

105TH CONGRESS
2D SESSION

H. R. 1833

AN ACT

To amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

105TH CONGRESS
2D SESSION

H. R. 1833

AN ACT

To amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Tribal Self-Governance
3 Amendments of 1998”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the tribal right of self-government flows
7 from the inherent sovereignty of Indian tribes and
8 nations;

9 (2) the United States recognizes a special gov-
10 ernment-to-government relationship with Indian
11 tribes, including the right of the Indian tribes to
12 self-governance, as reflected in the Constitution,
13 treaties, Federal statutes, and the course of dealings
14 of the United States with Indian tribes;

15 (3) although progress has been made, the Fed-
16 eral bureaucracy, with its centralized rules and regu-
17 lations, has eroded tribal self-governance and domi-
18 nates tribal affairs;

19 (4) the Tribal Self-Governance Demonstration
20 Project, established under title III of the Indian
21 Self-Determination and Education Assistance Act
22 (25 U.S.C. 450f note) was designed to improve and
23 perpetuate the government-to-government relation-
24 ship between Indian tribes and the United States
25 and to strengthen tribal control over Federal fund-
26 ing and program management;

1 (5) although the Federal Government has made
2 considerable strides in improving Indian health care,
3 it has failed to fully meet its trust responsibilities
4 and to satisfy its obligations to the Indian tribes
5 under treaties and other laws; and

6 (6) Congress has reviewed the results of the
7 Tribal Self-Governance Demonstration Project and
8 finds that transferring full control and funding to
9 tribal governments, upon tribal request, over deci-
10 sion making for Federal programs, services, func-
11 tions, and activities (or portions thereof)—

12 (A) is an appropriate and effective means
13 of implementing the Federal policy of govern-
14 ment-to-government relations with Indian
15 tribes; and

16 (B) strengthens the Federal policy of In-
17 dian self-determination.

18 **SEC. 3. DECLARATION OF POLICY.**

19 It is the policy of Congress to—

20 (1) permanently establish and implement tribal
21 self-governance within the Department of Health
22 and Human Services;

23 (2) call for full cooperation from the Depart-
24 ment of Health and Human Services and its con-

1 constituent agencies in the implementation of tribal self-
2 governance—

3 (A) to enable the United States to main-
4 tain and improve its unique and continuing re-
5 lationship with, and responsibility to, Indian
6 tribes;

7 (B) to permit each Indian tribe to choose
8 the extent of its participation in self-governance
9 in accordance with the provisions of the Indian
10 Self-Determination and Education Assistance
11 Act relating to the provision of Federal services
12 to Indian tribes;

13 (C) to ensure the continuation of the trust
14 responsibility of the United States to Indian
15 tribes and Indian individuals;

16 (D) to affirm and enable the United States
17 to fulfill its obligations to the Indian tribes
18 under treaties and other laws;

19 (E) to strengthen the government-to-gov-
20 ernment relationship between the United States
21 and Indian tribes through direct and meaning-
22 ful consultation with all tribes;

23 (F) to permit an orderly transition from
24 Federal domination of programs and services to
25 provide Indian tribes with meaningful authority,

1 control, funding, and discretion to plan, con-
2 duct, redesign, and administer programs, serv-
3 ices, functions, and activities (or portions there-
4 of) that meet the needs of the individual tribal
5 communities;

6 (G) to provide for a measurable parallel re-
7 duction in the Federal bureaucracy as pro-
8 grams, services, functions, and activities (or
9 portions thereof) are assumed by Indian tribes;

10 (H) to encourage the Secretary to identify
11 all programs, services, functions, and activities
12 (or portions thereof) of the Department of
13 Health and Human Services that may be man-
14 aged by an Indian tribe under this Act and to
15 assist Indian tribes in assuming responsibility
16 for such programs, services, functions, and ac-
17 tivities (or portions thereof); and

18 (I) to provide Indian tribes with the earli-
19 est opportunity to administer programs, serv-
20 ices, functions, and activities (or portions there-
21 of) from throughout the Department of Health
22 and Human Services.

1 **SEC. 4. TRIBAL SELF-GOVERNANCE.**

2 The Indian Self-Determination and Education Assist-
3 ance Act (25 U.S.C. 450 et seq.) is amended by adding
4 at the end the following new titles:

5 **“TITLE V—TRIBAL SELF-**
6 **GOVERNANCE**

7 **“SEC. 501. ESTABLISHMENT.**

8 “The Secretary of Health and Human Services shall
9 establish and carry out a program within the Indian
10 Health Service of the Department of Health and Human
11 Services to be known as the ‘Tribal Self-Governance Pro-
12 gram’ in accordance with this title.

13 **“SEC. 502. DEFINITIONS.**

14 “(a) IN GENERAL.—For purposes of this title—

15 “(1) the term ‘construction project’ means an
16 organized noncontinuous undertaking to complete a
17 specific set of predetermined objectives for the plan-
18 ning, environmental determination, design, construc-
19 tion, repair, improvement, or expansion of buildings
20 or facilities, as described in a construction project
21 agreement. The term ‘construction project’ does not
22 mean construction program administration and ac-
23 tivities described in paragraphs (1) through (3) of
24 section 4(m), which may otherwise be included in a
25 funding agreement under this title;

1 “(2) the term ‘construction project agreement’
2 means a negotiated agreement between the Secretary
3 and an Indian tribe which at a minimum—

4 “(A) establishes project phase start and
5 completion dates;

6 “(B) defines a specific scope of work and
7 standards by which it will be accomplished;

8 “(C) identifies the responsibilities of the
9 Indian tribe and the Secretary;

10 “(D) addresses environmental consider-
11 ations;

12 “(E) identifies the owner and operations/
13 maintenance entity of the proposed work;

14 “(F) provides a budget;

15 “(G) provides a payment process; and

16 “(H) establishes the duration of the agree-
17 ment based on the time necessary to complete
18 the specified scope of work, which may be 1 or
19 more years;

20 “(3) the term ‘inherent Federal functions’
21 means those Federal functions which cannot legally
22 be delegated to Indian tribes;

23 “(4) the term ‘inter-tribal consortium’ means a
24 coalition of two or more separate Indian tribes that
25 join together for the purpose of participating in self-

1 governance, including, but not limited to, a tribal or-
2 ganization;

3 “(5) the term ‘gross mismanagement’ means a
4 significant, clear, and convincing violation of com-
5 pact, funding agreement, or regulatory, or statutory
6 requirements applicable to Federal funds transferred
7 to a tribe by a compact or funding agreement that
8 results in a significant reduction of funds available
9 for the programs, services, functions, or activities (or
10 portions thereof) assumed by an Indian tribe;

11 “(6) the term ‘tribal shares’ means an Indian
12 tribe’s portion of all funds and resources that sup-
13 port secretarial programs, services, functions, and
14 activities (or portions thereof) that are not required
15 by the Secretary for performance of inherent Fed-
16 eral functions;

17 “(7) the term ‘Secretary’ means the Secretary
18 of Health and Human Services; and

19 “(8) the term ‘self-governance’ means the pro-
20 gram established pursuant to section 501.

21 “(b) INDIAN TRIBE.—Where an Indian tribe has au-
22 thorized another Indian tribe, an inter-tribal consortium,
23 or a tribal organization to plan for or carry out programs,
24 services, functions, or activities (or portions thereof) on
25 its behalf under this title, the authorized Indian tribe,

1 inter-tribal consortium, or tribal organization shall have
2 the rights and responsibilities of the authorizing Indian
3 tribe (except as otherwise provided in the authorizing reso-
4 lution or in this title). In such event, the term ‘Indian
5 tribe’ as used in this title shall include such other author-
6 ized Indian tribe, inter-tribal consortium, or tribal organi-
7 zation.

