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.

OCTOBER 2, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.
H. R. 1833

[Report No. 105–765]

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

OCTOBER 2, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 7, 1997]

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,
SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

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 Project, established under title III of the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450f note) 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 and to satisfy its obligations to the Indian tribes under treaties and other laws; and

(6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof)—

(A) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with Indian tribes; and

(B) strengthens the Federal policy of Indian self-determination.

SEC. 3. DECLARATION OF POLICY.

It is the policy of Congress to—

(1) permanently establish and implement tribal Self-Governance within the Department of Health and Human Services;

(2) call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal Self-Governance—
(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(B) to permit each Indian tribe to choose the extent of its participation in Self-Governance;

(C) in accordance with the provisions of the Indian Self-Determination Act relating to the provision of Federal services to Indian tribes;

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

(E) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

(F) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

(G) 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;

(H) 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;

(I) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

(J) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.

SEC. 4. TRIBAL SELF-GOVERNANCE.

The Indian Self-Determination 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 the ‘Tribal Self-Governance Program’ in accordance with this title.

“SEC. 502. DEFINITIONS.

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

“(1) the term ‘inherent Federal functions’ means those Federal functions which cannot legally 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, but not limited to, 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 pursuant to section 501.

“(b) INDIAN TRIBE.—Where an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this title, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities 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 under title III on the date of enactment of this title may elect to participate in Self-Governance under this title under existing authority as reflected in tribal resolution.

“(b) ADDITIONAL PARTICIPANTS.—

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

“(2)(A) An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in Self-Governance provided the Indian tribe meets the eligibility criteria specified in subsection (c).

“(B) If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, it shall be entitled to its tribal share of funds supporting those programs, services, functions, and activities (or portions thereof) that it will be carrying out under its compact and funding agreement.

“(C) 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 each 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 gov-
erning body (or bodies) of the Indian tribe or tribes to be served; and

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

Evidence that during such years the Indian tribe had no uncorrected significant and material 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 be conducted to the satisfaction of the Indian tribe and shall include—

“(1) legal and budgetary research; and

“(2) internal tribal government planning and organizational preparation relating to the administration of health care programs.

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

“(1) to plan for participation in Self-Governance; and
“(2) to negotiate the terms of participation by
the Indian tribe or tribal organization in Self-Gov-
ernance, 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 requirement of
participation in Self-Governance.

“SEC. 504. COMPACTS.

“(a) Compact Required.—The Secretary shall nego-
tiate and enter into a written compact with each Indian
tribe participating in Self-Governance in a manner consist-
ent with the Federal Government’s trust responsibility,
treaty obligations, and the government-to-government rela-
tionship between Indian tribes and the United States.

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

“(c) Existing Compacts.—An Indian tribe partici-
pating in the tribal Self-Governance on the date of enact-
ment of this title shall have the option at any time there-
after to—
“(1) retain its Tribal Self-Governance Project 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) negotiate 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, retrocession, or reassumption.

“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, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

“(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 full tribal share funding for all programs, services, functions, and activities (or portions
thereof), including tribal shares of discretionary Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), that are carried out for the benefit of Indians because of their status as Indians (including all programs, services, functions, or activities (or portions thereof) where Indian tribes or Indians are primary or significant beneficiaries, administered by the Department of Health and Human Services through the Indian Health Service and grants (which may be added to a funding agreement after award of such grants)) without regard to the agency or office of the Indian Health Service (or of such other agency) 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 program 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, including those to be provided on a recurring basis, the time and method of transfer of the funds, the responsibilities of the Secretary,
and any other provisions to which the Indian tribe and the Secretary agree.

“(e) **Subsequent Funding Agreements.**—Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

“(f) **Existing Funding Agreements.**—Each Indian tribe participating in the Tribal Self-Governance Project established under title III, as in force before the enactment of the Tribal Self-Governance Amendments of 1998, on the date of enactment of this title shall have the option at any time thereafter to—

“(1) retain its Tribal Self-Governance Project 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.

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

“SEC. 506. SELF-GOVERNANCE FEASIBILITY STUDY.

“(a) IN GENERAL.—The Secretary shall conduct a study, in consultation with Indian tribes and other entities specified in subsection (b), to determine the feasibility of including in Self-Governance, on a demonstration project basis, programs of the Department of Health and Human Services, other than the Indian Health Service, that benefit Indian tribes or their members, and to identify the programs suitable for inclusion in such demonstration.

“(b) ENTITIES TO BE CONSULTED.—In conducting the study required under this section, the Secretary shall consult with Indian tribes, States, counties and municipalities, program beneficiaries, and concerned public interest
groups, and may consult with other entities as the Secretary finds appropriate.

