

Self-governance testimony asserts further lawlessness at Interior

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ABSTRACT (ABSTRACT)

The BIA is a part of Interior. Delia Carlyle, chairman of the Ak-Chin Indian Community near Phoenix, described the problems that have plagued Ak-Chin's self-government agreements for Sen. John McCain, R-Ariz., the committee chairman. The practice of "administrative holdback" emerged among others. "In short," Carlyle stated in written testimony, "the BIA is not releasing the full amount of authorized and appropriated funds for tribes and holding back about five to 10 percent of tribally earmarked funds. This is a direct violation of Section 405 of the Interior Appropriations Act, which requires any holdbacks to be approved by the [Interior] Appropriations Committee. In this [Ak-Chin's] case, there has been no such approval. ... Positive impact would come simply from the BIA following federal law and not enabling administrative holdbacks. Section 405 of the Interior Appropriations Act prohibits administrative holdbacks and requires the BIA to send the full amount of authorized and appropriated funds directly to tribes unless the holdbacks were approved by the Appropriations Committee."

FULL TEXT

WASHINGTON - A week after an independent inspector general told a subcommittee of Congress "anything goes" with the Interior Department's management culture as long as it's not technically criminal, testimony before the Senate Committee on Indian Affairs alleged a lawless attitude in the department's lesser echelons as well.

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But by the end of the Sept. 20 oversight hearing on the tribal self-governance program, administrative holdback was by no means the only reason identified for why the number of participant tribes has flattened at about 50. Tribal leaders Floyd Jourdain, of the Red Lake Band of Chippewa, and W. Ron Allen, of the Jamestown S'Klallam, joined Carlyle in describing the bureaucratic and budgetary obstacles that beset tribal self-governance. The program remains "a framework for progress," in the phrase of George Skibine, Interior's acting deputy assistant secretary for Indian affairs at the BIA. But progress itself has gotten hung up on the framework, to hear the tribal leaders tell it.

Jourdain quoted the report of another congressional committee that found tribes absorbing \$500,000 in unfunded

costs over three recent years. Jourdain himself focused on pay cost shortages that permanently reduced the band's funding of recurrent services by an estimated \$600,000 to \$800,000 annually for fiscal years 2003 through 2005. Even so, the tribe's self-governance program employees fell well behind their federal counterparts in pay.

In fiscal year 2006, Jourdain recounted, the tribe was gratified to learn it would receive full pay cost funding, pursuant to a request to that effect by President Bush and its enactment by Congress. But instead of the anticipated \$262,500, "BIA allocated only \$97,262 to the tribe."

After many meetings with the BIA, the tribe turned to the Office of Self-Governance, the BIA agency instituted to facilitate the transition of tribes to self-governance. It found that instead of allocating pay costs to tribes based on their data submissions, the BIA had distributed pay costs among all tribes, including those that did not submit pay cost data as required by Interior's own budget process. "That means the 'full funding' of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA. The Red Lake Band objected to BIA's redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different from the way they were requested [by the president] and appropriated [by Congress]."

Jourdain also related the case of a missed deadline, "because of apparent acrimony between BIA and OSG," that cost all tribes 25 percent of their legitimate pay costs in fiscal year 2002. Again, the BIA decided to distribute pay costs so as to cover a shortfall in funding to self-governance tribes, a shortfall that came about because of the botched deadline.

Unpaid contract support costs have been another recurring headache for self-governance tribes, but here they prevailed in court on the argument that government contracts are as enforceable as any other contract. Skibine described apparent real progress on the much-debated issue, the result of Interior policy formulation sessions that have provided guidance for tribes, the BIA and its OSG. Bush's budget request for FY '07 included a 14 percent increase for tribal contract support costs. Skibine added that non-participating tribes are thought likely to reconsider self-governance once the contract support cost issue is resolved.

Allen dwelt on the urgency of amending the Indian Self-Determination and Education Assistance Act to authorize self-governance tribes under its Title IV provision, "which Interior officials used to impede the full implementation of self-governance within the Department of Interior," to incorporate Title V provisions of their choosing into their self-governance compacts and funding agreements. Title V went outside Interior to authorize permanent tribal self-governance of IHS programs and corrected many of the flaws in Title IV Allen said.

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