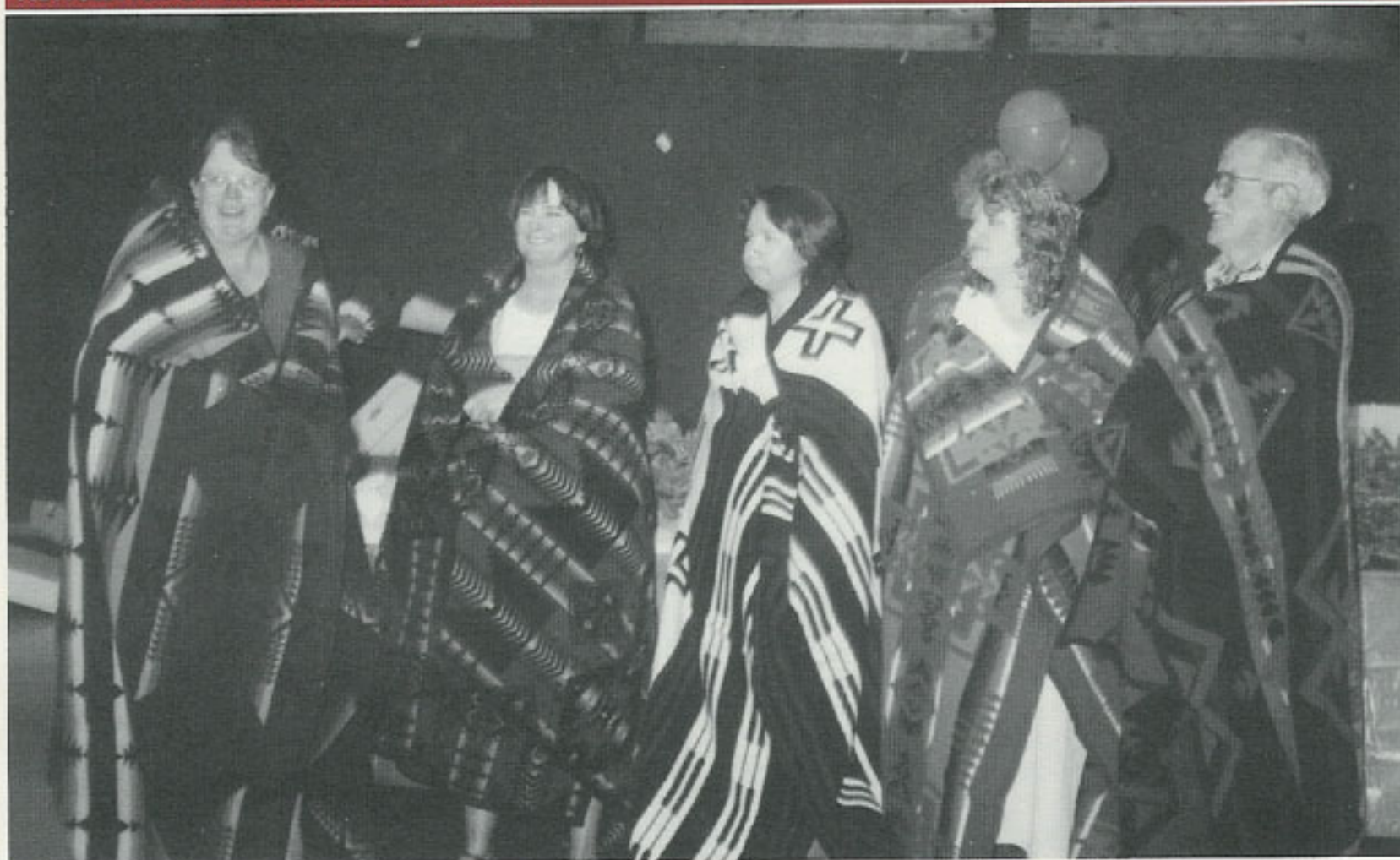


Sovereign Nations



Volume III
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NEWSLETTER OF TRIBAL SELF-GOVERNANCE



Self-Governance Funding Leads to Increase in College Graduates at Port Gamble S'Klallam Tribe

Because of the on-going attacks on Tribal Self-Governance and Self-Determination (see inside story on appropriations amendments), we don't always get to concentrate on the real benefits of Self Governance. The 3-steps forward and 2-steps backwards mentality which Tribes are forced into often obscures the fact that Self Governance does work, that Tribes can provide for themselves better than federal bureaucracies. The following story was submitted by the Port Gamble S'Kallam Tribe to show how their Tribal members have benefitted from funds once used to drive the BIA bureaucracy.

