



The National Center
for American Indian Enterprise Development

BOARD OF DIRECTORS

Derrick Watchman
Chairman (*Navajo*)

Patricia Parker
Vice-Chairwoman (*Choctaw*)

Clyde Gooden
Treasurer (*Eskimo*)

Urban L. Giff
Secretary (*Pima*)

Chris James
President/CEO (*Cherokee*)

Kip R. Ritchie
(*Forest County Potawatomi*)

John Echohawk
(*Pawnee*)

Joel Frank, Sr.
(*Seminole*)

Margo Gray
(*Osage*)

Michelle L. Holiday
(*Iowa Tribe of Oklahoma*)

Karlene Hunter
(*Oglala Sioux*)

Larry G. Kinley
(*Lummi*)

Ronald J. Solimon
(*Laguna Pueblo*)

Ernest Stevens, Jr.
(*Oneida*)

Testimony

of

Derrick Watchman, Chairman, Board of Directors

of

The National Center for American Indian Enterprise Development

on

H.R. 4506, the Jobs for Tribes Act

at the

Legislative Hearing of the

Subcommittee on Indian, Insular and Alaska Native Affairs

of the

House Committee on Natural Resources

January 17, 2018



953 East Juanita Avenue
Mesa, Arizona, 85204



o: (480) 545-1298
f: (480) 545-4208



e: chris.james@ncaied.org
w: www.ncaied.org

Testimony
Of
Derrick Watchman, Chairman, Board of Directors
of
The National Center for American Indian Enterprise Development
on
H.R. 4506, the Jobs for Tribes Act
at the
Legislative Hearing
of the
Subcommittee on Indian, Insular and Alaska Native Affairs
House Committee on Natural Resources

January 17, 2018

Chairman LaMalfa, Ranking Member Torres, and members of this distinguished Subcommittee, I am Derrick Watchman, Chairman of the Board of Directors of the National Center for American Indian Enterprise Development (NCAIED), and a citizen of Navajo Nation. Thank you for inviting me to present the views of the National Center on H.R. 4506, the Jobs for Tribes Act. As stated in the joint endorsement letter (attached to my testimony), this important legislation enjoys the support of the major tribal and other national organizations representing Indian Country, including the National Center, National Congress of American Indians (NCAI), Native American Contractors Association (NACA) and Native American Finance Officers Association (NAFOA).

We commend you, Ranking Member Torres, for your leadership in collaborating with Congressman Tom Cole and other cosponsors to address our calls for House companion legislation by combining provisions of two Senate bills (S. 1116 and S. 607) now moving to the Senate floor. We pledge to work closely with you and your colleagues to help facilitate the legislation's prompt movement through the committee process, onto the House floor and to enactment early this year.

The National Center has taken an active role in promoting business and economic development in Indian Country since the organization launched in Southern California in 1969. Now headquartered in Arizona, with offices across the country, the National Center has always worked to ensure that Native-owned businesses have the opportunity to acquire entrepreneurial skills, receive business assistance and training, meet potential business partners, and receive procurement technical assistance to become capable of competing in private and public marketplaces, both nationally and internationally. Since our inception we have worked with approximately 80% of the tribes in the United States

and assisted more than 100,000 businesses from tribes, Alaska Native regional and village corporations, Native Hawaiian Organizations, or enterprises owned by these entities or individual members of these communities. For this broad constituency, the National Center also has hosted Reservation Economic Summits (RES) for 30 years, with each RES offering several days of training workshops, a full day of procurement business match-making meetings, all day trade shows, and other opportunities for networking and business deal making.

H.R. 4506 directly responds to recommendations made by the National Center and other tribal organizations across the country to spur business and economic development by enhancing programs and targeting assistance in ways tailored to Indian Country's unique sovereign and business characteristics, capabilities, and challenges in accessing capital. As far back as Senate hearings in 1987 and 1990, National Center leaders have testified for expanding Buy Indian Act authority – now addressed in Title I of the bill. We have testified and advocated repeatedly for implementing and enhancing authorities enacted in the Native American Business Development, Trade Promotion and Tourism Act of 2000 – also part of Title I. We also testified and helped draft proposals for entrepreneurial and business development assistance centers targeted to Indian communities, and are very pleased that Title II adopted this tailored approach in the Native American Business Incubators Program Act provisions. And, in developing our own global trade center initiative, we understand first-hand the challenges of sparking and sustaining indigenous trade. Thus we welcome the emphasis on trade in both Titles I and III of H. R. 4506.

