



**WRITTEN TESTIMONY
SUBMITTED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON S. 919, "DEPARTMENT OF THE INTERIOR
TRIBAL SELF-GOVENANCE ACT OF 2013"**

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Good afternoon. Thank you for the opportunity to be here today to testify once again on this critical legislation. My name is W. Ron Allen and I am the Chairman/CEO of the Jamestown S'Klallam Tribe located in Washington State. I am also the Chairman of the Department of the Interior (DOI) Self-Governance Advisory Committee (SGAC), and I offer my testimony today in both capacities. Collectively, I am representing well over 300 Tribes that participate in Self-Governance within DOI and the Department of Health and Human Services (HHS), Indian Health Service (IHS).

I am pleased to testify in support of S. 919, a bill to strengthen Indian Tribes' opportunities for Self-Governance by amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) (P.L. 93-638, as amended). The proposed Title IV amendments advance three basic goals:

- To bring Title IV up to par with Title V, the permanent Self-Governance authority within HHS;
- To clean up the construction provisions of Title IV; and
- To maintain unchanged the discretionary authority to enter Self-Governance agreements with non-BIA agencies in Interior.

Before expanding on the need for these critical amendments, I will talk briefly about the success of the Self-Governance policy over the past 20 years and the Tribal-federal collaboration to expand that success through the Title IV amendments.

The Success of Self-Governance

The increasing number of Tribes that have opted to participate in the Self-Governance program on an annual basis reflects the success of the program. In Fiscal Year 1991, the first year Self-Governance agreements were negotiated by the BIA with

Tribes, only seven Tribes entered into agreements. At that time, the total dollar amount compacted by Indian Tribes was \$27.1 million. By Fiscal Year 2013, 254 Tribes and Tribal consortia entered into 106 funding agreements, operating \$432 million in programs, functions, services and activities.¹ The growth in Tribal participation in Self-Governance revealed by these numbers reflects the success of the program. Under Self-Governance, Tribes have assumed the management of a large number of DOI programs, including roads, housing, education, law enforcement, court systems, and natural resources management. Why? Simply put, Self-Governance works.

- ***Self-Governance Promotes Efficiency.*** Devolving federal administration from Washington, D.C. to Indian Tribes across the United States has strengthened the efficient management and delivery of federal programs impacting Indian Tribes. As this Committee well knows, prior to Self-Governance, up to 90% of federal funds earmarked for Indian Tribes were used by federal agencies for administrative purposes. Under Self-Governance, program responsibility and accountability has shifted from distant federal personnel to elected Tribal leaders. In turn, program efficiency has increased as politically accountable Tribal leaders leverage their knowledge of local resources, conditions and trends to make cost-saving management decisions.
- ***Self-Governance Strengthens Tribal Planning and Management Capacities.*** By placing Tribes in decision-making positions, Self-Governance vests Tribes with ownership of the critical ingredient necessary to plan our own futures – information. At the same time, Self-Governance has provided a generation of Tribal members with management experience beneficial for the continued effective stewardship of our resources.
- ***Self-Governance Allows for Flexibility.*** Self-Governance allows Tribes great flexibility when making decisions concerning allocation of funds. Whether managing programs in a manner consistent with traditional values or allocating funds to meet changing priorities, Self-Governance Tribes are developing in ways consistent with their own needs and priorities, not a monolithic federal policy.
- ***Self-Governance Affirms Sovereignty.*** By utilizing signed compacts, Self-Governance affirms the fundamental government-to-government relationship between Indian Tribes and the U.S. Government. It also advances a political agenda of both the Congress and the Administration: namely, shifting federal functions to local governmental control.

In short, Self-Governance works, because it places management responsibility in the hands of those who care most about seeing Indian programs succeed: Indian Tribes and their members.

¹ Source: Dep't of the Interior, *Budget Justifications and Performance Information, FY 2014, Indian Affairs*, Appendix 7.

