

Subcommittee on Indian, Insular and Alaska Native Affairs
Doug LaMalfa, Chairman
Hearing Memorandum

November 13, 2017

To: All Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff,
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: **Legislative hearing on H.R. 212 (Rep. Don Young),** To amend the Indian Self-Determination and Education Assistance Act to provide a process for expediting congressional review of an Indian tribe’s funding agreement at the Indian tribe’s request, and for other purposes.
Wednesday, November 15, 2017, at 10:00 a.m. in 1324 Longworth HOB

H.R. 212 (Rep. Don Young), “*Expediting Funding For Efficient Contracting Tribes Act (EFFECT Act)*”

Summary of the bill

H.R. 212 was introduced by Rep. Don Young on February 2, 2017. The bill would amend section 403 of the Indian Self-Determination and Education Assistance Act¹ (ISDEAA) to authorize an Indian tribe to request Congress to waive part or all of its 90-day review period of pending funding agreements the tribe has with the Department of the Interior (DOI). Presently, ISDEAA requires that the proposed effective date of a funding agreement not be sooner than 90 days from the date that DOI submits the agreement to Congress for review.²

Invited Witnesses

Mr. John Tahsuda III
Acting Assistant Secretary—Indian Affairs
U.S. Department of the Interior
Washington, D.C.

Ms. Charleen Fisher
Executive Director
Council of Athabascan Tribal Governments
Fort Yukon, AK

¹ 25 U.S.C. § 5304 et seq.

² 25 U.S.C. § 5363(f).

Background

The Indian Self-Determination and Education Assistance Act (ISDEAA) was enacted in 1975 to authorize federally recognized tribes an opportunity to manage federal services and benefits for their members rather than to have them managed by the federal government. Title I of the Act generally enables tribes to enter into contracts to provide certain services provided by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). The Act has been amended several times to increase tribal opportunities to undertake more contracting and to assume most management functions of many BIA and IHS programs.

In 1994, Congress added Title IV to the ISDEAA to establish a Tribal Self-Governance program at Interior. Tribal Self-Governance is a greatly enhanced form of contracting in which a tribe negotiates with the Secretary essentially to take over the management of a BIA program serving the tribe's members. Under this arrangement, a tribe may negotiate to re-design the program to suit its unique needs and that of its members. Congress then appropriates funds for the program which the BIA passes to the tribe in accord with a Self-Governance funding agreement. Overhead (called "contract support costs") is also paid to the tribe.

The Bureau of Indian Affairs estimates that in FY 2018, there are nearly 120 annual Self-Governance annual funding agreements for about 267 tribes to operate a wide range of BIA services for their tribal members.³ Examples of these services include law enforcement, education, welfare assistance, housing repairs, real estate services, appraisals, probates, and natural resource programs.

Within strict limits, tribes can also enter into funding agreements to manage non-BIA programs within the Department of the Interior when such programs are of special geographic, historical or cultural significance to a participating Indian tribe. One example of this is the Flathead Tribe of Montana's performance of certain duties on the National Bison Range in Montana. Funding agreements between tribes and the Secretary do not permit tribes to undertake "inherently" federal functions, such as making policy decisions. In the past, the definition of "inherently federal function," however, has not been fully agreed to by tribes and the Department.

Once the Department of the Interior has negotiated and is preparing to enter into an annual or multi-year funding agreement, Title IV of ISDEAA requires the Department to submit the agreement to be reviewed by the authorizing Congressional committees in Congress which have jurisdiction over the Bureau of Indian Affairs, for a period of no later than 90 days.

Some tribes have stated this 90-day review period causes an unintended delay for certain activities to occur which hampers the ability for a tribe to plan or respond to certain seasonal management activities.

³ Bureau of Indian Affairs Budget Justification FY2018, Appendix 6, Pg. 571.

Council of Athabascan Tribal Governments

Many cases of unintentional delays due to the restrictive 90-day Congressional review period have caused problems for tribes and tribal governments. In 2013, the Council of Athabascan Tribal Governments⁴ (CATG) had an AFA with the Bureau of Land Management (BLM) regarding wildfire mitigation services and funding for emergency firefighter training, among other services.

In 2013, then-Committee on Natural Resources Chairman Doc Hastings wrote to the BLM on behalf of the CATG outlining the need to implement the AFA immediately, as the services outlined in the AFA were time sensitive for the tribe's community and well-being. The BLM previously notified the Committee that the AFA would go into effect 90 days after the committee review period, but the need for an expedited process was clear.

The cumbersome rules regulating AFAs and MFAs stopped the BLM from expediting this much-needed funding from occurring in a timely manner. In response, Neil Kornze, the then-Principal BLM Deputy Director, cited regulatory requirements⁵ that stopped the Bureau from waiving the 90-day review period.

The way this waiting period is mandated under ISDEAA stops the DOI from expediting the effective date on any pending funding agreement, even upon receiving a formal request from Congress. H.R. 212 is intended to positively impact AFAs and MFAs by giving tribes more flexibility and great the self-governance to appropriately manage their communities. The flexibility afforded to tribes would allow for their AFAs and MFAs to better suit them in times of need, without having to wait for an unnecessary 90-day time limit to expire.

Cost

Unknown at this time.

Administration Position

Unknown at this time.

Section by Section Analysis of H.R. 212

Section 1. Short Title. Provides the short title of the bill.

Section 2. Expedited Review of Indian Tribe Funding Agreements. Section 2 outlines the changes that the bill will make to Section 403 of ISDEAA.

⁴ <http://www.catg.org/>

⁵ 25 CFR § 1000.178

Subsection'(g) Expedited Review- Subsection(g) states that an Indian tribe that is party to a funding agreement can submit a request for an expedited review to the appropriate House and Senate Committees, who may then send a request to the Secretary of the Interior. The Secretary will then be free to waive part or all the 90-day review period in the proposed agreement.

Effect on current law (Ramseyer)