

**STATEMENT
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES**

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Good afternoon Chairman Gallego, Ranking Member Cook, and Members of the Subcommittee. My name is Darryl LaCounte and I am the Director of the Bureau of Indian Affairs at the Department of the Interior (Department).

Thank you for the opportunity to provide testimony on behalf of the Department regarding H.R. 2414, to amend the Morris K. Udall and Stewart L. Udall Foundation Act; H.R. 2031, the PROGRESS for Indian Tribes Act; H.R. 895, Tribal School Federal Insurance Parity Act; and H.R. 396, to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois. Each of these bills is discussed below.

H.R. 2414

The Department of the Interior supports the Udall Foundation and its mission. Since the foundation's inception, the Department has had the privilege of hosting Udall Interns during the summer months and currently employs multiple Udall Foundation alumni.

The Department supports H.R. 2414 and the foundation as a whole.

H.R. 2031

H.R. 2031, the PROGRESS for Indian Tribes Act, would amend both Title I and Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. §§ 5301 et seq.). The Administration supports the principles of self-determination and self-governance, and this bill would improve on Federal coordination and consistency in government-to-government relationships with tribes. We look forward to working with the Committee to amend ISDEAA.

In 1975, Congress enacted ISDEAA, Pub. L. No. 93-638, as amended (Title I). Title I allows a tribe to contract individual programs with the Department. Title I contracts include requirements to produce a tribal scope of work for programs and submit quarterly reports including a tribal budget. The Department is responsible for monitoring the tribal programs and budget reprogramming approval.

In 1988, Congress enacted Title III of ISDEAA as a demonstration project, which allowed an Indian tribe to compact several programs from the Department, and allowed Indian tribes to reallocate funds and redesign those programs to best suit the local needs of their communities,

Pub. L. No. 100-472. In 1994, Congress made the demonstration project permanent in Title IV of the ISDEAA, Pub. L. No. 103-413.

Title IV allows the Department to provide resources to Indian tribes, enabling them to plan, conduct, consolidate, and administer programs, services, functions, and activities for tribal citizens according to priorities established at the tribal government level. Under Title IV, a self-governance tribe receives its base funding in one lump sum, much like a block grant. The tribe can invest these funds in government investment vehicles and keep the interest for its own use. Under Title IV, Indian tribes have greater control and flexibility in the use of these funds and reduced reporting requirements. In addition, Title IV permits Indian tribes to reallocate funds during the year and carry over unexpended funds into the next fiscal year without Secretarial approval. Programs, services, functions, and activities can be redesigned, consolidated, and funds can be reallocated based on tribal decision-making without Department approval with a few exceptions. The contractual document is annual or it can be multi-year. There is one contractual document that efficiently combines all compacted programs. Tribes do not submit their budget to the Department and most programs are not tracked line by line or reviewed and monitored individually. Title IV self-governance tribes can pursue funding agreements with DOI bureaus for non-BIA programs that have a historical, cultural, or geographic nexus to the tribe.

Funding agreements under the ISDEAA have helped to strengthen government-to-government relationships with Indian tribes. Self-determination and self-governance tribes are robust programs that offer tribes greater success in meeting the needs of their citizens. Often, tribal governments add their own resources to support the programs and services, thus extending the economic impact of program service delivery. Title IV program authorities support the tenet that tribal governments are often better suited than the Federal government to address the changing needs of their members.

For more than a decade, Indian tribes have worked on updating Title I and Title IV to address various issues, to include more non-BIA programs, to streamline the process of negotiating funding agreements, to replicate a contractual relationship that is already in place at the Indian Health Service and the Department of Transportation. The Department recognizes the need for the self-determination and self-governance programs to evolve in step with the times and to increase the frequency of Title IV funding agreements by offering in this legislation greater latitude in the application process to engage more tribes to become self-governance tribes.

The Department looks forward to working with the Subcommittee to clarify this bill. For example, the Department has not identified any significant impact from H.R. 2031, with the possible exception of one provision, which may result in an obligation to pay additional contract support costs. Specifically, the changes to Section 106 (a)(3) of ISDEAA in section 204 of the bill may expand costs to be reimbursed under §106(a)(3)(A)(ii) as contract support costs from “overhead” incurred in connection with operating the program to “expenses incurred” by a tribal governing body or tribal organization *and* “overhead expense incurred.” However, as currently drafted, it is unclear what additional expenses would be covered by this language.

