaq Association recently completed the construction of a long term care facility adjacent to the Health Center. Completion of this project has been a long term goal of Maniilaq Association and was the product of many years of work. In connection with this project Maniilaq Association unsuccessfully sought authorization from Indian Health Service to build the long term care facility as an addition to the Health Center which was owned by the Indian Health Service. Finally, after several years of discussion, Maniilaq Association realized that to keep the project moving it had no option but to agree with the Indian Health Service's suggestion that it accept title to the property. The parcel was transferred by the Indian Health Service to the Maniilaq Association through a Quitclaim Deed issued by the Indian Health Service to the Maniilaq Association on March 31, 2009. Final construction of the 18 bed facility was completed this year and it was dedicated last week. The facility's first residents will begin moving in next week.

The second and third parcels described in H.R. 443 are land on which housing for employees of the Health Center and long term care facility is located. The Indian Health Service has not transferred these parcels to Maniilaq Association to date.

The conveyance required by H. R. 443 will be through a warranty deed without consideration and without imposing any obligation, term, or condition on the Maniilaq Association, or reversionary interest in the United States, other than required by H. R. 443 itself or by section 512(c)(2)(B) of the ISDEAA. This makes the conveyance required by H. R. 443 consistent with the ISDEAA, which allows reversion of title back to the United States, at the option of the Secretary, only upon retrocession or withdrawal by the Maniilaq Association from the Alaska Tribal Health Compact or re-assumption of the compacted programs by the Indian Health Service.

The warranty deed required by H. R. 443 will supersede the Quitclaim Deed issued by the Secretary to the Maniilaq Association on March 31, 2009. The quitclaim deed includes provisions for Indian Health Service control of the Maniilaq Association's use of the property which are inconsistent with conveyance of title under the ISDEAA. For example, the quitclaim deed requires Indian Health Service approval for any mortgage or encumbrance of the property as security for construction or other loans for improvements on the property. Indian Health Service approval is also required for any contract which would impact the value of the property. This gives the Indian Health Service continuing control over the Maniilaq Association's use of the property. Breach of these requirements, which are made covenants running with the land, results in an immediate reversion of title back to the Indian Health Service. This goes far beyond the conditions for reversion of title back to the United States in section 512(c)(2)(B) of the ISDEAA.

While a quitclaim deed transfers the grantor's interest in the property, it does not warrant that the title is valid. Transfer by warranty deed, which requires special legislation, expressly guarantees the grantor's good and clear title and contains covenants concerning the quality of title, freedom from encumbrances, and defense of title against other claims. This gives the Maniilaq Association more security in its title and more flexibility in use of the property in carrying out health and social services programs for its member villages.

H. R. 443 exempts the Maniilaq Association from liability for environmental contamination or hazards, as defined in Federal law, present on the property as of the date of conveyance, notwithstanding any provision of Federal law. H. R. 443 does not pre-empt state environmental laws and the Secretary is granted any easement or access to the property which may be necessary for the Secretary to satisfy any retained environmental obligations and liability prior to conveyance. The Secretary must also comply with the notice and warranty provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) applicable to transfer of property owned by the United States on which any hazardous substance was stored for one year or more, known to be released, or disposed of on the property.

Enactment of H. R. 443 will enable the Maniilaq Association to exercise its rights of ownership in the transferred property consistent with the ISDEAA and the principles of self-governance.

H.R. 2444

Maniilaq Association has been involved with Self-Governance from its inception. As such, we understand the many important benefits of Self-Governance. We also understand the ways in which Self-Governance needs to be improved to provide tribes with the best tools possible to continue to advance the essential goals of Self-Governance. H.R. 2444 contains proposed amendments to Title IV that are important to the evolution of Self-Governance. Most significantly, these amendments create consistency between Title IV Self-Governance in the Department of the Interior (DOI) and Title V Self-Governance in the Department of Health and Human Services (DHHS).

Last year, a substantially similar bill, H.R. 4347, the Department of the Interior Tribal Self-Governance Act of 2010 passed the House but failed to pass the Senate due to DOI opposition to several provisions of the proposed bill. Tribal representatives and representatives for the DOI have now arrived at compromise language for the Department of the Interior Tribal Self-Governance Act of 2011. The bill now has the full support of the DOI and the Administration.

Thus, H.R. 2444 reflects significant compromise and, at long last, agreement on language for the needed amendments to Title IV. The time has come to pass this legislation, which would significantly advance Congress's policy of promoting Tribal Self-Governance.

The proposed amendments to Title IV will strengthen tribal Self-Governance, allowing tribes to prioritize their needs and plan for the future in a way that is consistent with each tribe's culture, traditions and institutions. Below I describe several of the key benefits of the Title IV Amendments.

- **Consistency.** The Title IV amendments in H.R. 2444 bring the IV Self-Governance initiative in the DOI further into line with the Title V Self-Governance initiative in DHHS, creating administrative efficiencies for tribes.
- **Minimizes Burdens.** The Title IV amendments in H.R. 2444 minimize some of the existing administrative burdens.
- **Balancing Negotiating Positions.** The amendment will clarify and limit the reasons for which the BIA may decline to enter a proposed agreement and the time frame for making a decision,

which levels the playing field and ensures that BIA acts in a timely manner with respect to contract proposals.

- **Clear Appeal and Burden of Proof.** The Title IV amendments in H.R. 2444 provide tribes with a clear avenue of appeal and burden of proof for tribes to challenge adverse agency decisions.

Conclusion

I would like to thank the Subcommittee for holding this important hearing on H.R. 443 and H.R. 2444. On behalf of the Maniilaq Association including our twelve constituent villages and their members, I sincerely hope that this Congress will enact both bills.

Thank you.