Port Gamble S'Klallam members Ronald Charles, 54, and his daughter



Marlo Charles, 28, received their Bachelor Degrees together on June 14, 1997 in commencement exercises at The Evergreen State College in Olympia, WA. They were joined by Barbara Jones, Sharon Purcer and Danette Ives, who also received their diplomas to mark the end of four long years of study. This is the largest graduating class in the history of the Port Gamble S'Klallam Tribe and brings the total number of graduates to 8 who have completed their studies through the ambitious Port Gamble/Evergreen State College reservation-based program. Since 1993, it has enhanced the benefits of a college education by tailoring the studies to fit the

Continued on back page

HUD Self-Governance Progresses



The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA), represents a major step forward for Tribal sovereignty. At its root is the idea that Tribal governments are better suited for developing and managing programs than the bureaucracy for the Department of Housing and Urban Development.

Passed by the House and Senate late in the 104th Congress, NAHASDA was signed into law by President Clinton on October 26, 1996. The law will be implemented on October 1 of this year following the finalizing of regulations which have been developed in consultation with Tribes and Tribal leaders.

The Principles of NAHASDA:

- Public housing programs modeled for urban America should not be forced on Indian Country.
- Indian Housing Authorities should have the ability and responsibility to strategically plan for their own communities' development, focusing on the long-term health of the community and the results of their work, not over-burdened by excessive regulation.
- Because of the unique government-to-government relationship between Tribes and the American government, as well as the value of having local communities solve local problems, Indian Housing Authorities should have greater flexibility in providing for recipients of assistance.
- Working with local communities to correct the relative lack of private housing and private capital opportunities in Indian reservations should be a priority of housing legislation for Indian Country.

Some key features of the new legislation include:

Consolidated Native American Housing Grant - Under the old model for providing housing assistance to Indian Country, HUD dictated how much money a Tribe could spend on modern-

ization, how much on operating subsidies and how much on new construction. Under NAHASDA, HUD's role is to assist local communities in solving problems, not dictate solutions.

Community-Based Strategic Planning - In an era of declining resources, the Tribes and Indian housing authorities, who worked to craft NAHASDA, recognized that federal dollars needed to be leveraged along with state, local and private sources of funding with the idea of "getting more for less" with federal money. NAHASDA requires long-term strategic planning on the part of Tribes, outlining not only how the block grant will be spent, but also how it will be used in concert with the other resources to attain specific, measurable goals for the benefit of the community.

Developing Private Mortgage Capital - The lack of private capital in Indian Country is rooted in both legal and cultural barriers. This bill makes it easier for private financial entities to make mortgages in Indian Country by eliminating a provision of current law that makes them unwilling because of the trust status of Indian land. The new law will increase lease-hold provisions from 20 to 50 years in order to encourage lenders (who usually give 30 year loans) and other capital providers to increase the number of loans, especially through Sec. 184 loan guarantee program.

Loan Guarantees for Affordable Housing Activities - NAHASDA enables Indian Housing Authorities to take advantage of the new consolidated grant to address Indian Country's most pressing problem - a lack of affordable housing units - and also provides for greater involvement of financial institutions.

The new law allows Tribes to borrow or issue debt equal to up to 5-years worth of their allocation under the housing grant. The loan or bond secured by a credit subsidy must be paid back over no more than 20 years and will have the full faith and credit of the U.S. Treasury.