“(c) ISSUES.—The study under this section shall consider the following issues with respect to the feasibility and design of a Self-Governance demonstration:

“(1) The probable effects on specific programs and program beneficiaries.

“(2) Statutory, regulatory, or operational impediments to implementation.

“(3) Strategies for facilitating Self-Governance.

“(4) Probable costs associated with Self-Governance.

“(5) Methods to ensure quality and accountability in Self-Governance demonstrations.

“(6) Such other issues as may be identified by the Secretary.

“(d) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall report to the Congress the findings and conclusions of the study under this section and any separate or dissenting views of the entities consulted pursuant to subsection (b).

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1999 and
2000 such sums as necessary to carry out the purposes of this section, to remain available until expended.

“SEC. 507. 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 ensure 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, 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 re-
quired 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).

“(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 recordkeeping system requirements under the sections 3101 through 3106 of title 44, United States Code.

“(e) REDESIGN AND CONSOLIDATION.—An Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement under section 505 and reallocate or redirect 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, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served.

“(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. Such withdrawal shall become effective within the time frame specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium. In the absence of a specific time frame 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 withdrawing Indian tribe and the participating tribal organization or inter-tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

“(2) DISTRIBUTION OF FUNDS.—When an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I 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 (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization), and such funds shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, provided that the provisions of sections 102, 105(i), and 506, as appropriate, shall apply to such withdrawing Indian tribe.

“(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, at the option of the Indian tribe, 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 title 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. 508. 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 requires the Indian tribe to report on health status and service delivery—

“(A) 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; and

“(B) if such reporting shall impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 518 of this title.

“(2) REASSUMPTION.—(A) Contracts 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 imminent endangerment of the public health caused by an act or omission of the Indian
tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement.

“(B) The Secretary shall not reassume operation of a program, service, function, or activity unless (i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe; and (ii) the Indian tribe has not taken corrective action to remedy the imminent endangerment to public health.

“(C) Notwithstanding subparagraph (B), the Secretary may, upon written notification to the tribe, immediately reassume operation of a program, service, function, or activity (or portion thereof) if (i) 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 (ii) the endangerment arises out of a failure to carry out the compact or funding agreement. If the Secretary reassumes operation of a program, service, function, or activity (or portion thereof) under this subparagraph, the Secretary shall provide the tribe with a hearing on the record not later than 10 days after such reassumption.

“(D) In any hearing or appeal involving a decision to reassume operation of a program, service,
function, or activity (or portion thereof), 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, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary. The Secretary shall have no more than 45 days after such submission, or within a longer time agreed upon by the Indian tribe made in compliance to review and make a determination with respect to such offer. In the absence of a timely rejection of the offer, in whole or in part, made in compliance with subsection (c), 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) (or one or more provisions or funding levels in such offer), the Secretary shall provide—

“(1) a timely 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 cannot legally be delegated to an Indian tribe;

“(C) the Indian tribe cannot carry out the program, function, service, or activity (or portion thereof) in a manner that would not result in imminent danger to the public health; or

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

“(2) technical assistance to overcome the objections stated in the notification required by paragraph (1);

“(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 initiate an action in a Federal district court pursuant to section 110(a); and
“(4) the Indian tribe with the option of entering
into the severable portions of a final proposed com-
pact or funding agreement, or provision thereof; (in-
cluding lesser funding amount, if any), that the Sec-
retary did not reject, subject to any additional alter-
ations 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.—With respect to any hear-
ing or appeal or civil action conducted pursuant to this
section, the Secretary shall have the burden of demonstrat-
ing by clear and convincing evidence the validity of the
grounds for rejecting the offer (or a provision thereof) made
under subsection (b).

“(e) GOOD FAITH.—In the negotiation of compacts
and funding agreements the Secretary shall at all times ne-
gotiate 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 3.
“(f) Savings.—To the extent that programs, functions, services, or activities (or portions thereof) carried out by Indian tribes under this title reduce the administrative 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 509(d), the Secretary shall make such savings available to the Indian tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

“(g) Trust Responsibility.—The Secretary is prohibited 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, and/or court decisions.

“(h) Decisionmaker.—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—

“(1) 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
“(2) by an administrative judge.

“SEC. 509. TRANSFER OF FUNDS.

