



**WRITTEN TESTIMONY
SUBMITTED TO THE
HOUSE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON H.R. 4546, "DEPARTMENT OF THE INTERIOR
TRIBAL SELF-GOVERNANCE ACT OF 2014"**

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ADVISORY COMMITTEE (SGAC)**

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Good afternoon. Thank you for the opportunity to be here today to testify once again on this critical legislation. My name is W. Ron Allen and I am the Chairman/CEO of the Jamestown S'Klallam Tribe located in Washington State. I am also the Chairman of the Department of the Interior (DOI) Self-Governance Advisory Committee (SGAC), and Co-Chair of the Title IV Tribal Task Force and I offer my testimony today in all of these capacities. Collectively, I am representing well over 300 Tribes that participate in Self-Governance within DOI and the Department of Health and Human Services (HHS), Indian Health Service (IHS).

I am pleased to testify in support of H.R.4546, a bill to strengthen Indian Tribes' opportunities for Self-Governance by amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) (P.L. 93-638, as amended). The proposed Title IV amendments advance three basic goals:

- To bring Title IV up to par with Title V, the permanent Self-Governance authority within HHS;
- To improve the construction provisions of Title IV; and,
- To maintain unchanged the discretionary authority to enter Self-Governance agreements with non-BIA agencies in Interior.

Before expanding on the need for these critical amendments, I will talk briefly about the success of the Self-Governance policy over the past 25 years and the Tribal-

Federal collaboration to expand that success through the implementation of the Title IV amendments.

The Success of Self-Governance

The increasing number of Tribes that have opted to participate in Self-Governance on an annual basis reflects the success of Self-Governance. In Fiscal Year 1991, the first year Self-Governance agreements were negotiated by the BIA with Tribes, only seven Tribes entered into agreements. At that time, the total dollar amount compacted by Indian Tribes was \$27.1 million. In Fiscal Year 2013, 254 Tribes and Tribal consortia were operating 106 funding agreements with over \$432 million in programs, functions, services and activities.¹ This growth in Tribal participation in Self-Governance reflects the stunning success of Tribal Self-Governance. Under Self-Governance, Tribes have assumed the management of a large number of DOI programs, including roads, housing, education, law enforcement, court systems, and natural resources management. Self-Governance is the *only* successful Tribal – Federal policy that has benefitted *both* the Tribes and the United States and it has provided the foundation for building a positive relationship and partnership between our governments.

² How so, you might ask? The answer is “**Tribal Self-Governance Works.**”

- ***Self-Governance Promotes Efficiency.*** Devolving Federal administration from Washington, D.C. to Indian Tribes across the United States has strengthened the efficient management and delivery of Federal programs impacting Indian Tribes. As this Committee well knows, prior to Self-Governance up to 90% of Federal funds earmarked for Indian Tribes were used by Federal agencies for administrative purposes. Under Self-Governance, program responsibility and accountability has shifted from distant Federal personnel to elected Tribal leaders. In turn, program efficiency has increased as politically accountable Tribal leaders leverage their knowledge of local resources, conditions and trends to make cost-saving management decisions.
- ***Self-Governance Strengthens Tribal Planning and Management Capacities.*** By placing Tribes in decision-making positions, Self-Governance vests Tribes with ownership of the critical ingredient necessary to plan our own futures – information. At the same time, Self-Governance has provided a generation of

¹ Source: Department of the Interior, *Budget Justifications and Performance Information, FY 2014, Indian Affairs*, Appendix 7.

² Testimony of Kevin K. Washburn, Assistant Secretary Indian Affairs, U.S. Department of the Interior at Senate Committee on Indian Affairs Legislative Hearing on S. 919, Department of the Interior Tribal Self-Governance Act of 2013, January 29, 2014

Tribal members with the management experience that is so critical to the continued effective stewardship of our resources.

- ***Self-Governance Allows for Flexibility.*** Self-Governance allows Tribes great flexibility when making decisions concerning efficient and effective allocation of funds across programs that are fully compliant with Federal regulations. Whether managing programs in a manner consistent with traditional values or allocating funds to meet changing priorities, Self-Governance Tribes are developing in ways consistent with their own needs and priorities, not a monolithic Federal policy.
- ***Self-Governance Affirms Sovereignty.*** By utilizing signed compacts, Self-Governance successfully implements the fundamental government-to-government relationship between Indian Tribes and the U.S. Government. It also advances a bi-partisan political agenda of both the Congress and the Administration: namely, shifting Federal functions to local governmental control.

In short, Self-Governance works, because it places management responsibility in the hands of those who care most about seeing Indian programs succeed: Indian Tribes and their citizens.

Need for Title IV Amendments

As important and successful as Self-Governance has been for my Tribe and so many others, it is not perfect. Shortly after Title IV was enacted in 1994, the DOI began a rulemaking process to develop and promulgate regulations. The process was a failure in many ways. Ultimately, five years after the rulemaking process began, DOI published regulations that, from the Tribal perspective, failed to fully implement Congress's intent when Title IV was enacted. Instead of moving the initiative forward, it moved backwards.

