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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

4 SEC. 2. FINDINGS.

5 Congress finds that—
(1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;

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

(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

(4) the Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management;

(5) although the Federal Government has made considerable strides in improving Indian health care, it has failed to fully meet its trust responsibilities to the Indian tribes; and
(6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that—

(A) transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions and activities (or portions thereof) is an appropriate and effective means to implement the Federal policy of government-to-govern ment relations with Indian tribes; and

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

SEC. 3. DECLARATION OF POLICY.

It is the policy of the Congress to permanently establish and implement tribal self-governance within the Department of Health and Human Services, and to call for full cooperation from the Department and its constituent agencies in the implementation of self-governance—

(1) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;
(2) to permit each Indian tribe to choose the extent of the participation of such Indian tribe in self-governance;

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

(4) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

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

(6) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding and discretion to plan, conduct, redesign and administer programs, services, functions and activities (or portions thereof) that meet the needs of the individual tribal communities;

(7) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions and activities (or portions thereof) are assumed by Indian tribes;

(8) to encourage the Secretary to identify all programs, services, functions and activities (or por-
tions thereof) of the Department that may be man-
aged by an Indian tribe under this Act and to assist
Indian tribes to assume responsibility for such pro-
grams, services, functions and activities (or portions
thereof); and

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

SEC. 4. TRIBAL SELF-GOVERNANCE.

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

“TITLE V—TRIBAL SELF-
GOVERNANCE

“SEC. 501. ESTABLISHMENT.

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

“SEC. 502. DEFINITIONS.

“(a) Except as otherwise provided herein, the defini-
tions set out in sections 4(a) through (g), (j), (l), and (m)
of the Indian Self-Determination and Education Assist-
ance Act shall apply to this title as if fully set forth herein,
provided that reference therein to a contract or self-determination contract shall include a compact and funding agreement authorized under this title.

“(b) For purposes of this title—

“(1) the term ‘inherent Federal functions’ means those functions which by express provision of the Constitution or Federal statute must be performed by officials of the United States and therefore may not be delegated to Indian tribes;

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

“(3) the term ‘tribal shares’ means an Indian tribe’s portion of all funds and resources that support secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions;

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

“(5) the term ‘Self-Governance’ means the program established in section 501.

“(c) Where an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organi-
zation to plan for or carry out programs, services, func-
tions, or activities (or portions thereof) on its behalf under
this title, the authorized Indian tribe, inter-tribal consor-
tium, or tribal organization shall have the rights and re-
sponsibilities of the authorizing Indian tribe (except as
otherwise provided in the authorizing resolution or in this
title). In such event, the term ‘Indian tribe’ as used in
this title shall include such other authorized Indian tribe,
inter-tribal consortium, or tribal organization.

``SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES.
``(a) CONTINUING PARTICIPATION.—Each Indian
tribe that is participating in the Tribal Self-Governance
Demonstration Project at the Department of Health and
Human Services under title III on the date of enactment
of this title shall thereafter participate in Self-Governance
under this title and cease participation in the Tribal Self-
Governance Demonstration Project under title III.
``(b) ADDITIONAL PARTICIPANTS.—

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

“(2) An Indian tribe that has withdrawn from
participation in an inter-tribal consortium or tribal
organization that is participating in Self-Governance shall be entitled to continue to participate in Self-Governance provided the Indian tribe meets the eligibility criteria specified in subsection (c). Such Indian tribe shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) that it will be carrying out under its own compact and funding agreement. In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in Self-Governance.

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

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

“(2) has requested participation in Self-Governance by resolution or other official action by the governing body (or bodies) of the Indian tribe or tribes to be served; and

“(3) has demonstrated, for the previous three fiscal years, financial stability and financial management capability. Evidence that during such years the Indian tribe had no uncorrected significant and ma-
terial audit exceptions in the required annual audit of the Indian tribe’s self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability for the purposes of this subsection.

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

“(1) legal and budgetary research; and
“(2) internal tribal government planning and organizational preparation.

“(e) GRANTS.—Subject to the availability of appropriations, any Indian tribe meeting the requirements of subsections (c)(2) and (3) shall be eligible for—

“(1) a grant to plan for participation in Self-Governance; and
“(2) a grant to negotiate the terms of the Indian tribe’s or tribal organization’s participation in Self-Governance, as set forth in a compact and a funding agreement.

