

TESTIMONY
OF
KEVIN WASHBURN
ASSISTANT SECRETARY-INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 1474, S. 1574, S. 1622, AND S. 2160

APRIL 2, 2014

Chairman Tester, Vice-Chairman Barrasso, and Members of the Committee, my name is Kevin K. Washburn and I am Assistant Secretary-Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department's views, on S. 1474, S. 1574, S. 1622, and S. 2160.

S. 1474, the "Alaska Safe Families and Villages Act of 2013"

The Department supports S. 1474, a bill to encourages the State of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes, to improve the quality of life in rural Alaska, and to reduce alcohol and drug abuse. This bill involves matters that are under the jurisdiction of the Department of Justice and we defer to the Department of Justice's testimony on this bill.

S. 1574, the "Indian Employment, Training and Related Services Consolidation Act of 2013"

S. 1574 is a bill to "amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to facilitate the ability of Indian tribes to integrate the employment, training, and related services from diverse Federal sources." As discussed below, the Department supports the goals of Indian self-determination. We would like to work with the Committee to address certain provisions of the bill, as described more fully below.

Public Law 102-477 is a self-determination statute that allows tribes greater control over delivery of social-welfare and workforce-development services. It permits eligible tribes and Alaska Native organizations to consolidate into a single plan employment-and-training-related, formula-funded federal grant monies from ten different programs within our Department's Bureau of Indian Affairs and Bureau of Indian Education, and the Departments of Labor (DOL) and Health

and Human Services (DHHS). The "477" program allows participating tribes to save administrative time and expense because they are no longer required to submit individual program plans and reports—affording more support for job placements and case management.

Public Law 102-477 designated our Department to be the lead agency to administer this program. We are proud, too, that in FY 2013, we disbursed approximately \$87 million in grants for this program to 265 participating tribes, most of which are tribes in Alaska.

The Public Law 102-477 program has operated for over two decades as a demonstration project and has demonstrated that it should be permanent. When agencies collaborate to surmount bureaucratic obstacles, consolidate programs, and deliver desperately-needed services on a one-stop basis, we can more promptly and efficiently address joblessness and social distress in Native communities.

To provide additional flexibility to tribes under P.L. 102-477, the P.L. 102-477 federal partners have worked in cooperation with tribal representatives since November 2011 as a “Public Law 102-477 Administrative Flexibility Work Group” (AFWG). Between November 2011 and January 2014, the AFWG met by teleconference or in person approximately 30 times and we are happy to report on the group’s accomplishments: (1) a streamlined plan-approval process that uses an agreed upon checklist for tribes and the federal agencies; (2) simplified financial reporting based on agreed-upon cost categories instead of dollar for dollar reporting; (3) an agreed upon narrative report allowing tribes to highlight their program activities; (4) agreement that a Tribe with a 477 plan may use funds made available under the law for economic development, including providing private sector training placement.

During the last face-to-face meeting on January 24, 2014, the AFWG agreed to move forward to consultation on the reporting forms. DOI held consultation on Thursday, March 13, 2014, at the National Congress of American Indians Executive Council Winter Session. AFWG federal and tribal members attended the consultation and tribal workgroup members commented on the forms and listed the many accomplishments of the workgroup. The 60-day period to comment on the proposed reporting forms closes on April 15, 2014.

We are pleased to support the goals of Indian self-determination, and we would like to work with the Committee to address concerns in S. 1574 to this end.

S. 1574 provides a 90-day time limit for an affected federal agency to decide on a tribal request for a waiver of statutory, regulatory, or administrative requirements that prevent the tribe or tribal organization from efficiently implementing its plan. We understand why tribal governments would want to have a fixed time limit for such decisions. However, this provision gives us pause. In light of our need to interact not just with tribal governments, but also other federal partners, we believe that 90 days may not be a sufficient amount of time for proper

deliberation and collaboration among the federal partners. We would like to discuss this with our federal partners.

We look forward to working with Senator Murkowski and the Committee to modify S. 1574 to achieve its goal of further streamlining federal delivery of employment, training and related services to tribes that urgently need them.

One of the reasons that the 477 program is so successful is that it requires federal agencies to cooperate to better deliver services to tribes. The Department would like to work with the Committee to modify certain provisions of S. 1574 that seem to subvert that spirit of cooperation by giving the Secretary of the Interior the exclusive authority to approve or disapprove a proposed plan without the input of other affected federal partners. This also pertains to the provisions that would approve a plan if the Secretary took no action on it within 90 days of receiving it.

