

Union Calendar No. 436

105TH CONGRESS
2^D SESSION

H. R. 1833

[Report No. 105-765]

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

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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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 *Congress finds that—*

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

8 *(2) the United States recognizes a special govern-*
9 *ment-to-government relationship with Indian tribes,*
10 *including the right of the Indian tribes to Self-Gov-*
11 *ernance, as reflected in the Constitution, treaties, Fed-*
12 *eral statutes, and the course of dealings of the United*
13 *States with Indian tribes;*

14 *(3) although progress has been made, the Federal*
15 *bureaucracy, with its centralized rules and regula-*
16 *tions, has eroded tribal Self-Governance and domi-*
17 *nates tribal affairs;*

18 *(4) the Tribal Self-Governance Project, estab-*
19 *lished under title III of the Indian Self-Determina-*
20 *tion and Education Assistance Act of 1975 (25 U.S.C.*
21 *450f note) was designed to improve and perpetuate*
22 *the government-to-government relationship between*
23 *Indian tribes and the United States and to strengthen*
24 *tribal control over Federal funding and program*
25 *management;*

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

6 (6) *Congress has reviewed the results of the Trib-*
7 *al Self-Governance Demonstration Project and finds*
8 *that transferring full control and funding to tribal*
9 *governments, upon tribal request, over decision mak-*
10 *ing for Federal programs, services, functions, and ac-*
11 *tivities (or portions thereof)—*

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

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

17 **SEC. 3. DECLARATION OF POLICY.**

18 *It is the policy of Congress to—*

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

22 (2) *call for full cooperation from the Department*
23 *of Health and Human Services and its constituent*
24 *agencies in the implementation of tribal Self-Govern-*
25 *ance—*

1 (A) to enable the United States to maintain
2 and improve its unique and continuing relation-
3 ship with, and responsibility to, Indian tribes;

4 (B) to permit each Indian tribe to choose
5 the extent of its participation in Self-Govern-
6 ance;

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

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

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

16 (F) to strengthen the government-to-govern-
17 ment relationship between the United States and
18 Indian tribes through direct and meaningful
19 consultation with all tribes;

20 (G) to permit an orderly transition from
21 Federal domination of programs and services to
22 provide Indian tribes with meaningful authority,
23 control, funding and discretion to plan, conduct,
24 redesign and administer programs, services,
25 functions and activities (or portions thereof) that

1 *meet the needs of the individual tribal commu-*
2 *nities;*

3 *(H) to provide for a measurable parallel re-*
4 *duction in the Federal bureaucracy as programs,*
5 *services, functions, and activities (or portions*
6 *thereof) are assumed by Indian tribes;*

7 *(I) to encourage the Secretary to identify all*
8 *programs, services, functions, and activities (or*
9 *portions thereof) of the Department of Health*
10 *and Human Services that may be managed by*
11 *an Indian tribe under this Act and to assist In-*
12 *Indian tribes in assuming responsibility for such*
13 *programs, services, functions, and activities (or*
14 *portions thereof); and*

15 *(J) to provide Indian tribes with the earli-*
16 *est opportunity to administer programs, services,*
17 *functions, and activities (or portions thereof)*
18 *from throughout the Department of Health and*
19 *Human Services.*

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

21 *The Indian Self-Determination Act (25 U.S.C. 450 et*
22 *seq.) is amended by adding at the end the following new*
23 *title:*

1 **“TITLE V—TRIBAL SELF-**
2 **GOVERNANCE**

3 **“SEC. 501. ESTABLISHMENT.**

4 *“The Secretary of Health and Human Services shall*
5 *establish and carry out a program within the Department*
6 *of Health and Human Services to be known as the ‘Tribal*
7 *Self-Governance Program’ in accordance with this title.*

8 **“SEC. 502. DEFINITIONS.**

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

10 *“(1) the term ‘inherent Federal functions’ means*
11 *those Federal functions which cannot legally be dele-*
12 *gated to Indian tribes;*