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

(a) COMPACT REQUIRED.—The Secretary shall negotiate and enter into a written compact with each Indian tribe participating in Self-Governance in a manner consistent with the Federal Government’s trust responsibility and the government-to-government relationship between Indian tribes and the United States.

(b) CONTENTS.—Each compact required under subsection (a) shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties.

(c) EXISTING COMPACTS.—An Indian tribe participating in Self-Governance on the date of enactment of this title shall have the option at any time thereafter to either—

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

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

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

“SEC. 505. FUNDING AGREEMENTS.

“(a) FUNDING AGREEMENT REQUIRED.—The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe participating in Self-Governance in a manner consistent with the Federal Government’s trust responsibility.

“(b) CONTENTS.—Each funding agreement required under subsection (a) shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive funding for all programs, services, functions, and activities (or portions thereof), including tribal shares of Indian Health Service competitive grants, that are carried out for the benefit of Indians (where Indian tribes or Indians are primary or significant beneficiaries), administered by the Department of Health and Human Services through the Indian Health Service without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed, including tribal share funding for all local, field, service unit, area, regional, and central/headquarters or national office functions administered under the authority of—
“(1) the Act of November 2, 1921 (25 U.S.C. 13);
“(2) the Act of April 16, 1934 (25 U.S.C. 452 et seq.);
“(3) the Act of August 5, 1954 (68 Stat. 674);
“(4) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);
“(5) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.);
“(6) any other act of Congress authorizing agencies of the Department of Health and Human Services to administer, carry out or provide financial assistance to such programs, services, functions or activities (or portions thereof) described in this section; or
“(7) any other act of Congress authorizing such programs, services, functions or activities (or portions thereof) under which appropriations are made to agencies other than agencies within the Department of Health and Human Services, when the Secretary administers such programs, services, functions or activities (or portions thereof).
“(c) INCLUSION IN COMPACT OR FUNDING AGREEMENT.—Indian tribes or Indians need not be identified in
the authorizing statute for a program or element of a pro-
gram to be eligible for inclusion in a compact or funding
agreement under this title.

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

“(e) Existing Funding Agreements.—Each In-
dian tribe participating in self-governance on the date of
enactment of this title shall have the option at any time
thereafter to either—

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

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

“(f) Non-IHS Demonstration.—A compact or
funding agreement may authorize an Indian tribe to plan,
conduct, consolidate, and administer, and to receive fund-
ing for, any programs, services, functions, and activities (or portions thereof), administered by the Department of Health and Human Services that benefit the health or welfare of Indian tribes or their members.

“SEC. 506. GENERAL PROVISIONS.

“(a) APPLICABILITY.—The provisions of this section shall apply to compacts and funding agreements negotiated under this title and an Indian tribe may, at its option, include provisions that reflect such requirements in a compact or funding agreement.

“(b) CONFLICTS OF INTEREST.—Indian tribes participating in Self-Governance under this title shall assure that internal measures are in place to address conflicts of interest in the administration of Self-Governance programs, services, functions, or activities (or portions thereof).

“(c) AUDITS.—

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

“(2) COST PRINCIPLES.—An Indian tribe shall apply cost principles under the applicable Office of Management and Budget Circular, except as modified by section 106 of title I of this Act, or by any
exemptions to applicable Office of Management and Budget Circulars subsequently granted by Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to the provisions of section 106(f) of this Act.

“(d) RECORDS.—

“(1) IN GENERAL.—Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of the Indian tribe shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

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

“(e) REDESIGN AND CONSOLIDATION.—An Indian tribe may redesign or consolidate programs, services, func-
tions, and activities (or portions thereof) included in a funding agreement under section 505 and reallocate or re-direct funds for such programs, services, functions, and activities (or portions thereof) in any manner which the Indian tribe deems to be in the best interest of the health and welfare of the Indian community being served, except that with respect to the redesign of programs described in section 505(f), a joint agreement between the Secretary and the Indian tribe shall be required.