Given this background, the National Center is pleased to present the following comments on this legislation so important to Indian Country's business and economic development.

Comments on H.R. 4506:

As noted, the National Center has repeatedly testified in support of provisions as contained in H.R. 4506, including those to: 1) elevate and enhance the Office of Native American Business Development reporting directly to the Secretary of Commerce; 2) increase support for the Indian Loan Guarantee Program and the Community Development Financial Institutions (CDFI) Fund programs to help more Native CDFIs; 3) expand use of the Buy Indian Act authority; 4) establish a Native American Business Incubators Program; and 5) develop strategies to enhance domestic and international indigenous trade. Outlined below are the National Center's specific comments on this key legislation.

Title I – Indian Community Economic Enhancement Act

Section 102. Findings – In Senate testimony on September 7, 2016, I presented the National Center's recommendations on the provisions of Title I then contained in S. 3234 (114th Congress) and now S. 1116 (115th Congress). We endorsed most of the Findings section but urged stronger language in some key findings. So, for example, the Senate sponsors agreed to acknowledge that significant barriers must be overcome, such as lack of infrastructure or capacity, and lack of sufficient collateral and capital, and that the few

federal loan guarantee programs available to facilitate financing of business, energy, economic, housing, and community development projects in Indian communities are underfunded and therefore oversubscribed.

In particular, the Indian Loan Guarantee Program has rarely received sufficient funding, despite increasing demand for the guarantees. For the last two years, the program's credit subsidy for the guarantees was exhausted well before the end of the fiscal year, resulting in backlogs of financings that delayed deal closings and project completion. The Department of Agriculture (USDA) loan guarantee program also has lost ground in recent budget requests, as has the Indian Energy Loan Guarantee Program.

I must draw your attention to the key Findings in Section 102, (6)(A) through (C), especially because last month **Congress totally ignored Indian Country's persistent calls to include tribal tax parity provisions in the mammoth tax bill enacted.** We urge you to acknowledge and act on these crucial Findings:

- (A) Federal capital improvement programs that “facilitate tax-exempt bond financing and loan guarantees, are tools that help improve or replace crumbling infrastructure;”
- (B) **lack of parity in treatment of Indian tribes as governmental entities under Federal tax laws impedes Indian tribes' ability to raise capital through issuance of tax exempt debt and benefit from other investment incentives accorded to State and local governmental entities; and**
- (C) **as a result of tribal governments' disparate treatment, investors may avoid financing, or demand a premium to finance, projects in Indian communities, making the projects more costly or inaccessible.**

Please, at the very next opportunity – whether in the Tax Extenders bill, or any tax corrections bill, or any infrastructure measure – Congress must include the tribal tax parity provisions that Indian Country so desperately needs. Fairness, morality, economic equality and necessity fully justify enactment of tribal tax parity provisions this year.

Section 103 – Native American Business Development, Trade Promotion, and Tourism Act of 2000

The National Center has long advocated for elevating and enhancing the Office of Native American Business Development headed by a Director reporting directly to the Secretary of Commerce, as contemplated in the enactment of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (Public Law 106-464, referenced herein as the “2000 Act”).

The Department of Commerce operates so many agencies and programs that could benefit Indian communities, and link them with opportunities domestically and globally. It is essential that Commerce embrace that challenge by supporting the Office of Native American Business Development! Yet, from 2000 to 2005, Commerce disregarded the directives of the Act, and those of another passed in 2000, the Indian Tribal Regulatory

Reform and Business Development Act. In mid-2005, Commerce's Minority Business Development Agency (MBDA) paid some attention, with the MBDA Director assuming the title of Director of the Office of Native American Business Development and allocating about \$200,000 for an experienced Native American to be hired, develop a business plan, and begin fulfilling the requirements of the two statutes enacted in 2000. Three Native Americans, successively, held that position, with the latter two also designated at the Senior Advisor to the Secretary on Native American Affairs. These "Senior Advisor" positions, however, also carried Inter-Governmental Affairs Office responsibilities so time and attention had to be split between Indian Country initiatives and many other, unrelated duties. To be effective, the Director's sole focus should be on the Office of Native American Business Development, with its own budget and some staff to assist with full implementation of the duties prescribed in the Act and the amendments to it proposed in Section 103.