13 *“(2) the term ‘inter-tribal consortium’ means a*
14 *coalition of two or more separate Indian tribes that*
15 *join together for the purpose of participating in Self-*
16 *Governance, including, but not limited to, a tribal or-*
17 *ganization;*

18 *“(3) the term ‘tribal shares’ means an Indian*
19 *tribe’s portion of all funds and resources that support*
20 *secretarial programs, services, functions, and activi-*
21 *ties (or portions thereof) that are not required by the*
22 *Secretary for performance of inherent Federal func-*
23 *tions;*

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

1 “(5) the term ‘Self-Governance’ means the pro-
2 gram established pursuant to section 501.

3 “(b) *INDIAN TRIBE*.—Where an Indian tribe has au-
4 thorized another Indian tribe, an inter-tribal consortium,
5 or a tribal organization to plan for or carry out programs,
6 services, functions, or activities (or portions thereof) on its
7 behalf under this title, the authorized Indian tribe, inter-
8 tribal consortium, or tribal organization shall have the
9 rights and responsibilities of the authorizing Indian tribe
10 (except as otherwise provided in the authorizing resolution
11 or in this title). In such event, the term ‘Indian tribe’ as
12 used in this title shall include such other authorized Indian
13 tribe, inter-tribal consortium, or tribal organization.

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

15 “(a) *CONTINUING PARTICIPATION*.—Each Indian tribe
16 that is participating in the Tribal Self-Governance Dem-
17 onstrations Project under title III on the date of enactment
18 of this title may elect to participate in Self-Governance
19 under this title under existing authority as reflected in trib-
20 al resolution.

21 “(b) *ADDITIONAL PARTICIPANTS*.—

22 “(1) In addition to those Indian tribes partici-
23 pating in Self-Governance under subsection (a), each
24 year an additional 50 Indian tribes that meet the eli-

1 *gibility criteria specified in subsection (c) shall be en-*
2 *titled to participate in Self-Governance.*

3 “(2)(A) *An Indian tribe that has withdrawn*
4 *from participation in an inter-tribal consortium or*
5 *tribal organization, in whole or in part, shall be enti-*
6 *tled to participate in Self-Governance provided the*
7 *Indian tribe meets the eligibility criteria specified in*
8 *subsection (c).*

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

15 “(C) *In no event shall the withdrawal of an In-*
16 *dian tribe from an inter-tribal consortium or tribal*
17 *organization affect the eligibility of the inter-tribal*
18 *consortium or tribal organization to participate in*
19 *Self-Governance.*

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

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

24 “(2) *has requested participation in Self-Govern-*
25 *ance by resolution or other official action by the gov-*

1 *erning body (or bodies) of the Indian tribe or tribes*
2 *to be served; and*

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

6 *Evidence that during such years the Indian tribe had no*
7 *uncorrected significant and material audit exceptions in*
8 *the required annual audit of the Indian tribe’s self-deter-*
9 *mination contracts or Self-Governance funding agreements*
10 *with any Federal agency shall be conclusive evidence of the*
11 *required stability and capability for the purposes of this*
12 *subsection.*

13 *“(d) PLANNING PHASE.—Each Indian tribe seeking*
14 *participation in Self-Governance shall complete a planning*
15 *phase. The planning phase shall be conducted to the satis-*
16 *faction of the Indian tribe and shall include—*

17 *“(1) legal and budgetary research; and*

18 *“(2) internal tribal government planning and*
19 *organizational preparation relating to the adminis-*
20 *tration of health care programs.*

21 *“(e) GRANTS.—Subject to the availability of appro-*
22 *priations, any Indian tribe meeting the requirements of*
23 *subsections (c)(2) and (3) shall be eligible for grants—*

24 *“(1) to plan for participation in Self-Govern-*
25 *ance; and*

1 “(2) to negotiate the terms of participation by
2 the Indian tribe or tribal organization in Self-Gov-
3 ernance, as set forth in a compact and a funding
4 agreement.