8 **“SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES.**

9 “(a) CONTINUING PARTICIPATION.—Each Indian
10 tribe that is participating in the Tribal Self-Governance
11 Demonstration Project under title III on the date of enact-
12 ment of this title may elect to participate in self-govern-
13 ance under this title under existing authority as reflected
14 in tribal resolutions.

15 “(b) ADDITIONAL PARTICIPANTS.—

16 “(1) In addition to those Indian tribes partici-
17 pating in self-governance under subsection (a), each
18 year an additional 50 Indian tribes that meet the eli-
19 gibility criteria specified in subsection (c) shall be
20 entitled to participate in self-governance.

21 “(2)(A) An Indian tribe that has withdrawn
22 from participation in an inter-tribal consortium or
23 tribal organization, in whole or in part, shall be enti-
24 tled to participate in self-governance provided the

1 Indian tribe meets the eligibility criteria specified in
2 subsection (c).

3 "(B) If an Indian tribe has withdrawn from
4 participation in an inter-tribal consortium or tribal
5 organization, it shall be entitled to its tribal share
6 of funds supporting those programs, services, func-
7 tions, and activities (or portions thereof) that it will
8 be carrying out under its compact and funding
9 agreement.

10 "(C) In no event shall the withdrawal of an In-
11 dian tribe from an inter-tribal consortium or tribal
12 organization affect the eligibility of the inter-tribal
13 consortium or tribal organization to participate in
14 self-governance.

15 "(c) APPLICANT POOL.—The qualified applicant pool
16 for self-governance shall consist of each Indian tribe
17 that—

18 "(1) successfully completes the planning phase
19 described in subsection (d);

20 "(2) has requested participation in self-govern-
21 ance by resolution or other official action by the gov-
22 erning body (or bodies) of the Indian tribe or tribes
23 to be served; and

1 “(3) has demonstrated, for the previous 3 fiscal
2 years, financial stability and financial management
3 capability.

4 Evidence that during such years the Indian tribe had no
5 uncorrected significant and material audit exceptions in
6 the required annual audit of the Indian tribe’s self-deter-
7 mination contracts or self-governance funding agreements
8 shall be conclusive evidence of the required stability and
9 capability for the purposes of this subsection.

10 “(d) PLANNING PHASE.—Each Indian tribe seeking
11 participation in self-governance shall complete a planning
12 phase. The planning phase shall be conducted to the satis-
13 faction of the Indian tribe and shall include—

14 “(1) legal and budgetary research; and
15 “(2) internal tribal government planning and
16 organizational preparation relating to the adminis-
17 tration of health care programs.

18 “(e) GRANTS.—Subject to the availability of appro-
19 priations, any Indian tribe meeting the requirements of
20 paragraphs (2) and (3) of subsection (c) shall be eligible
21 for grants—

22 “(1) to plan for participation in self-governance;
23 and
24 “(2) to negotiate the terms of participation by
25 the Indian tribe or tribal organization in self-govern-

1 ance, as set forth in a compact and a funding agree-
2 ment.

3 “(f) RECEIPT OF GRANT NOT REQUIRED.—Receipt
4 of a grant under subsection (e) shall not be a requirement
5 of participation in self-governance.

6 **“SEC. 504. COMPACTS.**

7 “(a) COMPACT REQUIRED.—The Secretary shall ne-
8 gotiate and enter into a written compact with each Indian
9 tribe participating in self-governance in a manner consist-
10 ent with the Federal Government’s trust responsibility,
11 treaty obligations, and the government-to-government re-
12 lationship between Indian tribes and the United States.

13 “(b) CONTENTS.—Each compact required under sub-
14 section (a) shall set forth the general terms of the govern-
15 ment-to-government relationship between the Indian tribe
16 and the Secretary, including such terms as the parties in-
17 tend shall control year after year. Such compacts may only
18 be amended by mutual agreement of the parties.

19 “(c) EXISTING COMPACTS.—An Indian tribe partici-
20 pating in the Tribal Self-Governance Demonstration
21 Project under title III on the date of enactment of this
22 title shall have the option at any time thereafter to—

23 “(1) retain its Tribal Self-Governance Dem-
24 onstration Project compact (in whole or in part) to
25 the extent the provisions of such compact are not di-

1 rectly contrary to any express provision of this title,

2 or

3 “(2) negotiate in lieu thereof (in whole or in
4 part) a new compact in conformity with this title.

5 “(d) TERM AND EFFECTIVE DATE.—The effective
6 date of a compact shall be the date of the approval and
7 execution by the Indian tribe or another date agreed upon
8 by the parties, and shall remain in effect for so long as
9 permitted by Federal law or until terminated by mutual
10 written agreement, retrocession, or reassumption.

11 **“SEC. 505. FUNDING AGREEMENTS.**

12 “(a) FUNDING AGREEMENT REQUIRED.—The Sec-
13 retary shall negotiate and enter into a written funding
14 agreement with each Indian tribe participating in self-gov-
15 ernance in a manner consistent with the Federal Govern-
16 ment’s trust responsibility, treaty obligations, and the gov-
17 ernment-to-government relationship between Indian tribes
18 and the United States.

19 “(b) CONTENTS.—Each funding agreement required
20 under subsection (a) shall, as determined by the Indian
21 tribe, authorize the Indian tribe to plan, conduct, consoli-
22 date, administer, and receive full tribal share funding, in-
23 cluding tribal shares of Indian Health Service competitive
24 grants (excluding congressionally earmarked competitive
25 grants), for all programs, services, functions, and activi-

1 ties (or portions thereof), that are carried out for the bene-
2 fit of Indians because of their status as Indians without
3 regard to the agency or office of the Indian Health Service
4 within which the program, service, function, or activity (or
5 portion thereof) is performed. Such programs, services,
6 functions, or activities (or portions thereof) include all
7 programs, services, functions, activities (or portions there-
8 of) where Indian tribes or Indians are primary or signifi-
9 cant beneficiaries, administered by the Department of
10 Health and Human Services through the Indian Health
11 Service and grants (which may be added to a funding
12 agreement after award of such grants) and all local, field,
13 service unit, area, regional, and central headquarters or
14 national office functions administered under the authority
15 of—

16 “(1) the Act of November 2, 1921 (25 U.S.C.
17 13);

18 “(2) the Act of April 16, 1934 (25 U.S.C. 452
19 et seq.);

20 “(3) the Act of August 5, 1954 (68 Stat. 674);

21 “(4) the Indian Health Care Improvement Act
22 (25 U.S.C. 1601 et seq.); or

23 “(5) the Indian Alcohol and Substance Abuse
24 Prevention and Treatment Act of 1986 (25 U.S.C.
25 2401 et seq.).

1 “(c) INCLUSION IN COMPACT OR FUNDING AGREEMENT.—Indian tribes or Indians need not be identified in
2 the authorizing statute for a program or element of a pro-
3 gram to be eligible for inclusion in a compact or funding
4 agreement under this title.

6 “(d) FUNDING AGREEMENT TERMS.—Each funding
7 agreement shall set forth terms that generally identify the
8 programs, services, functions, and activities (or portions
9 thereof) to be performed or administered, the general
10 budget category assigned, the funds to be provided, includ-
11 ing those to be provided on a recurring basis, the time
12 and method of transfer of the funds, the responsibilities
13 of the Secretary, and any other provisions to which the
14 Indian tribe and the Secretary agree.

15 “(e) SUBSEQUENT FUNDING AGREEMENTS.—Absent
16 notification from an Indian tribe that is withdrawing or
17 retroceding the operation of one or more programs, serv-
18 ices, functions, or activities (or portions thereof) identified
19 in a funding agreement, or unless otherwise agreed to by
20 the parties, each funding agreement shall remain in full
21 force and effect until a subsequent funding agreement is
22 executed, and the terms of the subsequent funding agree-
23 ment shall be retroactive to the end of the term of the
24 preceding funding agreement.

