

105TH CONGRESS
1ST SESSION

H. R. 1833

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 1997

Mr. MILLER of California (for himself, Mr. YOUNG of Alaska, Mr. KILDEE, Mr. KENNEDY of Rhode Island, and Mr. FALEOMAVAEGA) introduced the following bill; which was referred to the Committee on Resources

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Self-Governance
5 Amendments of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the tribal right of self-government flows
2 from the inherent sovereignty of Indian tribes and
3 nations;

4 (2) the United States recognizes a special gov-
5 ernment-to-government relationship with Indian
6 tribes, including the right of the Indian tribes to
7 self-governance, as reflected in the Constitution,
8 treaties, Federal statutes, and the course of dealings
9 of the United States with Indian tribes;

10 (3) although progress has been made, the Fed-
11 eral bureaucracy, with its centralized rules and regu-
12 lations, has eroded tribal self-governance and domi-
13 nates tribal affairs;

14 (4) the Tribal Self-Governance Demonstration
15 Project was designed to improve and perpetuate the
16 government-to-government relationship between In-
17 dian tribes and the United States and to strengthen
18 tribal control over Federal funding and program
19 management;

20 (5) although the Federal Government has made
21 considerable strides in improving Indian health care,
22 it has failed to fully meet its trust responsibilities to
23 the Indian tribes; and

1 (6) Congress has reviewed the results of the
2 Tribal Self-Governance Demonstration Project and
3 finds that—

4 (A) transferring full control and funding to
5 tribal governments, upon tribal request, over
6 decision making for Federal programs, services,
7 functions and activities (or portions thereof) is
8 an appropriate and effective means to imple-
9 ment the Federal policy of government-to-gov-
10 ernment relations with Indian tribes; and

11 (B) transferring full control and funding to
12 tribal governments, upon tribal request, over
13 decision making for Federal programs, services,
14 functions and activities strengthens the Federal
15 policy of Indian self-determination.

16 **SEC. 3. DECLARATION OF POLICY.**

17 It is the policy of the Congress to permanently estab-
18 lish and implement tribal self-governance within the De-
19 partment of Health and Human Services, and to call for
20 full cooperation from the Department and its constituent
21 agencies in the implementation of self-governance—

22 (1) to enable the United States to maintain and
23 improve its unique and continuing relationship with,
24 and responsibility to, Indian tribes;

1 (2) to permit each Indian tribe to choose the
2 extent of the participation of such Indian tribe in
3 self-governance;

4 (3) to coexist with the provisions of the Indian
5 Self-Determination Act relating to the provision of
6 Indian services by designated Federal agencies;

7 (4) to ensure the continuation of the trust re-
8 sponsibility of the United States to Indian tribes and
9 Indian individuals;

10 (5) to strengthen the government-to-government
11 relationship between the United States and Indian
12 tribes;

13 (6) to permit an orderly transition from Federal
14 domination of programs and services to provide In-
15 dian tribes with meaningful authority, control, fund-
16 ing and discretion to plan, conduct, redesign and ad-
17 minister programs, services, functions and activities
18 (or portions thereof) that meet the needs of the indi-
19 vidual tribal communities;

20 (7) to provide for a measurable parallel reduc-
21 tion in the Federal bureaucracy as programs, serv-
22 ices, functions and activities (or portions thereof)
23 are assumed by Indian tribes;

24 (8) to encourage the Secretary to identify all
25 programs, services, functions and activities (or por-

1 tions thereof) of the Department that may be man-
2 aged by an Indian tribe under this Act and to assist
3 Indian tribes to assume responsibility for such pro-
4 grams, services, functions and activities (or portions
5 thereof); and

6 (9) to provide Indian tribes with the earliest op-
7 portunity to administer programs, services, functions
8 and activities (or portions thereof) in the Depart-
9 ment of Health and Human Services.

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

11 The Indian Self-Determination and Education Assist-
12 ance Act (25 U.S.C. 450 et seq.) is amended by adding
13 at the end the following new title:

14 **“TITLE V—TRIBAL SELF-**
15 **GOVERNANCE**

16 **“SEC. 501. ESTABLISHMENT.**

17 “The Secretary of Health and Human Services shall
18 establish and carry out a program within the Department
19 of Health and Human Services to be known as Tribal Self-
20 Governance in accordance with this title.

21 **“SEC. 502. DEFINITIONS.**

22 “(a) Except as otherwise provided herein, the defini-
23 tions set out in sections 4(a) through (g), (j), (l), and (m)
24 of the Indian Self-Determination and Education Assist-
25 ance Act shall apply to this title as if fully set forth herein,

1 provided that reference therein to a contract or self-deter-
2 mination contract shall include a compact and funding
3 agreement authorized under this title.

4 “(b) For purposes of this title—

5 “(1) the term ‘inherent Federal functions’
6 means those functions which by express provision of
7 the Constitution or Federal statute must be per-
8 formed by officials of the United States and there-
9 fore may not be delegated to Indian tribes;

10 “(2) the term ‘inter-tribal consortium’ means a
11 coalition of two or more separate Indian tribes that
12 join together for the purpose of participating in Self-
13 Governance, including a tribal organization;

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

20 “(4) the term ‘Secretary’ means the Secretary
21 of Health and Human Services; and

22 “(5) the term ‘Self-Governance’ means the pro-
23 gram established in section 501.

