



Native American Contractors Association
*Protecting the rights of Indigenous Peoples to create economic development through
government contracting*

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Statement of Michael G. Anderson

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Legislative Hearing on:

**S. 607, Native American Business Incubators Program Act
and**

**S. 1116, Indian Community Economic Enhancement Act of
2018**

**House Subcommittee on Indian, Insular, and Alaska Native
Affairs**

July 24, 2018

Introduction

The Native American Contractors Association (NACA) expresses our sincere appreciation to Chairman LaMalfa, Ranking Member Gallego, and the Members of the House Subcommittee on Indian, Insular, and Alaska Native Affairs for this opportunity to present testimony on S.607, “Native American Business Incubators Program Act,” and S.1116, “Indian Community Economic Enhancement Act of 2018.

Formed in October 2003 and located in Washington, DC, NACA is a 501(c)6 trade association – the only advocate for community- and individually-owned Tribal, Alaska Native, and Native Hawaiian enterprises engaged in federal contracting. Our mission is to protect the rights of Native Americans to create economic development through government contracting as a result of the nation-to-nation trust relationship recognized in the Constitution and treaties. Our members proudly serve federal agencies in all 50 states and internationally. In fiscal 2017, Native contractors provided \$15.6 billion in goods and services in nearly every industry code to our federal customers.¹ The net profits Native entities derive from contracting, fund a full range of economic, infrastructure, health care, education, and cultural development programs positively impacting 5.8 million Native Americans in communities across the country.

Therefore, economic development within Native communities is essential, and regular dialogue and consideration of legislation to advance it is necessary and appreciated. Programs that exist today must not only remain intact, but be improved so that their intended design -- improving the lives of Native Americans and the ability to control their own destinies -- is realized. The existence of time-tested, proven programs, in which Native communities can invest and thus parlay the value of such capital, is critical to the achievement of a sustainable Native self-determination.

In NACA’s view, the advancement of Native-owned small businesses is not just an exercise of the nation-to-nation trust responsibility, it also meets Congress’ intent stated in Section 2 of the Small Business Act of 1953. That is:

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for

¹ Per the Federal Procurement Data System (FPDS) Next Generation (NG) (www.fpds-ng.gov). \$15.6 billion was 3% of the federal procurement spend in fiscal 2017. Excluding Native Hawaiian Organizations (NHOs) in government contracting (govcon), the fiscal 2017 procurement spend was \$15.3 billion or 2.9% of the federal procurement spend.

the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.²

In other words, developing Native small businesses is essential to having vibrant, successful Native communities, and to our Nation's national security interests.

Healthy, effective programs -- like those proposed in S.607 and S.1116 -- advance the ability of Native communities to move closer to attaining the goal of self-determination. Therefore, this testimony documents NACA's full endorsement of both bills, and provides supporting statements and data using our expertise in government contracting.

A Coalition of Support in Indian Country

In a January 2018 letter to the Senate Committee on Indian Affairs,³ NACA joined the National Congress of American Indians (NCAI), the National Center for American Indian Enterprise Development (NCAIED), and the Native American Finance Officers Association (NAFOA) in expressing Indian Country's broad support for the long-sought initiatives in S. 607 and S. 1116. NCAI passed resolutions in support of [S. 607](#) and [S. 1116](#) at their Mid-Year and Annual Conferences in 2017. Additionally, NCAIED testified at a Senate Indian Affairs Committee [legislative hearing](#) in September 2016 in support of both bills and has advocated for their passage. NACA carried our full support of the bills to Congress during our November 2017 Federal Contracting Policy and Advocacy Conference, and again during our March 2018 Congressional Outreach Summit. Since the Senate's passage of the bills, NACA has continued to advocate for the bills with the professional staff of the Senate Committee on Indian Affairs, and the House Subcommittee on Indian, Insular, and Alaska Native Affairs.

S. 607, Native American Business Incubators Program Act

The Native American Business Incubators Program Act supports job growth and tribal economic development by promoting entrepreneurship in Tribal communities. The first incubator facility -- the Batavia Industrial Center -- was developed by Joseph Mancuso in 1959.⁴ Today, there are over 2,200 incubators located globally, and present day incubators are "Facilit[ies] established to nurture young startup firms during their early months or years. It usually provides affordable space, shared offices and services, hands-on management training, marketing support and, often, access

² 15 USC 631. https://www.sba.gov/sites/default/files/Small_Business_Act.pdf.

³ Joint NCAIED, NCAI, NACA, and NAFOA letter to Senators Hoeven (Chairman) and Udall (Vice Chairman), Senate Committee on Indian Affairs, "Re: Indian Country Support for S. 1116 and S. 607," January 11, 2018.