1 “(f) EXISTING FUNDING AGREEMENTS.—Each In-
2 dian tribe participating in the Tribal Self-Governance
3 Demonstration Project established under title III on the
4 date of enactment of this title shall have the option at
5 any time thereafter to—

6 “(1) retain its Tribal Self-Governance Dem-
7 onstration Project funding agreement (in whole or in
8 part) to the extent the provisions of such funding
9 agreement are not directly contrary to any express
10 provision of this title; or

11 “(2) adopt in lieu thereof (in whole or in part)
12 a new funding agreement in conformity with this
13 title.

14 “(g) STABLE BASE FUNDING.—At the option of an
15 Indian tribe, a funding agreement may provide for a stable
16 base budget specifying the recurring funds (including, for
17 purposes of this provision, funds available under section
18 106(a) of the Act) to be transferred to such Indian tribe,
19 for such period as may be specified in the funding agree-
20 ment, subject to annual adjustment only to reflect changes
21 in congressional appropriations by sub-sub activity exclud-
22 ing earmarks.

23 **“SEC. 506. GENERAL PROVISIONS.**

24 “(a) APPLICABILITY.—The provisions of this section
25 shall apply to compacts and funding agreements nego-

1 tiated under this title and an Indian tribe may, at its op-
2 tion, include provisions that reflect such requirements in
3 a compact or funding agreement.

4 “(b) CONFLICTS OF INTEREST.—Indian tribes par-
5 ticipating in self-governance under this title shall ensure
6 that internal measures are in place to address conflicts
7 of interest in the administration of self-governance pro-
8 grams, services, functions, or activities (or portions there-
9 of).

10 “(c) AUDITS.—

11 “(1) SINGLE AGENCY AUDIT ACT.—The provi-
12 sions of chapter 75 of title 31, United States Code,
13 requiring a single agency audit report shall apply to
14 funding agreements under this title.

15 “(2) COST PRINCIPLES.—An Indian tribe shall
16 apply cost principles under the applicable Office of
17 Management and Budget Circular, except as modi-
18 fied by section 106 or other provisions of law, or by
19 any exemptions to applicable Office of Management
20 and Budget Circulars subsequently granted by Of-
21 fice of Management and Budget. No other audit or
22 accounting standards shall be required by the Sec-
23 retary. Any claim by the Federal Government
24 against the Indian tribe relating to funds received
25 under a funding agreement based on any audit

1 under this subsection shall be subject to the provi-
2 sions of section 106(f).

3 “(d) RECORDS.—

4 “(1) IN GENERAL.—Unless an Indian tribe
5 specifies otherwise in the compact or funding agree-
6 ment, records of the Indian tribe shall not be consid-
7 ered Federal records for purposes of chapter 5 of
8 title 5, United States Code.

9 “(2) RECORDKEEPING SYSTEM.—The Indian
10 tribe shall maintain a recordkeeping system, and,
11 after 30 days advance notice, provide the Secretary
12 with reasonable access to such records to enable the
13 Department of Health and Human Services to meet
14 its minimum legal recordkeeping system require-
15 ments under sections 3101 through 3106 of title 44,
16 United States Code.

17 “(e) REDESIGN AND CONSOLIDATION.—An Indian
18 tribe may redesign or consolidate programs, services, func-
19 tions, and activities (or portions thereof) included in a
20 funding agreement under section 505 and reallocate or re-
21 direct funds for such programs, services, functions, and
22 activities (or portions thereof) in any manner which the
23 Indian tribe deems to be in the best interest of the health
24 and welfare of the Indian community being served, only
25 if the redesign or consolidation does not have the effect

1 of denying eligibility for services to population groups oth-
2 erwise eligible to be served under Federal law.

3 “(f) RETROCESSION.—An Indian tribe may retro-
4 cede, fully or partially, to the Secretary programs, serv-
5 ices, functions, or activities (or portions thereof) included
6 in the compact or funding agreement. Unless the Indian
7 tribe rescinds the request for retrocession, such retroces-
8 sion will become effective within the time frame specified
9 by the parties in the compact or funding agreement. In
10 the absence of such a specification, such retrocession shall
11 become effective on—

12 “(1) the earlier of—

13 “(A) one year from the date of submission
14 of such request; or

15 “(B) the date on which the funding agree-
16 ment expires; or

17 “(2) such date as may be mutually agreed by
18 the Secretary and the Indian tribe.

19 “(g) WITHDRAWAL.—

20 “(1) PROCESS.—An Indian tribe may fully or
21 partially withdraw from a participating inter-tribal
22 consortium or tribal organization its share of any
23 program, function, service, or activity (or portions
24 thereof) included in a compact or funding agree-
25 ment. Such withdrawal shall become effective within

1 the time frame specified in the resolution which au-
2 thorizes transfer to the participating tribal organiza-
3 tion or inter-tribal consortium. In the absence of a
4 specific time frame set forth in the resolution, such
5 withdrawal shall become effective on—

6 “(A) the earlier of—

7 “(i) one year from the date of submis-
8 sion of such request; or

9 “(ii) the date on which the funding
10 agreement expires; or

11 “(B) such date as may be mutually agreed
12 upon by the Secretary, the withdrawing Indian
13 tribe, and the participating tribal organization
14 or inter-tribal consortium that has signed the
15 compact or funding agreement on behalf of the
16 withdrawing Indian tribe, inter-tribal consor-
17 tium, or tribal organization.

18 “(2) DISTRIBUTION OF FUNDS.—When an In-
19 dian tribe or tribal organization eligible to enter into
20 a self-determination contract under title I or a com-
21 pact or funding agreement under this title fully or
22 partially withdraws from a participating inter-tribal
23 consortium or tribal organization, the withdrawing
24 Indian tribe or tribal organization shall be entitled
25 to its tribal share of funds supporting those pro-

1 grams, services, functions, or activities (or portions
2 thereof) which it will be carrying out under its own
3 self-determination contract or compact and funding
4 agreement (calculated on the same basis as the
5 funds were initially allocated in the funding agree-
6 ment of the inter-tribal consortium or tribal organi-
7 zation), and such funds shall be transferred from
8 the funding agreement of the inter-tribal consortium
9 or tribal organization, provided that the provisions
10 of sections 102 and 105(i), as appropriate, shall
11 apply to such withdrawing Indian tribe.

12 “(3) REGAINING MATURE CONTRACT STATUS.—
13 If an Indian tribe elects to operate all or some pro-
14 grams, services, functions, or activities (or portions
15 thereof) carried out under a compact or funding
16 agreement under this title through a self-determi-
17 nation contract under title I, at the option of the In-
18 dian tribe, the resulting self-determination contract
19 shall be a mature self-determination contract.

20 “(h) NONDUPLICATION.—For the period for which,
21 and to the extent to which, funding is provided under this
22 title or under the compact or funding agreement, the In-
23 dian tribe shall not be entitled to contract with the Sec-
24 retary for such funds under section 102, except that such

1 Indian tribe shall be eligible for new programs on the same
2 basis as other Indian tribes.

3 **“SEC. 507. PROVISIONS RELATING TO THE SECRETARY.**

4 “(a) MANDATORY PROVISIONS.—

5 “(1) HEALTH STATUS REPORTS.—Compacts or
6 funding agreements negotiated between the Sec-
7 retary and an Indian tribe shall include a provision
8 that requires the Indian tribe to report on health
9 status and service delivery—

10 “(A) to the extent such data is not other-
11 wise available to the Secretary and specific
12 funds for this purpose are provided by the Sec-
13 retary under the funding agreement; and

14 “(B) if such reporting shall impose mini-
15 mal burdens on the participating Indian tribe
16 and such requirements are promulgated under
17 section 517.