Tribal leaders began discussions about how the statute could be amended. At the same time, Congress in 2000 enacted Title V of the ISDEAA. Title V created permanent Self-Governance authority within HHS and directly addressed many of the issues that had proven to be problematic during the Title IV rulemaking process. But the many improvements reflected in Title V remain absent from Title IV. Consequently, Self-Governance Tribes have been forced to operate under two separate sets of administrative requirements, one for IHS and one for BIA.

Tribal Leaders decided that Title IV needed to be amended to reflect the advances made in Title V. For over a decade amending Title IV has been a top legislative priority for Tribal Leaders. In the past two Congresses, I, along with other Tribal Leaders on

both the Self-Governance Advisory Committee and the Title IV Tribal Task Force, have testified before this Committee in support of predecessor bills to H.R. 4546.³ Our persistence speaks to the importance Tribal Leadership has placed on amending Title IV to empower our Tribes to maximize their ability to manage limited Federal resources for the benefit of our Tribal citizens.

H.R. 4546 reflects nearly two decades of discussions, drafting, negotiation, and redrafting. Tribal representatives, along with agency and Congressional staff have worked very hard in the past two years to come up with a bill that everyone can support. The time is long overdue to pass a bill that will significantly advance Congress's policy of promoting Tribal Self-Governance for all American Indian and Alaska Native Tribal governments.

Overview of H.R. 4546

The proposed bill will bring Title IV into line with Title V, creating administrative efficiencies for Tribes while also importing the beneficial provisions of Title V currently missing in the older Self-Governance statute. Let me quickly summarize a few of the bill's key provisions. H.R. 4546 would, among other things:

- conform Title IV to Title V in order to create consistency and administrative efficiencies for Tribes now operating under two different compacting regimes;
- establish a clear “final offer” process and associated timelines to address situations where DOI and the Tribe are unable to agree on particular terms of a compact or funding agreement, or when DOI delays approval unreasonably (while retaining Secretarial authority to affirmatively disapprove a compact agreement);
- clarify and limit the reasons for which the agency may decline to enter a proposed agreement;
- protect Tribes from DOI attempts to impose unauthorized terms in compacts or funding agreements;
- provide a clear avenue of appeal and burden of proof for Tribes to challenge adverse agency decisions;
- clarify Tribal and Federal oversight roles in construction to ensure fiscal prudence and public safety;

³ E.g., House Committee on Natural Resources Full Committee Legislative Hearing on H.R. 4347, Department of the Interior Tribal Self-Governance Act of 2010 (June 9, 2010); House Subcommittee on Indian and Alaska Native Affairs Legislative Hearing on H.R. 2444, Department of the Interior Tribal Self-Governance Act of 2011 (September 22, 2011).

- leave unchanged the Secretary’s discretionary authority to compact non-BIA programs within DOI; and
- make important amendments to Title I, the self-determination contracting law, such as clarifying reporting requirements, rules of interpretation, and applicability of certain Title I provisions to Title IV agreements.

There is ample precedent for nearly all of H.R. 4546 in Title V, and that Title has worked very well in the context of health care services; it is the model for this legislation. At the same time, Tribes have conceded on very significant key issues—for example, removing provisions on mandatory compacting of non-BIA programs. H.R. 4546 ensures that existing law with respect to non-BIA programs will NOT be changed in any way, and that nothing in the Act, or any amendment made by the Act, “modifies or affects the meaning, application, or effect of” the sections of the ISDEAA dealing with non-BIA programs. The fundamental principles guiding H.R. 4546 are all sound, as proven by the success of Title V since 2000.

Conclusion

Finally, I understand that some groups have criticized this legislation because they mistakenly believe that it has a significant impact on Federal lands managed by the Department of the Interior (National Wildlife Refuges, National Parks, National Historic Monuments, BLM Lands, Bureau of Reclamation Properties, etc.). They believe that H.R. 4546 would amend Title IV to allow more flexibility for the Secretary to make Federal programs and lands available for Tribal control and management. They further believe that these proposed amendments would remove important protection afforded to public resources which were negotiated into previous versions of this legislation.

These concerns are misleading and misguided; and in fact, not true. In fact, the bill has been crafted specifically to ensure that existing law with respect to non-BIA programs will **NOT** be changed in any way. The extensive savings provision in Section 202 says explicitly that nothing in the Act, or any amendment made by the Act, “modifies or affects the meaning, application, or effect of” the sections of the ISDEAA dealing with non-BIA programs. I and other Tribal leaders hope that members of this Committee, as well as the House of Representatives will ignore these misinformed critics and support this important bill.

The Title IV amendments embodied in H.R. 4546 significantly advance the U.S. policy of Tribal Self-Governance. At the same time, these critical amendments will cost nothing; indeed, they will promote the efficient use of Federal funds and improve

services to Tribal communities across the Nation. The legislation enjoys broad support among Tribes and their friends in Congress and Interior. H.R. 4546 is the product of 14 years of experience, discussion, and compromise. Now is the time for this Committee, and Congress as a whole, to push the bill forward so that we can build on the impressive success of the past and further Tribal Self-Governance, in partnership with the United States, to improve the lives of our Tribal citizens.

Thank you for this opportunity to share our views on this important legislative initiative for our Tribes and all of Indian Country.