

**NATIONAL CONGRESS OF AMERICAN INDIANS
TESTIMONY OF W. RON ALLEN
ON S. 2172
THE TRIBAL CONTRACT SUPPORT COST
TECHNICAL AMENDMENTS OF 2004**

*Senate Committee on Indian Affairs
April 28, 2004*



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NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

Chairman Campbell, Vice-Chairman Inouye, and members of the Senate Committee on Indian Affairs, my name is W. Ron Allen and I am Chairman of the Jamestown S'Klallam Tribe in Washington State. I also serve as Treasurer for the National Congress of American Indians and Chair of the NCAI National Policy Work Group on Contract Support Costs. It is an honor to present testimony in support of S. 2172, a bill to make technical amendments to the contract support cost provisions of the Indian Self-Determination and Education Assistance Act.

NCAI is the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments and was founded in 1944 in response to federal termination policies and hostile legislation that proved devastating to Indian nations. To this day, NCAI remains committed to the restoration and exercise of tribal sovereignty and the continued viability of all tribal governments. NCAI, representing over 250 member tribes, has been particularly active in advancing solutions to the problems created by the chronic under funding of contract support costs for those tribes and tribal communities that administer federal government programs under the Indian Self-Determination Act.

INTRODUCTION

For the last 30 years, the promotion of tribal autonomy and self-governance has been the hallmark of this Nation's federal Indian policy, the cornerstone of which is the Indian Self-Determination and Education Assistance Act of 1975. The Act authorizes tribes to enter into contracts or self-governance compacts to administer federal programs previously administered by the departments of Interior and Health and Human Services for the benefit of tribal members. The well-documented achievements of the self-determination policy for tribal communities have consistently improved service delivery, increased service levels, and strengthened tribal governments and tribal institutions. Every Administration from Nixon to Bush has embraced this policy and Congress has repeatedly affirmed it through extensive strengthening amendments to the Self-Determination Act enacted in 1988 and 1994.

Long recognized by this committee, one of the greatest obstacles to the full implementation of the policy has been the consistent failure of the Bureau of Indian Affairs and Indian Health Service to fully fund the contract support costs required to carry out federal programs. A 1999 GAO study¹ concluded with the finding that

¹ GAO/RCED-99-150, Indian Self-Determination Act: Shortfalls in Indian Contract Support Costs Need to be Addressed, June 1999

failing to fully reimburse contract support costs effectively penalizes tribes for exercising their self-determination rights, forces cuts to tribal programs in order to cover the shortfall, and leads to partial termination of the federal government's trust responsibility. As a matter of federal contracting principle, tribal contractors, like all other government contractors, should be promptly paid in full—payments not dependent on the politics of the budget process, the competing agency demands in OMB, or the willingness of tribal contractors to litigate.

S. 2172 CONTRACT SUPPORT COST TECHNICAL AMENDMENTS

The NCAI Policy Workgroup on Contract Support Costs since its inception has offered several key recommendations, some of which we are pleased to find reflected in S. 2172 and which are supported by NCAI. The following summarizes our views.

1. Contract support costs must be fully funded.

The NCAI Policy Workgroup on Contract Support Costs issued this position as its first and most important recommendation in its July 1999 final report, a recommendation also supported by the GAO June 1999 study. The shortfall in IHS contract support cost at year-end FY04 is \$93 million; using the estimated flat FY05 appropriation, at year-end FY05 the shortfall would be \$111 million. For BIA, including the estimated direct CSC required per *Ramah, Oglala, Zuni v. Norton*, the shortfall in contract support costs for FY03 is \$45 million; at year-end FY04, the BIA shortfall will be \$48 million; at year-end FY05, the shortfall would be \$50 million.

Contract support costs are a legal and contractual obligation of the federal government. Under funding contract support treats tribes as second-class contractors and is unacceptable. Indian tribes ask nothing less than to be treated as other comparable government contractors.

Section 3 of the bill accomplishes this in two ways. First, the bill eliminates ambiguous provisions in the law which have been seized upon by the government as a justification for under funding contract support costs. Second, Section 3 makes a permanent appropriation to cover full contract support cost requirement. The permanent appropriation device has ample precedent, such as in a wide array of housing programs for the poor, and is appropriate to meet the federal government's obligations to Indian trust beneficiaries as tribes administer federal programs.

2. Congress should promote financial stability and efficiency in tribal operations.

Section 2 addresses the fact that the indirect costs paid to tribes are pooled with other federal funds administered by a tribal contractor, and are spent out of single account. This section of the bill reinforces subsection 106(i) and (j) of the Indian Self-Determination Act by assuring that tribal funds pooled within a tribe's indirect cost pool may be spent under the same guidelines that apply to self-determination funds. For instance, a tribal contractor can use self-determination funds to purchase computer hardware without first securing advance agency approval. Once the self-determination funds are placed in a tribe's indirect cost pool, however, the Office of Inspector General suggests that the pooled funds cannot be used for new computer hardware because the pool also includes other federal funds besides Indian Self-Determination Act funds. Section 2 of S. 2172 clarifies that the self-determination rules regarding expenditure of funds set forth in subsections (i) and (j) of the Act apply to the tribal

expenditure of all other pooled federal indirect cost funds administered by a tribe under any other federal statute. NCAI applauds this clarification that will put an end to a needlessly nonsensical approach.

3. Federal agencies other than BIA and IHS must finally conform their practices to the government-wide federal indirect cost system.

The failure of other federal agencies besides the BIA and IHS to pay their appropriate share of indirect costs continues to place tribes administering federal programs in a deplorable bind. Many other agencies refuse to adhere to the government-wide indirect cost rate set by each tribe's federal cognizant agency under OMB Circular A-87 (usually, the Department of Interior's Office of Inspector General).

Historically, the OMB indirect cost system has been the most reliable and sound system for fairly determining each tribe's prudent requirements for contract support. The NCAI Contract Support Workgroup found that past efforts to replace the indirect cost system have failed in not accounting for programmatic differences, sizes of tribes, geographical locations, and other variations in tribes and contracts. Under the OMB indirect cost system, requirements are fixed by the tribe's federal cognizant agency, the agency under which the tribe does the most contracting. The accounting principles reflected in that agreement should then be binding on all other federal agencies. All branches of the federal government **must** respect the indirect cost requirements for the system to work for tribal governments. NCAI supports the first provision in Section 2 of S. 2172 that will remedy this long standing accounting turmoil for tribes.

CONCLUSION

The National Congress of American Indians strongly supports S. 2172 as a means to affirming tribal autonomy, self-governance, as well as tribal accountability. We commend the committee for its commitment to Indian Country, our self-determination and self-governance rights, and to legislation that will promote tribes' ability to serve their members for generations to come. NCAI and its member tribes firmly believe that these proposed amendments are consistent with this Congress' and Administration's agenda to enhance more independent and self-reliant communities. Thank you for this opportunity to testify before your committee and I welcome any questions you may have.