18 “(2) REASSUMPTION—(A) Compacts and fund-
19 ing agreements negotiated between the Secretary
20 and an Indian tribe shall include a provision author-
21 izing the Secretary to reassume operation of a pro-
22 gram, service, function, or activity (or portions
23 thereof) and associated funding if there is a specific
24 finding relative to that program, service, function, or
25 activity (or portion thereof) of—

1 “(i) imminent endangerment of the public
2 health caused by an act or omission of the In-
3 dian tribe, and the imminent endangerment
4 arises out of a failure to carry out the compact
5 or funding agreement; or

6 “(ii) gross mismanagement with respect to
7 funds transferred to a tribe by a compact or
8 funding agreement, as determined by the Sec-
9 retary in consultation with the Inspector Gen-
10 eral, as appropriate.

11 “(B) The Secretary shall not reassume oper-
12 ation of a program, service, function, or activity (or
13 portions thereof) unless (i) the Secretary has first
14 provided written notice and a hearing on the record
15 to the Indian tribe; and (ii) the Indian tribe has not
16 taken corrective action to remedy the imminent
17 endangerment to public health or gross mismanage-
18 ment.

19 “(C) Notwithstanding subparagraph (B), the
20 Secretary may, upon written notification to the
21 tribe, immediately reassume operation of a program,
22 service, function, or activity (or portion thereof) and
23 associated funding if (i) the Secretary makes a find-
24 ing of imminent substantial and irreparable
25 endangerment of the public health caused by an act

1 or omission of the Indian tribe; and (ii) the
2 endangerment arises out of a failure to carry out the
3 compact or funding agreement. If the Secretary re-
4 assumes operation of a program, service, function,
5 or activity (or portion thereof) under this subparagraph,
6 the Secretary shall provide the tribe with a
7 hearing on the record not later than 10 days after
8 such reassumption.

9 “(D) In any hearing or appeal involving a deci-
10 sion to reassume operation of a program, service,
11 function, or activity (or portion thereof), the Sec-
12 retary shall have the burden of proof of demonstrat-
13 ing by clear and convincing evidence the validity of
14 the grounds for the reassumption.

15 “(b) FINAL OFFER.—In the event the Secretary and
16 a participating Indian tribe are unable to agree, in whole
17 or in part, on the terms of a compact or funding agree-
18 ment (including funding levels), the Indian tribe may sub-
19 mit a final offer to the Secretary. Not more than 45 days
20 after such submission, or within a longer time agreed upon
21 by the Indian tribe, the Secretary shall review and make
22 a determination with respect to such offer. In the absence
23 of a timely rejection of the offer, in whole or in part, made
24 in compliance with subsection (c), the offer shall be
25 deemed agreed to by the Secretary.

1 “(c) REJECTION OF FINAL OFFERS.—If the Sec-
2 retary rejects an offer made under subsection (b) (or one
3 or more provisions or funding levels in such offer), the
4 Secretary shall provide—

5 “(1) a timely written notification to the Indian
6 tribe that contains a specific finding that clearly
7 demonstrates, or that is supported by a controlling
8 legal authority, that—

9 “(A) the amount of funds proposed in the
10 final offer exceeds the applicable funding level
11 to which the Indian tribe is entitled under this
12 title;

13 “(B) the program, function, service, or ac-
14 tivity (or portion thereof) that is the subject of
15 the final offer is an inherent Federal function
16 that cannot legally be delegated to an Indian
17 tribe;

18 “(C) the Indian tribe cannot carry out the
19 program, function, service, or activity (or por-
20 tion thereof) in a manner that would not result
21 in significant danger or risk to the public
22 health; or

23 “(D) the tribe is not eligible to participate
24 in self-governance under section 503;

1 “(2) technical assistance to overcome the objec-
2 tions stated in the notification required by para-
3 graph (1);

4 “(3) the Indian tribe with a hearing on the
5 record with the right to engage in full discovery rel-
6 evant to any issue raised in the matter and the op-
7 portunity for appeal on the objections raised, pro-
8 vided that the Indian tribe may, in lieu of filing such
9 appeal, directly proceed to initiate an action in a
10 Federal district court pursuant to section 110(a);
11 and

12 “(4) the Indian tribe with the option of enter-
13 ing into the severable portions of a final proposed
14 compact or funding agreement, or provision thereof,
15 (including lesser funding amount, if any), that the
16 Secretary did not reject, subject to any additional al-
17 terations necessary to conform the compact or fund-
18 ing agreement to the severed provisions. If an Indian
19 tribe exercises the option specified herein, it shall re-
20 tain the right to appeal the Secretary’s rejection
21 under this section, and paragraphs (1), (2), and (3)
22 shall only apply to that portion of the proposed final
23 compact, funding agreement or provision thereof
24 that was rejected by the Secretary.

1 “(d) BURDEN OF PROOF.—With respect to any hear-
2 ing or appeal or civil action conducted pursuant to this
3 section, the Secretary shall have the burden of dem-
4 onstrating by clear and convincing evidence the validity
5 of the grounds for rejecting the offer (or a provision there-
6 of) made under subsection (b).

7 “(e) GOOD FAITH.—In the negotiation of compacts
8 and funding agreements the Secretary shall at all times
9 negotiate in good faith to maximize implementation of the
10 self-governance policy. The Secretary shall carry out this
11 title in a manner that maximizes the policy of tribal self-
12 governance, consistent with section 3.

13 “(f) SAVINGS.—To the extent that programs, func-
14 tions, services, or activities (or portions thereof) carried
15 out by Indian tribes under this title reduce the administra-
16 tive or other responsibilities of the Secretary with respect
17 to the operation of Indian programs and result in savings
18 that have not otherwise been included in the amount of
19 tribal shares and other funds determined under section
20 508(c), the Secretary shall make such savings available
21 to the Indian tribes, inter-tribal consortia, or tribal organi-
22 zations for the provision of additional services to program
23 beneficiaries in a manner equitable to directly served, con-
24 tracted, and compacted programs.

1 “(g) TRUST RESPONSIBILITY.—The Secretary is pro-
2 hibited from waiving, modifying, or diminishing in any
3 way the trust responsibility of the United States with re-
4 spect to Indian tribes and individual Indians that exists
5 under treaties, Executive orders, other laws, or court deci-
6 sions.

7 “(h) DECISIONMAKER.—A decision that constitutes
8 final agency action and relates to an appeal within the
9 Department of Health and Human Services conducted
10 under subsection (c) shall be made either—

11 “(1) by an official of the Department who holds
12 a position at a higher organizational level within the
13 Department than the level of the departmental agen-
14 cy in which the decision that is the subject of the
15 appeal was made; or

16 “(2) by an administrative judge.

17 **“SEC. 508. TRANSFER OF FUNDS.**

18 “(a) IN GENERAL.—Pursuant to the terms of any
19 compact or funding agreement entered into under this
20 title, the Secretary shall transfer to the Indian tribe all
21 funds provided for in the funding agreement, pursuant to
22 subsection (c), and provide funding for periods covered by
23 joint resolution adopted by Congress making continuing
24 appropriations, to the extent permitted by such resolu-
25 tions. In any instance where a funding agreement requires

1 an annual transfer of funding to be made at the beginning
2 of a fiscal year, or requires semiannual or other periodic
3 transfers of funding to be made commencing at the begin-
4 ning of a fiscal year, the first such transfer shall be made
5 not later than 10 days after the apportionment of such
6 funds by the Office of Management and Budget to the
7 Department, unless the funding agreement provides other-
8 wise.

