

TESTIMONY OF
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ON H.R. 4148
TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000
BEFORE THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 16, 2000

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss H.R. 4148, proposed amendments to the Indian Self-Determination and Education Assistance Act. The primary purpose of the bill is to clarify the provisions on the payment of contract support costs. We welcome Congressional action that will make the law clear and unambiguous.

The Administration supports the goal of full funding of contract support costs for Indian Tribes over time and has increased in the FY 2001 budget the amount of discretionary spending for contract support within the balanced budget framework. Also, reaching the full funding goal should be accompanied by timely reporting and auditing of the use of these support costs, as required of other Federal agencies.

Mr. Chairman, I do not exaggerate when I tell you that contract support payments have been among the most contentious issues in Indian Affairs for the past 25 years. BIA and IHS have been placed in an impossible position - we have been charged by the Congress to move program operations from Federal employees to tribal governments that lack modern support structures. Unlike state and local governments that have long had organizations in place to manage state and local revenues and provide services to their citizens, tribal governments began the Self- Determination era with little more than tribal councils. The Congress, the Administration and the Indian tribes all recognize the need to amend Public Law 93-638 to achieve the consistent and uniform policies that have not been gained through continued litigation. The Administration must point out however that the

noteworthy intent of this Committee does not appear to be consistent with the actions being taken by other parts of this Congress.

Under H. Con. Res. 290, the budget resolution adopted by this Congress on April 13, 2000, Congress anticipates a tax cut of over \$175 billion and reductions in overall spending of nearly 10% by FY 2005. As a result of this resolution, the House Appropriations Subcommittee on Interior and Related Agencies is operating with a budget allocation that is \$1.7 billion below President Clinton's request for FY 2001. Assuming a pro rata cut, the operating budget for tribal programs would be cut by about \$200 million, and the construction funds for Indian schools and projects to repair critical health and safety problems would be cut by about \$40 million below the President's request. As that Subcommittee marks up its bill tomorrow hampered by this budget allocation, I seriously doubt that it will provide full funding for the contract support costs of Indian Tribes in the context of the entire Interior and Related Agencies budget.

While we support the goal of full funding for tribal contract support costs, the Administration has a number of serious concerns with H.R. 4148. Its intent is often unclear, specific provisions are contradictory and ambiguous, and some requirements are unnecessary or impossible to implement government-wide. As a result, the proposed amendments could become more contentious than the current statute. We would like to work with the Committee to resolve these problems, including finding suitable offsets and improved management controls over contract spending.

While Section 3 amends the Indian Self-Determination and Education Assistance Act (the Act) to declare that necessary amounts are appropriated to pay contract support, it does not clearly identify the source of these funds. The bill's language could be construed to compel federal agencies to redirect program funds from other recipients or operations to meet the full contract support payments of Indian tribes and tribal organizations. We do not believe that the Committee intends this consequence since it would be disruptive to so many federally-supported state and local government services.

Section 2 provides for a new section 106A of the Act. Subsection (a) of that section is intended to allow Tribes to fully *recover* indirect costs under awards made by agencies other than the Departments of the Interior and Health and Human Services. This provision

would expand the scope of the current law beyond just BIA and IHS to all other Federal agencies that award funds to tribes or tribal organizations. The other agencies are not required under current law to add contract support payments to the award amount as BIA and IHS are required to do for self-determination and self-governance awards. However, many federal programs already permit a recipient, through statute or regulation, to use a portion of the award for administrative expenses that support the program or project that is being funded. It is also noteworthy that some Tribes have indirect cost rates of 100 percent or more of direct program funds. In situations like this, there is no way that a Tribe could recover indirect costs since those costs would exceed the total amount of the program award.

The most complex provisions of H.R. 4148 are in subsection (d) of the new section 106A. Once a number of conditions are met, the program funds and the contract support payment are to be consolidated into a single award. Once consolidated, however, both the Federal Government and the Tribe would have to maintain annual records on the amount of contract support provided because that amount is to be adjusted each year based on either the medical inflation rate or the consumer price index. Further, at any point during a year that a Tribe's total program funding from all Federal sources increases or decreases by 20 percent or more, the Secretary is required to "deconsolidate" the award and recalculate contract support.

These provisions appear to implement the Consolidated Contract proposal outlined in the General Accounting Office's report: "Indian Self-Determination Act - Shortfalls in Indian Contract Support Costs Need to Be Addressed" (GAO/REC-99-150). GAO recommended a single self-determination contract that includes direct program funds and administrative support costs so that the tribes could manage indirect costs more prudently to achieve the greatest possible program service benefits. GAO's specific recommendations were directed towards the program and funding structures of the Bureau of Indian Affairs and the Indian Health Service.

H.R. 4148 does not make clear which of these provisions under subsection (d) apply to other federal programs. The "Conditions for Consolidation" provisions seem to apply only to Indian self-determination contracts; while the "Deconsolidation" provision seems to include other federal programs. Although Consolidated Contracts are intended to provide

tribes with more flexibility in managing fiscal resources, this is contradicted with requirements to retain indirect cost rates and related records. The proposed requirements would be an administrative nightmare for the Tribes and for us, and would undercut the potential benefits of such consolidation.

We believe that GAO's policy alternatives have merit, but need to be further considered before incorporation in legislation.

Section 3 amends a number of provisions in the Act in order to make contract support payments actual entitlements. It goes far beyond contract support, however. By amending section 105(c) (1), H.R. 4148 would make the entire amount of the self-determination contract an entitlement, which includes direct program costs and contract support costs. We recommend that this provision be deleted.

An amendment to Section 106 would require the Secretary to pay for pre-award and startup costs regardless of when such costs were incurred, subject to two restrictions: (1) the Secretary must have received written notification of the nature and extent of the costs prior to the time any such costs are incurred; and (2) the pre-award costs are payable only during the first year of a contract. We read this to mean that notwithstanding the phrase "including such costs incurred prior to the date of the enactment of this sentence," there would be no retroactive effect on contracts already awarded. This provision would apply only to future contracts. With that understanding, we do not object to the amendment. If the Committee has a different interpretation, we will need to have additional discussions on the subject.

H.R. 4148 would re-enact, without modification, the requirement for an annual report on Self-Determination contracting and contract support payments. The original intent of the report was to advise Congress of our shortfall in contract support in time for action to be taken in the appropriations bills. If contract support payments have assured funding sources, then the main reason for the report disappears. However, the Administration believes that as tribal contracting increases, additional management controls should be authorized through tribal reporting and independent audits of contract results.

Next week, my staff will be meeting with a National Congress of American Indians work group and discussion of this reporting requirement is on the agenda. I suggest that we

allow the work group to consider other reporting options which we will then forward to the Committee. Section 4 would amend the Act to extend from 90 to 180 days the time the Secretary is allowed to review initial proposals for Self-Determination contracts. We have testified in the past that one of the difficulties we face in accurately forecasting contract support requirements for inclusion in the budget request is the lack of lead time to plan for new awards. If contract support payments are reclassified as entitlement payments, there is no need to extend the review period. If such payments continue to be subject to annual appropriations, however, we would need at least a year's notice if the full requirements are to be included in budget requests.

Mr. Chairman, as I stated earlier, the lack of adequate contract support is one of the most serious problems in Indian country. I sincerely hope that the Administration, the Congress, and the Tribes will be able to agree on responsible and pragmatic amendments fully paid for within the framework of a balanced budget to overcome this and other problems that continue to serve as barriers to Indian self-determination.

I'll be pleased to answer any questions you may have.