Negotiated Rulemaking - Unlike other housing statutes, NAHASDA requires HUD to engage in negotiated rulemaking to draft the procedures under which the new program will operate. This means that Tribes and Tribal leaders are actually taking part in the writing of regulations. While this has not been easy for any of the participants, it has resulted in previously unimaginable consultation between the federal government and Tribal governments on housing issues.

As a result of the Rulemaking process, a proposed rule has been published and is available for public comment (copies available from Federal Register or HUD). While there were some changes made by HUD prior to its publication, the committee will be reconvening in Denver in late August 1997 to discuss comments received and propose any changes.

Summary - Still awaiting Congressional action is the actual appropriations bill, expected in September which will fund NAHASDA. President Clinton's budget request includes \$485 million for the block grants and \$3 million for Section 184 mortgage guarantee program and funds for the Title VI loan guaranty. The House-passed version of the bill provides for \$650 million for the block grant, and \$3 million for Section 184, while the Senate bill only provides for \$485 million for the block grant, but \$6 million for Section 184 and \$5 million for a Title VI credit subsidy.

In addition, Senate Indian Affairs Committee Chairman Ben Nighthorse Campbell (R-Colorado) and Vice-Chairman Daniel K. Inouye (D-Hawaii) have introduced amendments to the NAHASDA which will clarify some technical issues. It is hoped this technical amendment package will be available for the negotiated rulemaking committee to review when it convenes in Denver.

Contract Support Cost Report Completed



The Indian Health Service (IHS) Office of Tribal Programs recently completed a report on contract support costs. The report was initiated from a directive by Congress due to their concerns over the escalation of the IHS contract support cost budget. The report includes the background of Contract Support Cost (CSC) funding and policy development within IHS, the increased need for CSC funding, the impact of not funding CSC shortfall, and several findings and conclusions.

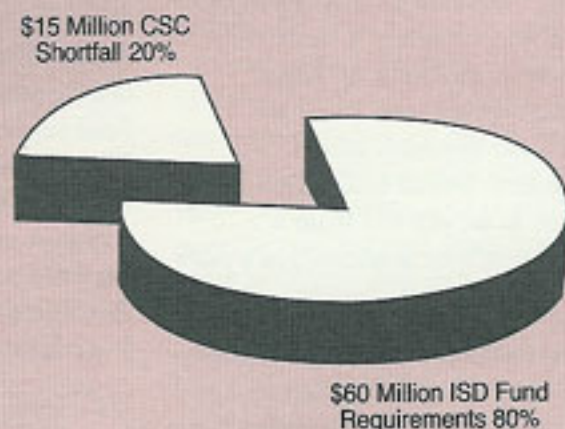
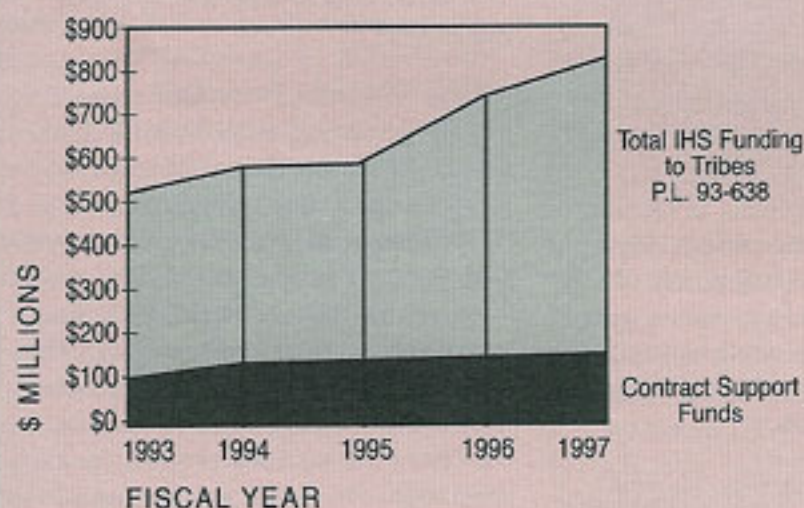
The report is extremely useful as it provides some interesting information which more than justifies the recent escalation in the CSC budget. The directive from Congress to the IHS suggests that Congress believes the reason for the rapid growth in the need for CSC has been due to increases in the negotiated rates of the Tribes. However, the report clearly shows that the increase is due primarily to the increase in Tribal contracting and compacting-- not to an increase in CSC rates. As Tribes continue to assume functions and services under contracting or compacting, the need and legal requirement for additional CSC funds is required.