9 “(b) MULTICYEAR FUNDING.—The Secretary is here-
10 by authorized to employ, upon tribal request, multiyear
11 funding agreements, and references in this title to funding
12 agreements shall include such multiyear agreements.

13 “(c) AMOUNT OF FUNDING.—The Secretary shall
14 provide funds under a funding agreement under this title
15 in an amount equal to the amount that the Indian tribe
16 would have been entitled to receive under self-determina-
17 tion contracts under this Act, including amounts for direct
18 program costs specified under section 106(a)(1) and
19 amounts for contract support costs specified under sec-
20 tions 106(a)(2), (a)(3), (a)(5), and (a)(6), including any
21 funds that are specifically or functionally related to the
22 provision by the Secretary of services and benefits to the
23 Indian tribe or its members, all without regard to the or-
24 ganizational level within the Department where such func-
25 tions are carried out.

1 “(d) PROHIBITIONS.—The Secretary is expressly pro-
2 hibited from—

3 “(1) failing or refusing to transfer to an Indian
4 tribe its full share of any central, headquarters, re-
5 gional, area, or service unit office or other funds due
6 under this Act, except as required by Federal law;

7 “(2) withholding portions of such funds for
8 transfer over a period of years; and

9 “(3) reducing the amount of funds required
10 herein—

11 “(A) to make funding available for self-
12 governance monitoring or administration by the
13 Secretary;

14 “(B) in subsequent years, except pursuant
15 to—

16 “(i) a reduction in appropriations
17 from the previous fiscal year for the pro-
18 gram or function to be included in a com-
19 pact or funding agreement;

20 “(ii) a congressional directive in legis-
21 lation or accompanying report;

22 “(iii) a tribal authorization;

23 “(iv) a change in the amount of pass-
24 through funds subject to the terms of the
25 funding agreement; or

1 “(v) completion of a project, activity,
2 or program for which such funds were pro-
3 vided;

4 “(C) to pay for Federal functions, includ-
5 ing Federal pay costs, Federal employee retire-
6 ment benefits, automated data processing, tech-
7 nical assistance, and monitoring of activities
8 under this Act; or

9 “(D) to pay for costs of Federal personnel
10 displaced by self-determination contracts under
11 this Act or self-governance;

12 except that such funds may be increased by the Secretary
13 if necessary to carry out this Act or as provided in section
14 105(c)(2).

15 “(e) OTHER RESOURCES.—In the event an Indian
16 tribe elects to carry out a compact or funding agreement
17 with the use of Federal personnel, Federal supplies (in-
18 cluding supplies available from Federal warehouse facili-
19 ties), Federal supply sources (including lodging, airline
20 transportation, and other means of transportation includ-
21 ing the use of interagency motor pool vehicles) or other
22 Federal resources (including supplies, services, and re-
23 sources available to the Secretary under any procurement
24 contracts in which the Department is eligible to partici-

1 pate), the Secretary is authorized to transfer such person-
2 nel, supplies, or resources to the Indian tribe.

3 “(f) REIMBURSEMENT TO INDIAN HEALTH SERV-
4 ICE.—With respect to functions transferred by the Indian
5 Health Service to an Indian tribe, the Indian Health Serv-
6 ice is authorized to provide goods and services to the In-
7 dian tribe, on a reimbursable basis, including payment in
8 advance with subsequent adjustment, and the reimburse-
9 ments received therefrom, along with the funds received
10 from the Indian tribe pursuant to this title, may be cred-
11 ited to the same or subsequent appropriation account
12 which provided the funding, such amounts to remain avail-
13 able until expended.

14 “(g) PROMPT PAYMENT ACT.—Chapter 39 of title
15 31, United States Code, shall apply to the transfer of
16 funds due under a compact or funding agreement author-
17 ized under this title.

18 “(h) INTEREST OR OTHER INCOME ON TRANS-
19 FERS.—An Indian tribe is entitled to retain interest
20 earned on any funds paid under a compact or funding
21 agreement to carry out governmental or health purposes
22 and such interest shall not diminish the amount of funds
23 the Indian tribe is authorized to receive under its funding
24 agreement in the year the interest is earned or in any sub-

1 sequent fiscal year. Funds transferred under this Act shall
2 be managed using the prudent investment standard.

3 “(i) CARRYOVER OF FUNDS.—All funds paid to an
4 Indian tribe in accordance with a compact or funding
5 agreement shall remain available until expended. In the
6 event that an Indian tribe elects to carry over funding
7 from one year to the next, such carryover shall not dimin-
8 ish the amount of funds the Indian tribe is authorized to
9 receive under its funding agreement in that or any subse-
10 quent fiscal year.

11 “(j) PROGRAM INCOME.—All medicare, medicaid, or
12 other program income earned by an Indian tribe shall be
13 treated as supplemental funding to that negotiated in the
14 funding agreement and the Indian tribe may retain all
15 such income and expend such funds in the current year
16 or in future years except to the extent that the Indian
17 Health Care Improvement Act (25 U.S.C. 1601 et seq.)
18 provides otherwise for medicare and medicaid receipts,
19 and such funds shall not result in any offset or reduction
20 in the amount of funds the Indian tribe is authorized to
21 receive under its funding agreement in the year the pro-
22 gram income is received or for any subsequent fiscal year.

23 “(k) LIMITATION OF COSTS.—An Indian tribe shall
24 not be obligated to continue performance that requires an
25 expenditure of funds in excess of the amount of funds

1 transferred under a compact or funding agreement. If at
2 any time the Indian tribe has reason to believe that the
3 total amount provided for a specific activity in the com-
4 pact or funding agreement is insufficient the Indian tribe
5 shall provide reasonable notice of such insufficiency to the
6 Secretary. If the Secretary does not increase the amount
7 of funds transferred under the funding agreement, the In-
8 dian tribe may suspend performance of the activity until
9 such time as additional funds are transferred.

10 **“SEC. 509. CONSTRUCTION PROJECTS.**

11 “(a) IN GENERAL.—Indian tribes participating in
12 tribal self-governance may carry out construction projects
13 under this title if they elect to assume all Federal respon-
14 sibilities under the National Environmental Policy Act of
15 1969, the Historic Preservation Act , and related provi-
16 sions of law that would apply if the Secretary were to un-
17 dertake a construction project, by adopting a resolution
18 (1) designating a certifying officer to represent the Indian
19 tribe and to assume the status of a responsible Federal
20 official under such laws, and (2) accepting the jurisdiction
21 of the Federal court for the purpose of enforcement of
22 the responsibilities of the responsible Federal official
23 under such environmental laws.

24 “(b) NEGOTIATIONS.—Construction project proposals
25 shall be negotiated pursuant to the statutory process in

1 section 105(m) and resulting construction project agree-
2 ments shall be incorporated into funding agreements as
3 addenda.

4 “(c) CODES AND STANDARDS.—The Indian tribe and
5 the Secretary shall agree upon and specify appropriate
6 buildings codes and architectural/engineering standards
7 (including health and safety) which shall be in conformity
8 with nationally recognized standards for comparable
9 projects.

10 “(d) RESPONSIBILITY FOR COMPLETION.—The In-
11 dian tribe shall assume responsibility for the successful
12 completion of the construction project in accordance with
13 the negotiated construction project agreement.

14 “(e) FUNDING.—Funding for construction projects
15 carried out under this title shall be included in funding
16 agreements as annual advance payments, with semiannual
17 payments at the option of the Indian tribe. Annual ad-
18 vance and semiannual payment amounts shall be deter-
19 mined based on mutually agreeable project schedules re-
20 flecting work to be accomplished within the advance pay-
21 ment period, work accomplished and funds expended in
22 previous payment periods, and the total prior payments.
23 The Secretary shall include associated project contingency
24 funds with each advance payment installment. The Indian

1 tribe shall be responsible for the management of the con-
2 tingency funds included in funding agreements.