24 “(c) Where an Indian tribe has authorized another
25 Indian tribe, an inter-tribal consortium, or a tribal organi-

1 zation to plan for or carry out programs, services, func-
2 tions, or activities (or portions thereof) on its behalf under
3 this title, the authorized Indian tribe, inter-tribal consor-
4 tium, or tribal organization shall have the rights and re-
5 sponsibilities of the authorizing Indian tribe (except as
6 otherwise provided in the authorizing resolution or in this
7 title). In such event, the term ‘Indian tribe’ as used in
8 this title shall include such other authorized Indian tribe,
9 inter-tribal consortium, or tribal organization.

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

11 “(a) CONTINUING PARTICIPATION.—Each Indian
12 tribe that is participating in the Tribal Self-Governance
13 Demonstration Project at the Department of Health and
14 Human Services under title III on the date of enactment
15 of this title shall thereafter participate in Self-Governance
16 under this title and cease participation in the Tribal Self-
17 Governance Demonstration Project under title III.

18 “(b) ADDITIONAL PARTICIPANTS.—

19 “(1) In addition to those Indian tribes partici-
20 pating in Self-Governance under subsection (a), each
21 year an additional 50 Indian tribes who meet the eli-
22 gibility criteria specified in subsection (c) shall be
23 entitled to participate in Self-Governance.

24 “(2) An Indian tribe that has withdrawn from
25 participation in an inter-tribal consortium or tribal

1 organization that is participating in Self-Governance
2 shall be entitled to continue to participate in Self-
3 Governance provided the Indian tribe meets the eli-
4 gibility criteria specified in subsection (c). Such In-
5 dian tribe shall be entitled to its tribal share of
6 funds supporting those programs, services, func-
7 tions, or activities (or portions thereof) that it will
8 be carrying out under its own compact and funding
9 agreement. In no event shall the withdrawal of an
10 Indian tribe from an inter-tribal consortium or tribal
11 organization affect the eligibility of the inter-tribal
12 consortium or tribal organization to participate in
13 Self-Governance.

14 “(c) APPLICANT POOL.—The qualified applicant pool
15 for Self-Governance shall consist of an Indian tribe that—

16 “(1) successfully completes the planning phase
17 described in subsection (d);

18 “(2) has requested participation in Self-Govern-
19 ance by resolution or other official action by the gov-
20 erning body (or bodies) of the Indian tribe or tribes
21 to be served; and

22 “(3) has demonstrated, for the previous three
23 fiscal years, financial stability and financial manage-
24 ment capability. Evidence that during such years the
25 Indian tribe had no uncorrected significant and ma-

1 terial audit exceptions in the required annual audit
2 of the Indian tribe’s self-determination contracts or
3 self-governance funding agreements with any Fed-
4 eral agency shall be conclusive evidence of the re-
5 quired stability and capability for the purposes of
6 this subsection.

7 “(d) PLANNING PHASE.—Each Indian tribe seeking
8 participation in Self-Governance shall complete a planning
9 phase. The planning phase shall include—

10 “(1) legal and budgetary research; and

11 “(2) internal tribal government planning and
12 organizational preparation.

13 “(e) GRANTS.—Subject to the availability of appro-
14 priations, any Indian tribe meeting the requirements of
15 subsections (c)(2) and (3) shall be eligible for—

16 “(1) a grant to plan for participation in Self-
17 Governance; and

18 “(2) a grant to negotiate the terms of the In-
19 dian tribe’s or tribal organization’s participation in
20 Self-Governance, as set forth in a compact and a
21 funding agreement.

22 “(f) RECEIPT OF GRANT NOT REQUIRED.—Receipt
23 of a grant under subsection (e) shall not be a prerequisite
24 to participation in Self-Governance.

1 **“SEC. 504. COMPACTS.**

2 “(a) COMPACT REQUIRED.—The Secretary shall ne-
3 gotiate and enter into a written compact with each Indian
4 tribe participating in Self-Governance in a manner consist-
5 ent with the Federal Government’s trust responsibility and
6 the government-to-government relationship between In-
7 dian tribes and the United States.

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

14 “(c) EXISTING COMPACTS.—An Indian tribe partici-
15 pating in Self-Governance on the date of enactment of this
16 title shall have the option at any time thereafter to ei-
17 ther—

18 “(1) retain its existing compact (in whole or in
19 part) to the extent the provisions of such compact
20 are not directly contrary to any express provision of
21 this title, or

22 “(2) adopt in lieu thereof (in whole or in part)
23 a new compact in conformity with this title.

24 “(d) TERM AND EFFECTIVE DATE.—The effective
25 date of a compact shall be the date of the approval and
26 execution by the Indian tribe or another date agreed upon

1 by the parties, and shall remain in effect for so long as
2 permitted by Federal law or until terminated by mutual
3 written agreement.