We look forward to working with the Committee to amend ISDEAA.

H.R. 895

H.R. 895, the Tribal School Federal Insurance Parity Act, would amend the Indian Health Care Improvement Act (25 U.S.C. § 1647b) to allow tribal grant schools operating under the Tribally Controlled Grant Schools Act (TCGSA) to participate in the Federal Employees Health Benefits (FEHB) Program. Presently, Public Law 100-297 prohibits the vast majority of tribally controlled grant schools from participating in the FEHB Program, which can create significant financial strains on schools and disadvantage school leaders in recruiting talented educators. The Department supports H. R. 895.

The mission of the Bureau of Indian Education (BIE) is to provide quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Federally recognized Indian tribes and Alaska Native villages as distinct cultural and governmental entities. The BIE manages a school system with 169 elementary and secondary schools and 14 dormitories providing educational services to 47,000 individual students, with an Average Daily Membership of 41,000 students in 23 States. The BIE also operates two post-secondary schools and administers grants for 29 tribally controlled colleges and universities and two tribal technical colleges.

Prior to 2010, tribal employers, in general, lacked access to FEHB benefits for their employees. With the passage of 25 U.S.C. 1647b under the Indian Healthcare Improvement Act (IHCA), tribes, tribal employers, and urban Indian organizations carrying out programs pursuant to Title V of the IHCA or under the Indian Self Determination and Education Assistance Act became eligible to participate in the FEHB Program. Participation in the FEHB Program reduced costs associated with providing employee benefits as well as aided organizations in their recruitment and retention efforts.

Currently, all BIE-operated schools participate in FEHB. Additionally, four BIE-funded tribally operated schools also participate in the FEHB Program. These tribally controlled schools operate pursuant to the ISDEAA. Under 25 U.S.C. § 1647b, tribal employers operating ISDEAA self-determination contracts and Title IV contracts are eligible to purchase FEHB coverage. However, 25 U.S.C. § 1647b does not extend eligibility to tribally-controlled schools under the TCGSA. Therefore, 126 of BIE's tribally-controlled schools that operate pursuant to the TCGSA may not purchase FEHB coverage under 25 U.S.C. § 1647b.

In April 2012, the U.S. Office of Personnel Management sent a letter to the Department's Office of the Solicitor seeking the Solicitor's opinion regarding OPM's legal conclusion regarding the ineligibility of schools operating under TCGSA for FEHB as the TCGSA schools are not within the scope of eligible tribal employers under 25 U.S.C. § 1647b. In June 2012, the Solicitor issued an opinion confirming OPM's conclusion that schools operating under TCGSA are ineligible for FEHB. In October 2017, a tribal grant school representative requested the Solicitor

to reconsider their position. However, the Solicitor stated its legal determination would stand.

The Department understands and supports the efforts of its tribal partners in seeking a legislative fix that would allow parity for schools operating under the TCGSA. The continued inability of these schools to access FEHB creates unfair budgetary constraints and exacerbates an already difficult task of recruiting highly-qualified teachers in often geographically-isolated schools. As such, the Department supports H.R. 895, the Tribal School Federal Insurance Parity Act, and looks forward to increasing parity for tribally controlled grant schools.

H.R. 396

H.R. 396, a bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes. In general, the Department would not be supportive of measures that would incur additional liability from any potential Court of Federal Claims award in light of the Miami Tribe of Oklahoma's prior activity before the Indian Claims Commission. Preliminary research into the litigation history of the Treaty of Grouseland and other related treaties indicates that other tribes were the proper owners of the Illinois lands at issue and that the Miami Tribe of Oklahoma had stipulated that their claims under those treaties were confined within Indiana as relative to other tribal co-signatories.

The Department would encourage the Subcommittee to pursue further investigation of the claims history to determine whether it is appropriate to grant the Miami Tribe of Oklahoma another opportunity to pursue a claim against the United States related to the Treaty of Grouseland notwithstanding the Indian Claims Commission Act's absolute bar on any available claims that were not timely presented before the Indian Claims Commission. The Department would be happy to assist the Committee and bill sponsor with that research.

Conclusion

Mr. Chairman, thank you for the opportunity to testify today. I would be glad to answer any questions the Subcommittee may have.