



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #DEN-07-007

TITLE: Support for Legislation requiring IHS and BIA to Comply with P.L. 93-638 Legal Contract Support Cost Funding Obligation

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Indian Self-Determination and Education Assistance Act, P.L. 93-638, 25 U.S.C. §§ 450 et seq., requires the payment of certain fixed institutional overhead costs, known specifically as "contract support costs," to Tribes and tribal organizations that operate and manage programs formerly operated by the Indian Health Service and the Bureau of Indian Affairs in the exercise of the federal government's trust responsibility to Indian Tribes, with these programs providing essential services to tribal members in such areas a police protection, social services and health care; and

WHEREAS, contract support costs include such fixed costs as financial and accounting services mandated by Federal law, personnel management costs and procurement management costs which Tribes must incur to carry out ISDA contracts and which the IHS and BIA generally incur in carrying out such programs in the absence of an ISDA contract; and

WHEREAS, in March 2005 the United States Supreme Court ruled in the case of Cherokee Nation v. Leavitt that IHS is contractually bound to pay full contract support costs to each tribal contractor, so long as IHS has sufficient appropriations to pay each Tribe, and that IHS is liable in a lawsuit for money damages if it fails to meet this obligation; and

WHEREAS, the Cherokee Nation decision applies equally to the Bureau of Indian Affairs; and

WHEREAS, ongoing efforts to extend the ruling in the Cherokee Nation case to all Indian tribal contractors and compactors has been frustrated by a New Mexico federal judge's refusal to certify a class action of tribal contractors in Pueblo of Zuni v. United States; and

WHEREAS, IHS has estimated that in FY 2007 it underpaid tribal contract support cost requirements by over \$100 million, and the BIA has estimated it underpaid Tribes their contract support cost requirements by approximately \$45 million; and

WHEREAS, the continuing failure of the federal government to fully pay contract support costs has compelled Tribes to reduce federal trust services being carried out under their ISDA contracts, in order to cover the fixed contract support costs that Tribes must incur to administer these contracts, directly penalizing tribal members for the federal government's failure to honor its contracts; and

WHEREAS, Indian Tribes and tribal organizations across the country have called upon Congress to hold oversight hearings to investigate the failure of the IHS and BIA to fully support tribal self-determination; and

WHEREAS, NCAI has on several occasions adopted Resolutions expressing NCAI's grave concern over the federal government's failure to honor its statutory duties and its trust responsibilities, to Indian Tribes and tribal organizations operating ISDA contracts and compacts (i.e., Resolutions #TUL-05-028 and #PHX-03-031).

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby respectfully calls upon Congress to convene oversight hearings to examine: (1) the failure of the IHS and BIA to honor their contractual commitments to Indian Tribes and tribal organizations carrying out federal trust programs under the Indian Self-Determination Act pursuant to ISDA contracts and compacts; (2) the extent to which the budgeting and appropriations processes further impede the federal government's commitment to and support for tribal self-determination; (3) the failure of the federal courts thus far to provide relief to Tribes and tribal organizations whose contracts were illegally underfunded, as determined by the Supreme Court in the Cherokee Nation case; and (4) to explore additional legislation that would provide a judicial or nonjudicial means for efficiently resolving past claims over contract support cost shortfalls, while reforming the manner in which contract support costs are paid beginning in FY 2009; and

BE IT FURTHER RESOLVED, that NCAI shall form an alliance with the Tribal Self-Governance Advisory Council on a plan on how to support Contract Support Cost increases; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until the actions described herein have been taken; and

BE IT FURTHER RESOLVED, that NCAI is directed to mount a major campaign during FY 2008 to educate members of Congress and the White House to the issues addressed in this Resolution; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

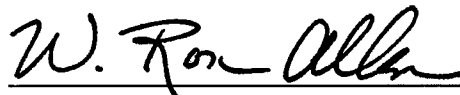
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2007 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Denver at the Colorado Convention Center in Denver, Colorado on November 11-16, 2007, with a quorum present.



President

ATTEST:



Recording Secretary

**THE NATIONAL CONGRESS OF
AMERICAN INDIANS**

RESOLUTION #DEN-07-_____

Title: Support for Legislation and Appropriations to Meet Indian Health Service and Bureau of Indian Affairs Legal Obligations to Pay Contract Support Costs to Tribes and Tribal Organizations Operating Self-determination Contracts and Self-Governance Compacts Pursuant to the Indian Self-Determination and Education Assistance Act (P.L. 93-638)

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people and their way of life, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Indian Self-Determination and Education Assistance Act, P.L. 93-638, 25 U.S.C. §§ 450 et seq., requires the payment of certain fixed institutional overhead costs, known specifically as "contract support costs," to Tribes and tribal organizations that operate and manage programs formerly operated by the Indian Health Service and the Bureau of Indian Affairs in the exercise of the federal government's trust responsibility to Indian Tribes, with these programs providing essential services to tribal members in such areas a police protection, social services and health care; and

WHEREAS, contract support costs include such fixed costs as financial and accounting services mandated by Federal law, personnel management costs and

procurement management costs which Tribes must incur to carry out ISDA contracts and which the IHS and BIA generally incur in carrying out such programs in the absence of an ISDA contract; and

WHEREAS, in March 2005 the United States Supreme Court ruled in the case of Cherokee Nation v. Leavitt that IHS is contractually bound to pay full contract support costs to each tribal contractor, so long as IHS has sufficient appropriations to pay each Tribe, and that IHS is liable in a lawsuit for money damages if it fails to meet this obligation; and

WHEREAS, the Cherokee Nation decision applies equally to the Bureau of Indian Affairs; and

WHEREAS, ongoing efforts to extend the ruling in the Cherokee Nation case to all Indian tribal contractors and compactors has been frustrated by a New Mexico federal judge's refusal to certify a class action of tribal contractors in Pueblo of Zuni v. United States; and

WHEREAS, IHS has estimated that in FY 2007 it underpaid tribal contract support cost requirements by over \$100 million, and the BIA has estimated it underpaid Tribes their contract support cost requirements by approximately \$45 million; and

WHEREAS, the continuing failure of the federal government to fully pay contract support costs has compelled Tribes to reduce federal trust services being carried out under their ISDA contracts, in order to cover the fixed contract support costs that Tribes must incur to administer these contracts, directly penalizing tribal members for the federal government's failure to honor its contracts; and

WHEREAS, Indian Tribes and tribal organizations across the country have called upon Congress to hold oversight hearings to investigate the failure of the IHS and BIA to fully support tribal self-determination; and

WHEREAS, NCAI has on several occasions adopted Resolutions expressing NCAI's grave concern over the federal government's failure to honor its statutory duties and its trust responsibilities, to Indian Tribes and tribal organizations operating ISDA contracts and compacts (i.e., Resolutions #TUL-05-028 and #PHX-03-031);

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BE IT FURTHER RESOLVED, that this Resolution shall be the policy of NCAI until the actions described herein have been taken; and

BE IT FURTHER RESOLVED, that NCAI is directed to mount a major campaign during FY 2008 to educate members of Congress and the White House to the issues addressed in this Resolution.

CERTIFICATION

The foregoing Resolution was adopted at the 2007 Annual Session of the National Congress of American Indians, held at the 64th Annual Convention in Denver, Colorado, on November __, 2007, with a quorum present.

President

ATTEST:

Recording Secretary

Adopted by the General Assembly during the 2007 Annual Session of the National Congress of American Indians held from November 11, 2007 to November 16, 2007 in Denver, Colorado.