We strongly support the provisions in Section 103(c) that define the "Director" of this Office, elevate the Office by placing the Director in the Office of the Secretary of Commerce, provide the office a budget, and enhance the Director's authority to coordinate the activities of Commerce and other key departments, to be actively involved in policy, and to ensure timely assistance and consultation with Indian tribes regarding policies, programs, assistance and activities. **This legislation, coupled with needed action in Commerce Appropriations bills to make these funds available for the Office within the Departmental Management budget, have long had the support of at least a dozen national and regional native organizations.**

The National Center also supports the provisions of Section 103(d) that would add a new section 8 to the Act to require the Director to coordinate with the Departments of the Interior and the Treasury (acting through the Administrator of the CDFI Fund) on the development of certain "initiatives" that encourage, promote, and provide education regarding investments in Indian communities through 1) the Indian Loan Guarantee Program, 2) the CDFI Fund and Native CDFIs, and 3) other capital development programs. Additional important "initiatives" would include examining and developing alternatives that would qualify as collateral for financing in Indian communities, and identifying regulatory or legal barriers to increasing investment, including qualifying or approving collateral structures, in Indian communities.

Especially important will be the initiatives to promote and support greater use of the Indian Loan Guarantee Program, the CDFI Fund program for Native CDFIs and bond guarantee program allocations to infuse investments into areas that include Indian reservations or whose targeted population includes an Indian tribe. The National Center has long urged Congress to double the credit subsidy supporting the Indian Loan Guarantee Program – to which Congress can and should respond by increasing the amount it appropriates for that line item in the annual Interior Appropriations Act. Adding just \$7.5 million more for the program would double the value of the private loan financings that could be made for business and economic development projects in Indian Country. Such a relatively small increase could be deployed immediately to leverage about \$250 million in private sector loans. In 2006, Congress recognized the importance

of the program by authorizing a big increase in the aggregate value of guaranteed loans, from \$500 million to \$1.5 billion, but unfortunately appropriations to support that increase have never yet been approved. **Funding the Indian Loan Guarantee Program is a federal obligation, and Congress can and must act now to increase this line item in the FY 2018 and future Interior Appropriations.**

Section 103(d) also would require development of initiatives for entrepreneur and other training relating to economic development through tribally controlled colleges and universities and other Indian organizations with experience in providing such training. The National Center knows, first-hand, the importance of this entrepreneurial training for Indian Country, and that's why we host our national RES events and regional conferences to provide an array of entrepreneurial and other trainings relating to business and economic development. For many years, Commerce's MBDA supported some of this business development assistance under cooperative assistance agreements for operating Native American Business Enterprise Centers (NABECs), but in 2012 the MBDA ceased that support in favor of funding "MBDA Business Centers" only. More Department of Commerce support for new initiatives for entrepreneurial and other economic development training is needed now more than ever.

Section 103(d) calls for an Indian Economic Development Feasibility Study by the Government Accountability Office (GAO). As suggested by the National Center, NCAI and NAFOA, a study of this nature will help clarify whether programs that "could" assist Indian Country actually are deployed for that purpose and to what extent. Accordingly, this section directs that the GAO study quantify and assess the past use and current allocation, and feasibility of expanding, incentive programs to facilitate and increase business, economic, energy, housing, community and infrastructure development in Indian communities – specifically the various loan guarantee and bond guarantee programs of Interior, USDA, Housing and Urban Development, Energy, Small Business Administration (SBA), and CDFI Fund. The study also must assess the allocation and use for Indian Country of: the New Market Tax Credit; the Low Income Housing Tax Credit; the Investment Tax Credit; Renewable Energy Tax incentives and Accelerated Depreciation. Finally, the GAO is asked to assess various alternative incentives that could be provided to enable and encourage tribal governments to invest in an "Indian Community Development Investment Fund" or bank.

