



**WRITTEN TESTIMONY  
SUBMITTED TO THE  
HOUSE NATURAL RESOURCES COMMITTEE  
SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON H.R. 2031, "The PROGRESS for Indian Tribes Act"**

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ADVISORY COMMITTEE (SGAC)**

**July 16, 2019**

Good afternoon Chairman Gallego, Ranking Member Cook, Representative Haaland and other distinguished members of this Subcommittee. It is an honor to testify before you today on H.R. 2031, "Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019" or the "PROGRESS for Indian Tribes Act". This has been a top legislative priority for Self-Governance Tribes for nearly 20 years. My name is W. Ron Allen and I am the Tribal Chairman/CEO of the Jamestown S'Klallam Tribe. Our Tribe has been actively engaged in Self-Governance since 1988 when Congress first authorized the Self-Governance Demonstration Project. We were one of the seven original Tribes and have since become a national leader in successfully implementing Self-Governance.

I testify before you today on behalf of my Tribe, as the Chairman of the Department of the Interior (DOI) Self-Governance Advisory Committee (SGAC), and as Co-Chair of the Title IV Tribal Task Force. Collectively, I am representing well over half of the 573 Federally Recognized Tribes that participate in Self-Governance within the Department of the Interior (DOI) and the Department of Health and Human Services (HHS), Indian Health Service (IHS).

I am pleased to testify in support of H.R. 2031, a bill that reaffirms the original intent of the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638, as amended to strengthen and improve Indian Tribes' opportunities for Self-Governance by amending Title IV. This bi-partisan legislation passed the Senate in the

last two sessions of Congress and most recently S. 209 was passed and was received in the House and referred to the House Committee on Natural Resources on June 28, 2019. We now respectfully urge members of this Subcommittee to assist us with advancing this legislation in the House.

### **Overview of H.R. 2031**

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 P.L. 104-413, the Title IV Self-Governance permanent legislation in the DOI. Let me quickly summarize a few of the bill's key provisions. H.R. 2031 conforms Title IV to Title V in order to create consistency and administrative efficiencies for Tribes now operating under two different compacting regimes and would, among other things:

- Require Federal agencies to clarify their reasoning for denying a Tribe's request to participate in Self-Governance;
- Prohibit the Department of the Interior from imposing unauthorized terminology into Compacts and Funding Agreements that often conflicts with Congressional intent;
- Establish clear processes and timelines for final offers to avoid unreasonable delays;
- Eliminate ambiguity in construing Title IV agreements providing greater clarity in interpretation of the provisions;
- Reinforce carry-over mechanisms and procedural directives for awarded funding;
- Specify appeals processes/evidentiary standards/waiver requests to expedite claims;
- Clarify construction oversight roles to ensure fiscal prudence and public safety; and,
- Establish clear payment schedules and procedures for involved parties.

These proposed amendments to Title IV have already proven successful within the context of Title V health care services, which is the model for this legislation. Tribes have also conceded on very significant key issues—for example, removing provisions on mandatory compacting of non-Bureau of Indian Affairs (BIA) programs. H.R. 2031 ensures that existing law with respect to non-BIA programs will NOT be changed in any way, and that nothing in the Act, or any amendment made by the Act, “modifies or affects the meaning, application, or effect of” the sections of the ISDEAA dealing with non-BIA programs. The fundamental principles guiding H.R. 2031 are all sound, as proven by the success of Title V since 2000.

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### **Need for Title IV Amendments**

As important and successful as Self-Governance 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. Title V created permanent Self-Governance authority within HHS and directly addressed many of the issues that had proven to be problematic during the Title IV rulemaking process. But the many improvements reflected in Title V remain absent from Title IV. Consequently, Self-Governance Tribes have been 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 reflect the advances made in Title V. For almost two decades amending Title IV has been a top legislative priority for Tribal Leaders. In the past two Congresses, I, along with other Tribal Leaders on both the Self-Governance Advisory Committee and the Title IV Tribal Task Force, have testified before this Committee in support of predecessor bills to H.R. 2031.<sup>1</sup> Our persistence speaks to the importance Tribal Leadership has placed on amending Title IV to empower our Tribes to maximize their ability to manage limited Federal resources for the benefit of our Tribal citizens.

H.R. 2031 reflects nearly two decades of discussions, drafting, negotiations, and redrafting. Tribal representatives, along with agency and Congressional staff have worked very hard in the past two years to come up with a bill that everyone can support. The time is long overdue to pass a bill that will significantly advance Congress's policy of promoting Tribal Self-Governance for all American Indian and Alaska Native Tribal governments.

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<sup>1</sup> E.g., House Committee on Natural Resources Full Committee Legislative Hearing on H.R. 4347, Department of the Interior Tribal Self-Governance Act of 2010 (June 9, 2010); House Subcommittee on Indian and Alaska Native Affairs Legislative Hearing on H.R. 2444, Department of the Interior Tribal Self-Governance Act of 2011 (September 22, 2011).

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## The Success of Self-Governance

The increasing number of Tribes that have opted to participate in Self-Governance on an annual basis reflects the success of Self-Governance. 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. In Fiscal Year 2019, 285 Tribes and Tribal consortia representing all 10 BIA Regions have entered into Compacts and Funding Agreements with over \$311.8 million in programs, functions, services and activities.<sup>2</sup> This growth in Tribal participation in Self-Governance reflects the stunning success of Tribal Self-Governance. 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. Self-Governance is the *only* successful Tribal – Federal policy that has benefitted *both* the Tribes and the United States and it has provided the foundation for building a positive relationship and partnership between our governments.<sup>3</sup> How so, you might ask? The answer is “**Tribal 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 the management experience that is so critical to the continued effective stewardship of our resources.

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<sup>2</sup> Source: Department of the Interior, Office of Self-Governance Update – April 2019, Indian Affairs.

<sup>3</sup> Testimony of Kevin K. Washburn, Assistant Secretary Indian Affairs, U.S. Department of the Interior at Senate Committee on Indian Affairs Legislative Hearing on S. 919, Department of the Interior Tribal Self-Governance Act of 2013 (January 29, 2014).

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- ***Self-Governance Allows for Flexibility.*** Self-Governance allows Tribes great flexibility when making decisions concerning efficient and effective allocation of funds across programs that are fully compliant with Federal regulations. 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 successfully implements the fundamental government-to-government relationship between Indian Tribes and the U.S. Government. It also advances a bi-partisan 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 citizens.

### **Conclusion**

The Title IV amendments embodied in H.R. 2031 significantly advance the U.S. policy of Tribal Self-Governance. At the same time, these critical amendments come at little to no cost to tax payers and no additional appropriations are required; indeed, they will 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. H.R. 2031 is the product of over three decades of experience, discussions, and compromises. Now is the time for this Committee, and Congress as a whole, to push the bill forward so that 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 Tribes and all of Indian Country.