3 “(f) APPROVAL.—The Secretary shall have at least
4 one opportunity to approve project planning and design
5 documents prepared by the Indian tribe in advance of con-
6 struction of the facilities specified in the scope of work
7 for each negotiated construction project agreement or
8 amendment thereof which results in a significant change
9 in the original scope of work. The Indian tribe shall pro-
10 vide the Secretary with project progress and financial re-
11 ports not less than semiannually. The Secretary may con-
12 duct on-site project oversight visits semiannually or on an
13 alternate schedule agreed to by the Secretary and the In-
14 dian tribe.

15 “(g) WAGES.—All laborers and mechanics employed
16 by contractors and subcontractors in the construction, al-
17 teration, or repair, including painting or decorating of
18 building or other facilities in connection with construction
19 projects undertaken by self-governance Indian tribes
20 under this Act, shall be paid wages at not less than those
21 prevailing wages on similar construction in the locality as
22 determined by the Secretary of Labor in accordance with
23 the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494).
24 With respect to construction, alteration, or repair work to
25 which the Act of March 3, 1921, is applicable under the

1 terms of this section, the Secretary of Labor shall have
2 the authority and functions set forth in Reorganization
3 Plan Numbered 14, of 1950, and section 2 of the Act of
4 June 13, 1934 (48 Stat. 948).

5 “(h) APPLICATION OF OTHER LAWS.—Unless other-
6 wise agreed to by the Indian tribe, no provision of the Of-
7 fice of Federal Procurement Policy Act, the Federal Ac-
8 quisition Regulations issued pursuant thereto, or any
9 other law or regulation pertaining to Federal procurement
10 (including Executive orders) shall apply to any construc-
11 tion project conducted under this title.

12 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**
13 **TIONS.**

14 “Notwithstanding any other provision of law, unless
15 expressly agreed to by the participating Indian tribe, the
16 compacts and funding agreements entered into under this
17 title shall not be subject to Federal contracting or coopera-
18 tive agreement laws and regulations (including Executive
19 orders and the Secretary’s regulations), except to the ex-
20 tent that such laws expressly apply to Indian tribes.

21 **“SEC. 511. CIVIL ACTIONS.**

22 “(a) CONTRACT DEFINED.—For the purposes of sec-
23 tion 110, the term ‘contract’ shall include compacts and
24 funding agreements entered into under this title.

1 “(b) APPLICABILITY OF CERTAIN LAWS.—Section
2 2103 of the Revised Statutes of the United States Code
3 (25 U.S.C. 81) and section 16 of the Act of June 18, 1934
4 (25 U.S.C. 476), shall not apply to attorney and other
5 professional contracts entered into by Indian tribes par-
6 ticipating in self-governance under this title.

7 “(c) REFERENCES.—All references in the Indian
8 Self-Determination and Education Assistance Act (25
9 U.S.C. 450 et seq.) to section 1 of the Act of June 26,
10 1936 (25 U.S.C. 81) are hereby deemed to include section
11 1 of the Act of July 3, 1952 (25 U.S.C. 82a).

12 **“SEC. 512. FACILITATION.**

13 “(a) SECRETARIAL INTERPRETATION.—Except as
14 otherwise provided by law, the Secretary shall interpret
15 all Federal laws, Executive orders and regulations in a
16 manner that will facilitate—

17 “(1) the inclusion of programs, services, func-
18 tions, and activities (or portions thereof) and funds
19 associated therewith, in the agreements entered into
20 under this section;

21 “(2) the implementation of compacts and fund-
22 ing agreements entered into under this title; and

23 “(3) the achievement of tribal health goals and
24 objectives.

25 “(b) REGULATION WAIVER.—

1 “(1) An Indian tribe may submit a written re-
2 quest to waive application of a regulation promul-
3 gated under this Act for a compact or funding
4 agreement entered into with the Indian Health Serv-
5 ice under this title, to the Secretary identifying the
6 applicable Federal regulation sought to be waived
7 and the basis for the request.

8 “(2) Not later than 90 days after receipt by the
9 Secretary of a written request by an Indian tribe to
10 waive application of a regulation for a compact or
11 funding agreement entered into under this title, the
12 Secretary shall either approve or deny the requested
13 waiver in writing. A denial may be made only upon
14 a specific finding by the Secretary that identified
15 language in the regulation may not be waived be-
16 cause such waiver is prohibited by Federal law. A
17 failure to approve or deny a waiver request not later
18 than 90 days after receipt shall be deemed an ap-
19 proval of such request. The Secretary’s decision shall
20 be final for the Department.

21 “(c) ACCESS TO FEDERAL PROPERTY.—In connec-
22 tion with any compact or funding agreement executed pur-
23 suant to this title or an agreement negotiated under the
24 Tribal Self-Governance Demonstration Project established
25 under title III, as in effect before the enactment of the

1 Tribal Self-Governance Amendments of 1998, upon the re-
2 quest of an Indian tribe, the Secretary—

3 “(1) shall permit an Indian tribe to use existing
4 school buildings, hospitals, and other facilities and
5 all equipment therein or appertaining thereto and
6 other personal property owned by the Government
7 within the Secretary’s jurisdiction under such terms
8 and conditions as may be agreed upon by the Sec-
9 retary and the tribe for their use and maintenance;

10 “(2) may donate to an Indian tribe title to any
11 personal or real property found to be excess to the
12 needs of any agency of the Department, or the Gen-
13 eral Services Administration, except that—

14 “(A) subject to the provisions of subparagraph
15 (B), title to property and equipment fur-
16 nished by the Federal Government for use in
17 the performance of the compact or funding
18 agreement or purchased with funds under any
19 compact or funding agreement shall, unless oth-
20 erwise requested by the Indian tribe, vest in the
21 appropriate Indian tribe;

22 “(B) if property described in subparagraph
23 (A) has a value in excess of \$5,000 at the time
24 of retrocession, withdrawal, or reassumption, at
25 the option of the Secretary upon the retroces-

1 sion, withdrawal, or reassumption, title to such
2 property and equipment shall revert to the De-
3 partment of Health and Human Services; and

4 “(C) all property referred to in subpara-
5 graph (A) shall remain eligible for replacement,
6 maintenance, and improvement on the same
7 basis as if title to such property were vested in
8 the United States; and

9 “(3) shall acquire excess or surplus Government
10 personal or real property for donation to an Indian
11 tribe if the Secretary determines the property is ap-
12 propriate for use by the Indian tribe for any purpose
13 for which a compact or funding agreement is author-
14 ized under this title.

15 “(d) MATCHING OR COST-PARTICIPATION REQUIRE-
16 MENT.—All funds provided under compacts, funding
17 agreements, or grants made pursuant to this Act, shall
18 be treated as non-Federal funds for purposes of meeting
19 matching or cost participation requirements under any
20 other Federal or non-Federal program.

21 “(e) STATE FACILITATION.—States are hereby au-
22 thorized and encouraged to enact legislation, and to enter
23 into agreements with Indian tribes to facilitate and supple-
24 ment the initiatives, programs, and policies authorized by

1 this title and other Federal laws benefiting Indians and
2 Indian tribes.

3 “(f) RULES OF CONSTRUCTION.—Each provision of
4 this title and each provision of a compact or funding
5 agreement shall be liberally construed for the benefit of
6 the Indian tribe participating in self-governance and any
7 ambiguity shall be resolved in favor of the Indian tribe.