As my final comment on Title I, I want to reiterate the urgency for Congress to rectify its failure to include **any** tribal tax parity provisions in the mammoth tax cut measure recently enacted. The original Senate bill included a "placeholder" provision that highlighted the enormously unfair and restrictive "essential governmental function" test for tribal government tax exempt bond financings. The National Center supported the underlying purpose of that provision as consistent with our repeated testimony advocating tax legislation to eliminate this restrictive "essential governmental function" test and provide fairer tax treatment of tribal governments in parity with State and local governments. During the tax bill debate, pending in the House of Representatives was (and still is) bipartisan, non-controversial legislation, the Tribal Tax and Investment Reform Act of 2017 (H.R. 3138 and S. 1935), that would amend the necessary provisions

of the Internal Revenue Code to accomplish these and other objectives. We join with our partners NCAI, NAFOA, Indian tribes and other tribal organizations in urging the members of this Committee to cosponsor and press for prompt enactment of this important tax legislation before the 115th Congress adjourns.

Section 104 – Buy Indian Act

The National Center has long advocated for strengthening and expanding the Buy Indian Act's reach. Our June 25, 2014 Senate testimony recounted our 1987 and 1990 statements to broaden use of Buy Indian Act authority beyond the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) to other federal agencies that expend funds for the benefit of American Indians and Alaska Natives. Together with NCAI, NACA and other tribal organizations, we urged the Department of Interior to modernize its implementing regulations, finally promulgated in 2013 (after a 100-year delay). We have urged the Department to establish a 100% goal for utilization, monitor compliance, and report annually on the extent of utilization and amount and value of contracts awarded to Indian-owned economic enterprises. The National Center also has hosted many RES workshops on Buy Indian Act implementation, inviting both BIA and IHS officials to report their progress in increasing use of this important authority. We believe that Section 104 will spur IHS officials to adopt updated regulations along the lines of Interior's new rules, and hope IHS will greatly expand its use of this authority in many more of its procurements going forward.

Section 104(b) requires that Buy Indian Act authority **will** be used for procurements, unless the Secretary of the Interior and or the Secretary of Health and Human Services determines such use to be impractical and unreasonable. Section 104(c) should improve implementation by requiring: outreach and training to Indian industrial entities; BIA and IHS regional offices' aggregation of data on compliance with the new provisions; procurement management reviews that include assessment of implementation; and consultation with Indian tribes and other stakeholders on methods to facilitate compliance with the Act and other small business or procurement goals. We are delighted that Section 104(d) requires, as we had recommended, that the Secretaries submit reports to this Committee and its Senate counterpart containing information on the names of agencies making Buy Indian procurements, the types of purchases from and contracts with Indian economic enterprises, description of the percentage increase or decrease in total dollar value and number of purchases and awards made within each agency region (as compared to the preceding fiscal year) from Indian and non-Indian economic enterprises, descriptions of methods used for market research to find Indian contractors, summaries of deviations from use of Buy Indian requirements, and any administrative procedural, legal or other barriers to achieving the purposes of Section 104, together with recommendations for legislative or administrative actions to address those barriers.

Section 105 – Native American Programs Act of 1974

In June, 2015, I was invited to testify at the Senate Indian Affairs Committee's oversight hearing on "Access to Capital in Indian Country" about the elements essential to facilitate

access to capital in Indian Country and some of the roles that the federal government, tribal governments, and bankers can play to improve access to capital. I mentioned, for example, that tribal access to capital can be facilitated by tribal uniform commercial codes or similar ordinances, good tribal court systems with commercial dispute resolution mechanisms, planning (including business plans, feasibility studies, master plans), among other financial elements (sophisticated financial management, etc.). I also spoke about traditional banking institutions, native owned banks, and the increasing numbers of Native CDFIs operating across Indian Country. The National Center has long supported increased funding for the Native CDFIs, and for the Administration for Native Americans (ANA) that administers the grant program amended by this section.

Most important, Section 105 reauthorizes ANA's grant programs through FY 2022. The section also makes Native CDFIs eligible to apply for ANA's economic development program grants, prioritize economic development grants for certain types of applications, including grants to develop: 1) tribal codes and court systems relating to economic development; 2) nonprofit subsidiaries and other tribal business structures; and 3) tribal master plans for community and economic development and infrastructure. Also prioritized is any technical assistance provided for grantees and applications covered by Section 105. The ANA also administers several other grant programs essential to Indian Country, including those to preserve native languages. Its reauthorization is well deserved and now overdue.