“(f) RETROCESSION.—An Indian tribe may retrocede, fully or partially, to the Secretary programs, services, functions, or activities (or portions thereof) included in the compact or funding agreement. Unless the Indian tribe rescinds the request for retrocession, such retrocession will become effective within the time frame specified by the parties in the compact or funding agreement. In the absence of such a specification, such retrocession shall become effective on—

“(1) the earlier of—

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

“(B) the date on which the funding agreement expires; or

“(2) such date as may be mutually agreed by the Secretary and the Indian tribe.
“(g) Withdrawal.—

“(1) Process.—An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement, and such withdrawal will become effective within the time frame specified in the resolution which authorized transfer to the participating tribal organization or inter-tribal consortium. In the absence of a specific time frame being set forth in the resolution, such withdrawal shall become effective on—

“(A) the earlier of—

“(i) one year from the date of submission of such request; or

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

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

“(2) Distribution of Funds.—When an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I of this Act
or a compact or funding agreement under this title fully or partially withdraws from a participating inter-tribal consortium or tribal organization, the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) which it will be carrying out under its own self-determination contract or compact and funding agreement, and such funds shall be transferred from the amount in the funding agreement of the inter-tribal consortium or tribal organization.

“(3) REGAINING MATURE CONTRACT STATUS.—If an Indian tribe elects to operate all or some programs, services, functions, or activities (or portions thereof) carried out under a compact or funding agreement under this title through a self-determination contract under title I of this Act, the resulting self-determination contract shall be a mature self-determination contract.

“(h) NONDUPLICATION.—For the period for which, and to the extent to which, funding is provided under this section or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 102, except that such
Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

“SEC. 507. PROVISIONS RELATING TO THE SECRETARY.

“(a) MANDATORY PROVISIONS.—

“(1) HEALTH STATUS REPORTS.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that may require the Indian tribe to report on data regarding health status and service delivery, to the extent such data is not otherwise available to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement, if such reporting shall impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 517 of this title.

“(2) REASSUMPTION.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision authorizing the Secretary to reassume operation of a program, service, function or activity (or portions thereof) if there is a finding of—

“(A) the violation of rights or endangerment of the health, safety, or welfare of any persons; or
“(B) gross negligence or mismanagement in the performance of the compact or funding agreement.

The Secretary shall not reassume operation of a program, service, function or activity unless the Secretary has first provided 60 days written notice and a hearing on the record to the Indian tribe, and the Indian tribe has not taken corrective action. However, the Secretary may, upon written notification to the tribe, immediately reassume operation of a program, service, function or activity (or portions thereof). If the Secretary makes a finding of imminent substantial and irreparable endangerment of the public health caused by an act or omission of the Indian tribe, and the endangerment arises out of a failure to carry out the compact or funding agreement, the Secretary shall provide the tribe with a hearing on the record within ten days of the reassumption. In any hearing or appeal involving a decision to reassume operation of a program, service, function or activity, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence the validity of the grounds for the reassumption.
“(b) Final Offer.—In the event the Secretary and a participating Indian tribe are unable to agree on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary. If the Secretary does not reject the offer not later than 30 days after it is submitted by the Indian tribe, or within a longer time agreed upon by the Indian tribe made in compliance (the offer shall be deemed agreed to by the Secretary).

“(c) Rejection of Final Offers.—If the Secretary rejects an offer, made under subsection (b), the Secretary shall provide—

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

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

“(B) the program, function, service, or activity (or portion thereof) that is the subject of the final offer is an inherent Federal function that may not be carried out by the Indian tribe;
“(C) the Indian tribe cannot reasonably carry out the program, function, service, or activity (or portion thereof) in a satisfactory manner; or

“(D) the Indian tribe is not eligible to participate in Self-Governance under section 503 of this title;

“(2) meaningful technical assistance to overcome the objections stated in the notification required by paragraph (2);

“(3) the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, provided that the Indian tribe may, in lieu of filing such appeal, directly proceed to Federal district court pursuant to section 110(a) of this Act; and

“(4) the Indian tribe with the option of entering into the severable portions of a final proposed compact or funding agreement, or provision thereof, (including lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions. If an Indian tribe exercises the option specified herein, it shall re-
tain the right to appeal the Secretary’s rejection under this section and paragraphs (1), (2), and (3) shall only apply to that portion of the proposed final compact, funding agreement or provision thereof that was rejected by the Secretary.

“(d) BURDEN OF PROOF.—

“(1) With respect to any hearing or appeal conducted pursuant to this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the offer (or a provision thereof) made under subsection (b).