⁴ From the International Business Incubators Association. See: <https://inbia.org>

to some form of financing.⁵ In S.607, Congress authorizes an incubator that is not an “incubator-as-a-facility;” but instead, an “incubator-as-a-service provider.”⁶

NACA believes Congress is authorizing the next step in business incubators and is excited about this evolution. S.607 establishes a grant program to create sustainable business incubators that provide workspace and business development training tailored to meet the unique needs of Native entrepreneurs starting and growing businesses in Native Communities. The bill also leverages existing resources by requiring interagency coordination and partnerships between business incubators and academic institutions. S.607 will provide much needed support for aspiring Native entrepreneurs striving to create the foundation for thriving Tribal economies. Entrepreneurs in the commercial and the government contracting marketplaces will ultimately benefit.

Today, there are 379 Tribally-owned, 641 Alaska-Native Corporation owned, and 2,512 individually-owned Native small businesses.⁷ This means individual Native entrepreneurs number 71% of the active Native small business enterprises today. With incubators properly targeted to supporting and advancing entrepreneurial interests, they will be critical to effect and support continued growth of Native small businesses which is essential to economic development in our Native communities. Moreover, incubators will grow businesses that offer products and services, help develop essential business and workforce skills, and promulgate economic development within their region.

S.1116, Indian Community Economic Enhancement Act

The Indian Community Economic Enhancement Act will make several long-sought federal programmatic changes to promote tribal economic development, most notably:

- Elevate (with specific funding) the Office of Native American Business Development to report directly to the Secretary of Commerce
- Expanding the Buy Indian Act and directing the Department of the Interior and Indian Health Services to “harmonize” their Buy Indian directives
- Reauthorizing and expanding economic development initiatives supported by the Native American Programs Act

Importantly, the bill will require agencies to work together to promote private investment in Native Communities and update securities regulations so tribes can qualify as accredited investors, thereby providing tribes access to the \$1 trillion market for debt and equity securities.

Passing this bill will facilitate greater access to capital, create economic development opportunities, and enhance procurement and other business assistance for Tribal and other Native

⁵ Read more: <http://www.businessdictionary.com/definition/business-incubator.html>

⁶ See S. 607, Section 3 (1).

⁷ Small Business Administration Dynamic Small Business Search (SBA DSBS) engine <http://dsbs.sba.gov>. This counts active Native small businesses who had updated their business profile as of April 1, 2018.

Enterprises. NACA will address two features of S.1116 – elevating the Office of Native American Business Development, and bolstering the Buy Indian Act.

Office of Native American Business Development

25 USC 4303 establishes the Office of Native American Business Development within the Department of Commerce. It provides that through the Director of Native American Business Development, the Commerce Secretary “shall ensure the coordination of Federal programs that provide assistance, including financial and technical assistance, to eligible entities for increased business, the expansion of trade by eligible entities, and economic development on Indian lands.” Moreover, through the Director, the Secretary shall “coordinate Federal programs relating to Indian economic development, including any such program of the Department of the Interior, the Small Business Administration, the Department of Labor or any other Federal agency charged with Indian economic development responsibilities.”⁸

Through S.1116, Congress elevates the Director’s duties and responsibilities to serve as “the program and policy advisor to the Secretary with respect to the trust and governmental relationship between the US and Indian Tribes.” Further, the Director becomes “the point of contact for Indian Tribes, Tribal organizations, and Indians regarding the policies and programs of the Department, and matters relating to economic development and doing business in Indian lands.”⁹

This authority and responsibility require commensurate levels of authority and funding. In comparing other similar department/agency-level Native American Director positions, NACA finds these trust responsibilities well served and the \$2 million funding level appropriate. Having a central Native point of contact, with the ease of direct access to the Secretary, can only facilitate more efficient and effective policies and processes in the support and advancement of economic and business policies for Native communities.

The Buy Indian Act

The Buy Indian Act (25 USC 47) provides that, so far as may be practicable, Indian labor shall be employed and purchases of the products of Indian industry may be made in open market at the discretion of the Secretary of the Interior.¹⁰ The federal preference for the purchase of Indian goods and services began with the Indian Appropriations Act of 1886, but was not permanently authorized in statute until June 25, 1910. The Act itself is brief and contains little detail. The key to implementing the Act lies in DOI’s and IHS’s regulations, and both agencies have broad discretion over whether and how to use the Act.¹¹ The Act initially authorized the Department of the Interior, including the Bureau of Indian Affairs (BIA), the Bureau of Indian Education (BIE), and the offices of the Assistant Secretary – Indian Affairs (AS-IA), to purchase supplies, services

⁸ 25 USC 4303. <https://www.law.cornell.edu/uscode/text/25/4303>.