5 “(f) RECEIPT OF GRANT NOT REQUIRED.—Receipt of
6 a grant under subsection (e) shall not be a requirement of
7 participation in Self-Governance.

8 **“SEC. 504. COMPACTS.**

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

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

21 “(c) EXISTING COMPACTS.—An Indian tribe partici-
22 pating in the tribal Self-Governance on the date of enact-
23 ment of this title shall have the option at any time there-
24 after to—

1 “(1) *retain its Tribal Self-Governance Project*
2 *compact (in whole or in part) to the extent the provi-*
3 *sions of such compact are not directly contrary to*
4 *any express provision of this title, or*

5 “(2) *negotiate in lieu thereof (in whole or in*
6 *part) a new compact in conformity with this title.*

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

13 **“SEC. 505. FUNDING AGREEMENTS.**

14 “(a) *FUNDING AGREEMENT REQUIRED.—The Sec-*
15 *retary shall negotiate and enter into a written funding*
16 *agreement with each Indian tribe participating in Self-*
17 *Governance in a manner consistent with the Federal Gov-*
18 *ernment’s trust responsibility, treaty obligations, and the*
19 *government-to-government relationship between Indian*
20 *tribes and the United States.*

21 “(b) *CONTENTS.—Each funding agreement required*
22 *under subsection (a) shall, as determined by the Indian*
23 *tribe, authorize the Indian tribe to plan, conduct, consoli-*
24 *date, administer, and receive full tribal share funding for*
25 *all programs, services, functions, and activities (or portions*

1 *thereof), including tribal shares of discretionary Indian*
2 *Health Service competitive grants (excluding congression-*
3 *ally earmarked competitive grants), that are carried out for*
4 *the benefit of Indians because of their status as Indians (in-*
5 *cluding all programs, services, functions, or activities (or*
6 *portions thereof) where Indian tribes or Indians are pri-*
7 *mary or significant beneficiaries, administered by the De-*
8 *partment of Health and Human Services through the In-*
9 *dian Health Service and grants (which may be added to*
10 *a funding agreement after award of such grants)) without*
11 *regard to the agency or office of the Indian Health Service*
12 *(or of such other agency) within which the program, service,*
13 *function, or activity (or portion thereof) is performed, in-*
14 *cluding tribal share funding for all local, field, service unit,*
15 *area, regional, and central headquarters or national office*
16 *functions administered under the authority of—*

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

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

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

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

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

1 “(6) any other act of Congress authorizing agen-
2 cies of the Department of Health and Human Serv-
3 ices to administer, carry out or provide financial as-
4 sistance to such programs, services, functions or ac-
5 tivities (or portions thereof) described in this section;
6 or

7 “(7) any other act of Congress authorizing such
8 programs, services, functions or activities (or portions
9 thereof) under which appropriations are made to
10 agencies other than agencies within the Department of
11 Health and Human Services, when the Secretary ad-
12 ministers such programs, services, functions or activi-
13 ties (or portions thereof).

14 “(c) *INCLUSION IN COMPACT OR FUNDING AGREE-*
15 *MENT.*—Indian tribes or Indians need not be identified in
16 the authorizing statute for a program or element of a pro-
17 gram to be eligible for inclusion in a compact or funding
18 agreement under this title.

19 “(d) *FUNDING AGREEMENT TERMS.*—Each funding
20 agreement shall set forth terms that generally identify the
21 programs, services, functions, and activities (or portions
22 thereof) to be performed or administered, the general budget
23 category assigned, the funds to be provided, including those
24 to be provided on a recurring basis, the time and method
25 of transfer of the funds, the responsibilities of the Secretary,

1 *and any other provisions to which the Indian tribe and the*
2 *Secretary agree.*