8 **“SEC. 513. BUDGET REQUEST.**

9 “(a) IN GENERAL.—The President shall identify in
10 the annual budget request submitted to the Congress
11 under section 1105 of title 31, United States Code, all
12 funds necessary to fully fund all funding agreements au-
13 thorized under this title, including funds specifically iden-
14 tified to fund tribal base budgets. All funds so appro-
15 priated shall be apportioned to the Indian Health Service.
16 Such funds shall be provided to the Office of Tribal Self-
17 Governance which shall be responsible for distribution of
18 all funds provided under section 505. Nothing in this pro-
19 vision shall be construed to authorize the Indian Health
20 Service to reduce the amount of funds that a self-govern-
21 ance tribe is otherwise entitled to receive under its funding
22 agreement or other applicable law, whether or not such
23 funds are made available to the Office of Tribal Self-Gov-
24 ernance under this section.

1 “(b) PRESENT FUNDING; SHORTFALLS.—In such
2 budget request, the President shall identify the level of
3 need presently funded and any shortfall in funding (in-
4 cluding direct program and contract support costs) for
5 each Indian tribe, either directly by the Secretary, under
6 self-determination contracts, or under compacts and fund-
7 ing agreements authorized under this title.

8 **“SEC. 514. REPORTS.**

9 “(a) ANNUAL REPORT.—Not later than January 1
10 of each year after the date of the enactment of this title,
11 the Secretary shall submit to the Committee on Resources
12 of the House of Representatives and the Committee on
13 Indian Affairs of the Senate a written report regarding
14 the administration of this title. Such report shall include
15 a detailed analysis of the level of need being presently
16 funded or unfunded for each Indian tribe, either directly
17 by the Secretary, under self-determination contracts under
18 title I, or under compacts and funding agreements author-
19 ized under this Act. In compiling reports pursuant to this
20 section, the Secretary may not impose any reporting re-
21 quirements on participating Indian tribes or tribal organi-
22 zations, not otherwise provided in this Act.

23 “(b) CONTENTS.—The report shall be compiled from
24 information contained in funding agreements, annual

1 audit reports, and Secretarial data regarding the disposi-
2 tion of Federal funds and shall—

3 “(1) identify the relative costs and benefits of
4 self-governance;

5 “(2) identify, with particularity, all funds that
6 are specifically or functionally related to the provi-
7 sion by the Secretary of services and benefits to self-
8 governance Indian tribes and their members;

9 “(3) identify the funds transferred to each self-
10 governance Indian tribe and the corresponding re-
11 duction in the Federal bureaucracy;

12 “(4) identify the funding formula for individual
13 tribal shares of all headquarters funds, together with
14 the comments of affected Indian tribes or tribal org-
15 ganizations, developed under subsection (c);

16 “(5) identify amounts expended in the preced-
17 ing fiscal year to carry out inherent Federal func-
18 tions, including an identification of those functions
19 by type and location;

20 “(6) contain a description of the method or
21 methods (or any revisions thereof) used to determine
22 the individual tribal share of funds controlled by all
23 components of the Indian Health Service (including
24 funds assessed by any other Federal agency) for in-

1 inclusion in self-governance compacts or funding
2 agreements;

3 "(7) prior to being submitted to Congress, be
4 distributed to the Indian tribes for comment, such
5 comment period to be for no less than 30 days; and

6 "(8) include the separate views and comments
7 of the Indian tribes or tribal organizations.

8 "(c) REPORT ON FUND DISTRIBUTION METHOD.—
9 Not later than 180 days after the date of enactment of
10 this title, the Secretary shall, after consultation with In-
11 dian tribes, submit a written report to the Committee on
12 Resources of the House of Representatives and the Com-
13 mittee on Indian Affairs of the Senate which describes the
14 method or methods used to determine the individual tribal
15 share of funds controlled by all components of the Indian
16 Health Service (including funds assessed by any other
17 Federal agency) for inclusion in self-governance compacts
18 or funding agreements.

19 **"SEC. 515. DISCLAIMERS.**

20 "(a) NO FUNDING REDUCTION.—Nothing in this
21 title shall be construed to limit or reduce in any way the
22 funding for any program, project, or activity serving an
23 Indian tribe under this or other applicable Federal law.
24 Any Indian tribe that alleges that a compact or funding

1 agreement is in violation of this section may apply the pro-
2 visions of section 110.

3 “(b) FEDERAL TRUST AND TREATY RESPONSIBIL-
4 ITIES.—Nothing in this Act shall be construed to diminish
5 in any way the trust responsibility of the United States
6 to Indian tribes and individual Indians that exists under
7 treaties, Executive orders, or other laws and court deci-
8 sions.

9 “(c) TRIBAL EMPLOYMENT.—For purposes of section
10 2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter
11 372) (commonly known as the National Labor Relations
12 Act), an Indian tribe carrying out a self-determination
13 contract, compact, annual funding agreement, grant, or
14 cooperative agreement under this Act shall not be consid-
15 ered an employer.

16 “(d) OBLIGATIONS OF THE UNITED STATES.—The
17 Indian Health Service under this Act shall neither bill nor
18 charge those Indians who may have the economic means
19 to pay for services, nor require any Indian tribe to do so.

20 **“SEC. 516. APPLICATION OF OTHER SECTIONS OF THE ACT.**

21 “(a) MANDATORY APPLICATION.—All provisions of
22 sections 5(b), 6, 7, 102(c) and (d), 104, 105(k) and (l),
23 106(a) through (k), and 111 of this Act and section 314
24 of Public Law 101–512 (coverage under the Federal Tort
25 Claims Act), to the extent not in conflict with this title,

1 shall apply to compacts and funding agreements author-
2 ized by this title.

3 “(b) DISCRETIONARY APPLICATION.—At the request
4 of a participating Indian tribe, any other provision of title
5 I, to the extent such provision is not in conflict with this
6 title, shall be made a part of a funding agreement or com-
7 pact entered into under this title. The Secretary is obli-
8 gated to include such provision at the option of the partici-
9 pating Indian tribe or tribes. If such provision is incor-
10 porated it shall have the same force and effect as if it
11 were set out in full in this title. In the event an Indian
12 tribe requests such incorporation at the negotiation stage
13 of a compact or funding agreement, such incorporation
14 shall be deemed effective immediately and shall control the
15 negotiation and resulting compact and funding agreement.

16 **“SEC. 517. REGULATIONS.**

17 “(a) IN GENERAL.—

18 “(1) Not later than 90 days after the date of
19 enactment of this title, the Secretary shall initiate
20 procedures under subchapter III of chapter 5 of title
21 5, United States Code, to negotiate and promulgate
22 such regulations as are necessary to carry out this
23 title.

24 “(2) Proposed regulations to implement this
25 title shall be published in the Federal Register by

1 the Secretary no later than 1 year after the date of
2 enactment of this title.

3 “(3) The authority to promulgate regulations
4 under this title shall expire 21 months after the date
5 of enactment of this title.

6 “(b) COMMITTEE.—A negotiated rulemaking commit-
7 tee established pursuant to section 565 of title 5, United
8 States Code, to carry out this section shall have as its
9 members only Federal and tribal government representa-
10 tives, a majority of whom shall be nominated by and be
11 representatives of Indian tribes with funding agreements
12 under this Act, and the Committee shall confer with, and
13 accommodate participation by, representatives of Indian
14 tribes, inter-tribal consortia, tribal organizations, and in-
15 dividual tribal members.

16 “(c) ADAPTATION OF PROCEDURES.—The Secretary
17 shall adapt the negotiated rulemaking procedures to the
18 unique context of self-governance and the government-to-
19 government relationship between the United States and
20 Indian tribes.

21 “(d) EFFECT.—The lack of promulgated regulations
22 shall not limit the effect of this title.