“(a) In General.—Pursuant to the terms of any com-
pact or funding agreement entered into under this title, the
Secretary shall transfer to the Indian tribe all funds pro-
vided for in the funding agreement, pursuant to subsection
(d), and provide funding for periods covered by joint resolu-
tion adopted by Congress making continuing appropri-
tions, to the extent permitted by such resolutions. In any
instance where a funding agreement requires an annual
transfer of funding to be made at the beginning of a fiscal
year, or requires semi-annual or other periodic transfers of
funding to be made commencing at the beginning of a fiscal
year, the first such transfer shall be made not later than
10 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 hereby
authorized to employ, upon tribal request, multi-year fund-
ing agreements for construction or other multi-year activi-
ties, and references in this title to funding agreements shall
include such multi-year agreements.
“(c) Funding for Construction Programs.—Com- 
pacts or funding agreements authorized by this title, includ-
ing agreements encompassing construction programs, shall 
provide for advance transfers of funding to the Indian tribe 
in the form of full funding or annual or semi-annual in-
stallments, at the discretion of the Indian tribe.

“(d) Amount of Funding.—The Secretary shall pro-
vide funds under a funding agreement under this title in 
an amount equal to the amount that the Indian tribe would 
have been entitled to receive under self-determination con-
tracts under this Act, including amounts for direct program 
costs specified under section 106(a)(1) and amounts for con-
tract support costs specified under sections 106(a)(2), 
(a)(3), (a)(5), and (a)(6), including any funds that are spe-
cifically or functionally related to the provision by the Sec-
retary 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 pro-
hibited from—

“(1) failing or refusing to transfer to an Indian 
tribe its full share of any central, headquarters, re-

gional, area, or service unit office or other funds due
under this Act, except as required by other Federal law;

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

“(D) to pay for costs of Federal personnel displaced by self-determination contracts under this Act or Self-Governance;

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

“(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.

“(g) REIMBURSEMENT TO INDIAN HEALTH SERVICE.—With respect to functions transferred by the Indian
health Service to an Indian tribe, the Indian Health Service is authorized to provide goods and services to the Indian tribe, on a reimbursable basis, including payment in advance with subsequent adjustment, and the reimbursements received therefrom, along with the funds received from the Indian tribe pursuant to this title, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

“(h) 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.

“(i) Interest or Other Income on Transfers.—An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or health purposes 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. Funds transferred under this Act shall be managed using the prudent investment standard.

“(j) 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.

“(k) 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 except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) provides otherwise for Medicaid and Medicare receipts, and 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.

“(l) 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 transferred 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 insufficiency to the Secretary. If the Secretary does not increase the amount of funds

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transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

“SEC. 510. CONSTRUCTION PROJECTS.

“(a) In General.—Unless agreed to by the participating Indian tribe, no provision of the Office of Federal Procurement Policy Act or the Federal acquisition regulations or any other general law or regulation pertaining to Federal procurement (including executive orders), shall apply to any construction activity included in a compact or funding agreement.

“(b) Health and Safety Standards.—In all construction projects performed pursuant to this title, the parties shall specify appropriate health and safety standards relevant to the construction activity which shall be in conformity with nationally recognized standards for comparable projects.

“SEC. 511. 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 cooperative agreement laws and regulations (including executive orders and the Secretary’s procurement regulations), except
to the extent that such laws expressly apply to Indian tribes.

“SEC. 512. CIVIL ACTIONS.

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

“(b) APPLICABILITY OF CERTAIN LAWS.—Section 2103 of the Revised Statutes of the United States Code (25 U.S.C. 81) and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other professional contracts entered into by Indian tribes participating in Self-Governance under this title.

“SEC. 513. 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) and funds associated therewith, in the agreements entered into under this section;

“(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 with the Indian Health Service 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 90 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 not later than 90 days after receipt shall be deemed an approval of such request. The Secretary’s decision shall be final for the Department.

“(c) Access to Federal Property.—In connection with any compact or funding agreement executed pursuant to this title or an agreement negotiated under the Tribal Self-Governance Project established under title III, as in effect before the enactment of the Tribal Self-Governance
Amendments of 1998, 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 for their use and maintenance;

“(2) may donate to an Indian tribe title to 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) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the compact or funding agreement or purchased with funds under any compact or funding agreement shall, unless otherwise requested by the Indian tribe, vest in the appropriate Indian tribe;

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

“(C) all property referred to in subparagraph (A) 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 any 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
title and other Federal laws benefiting Indians and Indian tribes.

“(f) Rules of Construction.—Each provision of this title and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in Self-Governance and any ambiguity shall be resolved in favor of the Indian tribe.

“SEC. 514. BUDGET REQUEST.