The House Appropriations Committee has directed the IHS, Bureau of Indian Affairs and the Office of the Inspector General to contain the cost escalation in contract support costs. However, the report clearly shows that with a current backlog of over \$36 million in the IHS Indian Self-Determination (ISD) fund, Congress has failed to

appropriate sufficient CSC funds. When the funding is not increased to meet Tribal CSC, then Tribes are forced to use program dollars to fund their administrative cost; or, as is becoming the more common case, Tribes are forced to delay their rights to contract or compact until funding is available.

The Report concludes by listing the following points:

1. There has not been an unreasonable increase in Tribal indirect cost rates.
2. The increase in CSC need is due primarily to increased Tribal contracting and compacting.
3. CSC appropriations are a necessary component of implementing Congressional Indian Self-Determination Policy.
4. To fully comply with the statutory provisions of the ISDA, full funding of CSC appropriations is necessary.
5. Failure to finance CSC will continue to impede the transfer of programs, services, functions and activities from federal to Tribal control.
6. Information available to the Congress to support appropriations must continue to be improved and provided on a timely basis. ◀◀



National Indian Health Board (NIHB) Studies Self-Determination and Self-Governance



Recently the Sovereign Nations submitted a list of questions to NIHB Executive Director Yvette Joseph-Fox concerning their study of Self-Determination and Self-Governance through a grant funded by the Administration for Native Americans. The NIHB hired Brett Lee Shelton, Esq. to serve as Project Coordinator for the study.

1. What is the primary purpose of this study? What is the time frame for the study?

The primary purpose of the Indian Self-Determination and Self-Governance study is to assess the impacts of contracting and compacting from a Tribal perspective. The National Indian Health Board is interested in identifying the advances made, the services affected and the financial impact of Indian Self-Determination Contracting and Self-Governance Compacting Programs. The NIHB realizes that Indian health programs and policies are changing for a variety of reasons. Many of these changes are good and truly are improving health care in certain communities. And, we know that some of these changes are perceived in a negative light and could be related to diminished resources. The NIHB feels it is important that assessments be based on data rather than fears, assumptions, or expectations. We believe it is appropriate at this time to conduct a study of this nature, with the input of Tribal Governments. Otherwise, the few assessments and opinions which influence federal Indian health policy will continue to be offered from a federal employee's or academician's perspective.

This study was funded as a part of the NIHB's "Empowering Tribes to Participate in National Health Policy" Project funded by the Administration for Native Americans. The purpose of the grant is to enhance the capabilities of the NIHB to better serve the needs of Tribal Governments in the health care policy arena. The project has three objectives:

1) study the impact of Self-Determination and Self-Governance activities; 2) complete a five-year strategic plan and update the organization's By-laws and Charter; and, 3) develop a management information system utilizing the Internet for communicating health policy initiatives to Area Health Boards and Tribal Governments.

The NIHB feels it is important that assessments be based on data rather than fears, assumptions, or expectations.

A project Advisory Committee, consisting of representatives from each IHS Area and representatives from Self-Determination contracting Tribes, Self-Governance compacting Tribes and Tribes which choose to have their health care provided directly by IHS, has been formed for the project. This committee has been meeting since March 1997, and has helped shape the focus and logistics of the study. Surveys were mailed out to Tribal leaders and health directors across the country in late July. Analysis of the results of the surveys and other data will occur in September with a draft of a final report to be completed in October. The Advisory Committee must review and approve the report before a final report is published. It is expected that the final report will be published and distributed to Tribes and Area Health Boards in January 1998.