4 **“SEC. 505. FUNDING AGREEMENTS.**

5 “(a) FUNDING AGREEMENT REQUIRED.—The Sec-
6 retary shall negotiate and enter into a written funding
7 agreement with each Indian tribe participating in Self-
8 Governance in a manner consistent with the Federal Gov-
9 ernment’s trust responsibility.

10 “(b) CONTENTS.—Each funding agreement required
11 under subsection (a) shall, as determined by the Indian
12 tribe, authorize the Indian tribe to plan, conduct, consoli-
13 date, administer, and receive funding for all programs,
14 services, functions, and activities (or portions thereof), in-
15 cluding tribal shares of Indian Health Service competitive
16 grants, that are carried out for the benefit of Indians
17 (where Indian tribes or Indians are primary or significant
18 beneficiaries), administered by the Department of Health
19 and Human Services through the Indian Health Service
20 without regard to the agency or office of the Indian Health
21 Service within which the program, service, function, or ac-
22 tivity (or portion thereof) is performed, including tribal
23 share funding for all local, field, service unit, area, re-
24 gional, and central/headquarters or national office func-
25 tions administered under the authority of—

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

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

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

6 “(4) the Indian Health Care Improvement Act
7 (25 U.S.C. 1601 et seq.);

8 “(5) the Indian Alcohol and Substance Abuse
9 Prevention and Treatment Act of 1986 (25 U.S.C.
10 2401 et seq.);

11 “(6) any other act of Congress authorizing
12 agencies of the Department of Health and Human
13 Services to administer, carry out or provide financial
14 assistance to such programs, services, functions or
15 activities (or portions thereof) described in this sec-
16 tion; or

17 “(7) any other act of Congress authorizing such
18 programs, services, functions or activities (or por-
19 tions thereof) under which appropriations are made
20 to agencies other than agencies within the Depart-
21 ment of Health and Human Services, when the Sec-
22 retary administers such programs, services, func-
23 tions or activities (or portions thereof).

24 “(c) INCLUSION IN COMPACT OR FUNDING AGREE-
25 MENT.—Indian tribes or Indians need not be identified in

1 the authorizing statute for a program or element of a pro-
2 gram to be eligible for inclusion in a compact or funding
3 agreement under this title.

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

12 “(e) EXISTING FUNDING AGREEMENTS.—Each In-
13 dian tribe participating in self-governance on the date of
14 enactment of this title shall have the option at any time
15 thereafter to either—

16 “(1) retain its existing funding agreement (in
17 whole or in part) to the extent the provisions of such
18 funding agreement are not directly contrary to any
19 express provision of this title, or

20 “(2) adopt in lieu thereof (in whole or in part)
21 a new funding agreement in conformity with this
22 title.

23 “(f) NON-IHS DEMONSTRATION.—A compact or
24 funding agreement may authorize an Indian tribe to plan,
25 conduct, consolidate, and administer, and to receive fund-

1 ing for, any programs, services, functions, and activities
2 (or portions thereof), administered by the Department of
3 Health and Human Services that benefit the health or wel-
4 fare of Indian tribes or their members.

5 **“SEC. 506. GENERAL PROVISIONS.**

6 “(a) **APPLICABILITY.**—The provisions of this section
7 shall apply to compacts and funding agreements nego-
8 tiated under this title and an Indian tribe may, at its op-
9 tion, include provisions that reflect such requirements in
10 a compact or funding agreement.

11 “(b) **CONFLICTS OF INTEREST.**—Indian tribes par-
12 ticipating in Self-Governance under this title shall assure
13 that internal measures are in place to address conflicts
14 of interest in the administration of Self-Governance pro-
15 grams, services, functions, or activities (or portions there-
16 of).

17 “(c) **AUDITS.**—

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

22 “(2) **COST PRINCIPLES.**—An Indian tribe shall
23 apply cost principles under the applicable Office of
24 Management and Budget Circular, except as modi-
25 fied by section 106 of title I of this Act, or by any

1 exemptions to applicable Office of Management and
2 Budget Circulars subsequently granted by Office of
3 Management and Budget. No other audit or ac-
4 counting standards shall be required by the Sec-
5 retary. Any claim by the Federal Government
6 against the Indian tribe relating to funds received
7 under a funding agreement based on any audit
8 under this subsection shall be subject to the provi-
9 sions of section 106(f) of this Act.

10 “(d) RECORDS.—

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

16 “(2) RECORDKEEPING SYSTEM.—The Indian
17 tribe shall maintain a recordkeeping system, and,
18 after 30 days advance notice, provide the Secretary
19 with reasonable access to such records to enable the
20 Department of Health and Human Services to meet
21 its minimum legal record keeping system require-
22 ments under the Federal Records Act, 44 U.S.C.
23 3101, et seq.