3 “(e) *SUBSEQUENT FUNDING AGREEMENTS.—Absent*
4 *notification from an Indian tribe that is withdrawing or*
5 *retroceding the operation of one or more programs, services,*
6 *functions, or activities (or portions thereof) identified in a*
7 *funding agreement, or unless otherwise agreed to by the par-*
8 *ties, each funding agreement shall remain in full force and*
9 *effect until a subsequent funding agreement is executed, and*
10 *the terms of the subsequent funding agreement shall be ret-*
11 *roactive to the end of the term of the preceding funding*
12 *agreement.*

13 “(f) *EXISTING FUNDING AGREEMENTS.—Each Indian*
14 *tribe participating in the Tribal Self-Governance Project*
15 *established under title III, as in force before the enactment*
16 *of the Tribal Self-Governance Amendments of 1998, on the*
17 *date of enactment of this title shall have the option at any*
18 *time thereafter to—*

19 “(1) *retain its Tribal Self-Governance Project*
20 *funding agreement (in whole or in part) to the extent*
21 *the provisions of such funding agreement are not di-*
22 *rectly contrary to any express provision of this title,*
23 *or*

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

4 “(g) *STABLE BASE FUNDING*.—At the option of an In-
5 dian tribe, a funding agreement may provide for a stable
6 base budget specifying the recurring funds (including, for
7 purposes of this provision, funds available under section
8 106(a) of the Act) to be transferred to such Indian tribe,
9 for such period as may be specified in the funding agree-
10 ment, subject to annual adjustment only to reflect changes
11 in congressional appropriations by sub-sub activity exclud-
12 ing earmarks.

13 “**SEC. 506. SELF-GOVERNANCE FEASIBILITY STUDY.**

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

22 “(b) *ENTITIES TO BE CONSULTED*.—In conducting
23 the study required under this section, the Secretary shall
24 consult with Indian tribes, States, counties and municipali-
25 ties, program beneficiaries, and concerned public interest

1 *groups, and may consult with other entities as the Secretary*
2 *finds appropriate.*

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

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

8 “(2) *Statutory, regulatory, or operational im-*
9 *pediments to implementation.*

10 “(3) *Strategies for facilitating Self-Governance.*

11 “(4) *Probable costs associated with Self-Govern-*
12 *ance.*

13 “(5) *Methods to ensure quality and accountabil-*
14 *ity in Self-Governance demonstrations.*

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

17 “(d) *REPORT TO CONGRESS.—Not later than 18*
18 *months after the date of the enactment of this Act, the Sec-*
19 *retary shall report to the Congress the findings and conclu-*
20 *sions of the study under this section and any separate or*
21 *dissenting views of the entities consulted pursuant to sub-*
22 *section (b).*

23 “(e) *AUTHORIZATION OF APPROPRIATIONS.—There are*
24 *authorized to be appropriated for fiscal years 1999 and*

1 2000 such sums as necessary to carry out the purposes of
2 this section, to remain available until expended.

3 **“SEC. 507. GENERAL PROVISIONS.**

4 “(a) *APPLICABILITY.*—The provisions of this section
5 shall apply to compacts and funding agreements negotiated
6 under this title and an Indian tribe may, at its option,
7 include provisions that reflect such requirements in a com-
8 pact or funding agreement.

9 “(b) *CONFLICTS OF INTEREST.*—Indian tribes partici-
10 pating in Self-Governance under this title shall ensure that
11 internal measures are in place to address conflicts of inter-
12 est in the administration of Self-Governance programs,
13 services, functions, or activities (or portions thereof).