2. What kinds of questions do you hope to answer?

In recent years, Indian health programs have been affected by a number of changes in federal funding and policies, including budget cuts, unfunded Pay Act increases, FTE reductions, lack

of budget adjustments for population growth and inflation, the Reinventing Government initiatives of the Clinton administration and the recommendations of the Indian Health Service Design Team. Also, there have been changes in Medicaid programs and reimbursement approaches.

At the same time, there have been amendments and new regulations for P.L. 93-638, the Indian Self-Determination and Education Assistance Act, and an increasing number of Tribes entering into Annual Funding Agreements through compacts. Because all of these trends are happening at the same time, it is difficult to know the specific impacts of contracting and compacting. But this is the type of information we hope to uncover.

The few published assessments that have attempted to isolate the impacts of Indian Self-Determination and Tribal Self-Governance in Indian health have been written from the perspective of career federal employees or other Tribes when making their decisions about how their health care should be provided. It will also help Tribes by providing a study they can point to when addressing policy and funding issues.

3. What kind of data will you be collecting?

Data will come from three sources: 1) surveys mailed to all Tribal leaders across the United States; 2) surveys mailed to all Tribal health directors; and, 3) IHS financial data. The most important data will be that obtained from the surveys since that is where the Tribes will be sharing their perspectives. The surveys include a variety of types of information, including topics such as service and population profiles, quality assurance, changes in innovations of programs and facilities, management changes, recruitment and retention of professional staff, training needs and Area office performance. We anticipate that the IHS financial data will help to separate contracting and compacting



from other factors. For example, IHS data might reveal a net decrease in funding over the past few years due to inflation and federal pay raises, and thus help explain a decrease in service that might otherwise be attributed to some other factor.

4. This has been called the "Self-Governance study", however, is this study only about Self-Governance?

No, this study is really about Tribal choice in health care. What we are trying to do is show what has worked for Tribes under Self-Determination contracts, what has worked under Self-Governance Compacts and why Tribal Governments sometimes choose not to contract or compact. The answers to these questions will provide Tribes with some information about other Tribes when making their decisions about how their health care should be provided. It will also help Tribes by providing a study they can point to when addressing policy and funding issues.

5. Does the NIHB have a formal position regarding Self-Governance or the contracting of Area and HQ Tribal shares?

No. NIHB represents all Tribes including contracting Tribes, compacting Tribes, and Tribes which choose direct provision of health care by IHS. In fact, our Board is composed of individuals from all of these different types of Tribes. Because we are an organization that represents all Tribes (via Board Members from each IHS Area), and because not all Tribes agree on these issues, NIHB has not developed a formal position. There simply has not been any issue brought before the Board which would have led to a consensus position among the Board Members on any of these subjects.

6. In the changing arena of Tribal contracting/compacting and the IHS restructuring, what do you see as the future role of the NIHB? Will it be the same or do you envision major changes?

The study we have discussed so far is only one component of the project--"Empowering Tribes to Participate in the Development of National Health Policy". The two other components of the project reveal a little about NIHB in the future. One component is the development of a management information system utilizing the Internet to communicate health policy initiatives to Area Health Boards and to Tribes.

Another component of the project involves examining the future role of NIHB. Under the project, we are to examine the effectiveness of NIHB's current structure and effectiveness and recommend any changes that may be


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appropriate. This examination of NIHB's structure and effectiveness is already underway, and we invite suggestions as we continue the process. At our Annual Consumer Conference scheduled for September 22-25 in Spokane, WA, a participatory workshop will address the future of NIHB and Indian health in general. The surveys sent out as part of the study also include some questions designed to address NIHB's current role and changes Tribes might want to see made. NIHB staff and representatives have also been attending meetings with

as many Tribal government representatives in the IHS Areas as possible to discuss NIHB's role and suggestions for changes.

After more Tribal input, NIHB project staff and consultants will develop a report on the results and recommendations based on that input. The Project Coordinator will present this information at a meeting of the Board, so that they can decide whether to make any changes to the current structure of NIHB.