24 “(e) REDESIGN AND CONSOLIDATION.—An Indian
25 tribe may redesign or consolidate programs, services, func-

1 tions, and activities (or portions thereof) included in a
2 funding agreement under section 505 and reallocate or re-
3 direct funds for such programs, services, functions, and
4 activities (or portions thereof) in any manner which the
5 Indian tribe deems to be in the best interest of the health
6 and welfare of the Indian community being served, except
7 that with respect to the redesign of programs described
8 in section 505(f), a joint agreement between the Secretary
9 and the Indian tribe shall be required.

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

19 “(1) the earlier of—

20 “(A) one year from the date of submission
21 of such request; or

22 “(B) the date on which the funding agree-
23 ment expires; or

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

1 “(g) WITHDRAWAL.—

2 “(1) PROCESS.—An Indian tribe may fully or
3 partially withdraw from a participating inter-tribal
4 consortium or tribal organization its share of any
5 program, function, service, or activity (or portions
6 thereof) included in a compact or funding agree-
7 ment, and such withdrawal will become effective
8 within the time frame specified in the resolution
9 which authorized transfer to the participating tribal
10 organization or inter-tribal consortium. In the ab-
11 sence of a specific time frame being set forth in the
12 resolution, such withdrawal shall become effective
13 on—

14 “(A) the earlier of—

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

17 “(ii) the date on which the funding
18 agreement expires; or

19 “(B) such date as may be mutually agreed
20 upon by the Secretary, the participating tribal
21 organization or inter-tribal consortium, and the
22 withdrawing Indian tribe.

23 “(2) DISTRIBUTION OF FUNDS.—When an In-
24 dian tribe or tribal organization eligible to enter into
25 a self-determination contract under title I of this Act

1 or a compact or funding agreement under this title
2 fully or partially withdraws from a participating
3 inter-tribal consortium or tribal organization, the
4 withdrawing Indian tribe or tribal organization shall
5 be entitled to its tribal share of funds supporting
6 those programs, services, functions, or activities (or
7 portions thereof) which it will be carrying out under
8 its own self-determination contract or compact and
9 funding agreement, and such funds shall be trans-
10 ferred from the amount in the funding agreement of
11 the inter-tribal consortium or tribal organization.

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-determina-
17 tion contract under title I of this Act, the resulting
18 self-determination contract shall be a mature self-de-
19 termination contract.

20 “(h) NONDUPLICATION.—For the period for which,
21 and to the extent to which, funding is provided under this
22 section or under the compact or funding agreement, the
23 Indian 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 may require the Indian tribe to report on data
9 regarding health status and service delivery, to the
10 extent such data is not otherwise available to the
11 Secretary and specific funds for this purpose are
12 provided by the Secretary under the funding agree-
13 ment, if such reporting shall impose minimal bur-
14 dens on the participating Indian tribe and such re-
15 quirements are promulgated under section 517 of
16 this title.

17 “(2) REASSUMPTION.—Compacts or funding
18 agreements negotiated between the Secretary and an
19 Indian tribe shall include a provision authorizing the
20 Secretary to reassume operation of a program, serv-
21 ice, function or activity (or portions thereof) if there
22 is a finding of—

23 “(A) the violation of rights or
24 endangerment of the health, safety, or welfare
25 of any persons; or

1 “(B) gross negligence or mismanagement
2 in the performance of the compact or funding
3 agreement.

4 The Secretary shall not reassume operation of a pro-
5 gram, service, function or activity unless the Sec-
6 retary has first provided 60 days written notice and
7 a hearing on the record to the Indian tribe, and the
8 Indian tribe has not taken corrective action. How-
9 ever, the Secretary may, upon written notification to
10 the tribe, immediately reassume operation of a pro-
11 gram, service, function or activity (or portions there-
12 of). If the Secretary makes a finding of imminent
13 substantial and irreparable endangerment of the
14 public health caused by an act or omission of the In-
15 dian tribe, and the endangerment arises out of a
16 failure to carry out the compact or funding agree-
17 ment, the Secretary shall provide the tribe with a
18 hearing on the record within ten days of the re-
19 assumption. In any hearing or appeal involving a de-
20 cision to reassume operation of a program, service,
21 function or activity, the Secretary shall have the
22 burden of proof of demonstrating by clear and con-
23 vincing evidence the validity of the grounds for the
24 reassumption.

1 “(b) FINAL OFFER.—In the event the Secretary and
2 a participating Indian tribe are unable to agree on the
3 terms of a compact or funding agreement (including fund-
4 ing levels), the Indian tribe may submit a final offer to
5 the Secretary. If the Secretary does not reject the offer
6 not later than 30 days after it is submitted by the Indian
7 tribe, or within a longer time agreed upon by the Indian
8 tribe made in compliance (the offer shall be deemed agreed
9 to by the Secretary).