Title II – The Native American Business Incubators Act

The National Center strongly supports Title II to establish Native American Business Incubators as the most effective way to respond specifically to Indian Country's unique sovereign and business characteristics and capabilities, as well as access to capital challenges. Of the various federal programs that have purported to provide entrepreneurial development assistance, most were neither designed for nor extended much service to Indian Country. The two federal programs that did support some native business development unfortunately lost their funding. As noted earlier (page 5), the MBDA used to support cooperative assistance agreements for NABECs starting in the 1970s, but ceased doing so in 2012. During the 1990s, the SBA provided about \$5 million per year to support roughly a dozen Tribal Business Information Centers, but that funding ended in 2001. The SBA has awarded business accelerator "Prizes" pursuant to the American Competes Act to a few Native American-owned technology companies, but these one-time prizes neither provide sustained support nor require follow-on reporting on services rendered. In short, for many years, there has been no federal program with sustained funding to support Native American entrepreneurial and business assistance, incubation and mentoring of tribes and Native Americans striving to start and grow their business enterprises.

We welcome Title II's establishment of the Native American Business Incubators Program as an innovative response to this urgent need. To be administered by the Department of the Interior, Office of Indian Energy and Economic Development, the program will support entities that incubate and mentor tribes and Native American

entrepreneurs striving to start and grow their businesses. Eligible applicants must have multiple ties to tribal communities, educational institutions and business assistance entities so as to be able to expand Native American business assistance and incubation exponentially to many more Native-owned businesses in a broad range of business sectors. Applicants must develop detailed plans on how they will provide incubation assistance, to which Indian communities and types of enterprises, over the three-year period of the grant and renewals (if any). The legislation incorporates rigid requirements for eligibility, evaluation pre- and post-selection to ensure that eligible applicants can establish and operate business incubators that serve Native American communities. The incubator grantee must be able to: provide physical workspace and facilities resources to Native startups and established Native businesses; accelerate the growth and success of Native businesses through a variety of business support resources and services; and foster collaboration among institutions of higher education, tribal or private nonprofit providers, and Indian tribes, non-profit organizations, and institutions of higher education. Furthermore, Title II includes detailed reporting requirements, including reports to this Committee and its Senate counterpart, to permit tracking of the incubators' progress and success.

Once established, this long-sought response will help deliver entrepreneurial and business development assistance tailored to Indian Country's unique characteristics and needs. Native American business incubators with the experience and facilities resources necessary to provide business development, technical assistance and other support services to Native startups and established businesses will grow reservation economies and foster self-determination and self-sufficiency.

Title III – Indigenous Peoples Exchange and Economic Cooperation Act

When Ranking Member Torres first contacted the National Center about her proposal on indigenous trade, we were delighted and noted that the concept complemented Senate legislation (S. 1116), awaiting full Senate action, to facilitate new initiatives to expand Native American business development, trade promotion and tourism. We applaud you, Congresswoman Torres, for embracing the larger mission of combining your indigenous trade provisions with the pending Senate proposals and introducing them in H.R. 4506 as a bipartisan measure with Congressman Cole and other original cosponsors.

Title III, Section 302, would establish as United States policy to facilitate contacts and cooperation, including commercial relationships, between Indian tribes and indigenous peoples in the Western Hemisphere. Section 304 would require development of a federal strategy, in consultation with stakeholders, to promote and facilitate: 1) cross-investments between tribes and indigenous peoples in tribal businesses and commercial enterprises that involve indigenous peoples (such as sustainable natural resource management, agricultural development, or handicraft production); and 2) development of supply chains for United States entities that include products produced by tribes and indigenous peoples. The strategy developed pursuant to Title III must be submitted to the appropriate congressional committees within 180 days of enactment.