Much has happened since NIHB was first founded in 1972. At that time, Tribal leaders concerned about health care for Indians decided that NIHB Board Members should consist of a representative from each IHS Area, usually selected by the elected Tribal Officials or Area Health Board. Whether this is still the best way to ensure a unified voice in national Indian health care issues remains to be seen, but we are prepared to make any appropriate changes. Additionally, we are trying to provide everyone with an opinion about how we should operate with an opportunity to be heard.

It is also expected that NIHB will begin to focus more on education and training. Our Board of Directors has indicated its desire to proceed in this direction. Over time, and often with the help of Tribes which have taken a more active role in provision of their health care services, a network of very qualified professionals in Indian health has been developing. NIHB has been developing relationships with many of these professionals, and is preparing to provide training and educational assistance to Tribes that request it. NIHB envisions that, because it is a national organization, Tribes can utilize NIHB's national network to access expertise that might not otherwise be available. The areas where that expertise is developed further will depend on what Tribes, through their NIHB Board Members, say we should do. 

FY 1998 Appropriations Riders Adverse to Tribal Governments



Once again, Indian Country is facing serious threats as several "anti-Indian" riders have been attached to several of the FY1998 Appropriations bills which attack the very foundations of Tribal sovereignty. The FY1998 Interior Appropriations bill contains several provisions that would harm Tribes' governmental sovereign rights and adversely impact their rights to self-determination. Some of the provisions include:

Section 120 - Introduced by Senator Slade Gorton (R-WA),

this amendment would waive any claim of sovereign immunity for a Tribe that receives Tribal Priority Allocations (TPA) from the Bureau of Indian Affairs. If a Tribe accepted TPA funds, they would not have any sovereign immunity. In addition, this rider authorizes actions against Tribes to be heard in federal court.

This rider would overturn years of policy and law granting sovereign immunity to Tribes. Besides the fact that it singles out Indian Tribal governments while leaving other State and local governments intact, it undermines Tribal Self-Governance and places Tribal assets and funds at risk.

Section 118 - Also introduced by Senator Gorton, this amendment would require the BIA to create a formula which would consider Tribal business revenue, including that from casinos, when determining the amount of federal funding a Tribe should receive. The Tribes would be "means tested" to determine their need without any concern given to treaty rights or trust responsibilities.

Means testing completely ignores years of history concerning treaty rights and the trust responsibilities of the federal government to American Indian Tribes. Most Tribal treaties call for federal responsibilities, health care, education, etc., in exchange for Tribal lands. The treaties do not say if a Tribe manages to help its members, the treaty obligations are no longer valid. Nor does it say that the federal government has to give the land back to the Tribes if they acquire more or other lands.

This rider would penalize Tribes that are successful in generating revenue for Tribal programs. The vast majority of Tribal

enterprises provide much needed jobs and revenue for government programs. The reality is almost all Tribes are underfunded when it comes to federal funding, not to mention, extremely high unemployment rates on most reservations. Maybe Senator Gorton's rider should include identifying Tribal needs and coming up with extra federal dollars to assure those needs are provided.

Finally, this rider unfairly targets Native Americans. Are senior citizens "means tested" before they can receive

Medicare or pensions? Are States "means tested" before they can receive their share of highway dollars or Medicaid? No, a rich State receives the same formula of Medicaid dollars as a poor State.

So why is it that Tribes should be singled out and "means tested" for federal funds which the federal government has a trust and treaty responsibility to provide those funds?

