

TRIBAL SELF-GOVERNANCE TITLE IV TASK FORCE

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S. 286 (Barrasso R-WY)

“Department of the Interior Tribal Self-Governance Act of 2015”

S. 286, the Department of the Interior Tribal Self-Governance Act of 2015 (*referred to as the Title IV Amendments*), continues one of the most successful Indian policies in the history of the United States. This is bipartisan legislation and represents a positive and productive resolution to prior differences between the Self-Governance Tribes and the Administration. This bill does not include any new Federal funding. Enacting S. 286 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.¹

In 1975 Congress passed Public Law 93-638, the historic Indian Self-Determination and Education Assistance Act (ISDEAA). The Act placed the management and administration of Federal Indian programs in the hands of Tribal governments. In 1994, the ISDEAA was amended by *Title IV* to permanently authorize Self-Governance in the Department of the Interior’s Bureau of Indian Affairs (BIA).

Title IV authorized American Indian and Alaska Native Tribes to negotiate compact agreements with the BIA under which Tribes operate programs, services, functions and activities which were previously administered and managed by the Department. The compacts left undiminished the Government’s trust responsibility to Self-Governance Tribes and Tribal citizens. In 2000, Public Law 106-260, added Title V to the ISDEAA, authorizing similar Tribal compacts with the Department of Health and Human Services’ Indian Health Service (DHHS-IHS).

Most Self-Governance Tribes manage programs within both IHS and DOI and have achieved great success. However, significant differences between the Title IV and Title V amendments have forced Self-Governance Tribes to operate under two separate sets of legislative and administrative requirements. S.286 would largely reconcile these differences, streamline the Self-Governance process, improve efficiencies, and strengthen reservation economies during fiscally challenging times with declining Federal appropriations and eroding Tribal base funding.

Passage of S.286 is the top legislative priority of the Self-Governance Tribes² and is supported by the National Congress of American Indians, United South and Eastern Tribes, and the Affiliated Tribes of Northwest Indians and other regional Tribal interests. In 2015, the Senate passed S. 286, but the legislation has been stuck in the House. For over a year, Tribal leaders and technical advisors have been working with the Association of Fish and Wildlife Agencies (AFWA) to craft a version of the Title IV bill that addresses AFWA’s concerns but maintains the core objectives of Tribes.

- Attached is the most recent redline draft of S. 286, which includes changes that Tribes have agreed on with AFWA. AFWA’s main objection had to do with a perceived expansion in Tribes’ authority to contract for discretionary non-BIA programs under section 403(c) of the ISDEAA, “FUNDING AGREEMENTS, Additional Activities”. To address this, the parties agreed on the concept of a “freeze” in such authority; the bill would not affect the existing authority under Title IV at all. This is not a step backwards, as S. 286

¹ Congressional Budget Office Cost Estimate, S. 286, Department of the Interior Tribal Self-Governance Act of 2015, February 10, 2015

² Currently there are 567 Federally Recognized Tribes in the United States. More than half participate in Self-Governance. Not all IHS Self-Governance Tribes are BIA Self-Governance Tribes, but most Tribes participate in both IHS and BIA. As of January 2016, there are 261 Tribes in BIA Self-Governance and 362 Tribes in IHS Self-Governance. (SOURCE: BIA Office of Self-Governance and IHS Office of Tribal Self-Governance)

already includes the same concept, but AFWA wanted stronger language. The main revisions to S. 286 are included in the attached redline as noted below:

- We have switched the order of Title I and Title II, and moved the proviso language that was previously in section 202 to the new proposed section 101(a). As AFWA requested, this now puts the proviso prominently at the front of the bill.
- We have also incorporated new proviso language proposed by AFWA into the new section 101(a). While the language is new, it says the same thing: nothing in the bill modifies the Secretary's current authority with respect to section 403(c) discretionary non-BIA programs.
- We have stricken a disclaimer (previously proposed section 410) that AFWA viewed as inconsistent with the disclaimer in the current statute, 25 U.S.C. 458cc(k).
- While final offers involving BIA and mandatory non-BIA programs that are not timely rejected by the agency are deemed approved, a revision to section 406(c)(5) provides that a final offer to assume a 403(c) program to which the Secretary does not respond is deemed rejected.
- Similarly, a waiver request involving a 403(c) program is deemed denied if not rejected within the statutory review period (see section 409(b)(6)).

AFWA has indicated that these changes address their concerns without compromising the benefits to Tribes of amending Title IV to bring it in line with Title V. With the changes in the attached redline, AFWA will send a letter withdrawing its objections and supporting the legislation, which we hope may still be enacted this term.

We urge your support of S.286 and if you have any questions, please contact Title IV Task Force Co- Chairs and Technical contact:

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