“(2) A decision that constitutes final agency action and relates to an appeal within the Department of Health and Human Services conducted under subsection (c) shall be made either—

“(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

“(B) by an administrative judge.

“(e) GOOD FAITH.—In the negotiation of compacts and funding agreements the Secretary shall at all times negotiate in good faith to maximize implementation of the
Self-Governance policy. The Secretary shall carry out this

title in a manner that maximizes the policy of Tribal Self-
Governance, consistent with section 103 of this Act.

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

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

“SEC. 508. TRANSFER OF FUNDS.

“(a) IN GENERAL.—Pursuant to the terms of any
compact or funding agreement entered into under this
title, the Secretary shall transfer to the Indian tribe all
funds provided for in the funding agreement, pursuant to
subsection (d), and provide funding for periods covered by
joint resolution adopted by Congress making continuing
appropriations, to the extent permitted by such resolu-
tions. In any instance where a funding agreement requires
an annual transfer of funding to be made at the beginning
of a Federal fiscal year, or requires semi-annual or other
periodic transfers of funding to be made commencing at
the beginning of a Federal fiscal year, the first such trans-
fer shall be made within ten days after the apportionment
of such funds by the Office of Management and Budget
to the Department, unless the funding agreement provides
otherwise.

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

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

“(d) AMOUNT OF FUNDING.—Subject to the provi-
sions of section 505(f), the Secretary shall provide funds
under funding agreement under this title in an amount equal to the amount that the Indian tribe would have been eligible to receive under self-determination contracts under this Act, including amounts for direct program costs specified under section 106(a)(1) and amounts for contract support costs specified under sections 106 (a)(2), (a)(3), (a)(5), and (a)(6), including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members, all without regard to the organizational level within the Department where such functions are carried out.

“(e) PROHIBITIONS.—The Secretary is expressly prohibited from—

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

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

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

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

“(B) in subsequent years, except pursuant to—
“(i) a reduction in appropriations from the previous fiscal year for the program or function to be included in a compact or funding agreement;

“(ii) a congressional directive in legislation or accompanying report;

“(iii) a tribal authorization;

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

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

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

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

That such funds may be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c)(2) of this Act.

“(f) OTHER RESOURCES.—In the event an Indian tribe elects to carry out a compact or funding agreement
with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation including the use of Interagency Motor Pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary is authorized to and shall acquire and transfer such personnel, supplies, or resources to the Indian tribe, on a reimbursable basis. The Secretary is authorized to receive and shall retain such reimbursed amounts and shall not remit such sums to the Treasury.

“(g) PROMPT PAYMENT ACT.—Chapter 39 of title 31, United States Code, shall apply to the transfer of funds due under a compact or funding agreement authorized under this title and the annual or first semi-annual or other negotiated periodic transfer shall be made on or before 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for that fiscal year for the programs, services, functions or activities (or portions thereof) subject to the compact or funding agreement.

“(h) INTEREST OR OTHER INCOME ON ADVANCES.—An Indian tribe is entitled to retain interest earned on
any funds paid under a compact or funding agreement and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent fiscal year.

“(i) Carryover Funds.—All funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from one year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

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

“(k) Limitation of Costs.—An Indian tribe shall not be obligated to continue performance that requires an
expenditure of funds in excess of the amount of funds paid under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficient funding to the Secretary. If the Secretary does not increase the amount of funds paid under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are paid.

“SEC. 509. CONSTRUCTION PROJECTS.

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

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

“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULATIONS.

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

“SEC. 511. CIVIL ACTIONS.

“(a) For the purposes of section 110, the term ‘contract’ shall include compacts and funding agreements entered into under this title.


“SEC. 512. FACILITATION.

“(a) Secretarial Interpretation.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders and regulations in a manner that will facilitate—

“(1) the inclusion of programs, services, functions, and activities (or portions thereof) in the agreements entered into under this section; and

“(2) the implementation of compacts and funding agreements entered into under this title; and
“(3) the achievement of tribal health goals and objectives.