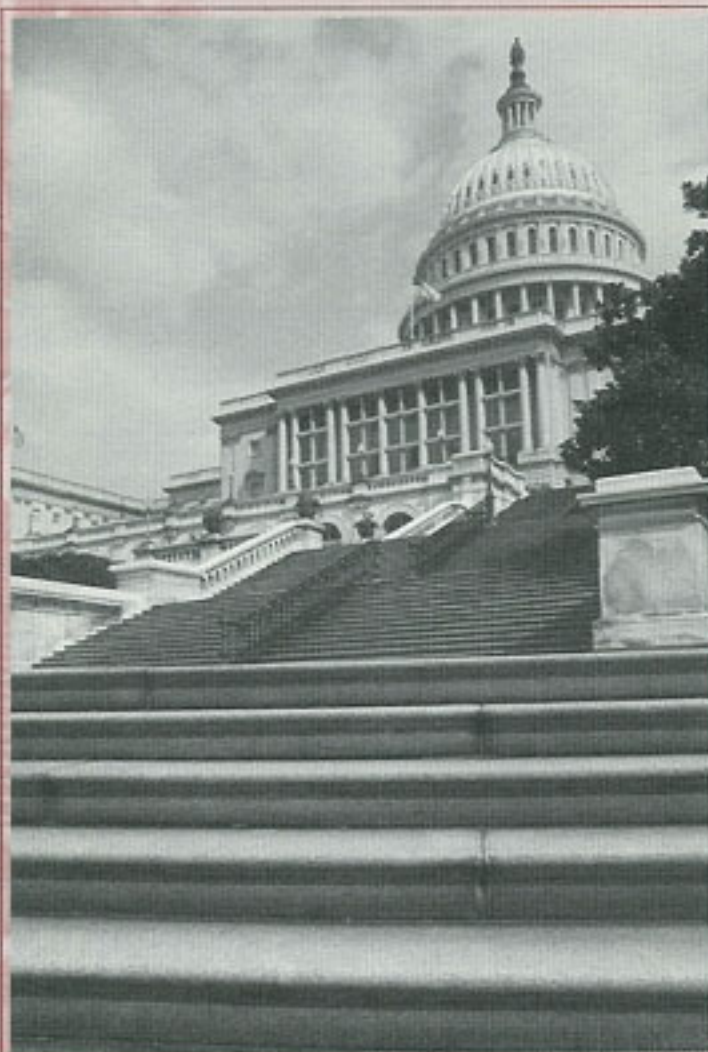
Sections 325 & 326 - These amendments restrict and prohibit individual Alaska Tribes rights related to the distribution of health care in Alaska. These riders severely reduce Alaska Native Villages and Tribes sovereignty and gives them little self-determination rights. It eliminates the right of an Alaska Native Village or Tribe to provide for their own services and is contrary to the self-determination and self-governance initiatives.

Those who support the amendments say that fragmented delivery of health services in Alaska will never work, that it will be ineffi-

cient and that needs will not be met. However, Tribes have successfully demonstrated that distribution of Tribal funding does not create fragmentation, but rather it creates more accountability as Tribes deliver services to their own people.

There are several other additional riders, most introduced by Senator Gorton, which diminish or limit Tribal sovereignty. They include:

Section 112 - This amendment would severely restrict the reinvestment of advance payments of federal funds to Tribes under the Self-Determination and Self-Governance Act.





Section 310 - This amendment would require Tribal governments to return savings on construction projects to the Secretary of Interior.

S. 1004 - Senate Version of FY1998 Energy and Water Development Appropriations - Language introduced by Senator Gorton places the treaty rights of Tribal governments on a par with the rights of Port Authorities to develop waterfront properties and facilities.

Section 216 - FY1998 VA, HUD and Independent Agencies Appropriations Bill - Language, again introduced by Senator Gorton bars further disbursement of HUD funds to any person or entity found "misusing" the funds. Again, no other government entity is permanently barred from future HUD funds if "misuse" occurs. It should be noted that almost all of the cases of fraud or misuse of HUD are non-Native American entities.

Summary Analysis

In general, Tribes are concerned with the attachment of "non-funding" riders to Appropriations bills. This process bypasses the authorizing Committees, who have specific expertise; eliminates any kind of public discourse or dialogue; and usually, is a way for some Senator or Congressman to attach a special-interest concern on a major bill, thus holding the bill hostage to the rider.

Note - Sovereign Nations will feature the Ketchikan Indian Corporation in the Tribal Profile section of the next issue.