⁹ S. 1116, Section 3(c).

¹⁰ See <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title25/html/USCODE-2016-title25-chap2-sec47.htm>.

¹¹ GAO-15-588, “Buy Indian Act: Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices,” July 2015, p. 3.

and certain kinds of construction from qualified Native American vendors defined as “Indian Economic Enterprises” or IEEs. At Interior, the Act is implemented by the Department of the Interior Acquisition Regulation (DIAR) Supplement, Title 48 of the Code of Federal Regulations, Part 1480, which requires Indian Affairs to use the Buy Indian Act authority to give preference to Indians whenever authorized and practicable.¹² In 1955, Congress transferred the authority over functions related to the maintenance and operation of Indian hospitals and health care facilities, and the conservation of the health of Indians from Interior to the Health and Human Services Department (HHS).¹³ Specifically, 48 CFR 370.501(b) transferred:

*The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians are transferred to the Surgeon General of the United States under the supervision of the Secretary of Health and Human Services, 42 U.S.C. 2001(a). Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians.*¹⁴

During the 1980s, it became generally acceptable that all BIA and IHS procurement contracts should be awarded through Buy Indian unless there is an important reason not to do so.¹⁵ Then on June 7, 2013, 103 years after the Act was passed by Congress, the Interior Department published the DIAR rule to fully implement Buy Indian procurement within the Department. Prior to that and since 1965, BIA had obtained services and supplies from Indian sources based on “policy memorandum and acquisition.” The 2013 regulation was published to describe “uniform administrative procedures that [B]IA will use in all of its locations to encourage procurement relationships with eligible Indian Economic Enterprises in the execution of the Buy Indian Act.”¹⁶

The Indian Health Services implemented Buy Indian through HHS’s acquisition regulations (48 CFR 370.5) and published the Indian Health Manual to provide additional guidance regarding the IHS procurement process. The Manual is under revision, however, Chapter 2, Part 5 – Management Services, provides IHS “with a unique instrument for providing essential sanitation facilities to Tribes.”¹⁷ Part 5-2.8B states:

¹² “The Buy Indian Opportunity.” Department of the Interior, Tribal Economic Development Principles-at-a-Glance Series, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18_508.pdf.

¹³ GAO-15-588, “Buy Indian Act: Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices,” July 2015, p. 3.

¹⁴ 48 CFR 370.501. See: <https://www.gpo.gov/fdsys/pkg/CFR-2008-title48-vol4/pdf/CFR-2008-title48-vol4-part370-subpart370-5.pdf>.

¹⁵ “The Buy Indian Opportunity.” Department of the Interior, Tribal Economic Development Principles-at-a-Glance Series, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18_508.pdf.

¹⁶ Federal Register 78 FR 34266, June 7, 2013

¹⁷ See: <https://www.ihs.gov/IHM/pc/part-5/p5c2/#5-2.1>.

The Buy Indian Act (25 U.S.C. Section 47) is a “set-aside” authority. Under the HHS acquisition regulations (HHSAR) at 48 CFR Subpart 370.5, set-aside acquisitions are negotiated acquisitions but should be conducted as if they were formally advertised acquisitions where appropriate. Contracts awarded under the Buy Indian Act are subject to competition among Indians or Indian concerns to the maximum extent that the Contracting Officer determines is practicable.¹⁸

In July 2015, the Government Accounting Office (GAO) reported that “BIA and IHS have limited insight into implementation of the Buy Indian Act at their regional offices, where the contracts are generally awarded.¹⁹ NACA has therefore sought to facilitate implementation of IHS Buy Indian Act procurement regulations that would mirror Interior’s to eliminate unnecessary differences in how both agencies identify, qualify, evaluate, award, and account for Buy Indian set asides. NACA and representatives from the Rosebud Economic Development Corporation (REDCO) first met with IHS Division of Acquisition Policy on November 16, 2016, to begin to facilitate this process. Since then, NACA has continued to meet periodically with and receive updates from IHS procurement officials at NACA-hosted events. It is a win-win for the government and qualified IEEs to “harmonize” the Buy Indian procedures between Interior and HIS as directed in S.1116.

Current Status of Buy Indian Utilization

The Buy Indian set-aside program differs from other government set-aside programs as it is not a federal government-wide authority. Only two agencies – Interior and IHS -- are currently authorized to use the Buy Indian Act. Further, Buy Indian set-asides are not limited to small businesses. And while the Small Business Administration negotiates with federal agencies to establish goals for contracting with various categories of small businesses, the Buy Indian Act does not have any goals associated with it. For Interior and IHS, meeting small business goals is a priority, while Buy Indian does not receive that attention.