10 “(c) REJECTION OF FINAL OFFERS.—If the Sec-
11 retary rejects an offer, made under subsection (b), the
12 Secretary shall provide—

13 “(1) written notification to the Indian tribe that
14 contains a specific finding that clearly demonstrates,
15 or that is supported by a controlling legal authority,
16 that—

17 “(A) the amount of funds proposed in the
18 final offer exceeds the applicable funding level
19 to which the Indian tribe is entitled under this
20 title;

21 “(B) the program, function, service, or ac-
22 tivity (or portion thereof) that is the subject of
23 the final offer is an inherent Federal function
24 that may not be carried out by the Indian tribe;

1 “(C) the Indian tribe cannot reasonably
2 carry out the program, function, service, or ac-
3 tivity (or portion thereof) in a satisfactory man-
4 ner; or

5 “(D) the Indian tribe is not eligible to par-
6 ticipate in Self-Governance under section 503 of
7 this title;

8 “(2) meaningful technical assistance to over-
9 come the objections stated in the notification re-
10 quired by paragraph (2);

11 “(3) the Indian tribe with a hearing on the
12 record with the right to engage in full discovery rel-
13 evant to any issue raised in the matter and the op-
14 portunity for appeal on the objections raised, pro-
15 vided that the Indian tribe may, in lieu of filing such
16 appeal, directly proceed to Federal district court
17 pursuant to section 110(a) of this Act; and

18 “(4) the Indian tribe with the option of enter-
19 ing into the severable portions of a final proposed
20 compact or funding agreement, or provision thereof,
21 (including lesser funding amount, if any), that the
22 Secretary did not reject, subject to any additional al-
23 terations necessary to conform the compact or fund-
24 ing agreement to the severed provisions. If an Indian
25 tribe exercises the option specified herein, it shall re-

1 tain the right to appeal the Secretary’s rejection
2 under this section and paragraphs (1), (2), and (3)
3 shall only apply to that portion of the proposed final
4 compact, funding agreement or provision thereof
5 that was rejected by the Secretary.

6 “(d) BURDEN OF PROOF.—

7 “(1) With respect to any hearing or appeal con-
8 ducted pursuant to this section, the Secretary shall
9 have the burden of demonstrating by clear and con-
10 vincing evidence the validity of the grounds for re-
11 jecting the offer (or a provision thereof) made under
12 subsection (b).

13 “(2) A decision that constitutes final agency ac-
14 tion and relates to an appeal within the Department
15 of Health and Human Services conducted under
16 subsection (c) shall be made either—

17 “(A) by an official of the Department who
18 holds a position at a higher organizational level
19 within the Department than the level of the de-
20 partmental agency in which the decision that is
21 the subject of the appeal was made; or

22 “(B) by an administrative judge.

23 “(e) GOOD FAITH.—In the negotiation of compacts
24 and funding agreements the Secretary shall at all times
25 negotiate in good faith to maximize implementation of the

1 Self-Governance policy. The Secretary shall carry out this
2 title in a manner that maximizes the policy of Tribal Self-
3 Governance, consistent with section 103 of this Act.

4 “(f) SAVINGS.—To the extent that programs, func-
5 tions, services, or activities (or portions thereof) carried
6 out by Indian tribes under this title reduce the administra-
7 tive or other responsibilities of the Secretary with respect
8 to the operation of Indian programs and result in savings
9 that have not otherwise been included in the amount of
10 tribal shares and other funds determined under section
11 508(d), the Secretary shall make such savings available
12 to the Indian tribes, inter-tribal consortia, or tribal organi-
13 zations for the provision of additional services to program
14 beneficiaries in a manner equitable to directly served, con-
15 tracted, and compacted programs.

16 “(g) TRUST RESPONSIBILITY.—The Secretary is pro-
17 hibited from waiving, modifying or diminishing in any way
18 the trust responsibility of the United States with respect
19 to Indian tribes and individual Indians that exist under
20 treaties, Executive orders, other laws, or court decisions.

21 **“SEC. 508. TRANSFER OF FUNDS.**

22 “(a) IN GENERAL.—Pursuant to the terms of any
23 compact or funding agreement entered into under this
24 title, the Secretary shall transfer to the Indian tribe all
25 funds provided for in the funding agreement, pursuant to

1 subsection (d), and provide funding for periods covered by
2 joint resolution adopted by Congress making continuing
3 appropriations, to the extent permitted by such resolu-
4 tions. In any instance where a funding agreement requires
5 an annual transfer of funding to be made at the beginning
6 of a Federal fiscal year, or requires semi-annual or other
7 periodic transfers of funding to be made commencing at
8 the beginning of a Federal fiscal year, the first such trans-
9 fer shall be made within ten days after the apportionment
10 of such funds by the Office of Management and Budget
11 to the Department, unless the funding agreement provides
12 otherwise.

13 “(b) MULTI-YEAR FUNDING.—The Secretary is here-
14 by authorized to employ, upon tribal request, multi-year
15 funding agreements for construction or other multi-year
16 activities, and references in this title to funding agree-
17 ments shall include such multi-year agreements.

18 “(c) FUNDING FOR CONSTRUCTION PROGRAMS.—
19 Compacts or funding agreements authorized by this title,
20 including agreements encompassing construction pro-
21 grams, shall provide for advance transfers of funding to
22 the Indian tribe in the form of annual or semi-annual in-
23 stallments, at the discretion of the Indian tribe.