Need for Title IV Amendments

As important and successful as the Self-Governance initiative has been for my Tribe and so many others, it is not perfect. Shortly after Title IV was enacted in 1994, the DOI began a rulemaking process to develop and promulgate regulations. The process was a failure in many ways. Ultimately, five years after the rulemaking process began, DOI published regulations that, from the Tribal perspective, failed to fully implement Congress's intent when Title IV was enacted. Instead of moving the initiative forward, it moved backwards.

Tribal leaders began discussions about how the statute could be amended. At the same time, Congress in 2000 enacted Title V of the ISDEAA which created a permanent Self-Governance program within HHS, and which directly addressed many of the issues that proved to be problematic during the Title IV rulemaking process. But many of the improvements and Tribal authority reflected in Title V remain absent from Title IV. Consequently, many Self-Governance Tribes are forced to operate under two separate sets of administrative requirements, one for IHS and one for BIA.

Tribal leaders decided that Title IV needed to be amended to incorporate many of Title V's provisions. It has long been a top legislative priority of Tribal leaders to amend Title IV. In the last ten years, I have testified several times before this Committee in support of predecessor bills to S. 919.² Some members of Congress may be tired of hearing from me on this issue, but our persistence speaks to the importance Tribal leadership has placed on amending Title IV with respect to empowering Tribal governance to manage limited federal resources to benefit Tribal citizens.

S. 919 reflects over ten years of discussions, drafting, negotiation, and redrafting. Particularly in the past two years, Tribal representatives, along with agency and Congressional staff, have worked hard to come up with a bill that everyone can support. The time has come to pass this legislation, which would significantly advance Congress's policy of promoting Tribal Self-Governance for American Indian and Alaska Native Tribal governments.

Overview of S. 919

The proposed bill will bring Title IV into line with Title V, creating administrative efficiencies for Tribes while also importing the beneficial provisions of Title V currently missing in the older Self-Governance statute. Let me quickly summarize a few of the key provisions in S. 919. To address problems in the DOI's implementation of the Tribal Self-Governance program, S. 919 would, among other things:

² E.g., SCIA Hearing on H.R. 4347, Department of the Interior Tribal Self-Governance Act of 2010 (Nov. 18, 2010); SCIA Oversight Hearing on the Success and Shortfall of Self-Governance under the Indian Self-Determination and Education Assistance Act after Twenty Years (May 13, 2008).

- conform Title IV to Title V in order to create consistency and administrative efficiencies for Tribes now operating under two compacting regimes;
- establish a clear “final offer” process and timelines for situations when DOI and the Tribe are unable to agree on particular terms of a compact or funding agreement, or when DOI delays approval unreasonably;
- clarify and limit the reasons for which the agency may decline to enter a proposed agreement;
- protect Tribes from DOI attempts to impose unauthorized terms in compacts or funding agreements;
- provide a clear avenue of appeal and burden of proof for Tribes to challenge adverse agency decisions;
- clarify Tribal and federal oversight roles in construction to ensure fiscal prudence and public safety;
- leave unchanged the discretionary authority to compact non-BIA programs within DOI; and
- make important amendments to Title I, the self-determination contracting law, such as clarifying reporting requirements, rules of interpretation, and applicability of certain Title I provisions to Title IV agreements.

There is ample precedent for most of S. 919 in Title V, which has worked very well in the context of health care services and served as the model for this legislation. Tribes have already conceded on very significant key issues—for example, removing provisions on mandatory compacting of non-BIA programs. The fundamental principles guiding S. 919 are all sound, as proven by the success of Title V over the last decade.

Conclusion

The Title IV amendments embodied in S. 919 significantly advance the U.S. policy of Tribal Self-Governance. These amendments would cost nothing; indeed, they would promote the efficient use of federal funds and improve services to Tribal communities across the nation. The legislation enjoys broad support among Tribes and their friends in Congress and Interior. S. 919 is the product of almost 14 years of experience, discussion, and compromise. Now is the time for this Committee, and Congress as a whole, to push the bill forward so we can build on the impressive success of the past and further Tribal Self-Governance, in partnership with the United States, to improve the lives of our Tribal citizens.

Thank you for this opportunity to share our views on this important legislative initiative for our Tribe and Indian Country.