14 “(c) *AUDITS.*—

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

19 “(2) *COST PRINCIPLES.*—An Indian tribe shall
20 apply cost principles under the applicable Office of
21 Management and Budget Circular, except as modified
22 by section 106, or by any exemptions to applicable
23 Office of Management and Budget Circulars subse-
24 quently granted by Office of Management and Budget.
25 No other audit or accounting standards shall be re-

1 *quired by the Secretary. Any claim by the Federal*
2 *Government against the Indian tribe relating to funds*
3 *received under a funding agreement based on any*
4 *audit under this subsection shall be subject to the pro-*
5 *visions of section 106(f).*

6 “(d) *RECORDS.*—

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

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

20 “(e) *REDESIGN AND CONSOLIDATION.*—*An Indian*
21 *tribe may redesign or consolidate programs, services, func-*
22 *tions, and activities (or portions thereof) included in a*
23 *funding agreement under section 505 and reallocate or redi-*
24 *rect funds for such programs, services, functions, and activi-*
25 *ties (or portions thereof) in any manner which the Indian*

1 *tribe deems to be in the best interest of the health and wel-*
 2 *fare of the Indian community being served, only if the rede-*
 3 *sign or consolidation does not have the effect of denying eli-*
 4 *gibility for services to population groups otherwise eligible*
 5 *to be served.*

6 “(f) *RETROCESSION.*—*An Indian tribe may retrocede,*
 7 *fully or partially, to the Secretary programs, services, func-*
 8 *tions, or activities (or portions thereof) included in the com-*
 9 *pact or funding agreement. Unless the Indian tribe rescinds*
 10 *the request for retrocession, such retrocession will become*
 11 *effective within the time frame specified by the parties in*
 12 *the compact or funding agreement. In the absence of such*
 13 *a specification, such retrocession shall become effective on—*

14 “(1) *the earlier of—*

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

17 “(B) *the date on which the funding agree-*
 18 *ment expires; or*

19 “(2) *such date as may be mutually agreed by the*
 20 *Secretary and the Indian tribe.*

21 “(g) *WITHDRAWAL.*—

22 “(1) *PROCESS.*—*An Indian tribe may fully or*
 23 *partially withdraw from a participating inter-tribal*
 24 *consortium or tribal organization its share of any*
 25 *program, function, service, or activity (or portions*

1 *thereof) included in a compact or funding agreement.*
2 *Such withdrawal shall become effective within the*
3 *time frame specified in the resolution which author-*
4 *izes transfer to the participating tribal organization*
5 *or inter-tribal consortium. In the absence of a specific*
6 *time frame set forth in the resolution, such with-*
7 *drawal shall become effective on—*

8 *“(A) the earlier of—*

9 *“(i) one year from the date of submis-*
10 *sion of such request; or*

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

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

20 *“(2) DISTRIBUTION OF FUNDS.—When an In-*
21 *dian tribe or tribal organization eligible to enter into*
22 *a self-determination contract under title I or a com-*
23 *compact or funding agreement under this title fully or*
24 *partially withdraws from a participating inter-tribal*
25 *consortium or tribal organization, the withdrawing*

1 *Indian tribe or tribal organization shall be entitled to*
2 *its tribal share of funds supporting those programs,*
3 *services, functions, or activities (or portions thereof)*
4 *which it will be carrying out under its own self-deter-*
5 *mination contract or compact and funding agreement*
6 *(calculated on the same basis as the funds were ini-*
7 *tially allocated in the funding agreement of the inter-*
8 *tribal consortium or tribal organization), and such*
9 *funds shall be transferred from the funding agreement*
10 *of the inter-tribal consortium or tribal organization,*
11 *provided that the provisions of sections 102, 105(i),*
12 *and 506, as appropriate, shall apply to such with-*
13 *drawing Indian tribe.*

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

22 *“(h) NONDUPLICATION.—For the period for which, and*
23 *to the extent to which, funding is provided under this title*
24 *or under the compact or funding agreement, the Indian*
25 *tribe shall not be entitled to contract with the Secretary*

1 *for such funds under section 102, except that such Indian*
2 *tribe shall be eligible for new programs on the same basis*
3 *as other Indian tribes.*

4 **“SEC. 508. PROVISIONS RELATING TO THE SECRETARY.**

5 *“(a) MANDATORY PROVISIONS.—*

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

11 *“(A) to the extent such data is not otherwise*
12 *available to the Secretary and specific funds for*
13 *this purpose are provided by the Secretary under*
14 *the funding agreement; and*