24 “(d) AMOUNT OF FUNDING.—Subject to the provi-
25 sions of section 505(f), the Secretary shall provide funds

1 under funding agreement under this title in an amount
2 equal to the amount that the Indian tribe would have been
3 eligible to receive under self-determination contracts under
4 this Act, including amounts for direct program costs speci-
5 fied under section 106(a)(1) and amounts for contract
6 support costs specified under sections 106 (a)(2), (a)(3),
7 (a)(5), and (a)(6), including any funds that are specifically
8 or functionally related to the provision by the Secretary
9 of services and benefits to the Indian tribe or its members,
10 all without regard to the organizational level within the
11 Department where such functions are carried out.

12 “(e) PROHIBITIONS.—The Secretary is expressly pro-
13 hibited from—

14 “(1) failing or refusing to transfer to an Indian
15 tribe its full share of any central, regional, or area
16 office or other funds due under this Act;

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

19 “(3) reducing the amount of funds required
20 herein—

21 “(A) to make funding available for self-
22 governance monitoring or administration by the
23 Secretary;

24 “(B) in subsequent years, except pursuant
25 to—

1 “(i) a reduction in appropriations
2 from the previous fiscal year for the pro-
3 gram or function to be included in a com-
4 pact or funding agreement;

5 “(ii) a congressional directive in legis-
6 lation or accompanying report;

7 “(iii) a tribal authorization;

8 “(iv) a change in the amount of pass-
9 through funds subject to the terms of the
10 funding agreement; or

11 “(v) completion of a project, activity,
12 or program;

13 “(C) to pay for Federal functions including
14 Federal pay costs, Federal employee retirement
15 benefits, automated data processing, technical
16 assistance, or monitoring of activities under this
17 Act; or

18 “(D) to pay for costs of Federal personnel
19 displaced by Self-Determination contracts or
20 Self-Governance;

21 That such funds may be increased by the Secretary if nec-
22 essary to carry out this Act or as provided in section
23 105(e)(2) of this Act.

24 “(f) OTHER RESOURCES.—In the event an Indian
25 tribe elects to carry out a compact or funding agreement

1 with the use of Federal personnel, Federal supplies (in-
2 cluding supplies available from Federal warehouse facili-
3 ties), Federal supply sources (including lodging, airline
4 transportation, and other means of transportation includ-
5 ing the use of Interagency Motor Pool vehicles) or other
6 Federal resources (including supplies, services, and re-
7 sources available to the Secretary under any procurement
8 contracts in which the Department is eligible to partici-
9 pate), the Secretary is authorized to and shall acquire and
10 transfer such personnel, supplies, or resources to the In-
11 dian tribe, on a reimbursable basis. The Secretary is au-
12 thorized to receive and shall retain such reimbursed
13 amounts and shall not remit such sums to the Treasury.

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 and the annual or first semi-annual
18 or other negotiated periodic transfer shall be made on or
19 before 10 calendar days after the date on which the Office
20 of Management and Budget apportions the appropriations
21 for that fiscal year for the programs, services, functions
22 or activities (or portions thereof) subject to the compact
23 or funding agreement.

24 “(h) INTEREST OR OTHER INCOME ON ADVANCES.—
25 An Indian tribe is entitled to retain interest earned on

1 any funds paid under a compact or funding agreement and
2 such interest shall not diminish the amount of funds the
3 Indian tribe is authorized to receive under its funding
4 agreement in the year the interest is earned or in any sub-
5 sequent fiscal year.

6 “(i) CARRYOVER FUNDS.—All funds paid to an In-
7 dian tribe in accordance with a compact or funding agree-
8 ment shall remain available until expended. In the event
9 that an Indian tribe elects to carry over funding from one
10 year to the next, such carryover shall not diminish the
11 amount of funds the Indian tribe is authorized to receive
12 under its funding agreement in that or any subsequent
13 fiscal year.

14 “(j) PROGRAM INCOME.—All Medicare, Medicaid, or
15 other program income earned by an Indian tribe shall be
16 treated as supplemental funding to that negotiated in the
17 funding agreement and the Indian tribe may retain all
18 such income and expend such funds in the current year
19 or in future years. Such funds shall not result in any offset
20 or reduction in the amount of funds the Indian tribe is
21 authorized to receive under its funding agreement in the
22 year the program income is received or for any subsequent
23 fiscal year.

24 “(k) LIMITATION OF COSTS.—An Indian tribe shall
25 not be obligated to continue performance that requires an

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

11 **“SEC. 509. CONSTRUCTION PROJECTS.**

12 “(a) Unless agreed to by the participating Indian
13 tribe, no provision of the Office of Federal Procurement
14 Policy Act or the Federal acquisition regulations shall
15 apply to any construction activity included in a compact
16 or funding agreement.

17 “(b) In all construction projects performed pursuant
18 to this title, the parties shall specify appropriate health
19 and safety standards relevant to the construction activity.