“(a) In General.—The President shall identify in the annual budget request 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, including funds specifically identified to fund tribal base budgets. All funds so identified shall be apportioned to the Indian Health Service, Office of Tribal Self-Governance. The Office shall be responsible for distribution of all funds provided under section 505. Nothing in this provision shall be construed to authorize the IHS to reduce the amount of funds that a Self-Governance tribe is otherwise entitled to receive under its funding agreement or other applicable law, whether or not such funds are apportioned to the Office of Tribal Self-Governance under this section.

“(b) Present Funding; Shortfalls.—In such budget request, the President shall identify the level of need
presently funded and any shortfall in funding (including
direct program and contract support costs) for each Indian
tribe in the United States, either directly by the Secretary,
under self-determination contracts, or under compacts and
funding agreements authorized under this title.

“SEC. 515. 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 ad-
ministration of this title. Such report shall include a de-
tailed report on the level of need being presently funded or
unfunded for each Indian tribe in the United States, either
directly by the Secretary, under self-determination con-
tracts under this Act, or under compacts and funding agree-
ments authorized under this Act.

“(b) CONTENTS.—The report shall be compiled from
information contained in funding agreements, annual
audit reports, and Secretarial data regarding the disposi-
tion 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 provi-
sion 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) 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);

“(5) identify amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

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

“(7) 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 180 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 all components of the Indian Health Service (including funds assessed by any other Fed-
eral agency) for inclusion in Self-Governance compacts or
funding agreements. The Secretary shall include such for-
mula or formulas (or any revisions thereof) in the annual
report submitted to the Congress under subsection (b), to-
gether with the views of the affected Indian tribes and tribal
organizations.

“SEC. 516. DISCLAIMERS.

“(a) NO FUNDING REDUCTION.—Nothing in this title
shall be construed to limit or reduce in any way the funding
for any program, project, or activity serving an Indian
tribe under this or other applicable Federal law. Any In-
dian tribe that alleges that a compact or funding agreement
is in violation of this section may apply the provisions of
section 110.

“(b) FEDERAL TRUST AND TREATY RESPONSIBIL-
ITIES.—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) of the 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 em-
ployer.

“(d) Obligations of the United States.—The In-
dian Health Service shall neither bill nor charge those Indi-
ans who may have the economic means to pay for services,
nor require any Indian tribe to do so.

“Sec. 517. Application of Other Sections of the Act.

“(a) Mandatory Application.—All provisions of sec-
tions 6, 7, 8, 102(c) and (d), 104, 105(k) and (l), 106(a)
through (k), and 111 of this Act and section 314 of Public
Law 101–512 (coverage under the Federal Tort Claims
Act), to the extent not in conflict with this title, shall apply
to compacts and funding agreements authorized by this
title.

“(b) Discretionary Application.—At the request of
a participating Indian tribe, any other provision of title
I, to the extent such provision is not in conflict with this
title, shall be made a part of a funding agreement or com-
pact entered into under this title. The Secretary is obligated
to include such provision at the option of the participating
Indian tribe or tribes. If such provision is incorporated it
shall have the same force and effect as if it were set out
in full in this title. In the event an Indian tribe requests
such incorporation at the negotiation stage of a compact
or funding agreement, such incorporation shall be deemed
effective immediately and shall control the negotiation and
resulting compact and funding agreement.

“SEC. 518. REGULATIONS.

“(a) IN GENERAL.—

“(1) Not later than 90 days after the date of en-
actment of this title, the Secretary shall initiate pro-
cedures 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 Sec-
retary no later than 1 year after the date of enactment of this title.

“(3) No regulations to implement this title may
be published unless they are recommended by the com-
mittee 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 commit-
tee established pursuant to section 565 of title 5, United
States Code, to carry out this section shall have as its mem-
ers only Federal and tribal government representatives, a
majority of whom shall be nominated by and be representa-
tives 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.

“(e) EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCES, AND RULES.—Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except as provided in section 105(g) and 510.

“SEC. 519. APPEALS.

“In any appeal (including civil actions) 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. 520. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 5. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS.

(a) Burden of Proof in District Court Actions.—Section 102(e)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f(e)(1)) is amended by inserting after “subsection (b)(3)” the following: “or any civil action conducted pursuant to section 110(a)”.

(b) Confirmation of 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.”.

(c) Effective Date.—This section shall apply to any proceedings commenced after October 25, 1994.

SEC. 6. REPEAL.

(a) In General.—Title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) is hereby repealed.
(b) **Effective Date.**—This section shall take effect on October 1, 1998.

**SEC. 7. EFFECTIVE DATE.**

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