

**TESTIMONY
OF
DAVID W. ANDERSON
ASSISTANT SECRETARY - INDIAN AFFAIRS
U. S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
HEARING ON
S. 1715, TO AMEND THE INDIAN SELF-DETERMINATION
AND EDUCATION ASSISTANCE ACT**

May 12, 2004

Good morning, Mr. Chairman, Mr. Vice Chairman, and Members of the Committee. I am pleased to be here today to provide the Administration's position on S. 1715, a bill to amend Title IV of the Indian Self-Determination and Education Assistance Act.

In 1988, Congress amended the Indian Self-Determination and Education Assistance Act (the Act) by adding Title III, which authorized the Self-Governance demonstration project. In 1994, Congress again amended the Act by adding Title IV, establishing a program within the Department of the Interior to be known as Tribal Self-Governance. The addition of Title IV made Self-Governance a permanent option for tribes. These amendments authorized federally recognized tribes to negotiate funding agreements with the Department of the Interior (Department) for programs, services, functions or activities administered by the Bureau of Indian Affairs and, within certain parameters, authorized such funding agreements with other bureaus of the Department. In the year 2000, the Act was amended again to include Titles V and VI, making Self-Governance a permanent option for tribes to negotiate compacts with the Indian Health Service (IHS) within the Department of Health and Human Services and providing for a now-completed study to determine the feasibility of conducting a Self-Governance Demonstration Project in other programs of that Department.

In 1990, the first seven funding agreements were negotiated for about \$27 million in total funding. For FY 2004, there are 83 agreements that include 227 federally recognized tribes and about \$300 million in total funding. Some of these agreements are with tribal consortia, which account for the number of such tribes exceeding the number of agreements. These funding agreements allow federally recognized tribes to provide a wide range of programs and services to their members such as law enforcement, scholarships, welfare assistance, and housing repairs just to mention a few. Many of the funding agreements include trust related programs such as real estate services, appraisals, probates and natural resource programs such as forestry, fisheries, and agriculture. What makes these funding agreements unique is that Title IV allows tribal governments to re-design programs and set their own priorities consistent with Federal laws and

regulations. This authority allows tribal leaders the ability to respond to the unique needs of their tribal members without seeking approval by Departmental officials.

Many tribes have been successful implementing Self-governance programs to meet their tribal needs. For example, the Salt River Pima-Maricopa Indian Community was able to accomplish the following in 2002: 1) delivered welfare assistance and child welfare services to 676 cases including placing 19 children in Indian homes, 29 children into non-Indian homes and reunifying 12 families, 2) provided scholarships and educational counseling to 42 tribal members, 3) responded to 772 Part I offenses including 3 homicides and 97 burglaries and 187 motor vehicle thefts and 3,395 other offenses including assaults, DUI's, runaways and domestic violence, 4) maintained 131 miles of roads, processed, and 5) prepared 5 probate cases; and submitting 30 conveyances to the BIA to be approved and recorded. This example is just one of many where tribes have been successful in directly administering federal programs.

In addition, Title IV authorizes funding agreements throughout all bureaus within the Department of the Interior. On April 30, 2004, the Secretary signed an agreement between the Council of Athabascan Tribal Governments (Council) and the Fish and Wildlife Service (Service) that will enable the Council to perform certain functions previously provided by the Service on the Yukon Flats National Wildlife Refuge in Alaska during FY 2004-2005. This agreement was the first of its kind between the Service and a federally recognized Indian organization. In addition, in FY 2004-2005 there will be four tribal funding agreements with the Bureau of Reclamation and four tribal funding agreements with the National Park Service.

The Department has concerns with this bill, S. 1715, and we would like to work with the Committee to ensure that this legislation does not adversely impact our ability to meet our trust responsibilities. In particular, the Department is concerned with subsection 409(1), which would permit a tribe to cease performance if it appears the expenditure of funds is in excess of the amount of funds transferred under a compact or funding agreement. If the Secretary does not increase the amount of funds transferred under the funding agreement, a tribe would be permitted to suspend performance of the activity until such time as additional funds are transferred. We have concerns about the impact this provision may have, especially on fiduciary trust functions. Under this provision, if a tribe contracts with the Department to administer IIM accounts and then decides there is not enough money to administer the accounts, the tribe could simply stop making IIM distributions to IIM account holders. It is imperative that a tribe perform any fiduciary function it contracts or compacts for regardless of the level of funding. The tribe should return the function to the Department to administer if they believe that the funding level is inadequate rather than have their members suffer if the tribe decides not to perform.

In addition, Section 405(b)(1)(B) also broadens application of funding agreements to authorize tribes to contract for all programs to which Indian tribes or Indians are primary or significant beneficiaries. Current law allows federally recognized tribes to assume programs administered by the Department's bureaus and offices other than the Bureau of Indian Affairs subject to negotiations and as long as the programs are available to Indian tribes or Indians. We would recommend that section 405(b)(1)(B) be made discretionary and subject to the terms of the agreement for programs which Indian tribes or Indians are the primary or significant

beneficiaries.

Finally, the Department is concerned with the reassumption provision contained in section 407. The provision would require that imminent jeopardy, substantial jeopardy, and irreparable harm be met simultaneously in order for the Secretary to reassume a program. This is a very high standard to achieve. Having to prove all three conditions practically eliminates the ability of the Secretary to quickly reassume a program in those rare instances where such an immediate re-assumption may be necessary, such as instances where serious injury or harm may occur. The Department would recommend that the re-assumption standard contained in the current Title IV be retained.

While we believe that S. 1715 is moving in the right direction to expand Self-Governance, we cannot support the legislation at this time, especially given the current high priority for trust reform and the impact this legislation would potentially have to that critical program. We would like to work with the Committee and the tribes in developing alternative language to address our concerns.

Mr. Chairman, this concludes my statement and I will be happy to answer any questions you may have.