23 “(e) EFFECT OF CIRCULARS, POLICIES, MANUALS,
24 GUIDANCES, AND RULES.—Unless expressly agreed to by
25 the participating Indian tribe in the compact or funding

1 agreement, the participating Indian tribe shall not be sub-
2 ject to any agency circular, policy, manual, guidance, or
3 rule adopted by the Indian Health Service and the eligi-
4 bility provisions of section 105(g).

5 **“SEC. 518. APPEALS.**

6 “In any appeal (including civil actions) involving deci-
7 sions made by the Secretary under this title, the Secretary
8 shall have the burden of proof of demonstrating by clear
9 and convincing evidence—

10 “(1) the validity of the grounds for the decision
11 made; and

12 “(2) the decision is fully consistent with provi-
13 sions and policies of this title.

14 **“SEC. 519. AUTHORIZATION OF APPROPRIATIONS.**

15 “There are authorized to be appropriated such sums
16 as may be necessary to carry out this title.

17 **“TITLE VI—TRIBAL SELF-GOV-**
18 **ERNANCE—DEPARTMENT OF**
19 **HEALTH AND HUMAN SERV-**
20 **ICES**

21 **“SEC. 601. DEMONSTRATION PROJECT FEASIBILITY.**

22 “(a) STUDY.—The Secretary shall conduct a study
23 to determine the feasibility a Tribal Self-Governance Dem-
24 onstration Project for appropriate programs, services,

1 functions, and activities (or portions thereof) of the agen-
2 cy.

3 “(b) CONSIDERATIONS.—When conducting the study,
4 the Secretary shall consider—

5 “(1) the probable effects on specific programs
6 and program beneficiaries of such a demonstration
7 project;

8 “(2) statutory, regulatory, or other imped-
9 iments to implementation of such a demonstration
10 project;

11 “(3) strategies for implementing such a dem-
12 onstration project;

13 “(4) probable costs or savings associated with
14 such a demonstration project;

15 “(5) methods to assure quality and accountabil-
16 ity in such a demonstration project; and

17 “(6) such other issues that may be determined
18 by the Secretary or developed through consultation
19 pursuant to section 602.

20 “(c) REPORT.—Not later than 18 months after the
21 enactment of this title, the Secretary shall submit a report
22 to the Committee on Resources of the House of Represent-
23 atives and the Committee on Indian Affairs of the Senate.

24 The report shall contain—

25 “(1) the results of the study;

1 “(2) a list of programs, services, functions, and
2 activities (or portions thereof) within the agency
3 which it would be feasible to include in a Tribal Self-
4 Governance Demonstration Project;

5 “(3) a list of programs, services, functions, and
6 activities (or portions thereof) included in the list
7 provided pursuant to paragraph (2) which could be
8 included in a Tribal Self-Governance Demonstration
9 Project without amending statutes, or waiving regu-
10 lations that the Secretary may not waive;

11 “(4) a list of legislative actions required in
12 order to include those programs, services, functions,
13 and activities (or portions thereof) included in the
14 list provided pursuant to paragraph (2) but not in-
15 cluded in the list provided pursuant to paragraph
16 (3) in a Tribal Self-Governance Demonstration
17 Project; and

18 “(5) any separate views of tribes and other en-
19 tities consulted pursuant to section 602 related to
20 the information provided pursuant to paragraph (1)
21 through (4).

22 **“SEC. 602. CONSULTATION.**

23 “(a) STUDY PROTOCOL.—

24 “(1) CONSULTATION WITH INDIAN TRIBES.—

25 The Secretary shall consult with Indian tribes to de-

1 determine a protocol for consultation under subsection
2 (b) prior to consultation under such subsection with
3 the other entities described in such subsection. The
4 protocol shall require, at a minimum, that—

5 “(A) the government-to-government rela-
6 tionship with Indian tribes forms the basis for
7 the consultation process;

8 “(B) the Indian tribes and the Secretary
9 jointly conduct the consultations required by
10 this section; and

11 “(C) the consultation process allow for sep-
12 arate and direct recommendations from the In-
13 dian tribes and other entities described in sub-
14 section (b).

15 “(2) OPPORTUNITY FOR PUBLIC COMMENT.—In
16 determining the protocol described in paragraph
17 (1), the Secretary shall publish the proposed protocol
18 and allow a period of not less than 30 days for com-
19 ment by entities described in subsection (b) and
20 other interested individuals, and shall take com-
21 ments received into account in determining the final
22 protocol.

23 "(b) CONDUCTING STUDY.—In conducting the study
24 under this title, the Secretary shall consult with Indian
25 tribes, States, counties, municipalities, program bene-

1 ficiaries, and interested public interest groups, and may
2 consult with other entities as appropriate.

3 **“SEC. 603. DEFINITIONS.**

4 “(a) IN GENERAL.—For purposes of this title, the
5 Secretary may use definitions provided in title V.

6 “(b) AGENCY.—For purposes of this title, the term
7 ‘agency’ shall mean any agency or other organizational
8 unit of the Department of Health and Human Services,
9 other than the Indian Health Service.

10 **“SEC. 604. AUTHORIZATION OF APPROPRIATIONS.**

11 “There are authorized to be appropriated for fiscal
12 years 1999 and 2000 such sums as may be necessary to
13 carry out this title. Such sums shall remain available until
14 expended.”.

15 **SEC. 5. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS.**

16 (a) BURDEN OF PROOF IN DISTRICT COURT Ac-
17 TIONS.—Section 102(e)(1) of the Indian Self-Determina-
18 tion and Education Assistance Act (25 U.S.C. 450f(e)(1))
19 is amended by inserting after “subsection (b)(3)” the fol-
20 lowing: “or any civil action conducted pursuant to section
21 110(a)”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to any proceedings commenced
24 after October 25, 1994.

1 **SEC. 6. SPEEDY ACQUISITION OF GOODS, SERVICES, OR**

2 **SUPPLIES.**

3 Section 105(k) of the Indian Self-Determination and

4 Education Assistance Act (25 U.S.C. 450j(k)) is amend-

5 ed—

6 (1) by striking “deemed an executive agency”

7 and inserting “deemed an executive agency and part

8 of the Indian Health Service”; and

9 (2) by adding at the end thereof the following:

10 “At the request of an Indian tribe, the Secretary
11 shall enter into an agreement for the acquisition, on
12 behalf of the Indian tribe, of any goods, services, or
13 supplies available to the Secretary from the General
14 Services Administration or other Federal agencies
15 that are not directly available to the Indian tribe
16 under this section or any other Federal law, includ-
17 ing acquisitions from prime vendors. All such acqui-
18 sitions shall be undertaken through the most effi-
19 cient and speedy means practicable, including elec-
20 tronic ordering arrangements.

21 **SEC. 7. PATIENT RECORDS.**

22 Section 105 of the Indian Self-Determination and

23 Education Assistance Act (25 U.S.C. 450j) is amended by

24 adding at the end the following new subsection:

25 “(o) At the option of an Indian tribe or tribal organi-
26 zation, Indian patient records may be deemed to be Fed-

1 eral records under the Federal Records Act of 1950 for
2 the limited purposes of making such records eligible for
3 storage by Federal Records Centers to the same extent
4 and in the same manner as other Department of Health
5 and Human Services patient records.”.

6 **SEC. 8. REPEAL.**

7 Title III of the Indian Self-Determination and Edu-
8 cation Assistance Act (25 U.S.C. 450f note) is hereby re-
9 pealed.

10 **SEC. 9. SAVINGS PROVISION.**

11 Funds appropriated for title III of the Indian Self-
12 Determination and Education Assistance Act (25 U.S.C.
13 450f note) shall be available for use under title V of such
14 Act.

15 **SEC. 10. EFFECTIVE DATE.**

16 Except as otherwise provided, the provisions of this
17 Act shall take effect on the date of the enactment of this
18 Act.

Passed the House of Representatives October 5,
1998.

Attest:

Clerk.