

D R A F T

MEMORANDUM RE HR _____

(Tribal Contract Support Cost Technical Amendments of 2003)

Background

This bill is largely a reintroduction of H.R. 4148, introduced March 30, 2000, reported out of Committee following a May 16, 2000 hearing, and passed by the full House prior to adjournment of the 106th Congress. The bill generally addresses various issues pertaining to the determination and payment of “contract support costs” specified in the Indian Self-Determination and Education Assistance Act of 1975, as amended. Most importantly, the bill provides an automatic mechanism for the payment of contract support costs outside the ordinary appropriations process, in recognition of the unique government to government commitments embodied in Indian Self-Determination Act contracts and compacts. The goal of the bill is to reinforce the proposition that tribal contractors are to be promptly paid in full like all other government contractors, while eliminating the need for further litigation to enforce those payment rights (as was necessary in such cases as *Thompson v. Cherokee Nation*, 334 F.3d 1075 (Fed. Cir. 2003)).

Section-by-Section

Section 1. This section gives the enactment the short title “Tribal Contract Support Cost Technical Amendments of 2003.”

Section 2. This paragraph adds a new Section 106A to the Indian Self-Determination Act. This section is devoted exclusively to contract support cost matters.

Subsection 106A(a) requires that all federal agencies abide by the government-wide negotiated indirect cost agreement established by each tribal contractor’s cognizant federal agency under OMB Circular A-87 (typically, the Department of the Interior’s Office of Inspector General). The bill makes clear that the cost recovery accounting provisions do not in and of themselves entitle tribes to additional funds from other federal agencies. The mark-up also limits the subsection to situations where Congress has not directly spoken to the issue in other legislation.

Subsection 106A(b) addresses the fact that the indirect costs paid to a tribe under the Indian Self-Determination Act are pooled with other federal funds administered by a tribal contractor, and thus are spent together out of a single account. Subsection (b) clarifies that the self-determination rules regarding expenditure of funds set forth in

subsections 106(i) and (j) of the Indian Self-Determination Act apply to the tribal expenditure of all other pooled federal indirect cost funds administered by a tribe under any other federal statute.

Section 3 of the bill, in subsections (1) through (3), reinforces current provisions of the Act providing that contract support costs are an entitlement, and specifically removes three provisions from the Act that make the payment of such entitlements subject to the annual appropriations cycle. Section 3 also provides that necessary amounts are appropriated to pay contract support costs. This permanent appropriation is similar to the mechanism for funding certain housing programs and for funding court judgments.

Section 4 sets forth the effective date of the measure.

Bill

107th CONGRESS
2d Session
H. R. _____

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
July __, 2003

Mr. Young of Alaska (for himself and Mr. Hayworth and Mr. Kildee), introduced the following bill; which was referred to the Committee on Resources.

A BILL

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Tribal Contract Support Cost Technical Amendments of 2003”.

SEC. 2. AMENDMENT DETAILING CALCULATION AND PAYMENT OF CONTRACT SUPPORT COSTS.

The Indian Self-Determination and Education Assistance Act is amended by adding after section 106 the following new section:

“SEC. 106A. CONTRACT SUPPORT COSTS.

“(a) Other Federal Agencies.--Except as otherwise provided by statute, an Indian tribe or tribal organization administering a contract or compact under this Act shall be entitled to recover its full indirect costs associated with any other Federal funding received by such tribe or tribal organization, consistent with the tribe’s or tribal organization’s indirect cost rate agreement with its cognizant Federal agency, provided that such right to recover shall not independently entitle such tribe or tribal organization to be paid additional amounts associated with such other Federal funding.

“(b) Allowable Uses of Funds.--Notwithstanding any other provision of law (including regulation or circular), an Indian tribe or tribal organization (1) administering a contract or compact under this Act and (2) employing an indirect cost pool that includes both funds paid under this Act and other Federal funds, shall be entitled to use or expend all Federal funds in such tribe’s or tribal organization’s indirect cost pool in the same manner as permitted in subsection 106(j) (relating to allowable uses of funds without approval of the Secretary), and for such purposes only the term ‘Secretary’ shall mean the Secretary of any Federal agency providing funds to such tribe or tribal organization.”.

SEC. 3. AMENDMENTS CLARIFYING CONTRACT SUPPORT COST ENTITLEMENT.

The Indian Self-Determination and Education Assistance Act is amended--

(1) in section 105(c)(1), by striking the last flush sentence;

(2) in section 106(b)--

(A) by striking “the provision of funds under this Act is subject to the availability of appropriations and”; and

(B) by adding at the end thereof the following flush sentence:

“Necessary amounts are appropriated to pay contract support costs when not otherwise provided for.”;

(3) in section 1(b)(4) of the model contract set forth in section 108(c), by striking “Subject to the availability of appropriations, the” and inserting “The”;

(4) in section 519, by striking subsection (b) and inserting “(b) Necessary amounts are appropriated to pay contract support costs when not otherwise provided for.”.

SEC. 4. EFFECTIVE DATE AND SUPERSEDURE.

The amendments made by this Act shall be effective on the date of enactment of this Act, and the provisions of this Act shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of this Act.

bill draft and explain 2003-4.wpd