“(b) Regulation Waiver.—

“(1) An Indian tribe may submit a written request to waive application of a regulation for a compact or funding agreement entered into under this title, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

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

“(c) Access to Federal Property.—In connection with any compact or funding agreement executed pursuant to this title, upon the request of an Indian tribe, the Secretary—
“(1) shall permit an Indian tribe to use existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary’s jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the tribe;

“(2) may donate to an Indian tribe any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

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

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

“(3) shall acquire excess or surplus Government personal or real property for donation to an Indian tribe if the Secretary determines the property is appropriate for use by the entity for a purpose for
which a compact or funding agreement is authorized under this title.

“(d) Matching or Cost-Participation Requirement.—All funds provided under compacts, funding agreements or grants made pursuant to this Act, shall be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

“(e) State Facilitation.—States are hereby authorized and encouraged to enact legislation, and to enter into agreements with Indian tribes to facilitate and supplement the initiatives, programs, and policies authorized by this Act and other Federal laws benefiting Indians and Indian tribes.

“SEC. 513. BUDGET REQUEST.

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

“SEC. 514. REPORTS.

“(a) Annual Report.—The Secretary shall submit to Congress on January 1 of each year following the date
of enactment of this title a written report regarding the administration of this title. Such report shall include a detailed report on the level of need being presently funded or unfunded for each Indian tribe participating in Self-Governance.

“(b) CONTENTS.—The report shall be compiled from information contained in funding agreements, annual audit reports, and Secretarial data regarding the disposition of Federal funds and shall—

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

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

“(3) identify the funds transferred to each Self-Governance Indian tribe and the corresponding reduction in the Federal bureaucracy;

“(4) describe all activities and efforts to implement the non-Indian Health Service Demonstration Project under section 505(f);

“(5) list all programs, services, functions and activities (or portions thereof) that the Secretary has identified as benefiting the health or welfare of Indian tribes or their members;
“(6) list specifically all requests for information regarding the non-Indian Health Service Demonstration Project;

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

“(8) identify, with particularity, all programs, services, functions and activities (or portions thereof) and related funds and other resources transferred to an Indian tribe under the non-Indian Health Service Demonstration Project;

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

“(10) identify the funding formula for individual tribal shares of all central and headquarters funds, together with the comments of affected Indian tribes or tribal organizations, developed under subsection (c);
“(11) identify amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

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

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

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

“(c) REPORT ON IHS FUNDS.—Not later than 90 days after the date of enactment of this title, the Secretary shall, in consultation with Indian tribes, report on funding formula or formulas used to determine the individual tribal share of funds controlled by the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in Self-Governance compacts or funding agreements. The Secretary shall include such formula or formulas in the annual report submitted to the Congress under subsection (b), together with the views of the affected Indian tribes and tribal organizations.
“SEC. 515. DISCLAIMERS.

“(a) Other Services, Contracts, and Funds.—Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe is eligible to receive under section 102 or under any other applicable Federal law.

“(b) Federal Trust Responsibilities.—Nothing in this Act shall be construed to diminish in any way the trust responsibility of the United States to Indian tribes and individual Indians that exist under treaties, Executive Orders or other laws and court decisions.

“(c) Tribal Employment.—For purposes of section 2(2), Act of July 5, 1935 (49 Stat. 450, chapter 372) (commonly known as the National Labor Relations Act), an Indian tribe carrying out a self-determination contract, compact, annual funding agreement, grant, or cooperative agreement under this Act shall not be considered an employer.

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

“(a) All provisions of sections 6, 7, 102(e) and (d), 104, 105(l), 106, and 111 of this Act and section 314 of Public Law 101–512 (coverage under the Federal Tort Claims Act) shall apply to compacts and funding agreements authorized by this title.

“(b) At the request of a participating Indian tribe, any other provision of title I of this Act shall be made
a part of an funding agreement or compact entered into under this title. If such provision is incorporated it shall have the same force and effect as if it were set out in full in this title. Such provision shall be deemed effective immediately and shall control any subsequent negotiations and resulting compact and funding agreement.

“SEC. 517. REGULATIONS.

“(a) IN GENERAL.—

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

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

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

“(4) The authority to promulgate regulations under this title shall expire 21 months after the date of enactment of this title.
“(b) COMMITTEE.—A negotiated rulemaking committee established pursuant to section 565 of title 5, United States Code, to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this title, and the Committee shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

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

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

“SEC. 518. APPEALS.

“In any appeal involving decisions made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

“(1) the validity of the grounds for the decision made; and
“(2) the decision is fully consistent with provisions and policies of this title.”.

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

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