20 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**
21 **TIONS.**

22 “Notwithstanding any other provision of law, unless
23 expressly agreed to by the participating Indian tribe, the
24 compacts and funding agreements entered into under this
25 title shall not be subject to Federal contracting or coopera-

1 tive agreement laws and regulations (including executive
2 orders and the Secretary’s program regulations), except
3 to the extent that such laws expressly apply to Indian
4 tribes.

5 **“SEC. 511. CIVIL ACTIONS.**

6 “(a) For the purposes of section 110, the term ‘con-
7 tract’ shall include compacts and funding agreements en-
8 tered into under this title.

9 “(c) Section 2103 of the Revised Statutes of the
10 United States Code (25 U.S.C. 81) and section 16 of the
11 Act of June 18, 1934 (25 U.S.C. 476) shall not apply
12 to attorney and other professional contracts entered into
13 by Indian tribes participating in Self-Governance under
14 this title.

15 **“SEC. 512. FACILITATION.**

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

20 “(1) the inclusion of programs, services, func-
21 tions, and activities (or portions thereof) in the
22 agreements entered into under this section; and

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

1 “(3) the achievement of tribal health goals and
2 objectives.

3 “(b) REGULATION WAIVER.—

4 “(1) An Indian tribe may submit a written re-
5 quest to waive application of a regulation for a com-
6 pact or funding agreement entered into under this
7 title, to the Secretary identifying the applicable Fed-
8 eral regulation sought to be waived and the basis for
9 the request.

10 “(2) Not later than 60 days after receipt by the
11 Secretary of a written request by an Indian tribe to
12 waive application of a regulation for a compact or
13 funding agreement entered into under this title, the
14 Secretary shall either approve or deny the requested
15 waiver in writing. A denial may be made only upon
16 a specific finding by the Secretary that identified
17 language in the regulation may not be waived be-
18 cause such waiver is prohibited by Federal law. A
19 failure to approve or deny a waiver request within
20 60 days shall be deemed an approval of such re-
21 quest. The Secretary’s decision shall be final.

22 “(c) ACCESS TO FEDERAL PROPERTY.—In connec-
23 tion with any compact or funding agreement executed pur-
24 suant to this title, upon the request of an Indian tribe,
25 the Secretary—

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

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

12 “(A) if the property has a value in excess
13 of \$5,000, at the option of the Secretary upon
14 retrocession of withdrawal, or reassumption or
15 Self-Governance, title to such property and
16 equipment shall revert to the Department of
17 Health and Human Services; and

18 “(B) all property shall remain eligible for
19 replacement, maintenance and improvement on
20 the same basis as if title to such property were
21 vested in the United States; and

22 “(3) shall acquire excess or surplus Government
23 personal or real property for donation to an Indian
24 tribe if the Secretary determines the property is ap-
25 propriate for use by the entity for a purpose for

1 which a compact or funding agreement is authorized
2 under this title.

3 “(d) MATCHING OR COST-PARTICIPATION REQUIRE-
4 MENT.—All funds provided under compacts, funding
5 agreements or grants made pursuant to this Act, shall be
6 treated as non-Federal funds for purposes of meeting
7 matching or cost participation requirements under any
8 other Federal or non-Federal program.

9 “(e) STATE FACILITATION.—States are hereby au-
10 thorized and encouraged to enact legislation, and to enter
11 into agreements with Indian tribes to facilitate and supple-
12 ment the initiatives, programs, and policies authorized by
13 this Act and other Federal laws benefiting Indians and
14 Indian tribes.

15 **“SEC. 513. BUDGET REQUEST.**

16 “The Secretary shall identify in the annual budget
17 request of the President submitted to the Congress under
18 section 1105 of title 31, United States Code, all funds nec-
19 essary to fully fund all funding agreements authorized
20 under this title. Such request shall include a detailed re-
21 port on the level of need being funded or unfunded for
22 each Indian tribe participating in Self-Governance.

23 **“SEC. 514. REPORTS.**

24 “(a) ANNUAL REPORT.—The Secretary shall submit
25 to Congress on January 1 of each year following the date

1 of enactment of this title a written report regarding the
2 administration of this title. Such report shall include a de-
3 tailed report on the level of need being presently funded
4 or unfunded for each Indian tribe participating in Self-
5 Governance.

6 “(b) CONTENTS.—The report shall be compiled from
7 information contained in funding agreements, annual
8 audit reports, and Secretarial data regarding the dispo-
9 sition of Federal funds and shall—

10 “(1) identify the relative costs and benefits of
11 Self-Governance;

12 “(2) identify, with particularity, all funds that
13 are specifically or functionally related to the provi-
14 sion by the Secretary of services and benefits to
15 Self-Governance Indian tribes and their members;

16 “(3) identify the funds transferred to each Self-
17 Governance Indian tribe and the corresponding re-
18 duction in the Federal bureaucracy;

19 “(4) describe all activities and efforts to imple-
20 ment the non-Indian Health Service Demonstration
21 Project under section 505(f);

22 “(5) list all programs, services, functions and
23 activities (or portions thereof) that the Secretary has
24 identified as benefiting the health or welfare of In-
25 dian tribes or their members;