The plan-approval process has been an issue in the past. However, this issue recently has been addressed through a cooperative process between federal partners and tribal representatives. The AFWG met extensively on the plan-approval process and streamlined the P.L. 102-477 plan-review process by creating a checklist for tribes and federal agencies to use when developing, renewing, and approving plans. The checklist is already in use. Under this new process, our agency has twenty days to review a plan for completeness, after which we submit it to the other affected federal agencies for their review. Each of them has 30 days to submit its comments and recommendations to us. After we receive those comments, we organize a teleconference that includes all of the relevant tribal and federal stakeholders. The point of that discussion is to ensure that the plan is approvable. We then have 30 days to render a partial or full approval of the plan.

We also look forward to discussing further to provisions in the bill that would prohibit a tribe or tribal organization from being required to submit any additional budget, report, audit, supplemental audit, or other documentation after its plan is approved. There are a number of reports that are not contemplated in an approved plan that must later be submitted. One example is the year-end Financial Assistance and Social Services Report, which is critical for determining welfare assistance payments. This provision could be clarified to specify the kinds of documentation that could not be solicited from a tribe once a plan is approved to ensure that they are not otherwise required by law. We note that the AFWG has worked on this issue as well, and has adopted measures to ensure that plans are complete.

We look forward to working with the Committee to modify the provision of S. 1574 that eliminates certain conditions on tribes or tribal organizations using funds under this Act for job-creation and economic-development activities and would require instead, that those expenditures

be consistent with their plans. This provision is unnecessary if the bill also contains the provision limiting waiver decisions to 90 days.

We are fully supportive of the objective that employers who provide work-based training should be incentivized to provide permanent employment to people who successfully complete a training program. However, we are concerned that compelling employers to hire a “work experience” or “on-the-job” trainee could be a disincentive for them to take part in these programs. Thus, we would like to work with the Committee on provisions needed to strike the proper balance here.

We also look forward to working with the Committee on the provision limiting the time frame for the Bureau of Indian Affairs (BIA) to transfer funds to participating tribes after receiving the funds from the originating federal agency. Once these funds are electronically transferred to our agency, we are diligent in disbursing them as quickly as possible. We note that we cannot disburse these grant funds until we obtain a signed grant amendment from the grantee’s tribal chairman. This exchange can take time depending on a number of factors, including tribal leadership’s availability.

We would also like to note that roughly half of 477 grantees receive funding that is disbursed, not through Public Law 93-638 contracts but through Annual Funding Agreements administered by our Department’s Office of Self-Governance. Because the Office of Self-Governance disburses money through Annual Funding Agreements, not grant amendments, allowances would have to be made for that office’s particular funding regime and disbursement timeline.

S. 1622, the "Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act"

The Department supports S. 1622 which would establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children. Children are a most sacred and valuable resource for Tribes and Indian families. Tribal preservation depends on protection and support of Indian families and children.

Native American children are the most at-risk population in the United States and are in that vulnerable position because of unaddressed poverty; insufficient access to services in health, education, social services, mental health, legal and other needs. The rates of suicide, foster care, and exposure to violence for Native American children are unacceptable.

We are currently working on initiatives that are complementary to the goals of S. 1622. The Department is presently working with DHHS, the Department of Justice, and the Substance Abuse and Mental Health Services Administration on updates to the BIA Child Protection Handbook which is used by social workers, health care providers, law enforcement, courts, and educators in Indian Country. The Handbook provides guidance on indicators of child abuse,

reporting requirements, and the assembly and function of child protection teams in Indian Country.

The Department is also re-examining the Bureau of Indian Affairs Guidelines for State Courts, providing guidance to state courts in interpreting the 1978 Indian Child Welfare Act (ICWA). The guidelines, now more than 30 years old, have not been updated since there were originally enacted, shortly after passage of ICWA. We hosted a listening session with tribal leaders on March 11, 2014 and have another listening session scheduled at the National Indian Child Welfare Association's National Conference on April 15, 2014. Our comment deadline is April 30.

These two updates are important pieces of the overall effort to address Indian child welfare issues, but S. 1622 goes beyond these efforts. This bill recognizes the need for a more collaborative and holistic approach across the federal government and the private sector to better define the issues and make recommendations for meaningful and lasting solutions. The bill includes a plan for measurable outcomes, stronger data, and implementation of best practices. It also includes Tribal youth voices that need to be heard.

We are happy to work with Senator Heitkamp and the Committee on this bill as it moves forward.

S. 2160, the "Native American Children's Safety Act"

The Department supports the principles S. 2160, which amends the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings.

The safety of Native children is a Department priority. The Native American Children's Safety Act recognizes the importance of the safety of Native children through establishing standards in background checks. We note that all placements made with Bureau of Indian Affairs funds require a background check. This bill would expand the requirement to all placements made through the tribal courts. We look forward to working with the committee to create consistency in the requirements of background checks. The IV-E background-check requirements are slightly inconsistent with those in this bill. The Department of Health and Human Services also notes the difference. We are happy to work with the Committee to align the requirements to avoid creating two different standards.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.