

**MARCUS D. LEVINGS, CHAIRMAN,
THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION**

**TESTIMONY TO
HOUSE NATURAL RESOURCES COMMITTEE
HEARING ON H.R. 4347,
TRIBAL SELF-GOVERNANCE ACT OF 2009**

June 9, 2010

Good morning. Thank you, Chairman Rahall and Committee members, for the opportunity to be here today. My Name is Marcus Dominick Levings, Eh-Bah-Dah-Gish, (Bald Eagle). I am the elected Tribal Chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

I am here to express the Three Affiliated Tribes' strong support for H.R. 4347, the Department of the Interior Tribal Self-Governance Act. We recognize the need to expand and improve Title IV of the Indian Self-Determination Act, the Self-Governance Program within Interior, even though we are not currently a self-governance tribe. But this bill would also make significant and much-needed changes to Title I of the Act, under which the Three Affiliated Tribes currently contract a wide range of programs from both the Indian Health Service and the Bureau of Indian Affairs. My testimony will focus on the Title I provisions proposed by H.R. 4347.

The Three Affiliated Tribes provide health care services, law enforcement, realty services, road construction and maintenance, and other programs and services under Title I contracts with the Indian Health Service and Bureau of Indian Affairs. Tribal members have seen dramatic improvements in services since the Tribes assumed control of these services. Just as Congress envisioned, placing the federal Indian programs in the hands of the local tribal people being served has -

- enhanced responsiveness to local needs;
- empowered the local tribal government; and
- reduced the influence of the federal bureaucracies over day-to-day decisions.

Yet Title I contracting could be even better. The current Title I continues to allow excessive bureaucratic oversight and impose a lack of flexibility and cost-effectiveness. The Title I amendments in H.R. 4347 would enhance the Tribes' ability to provide essential governmental services in a way that best meets the specific social and cultural needs of the Fort Berthold Reservation community. The key changes are as follow:

- Section 101 would amend the definition of "self-determination contract" to make clear that these government-to-government agreements are *not* ordinary procurement contracts and are not subject to any federal procurement laws. This clarification is necessary since BIA and IHS (and other federal agencies) have taken the position that these contracts between sovereigns are just like agreements with private contractors.
- Section 102 would impose a strict burden of proof on the agencies to show, on appeal, that their decisions are supported by "clear and convincing evidence." This standard not only accords with that in the current Title V of the Act, but is a familiar standard applied by courts, unlike the current standard requiring the Secretary to "clearly demonstrate[e] the validity of the grounds" for his or her decision.
- Section 103 would expand Title I tribes' authority to redesign and consolidate programs and services, similar to Titles IV and V, so long as the effect would not be to deny service to otherwise eligible persons. This provision would allow us to tailor programs and services to meet tribal priorities—the essence of self-determination – with even less unnecessary federal involvement.
- Section 104 would codify the longstanding "50% rule," under which the Three Affiliated Tribes can charge up to 50% of its contract costs incurred in administering federal

programs under Title I agreements to the indirect cost pool without burdensome documentation and oversight.

- Finally, Section 105 would clarify that any additional contract terms beyond the mandatory statutory model contract terms cannot be unilaterally imposed unless they meet the strict declination standards in section 102.

These modest amendments would help balance the negotiating positions of tribal and federal governments, and help tribes target federal and other resources where they are needed most. The amendments would cost the federal government nothing, yet would enhance the efficiency and effectiveness of federal programs for the benefit of the Three Affiliated Tribes, the other Title I tribes and the many enrolled members who rely on the governmental services which we provide.

Although the Title I amendments in H.R. 4347 are of the most immediate importance to the Three Affiliated Tribes, I want to make clear that we strongly support the entire bill, including the revisions to Title IV, the Department of the Interior Self-Governance Program. The Title IV amendments, negotiated over several years, would make Title IV consistent with Title V, the IHS self-governance legislation, creating administrative efficiencies for tribes. Although the Three Affiliated Tribes is currently content with our Title I contracts, we would appreciate the future option to enter Self-Governance compacts and funding agreements with IHS and Interior that operate under the same set of rules at some point in the future.

Like the federal-tribal government-to-government relationship itself, Title I has evolved since its initial enactment in 1975. The law needs to evolve again to reflect the maturation and growing capacity of tribal governments carrying out self-determination contracts. The old provisions retaining obtrusive federal oversight and limiting tribal redesign and consolidation authority are artifacts of an earlier era. The Three Affiliated Tribes, like many other tribal contractors, now administer multi-million-dollar health care and other programs. H.R. 4347

would help our Tribes and others diagnose and treat members, provide dental services, build and maintain roads, and provide a host of other governmental services through its Title I contracts.

Self-determination allows the Three Affiliated Tribes to prioritize our needs and plan our future in a way consistent with the Tribes' distinct culture, traditions, and institutions. I urge you to enact H.R. 4347 so that tribes and the federal government can build on the successes of the past 35 years and further tribal self-determination and self-governance.

Chairman Rahall, that concludes my prepared statement and I again thank you for the opportunity to present the views of the Three Affiliated Tribes. I would like yourself and the Natural Resource Committee for this time and I would be happy to answer any questions you may have.