1 “(6) list specifically all requests for information
2 regarding the non-Indian Health Service Demonstra-
3 tion Project;

4 “(7) list specifically all requests by an Indian
5 tribe for participation in the non-Indian Health
6 Service Demonstration Project, including disposition
7 of those requests and rationale for accepting or re-
8 jecting such requests;

9 “(8) identify, with particularity, all programs,
10 services, functions and activities (or portions there-
11 of) and related funds and other resources trans-
12 ferred to an Indian tribe under the non-Indian
13 Health Service Demonstration Project;

14 “(9) identify specifically all efforts being made
15 by the Secretary and agencies of the Department of
16 Health and Human Services to assist Indian tribes
17 to assume responsibility for programs, services, func-
18 tions and activities (or portions thereof) under the
19 non-Indian Health Service Demonstration Project;

20 “(10) identify the funding formula for individ-
21 ual tribal shares of all central and headquarters
22 funds, together with the comments of affected In-
23 dian tribes or tribal organizations, developed under
24 subsection (c);

1 “(11) identify amounts expended in the preced-
2 ing fiscal year to carry out inherent Federal func-
3 tions, including an identification of those functions
4 by type and location;

5 “(12) include the separate views and comments
6 of the Indian tribes or tribal organizations; and

7 “(13) prior to being submitted to Congress, be
8 distributed to the Indian tribes for comment, such
9 comment period to be for no less than 30 days.

10 In compiling this report the Secretary shall not impose
11 any reporting requirements on participating Indian tribes
12 or tribal organizations, not otherwise provided in this Act.

13 “(c) REPORT ON IHS FUNDS.—Not later than 90
14 days after the date of enactment of this title, the Secretary
15 shall, in consultation with Indian tribes, report on funding
16 formula or formulas used to determine the individual trib-
17 al share of funds controlled by the Indian Health Service
18 (including funds assessed by any other Federal agency)
19 for inclusion in Self-Governance compacts or funding
20 agreements. The Secretary shall include such formula or
21 formulas in the annual report submitted to the Congress
22 under subsection (b), together with the views of the af-
23 fected Indian tribes and tribal organizations.

1 **“SEC. 515. DISCLAIMERS.**

2 “(a) OTHER SERVICES, CONTRACTS, AND FUNDS.—
3 Nothing in this title shall be construed to limit or reduce
4 in any way the services, contracts, or funds that any other
5 Indian tribe is eligible to receive under section 102 or
6 under any other applicable Federal law.

7 “(b) FEDERAL TRUST RESPONSIBILITIES.—Nothing
8 in this Act shall be construed to diminish in any way the
9 trust responsibility of the United States to Indian tribes
10 and individual Indians that exist under treaties, Executive
11 Orders or other laws and court decisions.

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

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

20 “(a) All provisions of sections 6, 7, 102(c) and (d),
21 104, 105(l), 106, and 111 of this Act and section 314
22 of Public Law 101–512 (coverage under the Federal Tort
23 Claims Act) shall apply to compacts and funding agree-
24 ments authorized by this title.

25 “(b) At the request of a participating Indian tribe,
26 any other provision of title I of this Act shall be made

1 a part of an funding agreement or compact entered into
2 under this title. If such provision is incorporated it shall
3 have the same force and effect as if it were set out in
4 full in this title. Such provision shall be deemed effective
5 immediately and shall control any subsequent negotiations
6 and resulting compact and funding agreement.

7 **“SEC. 517. REGULATIONS.**

8 “(a) IN GENERAL.—

9 “(1) Not later than 90 days after the date of
10 enactment of this title, the Secretary shall initiate
11 procedures under subchapter III of chapter 5 of title
12 5, United States Code, to negotiate and promulgate
13 such regulations as are necessary to carry out this
14 title.

15 “(2) Proposed regulations to implement this
16 title shall be published in the Federal Register by
17 the Secretary no later than one year after the date
18 of enactment of this title.

19 “(3) No regulations may be published unless
20 they are recommended by the committee formed
21 under subsection (b).

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

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

11 “(c) ADAPTATION OF PROCEDURES.—The Secretary
12 shall adapt the negotiated rulemaking procedures to the
13 unique context of Self-Governance and the government-to-
14 government relationship between the United States and
15 Indian tribes.

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

18 **“SEC. 518. APPEALS.**

19 “In any appeal involving decisions made by the Sec-
20 retary under this title, the Secretary shall have the burden
21 of proof of demonstrating by clear and convincing evi-
22 dence—

23 “(1) the validity of the grounds for the decision
24 made; and

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

3 **SEC. 5. AMENDMENT TO PROVIDE FOR TRIAL DE NOVO.**

4 Section 110(a) of the Indian Self-Determination and
5 Education Assistance Act (25 U.S.C. 450m-1) is amended
6 by adding at the end the following new sentence: “In any
7 action brought under this subsection, the district courts
8 shall conduct a trial de novo with full rights of discovery
9 and proceed in accordance with the Federal Rules of Civil
10 Procedure.”.

○