Section 305 provides that, to improve the capacity of indigenous peoples to engage in and benefit from increased trade and investment relationships, the Secretary of State shall: 1) consult with the U.S. Agency for International Development and organizations representing the interests of indigenous peoples; and 2) provide assistance to countries in the Western Hemisphere in a manner that promotes and facilitates entrepreneurship among indigenous peoples by strengthening the capacity of their organizations and local governments and supporting projects involving sustainable natural resource management, agricultural development, and handicraft production.

Conclusion:

Again, I thank the lead sponsors of H.R. 4506, and Subcommittee members and staff for working collaboratively with the National Center and our Indian Country partners to promote this legislation and make this hearing happen so quickly. We urge all Subcommittee and full Committee members to join as cosponsors and help maneuver the bill through the committee process and final passage as early as possible this year. Enactment of this important legislation will galvanize key Federal departments and agencies to work much more proactively and collaboratively with Indian communities, their economic enterprises, and other stakeholders. We look forward to working with you to see that this legislation becomes law promptly to achieve these goals.

Attachment:

Joint Letter of Support for H.R. 4506 on behalf of the National Center for American Indian Enterprise Development, National Congress of American Indians, Native American Contractors Association and Native American Finance Officers Association



January 11, 2018

Honorable Rob Bishop, Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Honorable Raúl Grijalva, Ranking
House Committee on Natural Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Re: Indian Country Support for S. 1116, S. 607, and H.R. 4506

Dear Chairman Bishop and Ranking Member Grijalva:

We the undersigned organizations, representing the interests of American Indian and Alaska Native tribal governments and business enterprises, write to stress how important it is for Congress to pass legislation that will promote entrepreneurship, create jobs, and grow tribal economies. Accordingly, we express our strong support for prompt passage of the Indian Community Economic Enhancement Act ([S. 1116](#)) and the Native American Business Incubators Program Act ([S. 607](#)), and the Jobs for Tribes Act (H.R. 4506), which combines the two Senate measures and adds provisions to develop strategies to encourage indigenous trade.

The Indian Community Economic Enhancement Act would make several long-sought federal programmatic changes to promote tribal economic development, most notably by: (1) elevating (with specific funding) the Office of Native American Business Development to report directly to the Secretary of Commerce; (2) expanding the Buy Indian Act; and (3) reauthorizing and expanding economic development initiatives supported by the Native American Programs Act. The bill also would require agencies to work together to promote private investment in Indian Country 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.

The Native American Business Incubators Program Act would support job growth and tribal economic development by promoting entrepreneurship in tribal communities. The bill 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 Indian Country. The bill also leverages existing resources by requiring interagency coordination and partnerships between business incubators and academic institutions. These provisions will provide much needed support for aspiring Native entrepreneurs striving to create the foundation for thriving tribal economies.

These long-sought initiatives enjoy broad support in Indian Country. In fact, the National Congress of American Indians passed resolutions in support of [S. 1116](#) and [S. 607](#) at their 2017 Mid Year and Annual Conferences. Additionally, the National Center for American Indian Enterprise Development testified at a Senate Indian Affairs Committee [legislative hearing](#) in September 2016 in support of both bills and has advocated for their passage and action on House companion legislation. The Native American Contractors Association took their full support of



S. 1116 and S. 607 to Congress during their November 2017 Federal Contracting Policy and Advocacy Conference, and worked with House offices to draft a companion bill.

We are pleased that the House Natural Resource Committee’s Subcommittee on Indian, Insular and Alaska Native Affairs will hold a legislative hearing on January 17, 2018 on H.R. 4506, which we commend Representatives Norma Torres (D-CA) and Tom Cole (R-OK) for introducing with other cosponsors as House companion legislation that includes some additional provisions on international indigenous trade. The Senate bills are awaiting Senate floor action. Passing these bills would facilitate greater access to capital, create economic development opportunities, enhance procurement and other business assistance for tribal and other native enterprises throughout the United States, and encourage greater indigenous trade.

In sum, we urge expeditious action on these legislative measures to move them through the committee process and passage by the full House as soon as possible. We look forward to working with you to move these bills forward to prompt enactment this Congress.

Respectfully,

Chris James
President & CEO
National Center for American
Enterprise Development

Michael Anderson
Executive Director
Native American Contractors
Association

Jacqueline Pata
Executive Director
National Congress of
American Indians

Dante Desiderio
Executive Director
Native American Finance
Officers Association