Congressman Miller Introduces Title V IHS Permanent Self-Governance Legislation

Congressman George Miller (D-Calif.), introduced H.R. 1833, legislation which would amend the Indian Self-Determination and Education Assistance Act to permanently establish Self-Governance within the Indian Health Service and to provide for a Self-Governance Demonstration for other agencies within the Department of Health and Human Services.

The bill is based on a draft bill that was written over the past year by a Tribal Drafting Committee comprised of Tribal leaders and technical staff. Joining Miller as co-sponsors are Don Young (R-AK), Dale Kildee (D-MI), Eni Faleomavaega (D-AS), and Patrick Kennedy (D-RI).

Congressman Miller called the bill "an historic opportunity to strengthen Tribal governments and promote the Congressional policy of Indian Self-Determination by giving Indian Tribes the authority to run federal health programs themselves. Self-Governance has been an effective tool for eliminating layers of wasteful bureaucracy and providing Tribes with incentives to run programs that benefit their own members with more efficiency and dependability than federal agencies have in the past."

BIA Seeks Comments on Inherent Federal Functions Definition

Over 40 Self-Governance Tribal representatives met on July 29th and 30th in Portland, OR to draft a response to the BIA proposed Inherent Federal Functions listing. The completed draft response contains over 60 pages of Tribal perspectives on the over 30 BIA programs. The response is part of a formal BIA consultation with Tribes. The deadline for comments has been extended to September 30, 1997.

Many Tribes have been very concerned with the continued attempts of the BIA to expand the definition of what is an Inherent Federal Function. The definition of Inherent Federal Function effects the associated job activities and personnel needs and; consequently, the amount available for Tribal Shares. An expansion of what constitutes Inherent Federal Functions results in a decrease of funds available for Tribal shares.

Some of the Tribal concerns included: failure of the BIA to incorporate views of Tribal representatives on the Inherent Federal Functions Committee; the listing of activities like Technical Assistance and Training, which have never been remotely considered as Inherent Federal Functions; failure to have a legal review of the document; inadequate assessment of costs associated with Inherent Federal Functions; and, in general, what looks to be a program-wide expansion of the definition of Inherent Federal Function.

Information on the draft of Self-Governance Tribal responses is available via e-mail or disk. Please contact Maureen Kinley at 360/384-2301 for further information.

Update to Self-Governance Manual

An update to Appendix A of the Self-Governance: The New Partnership manual is now available. Please contact the Office of Self-Governance Communication and Education at 360/384-2302 or fax your request for copies to 360/384-2298.

SOVEREIGN NATIONS is a bi-monthly publication of Tribal Self-Governance. The purpose of the publication is to disseminate accurate information about Self-Governance. Complimentary subscriptions are available through the Communication and Education Project. Materials contained herein can be reproduced, with proper credit. Appropriate editorial contributions and correspondence are welcome.

Self-Governance is a Tribally driven initiative intended to provide Tribal governments more control over their own destinies. The project fosters the shaping of a "new partnership" between Tribal governments and the government of the United States. We believe that excellence in related communication and education is fundamental to the achievement of these goals.

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College Graduates *continue from front page*

unique cultural and historical backgrounds of indigenous people. **The program was initiated after the Port Gamble S'Klallam Tribe, under the banner of the pioneer Self-Governance Demonstration Project, reallocated resources to increase by six-fold the funding for higher education over the levels dictated in prior years by the Bureau of Indian Affairs.** As was stated by the Tribal Council during their Annual Retreat in 1992; "We believe that the key to true self-governance lies in the ability of our people to move forward into the 21st century, armed with the knowledge and insight that is fueled by higher education and tempered by the cultural heritage derived from

over 1,200 years of survival on the shores of Port Gamble Bay. With this in mind, we affirm, as a primary goal of the Tribe, to direct maximum efforts towards the education of our people."

Today, over 20 Tribal members are pursuing degrees ranging from Business Administration to Pharmaceutical studies. This unprecedented number of college students demonstrates the Tribe's commitment to education and the benefits provided under Self-Governance. The example shown by this, the largest class in Port Gamble S'Klallam history, certainly exemplifies that the Tribe is continuing to follow the path implicit in their name - "The Strong People".

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