In NACA’s outreach visits to Tribes in various regions of the country, we observed that Buy Indian presentations by regional representatives provided data inconsistent with that reported in FPDS-NG -- the federal database accessed to measure and report on government contracting by the government, contracting associations, and federal contractors. This only clouds the status of Buy Indian implementation.

Federal procurement data is clear. Table 1 shows that from fiscal 2014 through fiscal 2017, Native contracting by Tribally-Owned Businesses, Alaska Native Corporations, and Native-owned Entrepreneurial businesses (data excludes Native Hawaiian Organizations) grew 20.5%; in comparison federal procurement experienced a 14.4% growth over the same period.²⁰ While a 20.5% increase in the overall total value of contract spending is a positive sign, the corresponding

¹⁸ Ibid.

¹⁹ GAO-15-588, “Buy Indian Act: Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices,” July 2015, Executive Summary.

²⁰ FPDS-NG, July 15, 2018.

utilization of the Buy Indian set aside program is dismal at best. Buy Indian set asides account for only 2.3% of Interior’s total procurement from fiscal 2014 through fiscal 2017; 0.9% of IHS’s.

All Amounts in \$B	2014	2015	2016	2017	Change	Total	Percent	
All GovCon	447.5	441.8	477.6	512.1	14.4%	1879.000		
Native GovCon (exc NHO)	12.7	12.3	14	15.3	20.5%	54.300	2.9%	of All GovCon
DOI GovCon (exc NHO)	2.7	2.9	3.1	3	11.1%	11.700		
DOI Native GovCon (exc NHO)	0.3049	0.267	0.3111	0.3114	2.1%	1.194	10.2%	of DOI GovCon
DOI Buy Ind	0.0481	0.0586	0.0839	0.081	68.4%	0.272	2.3%	of DOI GovCon
BI/DOI GovCon	1.8%	2.0%	2.7%	2.7%	51.6%			
IndHS GovCon (exc NHO)	0.677	0.7415	0.8417	0.8595	27.0%	3.120		
IndHS Native GovCon (exc NHO)	0.0839	0.0925	0.0961	0.1253	49.3%	0.398	12.8%	of IndHS GovCon
IndHS Buy Indian	0.0024	0.0025	0.0044	0.018	650.0%	0.027	0.9%	of IndHS GovCon
BI/IndHS GovCon	0.4%	0.3%	0.5%	2.1%	490.8%			

Table 1. Value of Buy Indian Federal Procurement Contracting by Tribally-Owned Businesses, Alaska Native Corporations, and Native Entrepreneurs (in \$Billions)

Source: FPDS-NG

NACA asserts the spike in the value of procurement awards in fiscal 2017 is the result of emphasis by Interior and IHS seeking to increase Buy Indian set asides. We also believe increased Buy Indian education and emphasis by NACA, NCAIED and other Native organizations also aided in the uptick. However, given the size of IHS’s procurement budget, the increase in their budget for fiscal 2018, the subsequent forecast for fiscal 2019, and our Native communities’ intense commitment to and interest in quality health care, there is significant room for improvement in IHS’s utilization of Buy Indian set asides.

Therefore, NACA believes that S.1116 is needed to motivate action by Interior and IHS to bolster their utilization of Buy Indian set asides. What is often left unsaid is that Interior and IHS receive services and products from qualified and capable Native contractors.

The investment impact to Native communities is quantifiable.

- For Interior every 1% increase in Buy Indian awards equates to a \$118 million increase. Assuming a conservative 5% profit to IEEs, a 1% increase equates to \$5.9 million in economic development to Native communities.
- For IHS, every 1% increase in Buy Indian awards equates to a \$30 million increase. Using the same 5% profit, a 1% increase translates to \$1.5 million in economic development available to Native communities.

Conclusion

The communities served by Native enterprises remain some of the most impoverished groups in the United States. There is still significant work to be done to effect positive and sustainable economic growth and benefits for these communities. S.607 and S.1116 will enable Native communities and entrepreneurs to drive economic development through self-reliance and business

ingenuity. Supporting and growing these small businesses are essential to continuing the crucial economic development work occurring across Native America.

Thank you for granting NACA the opportunity to provide testimony on this important subject. Native economic development is a crucial investment where Congress meets its unique obligation and interest in providing for the self-determination of Native Americans. NACA greatly appreciates and applauds the Committee's commitment to ensuring that Native communities have the tools necessary to develop and grow their economies.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael G. Anderson". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael G. Anderson
Executive Director