15 *“(B) if such reporting shall impose mini-*
16 *mal burdens on the participating Indian tribe*
17 *and such requirements are promulgated under*
18 *section 518 of this title.*

19 *“(2) REASSUMPTION.—(A) Contracts or funding*
20 *agreements negotiated between the Secretary and an*
21 *Indian tribe shall include a provision authorizing the*
22 *Secretary to reassume operation of a program, serv-*
23 *ice, function, or activity (or portions thereof) if there*
24 *is a finding of imminent endangerment of the public*
25 *health caused by an act or omission of the Indian*

1 *tribe, and the imminent endangerment arises out of*
2 *a failure to carry out the compact or funding agree-*
3 *ment.*

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

10 *“(C) Notwithstanding subparagraph (B), the*
11 *Secretary may, upon written notification to the tribe,*
12 *immediately reassume operation of a program, serv-*
13 *ice, function, or activity (or portion thereof) if (i) the*
14 *Secretary makes a finding of imminent substantial*
15 *and irreparable endangerment of the public health*
16 *caused by an act or omission of the Indian tribe; and*
17 *(ii) the endangerment arises out of a failure to carry*
18 *out the compact or funding agreement. If the Sec-*
19 *retary reassumes operation of a program, service,*
20 *function, or activity (or portion thereof) under this*
21 *subparagraph, the Secretary shall provide the tribe*
22 *with a hearing on the record not later than 10 days*
23 *after such reassumption.*

24 *“(D) In any hearing or appeal involving a deci-*
25 *sion to reassume operation of a program, service,*

1 *function, or activity (or portion thereof), the Sec-*
2 *retary shall have the burden of proof of demonstrating*
3 *by clear and convincing evidence the validity of the*
4 *grounds for the reassumption.*

5 *“(b) FINAL OFFER.—In the event the Secretary and*
6 *a participating Indian tribe are unable to agree, in whole*
7 *or in part, on the terms of a compact or funding agreement*
8 *(including funding levels), the Indian tribe may submit a*
9 *final offer to the Secretary. The Secretary shall have no*
10 *more than 45 days after such submission, or within a longer*
11 *time agreed upon by the Indian tribe made in compliance*
12 *to review and make a determination with respect to such*
13 *offer. In the absence of a timely rejection of the offer, in*
14 *whole or in part, made in compliance with subsection (c),*
15 *the offer shall be deemed agreed to by the Secretary.*

16 *“(c) REJECTION OF FINAL OFFERS.—If the Secretary*
17 *rejects an offer, made under subsection (b) (or one or more*
18 *provisions or funding levels in such offer), the Secretary*
19 *shall provide—*

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

24 *“(A) the amount of funds proposed in the*
25 *final offer exceeds the applicable funding level to*

1 *which the Indian tribe is entitled under this*
2 *title;*

3 “(B) *the program, function, service, or ac-*
4 *tivity (or portion thereof) that is the subject of*
5 *the final offer is an inherent Federal function*
6 *that cannot legally be delegated to an Indian*
7 *tribe;*

8 “(C) *the Indian tribe cannot carry out the*
9 *program, function, service, or activity (or por-*
10 *tion thereof) in a manner that would not result*
11 *in imminent danger to the public health; or*

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

15 “(2) *technical assistance to overcome the objec-*
16 *tions stated in the notification required by paragraph*
17 *(1);*

18 “(3) *the Indian tribe with a hearing on the*
19 *record with the right to engage in full discovery rel-*
20 *evant to any issue raised in the matter and the op-*
21 *portunity for appeal on the objections raised, pro-*
22 *vided that the Indian tribe may, in lieu of filing such*
23 *appeal, directly proceed to initiate an action in a*
24 *Federal district court pursuant to section 110(a); and*

1 “(4) the Indian tribe with the option of entering
2 into the severable portions of a final proposed com-
3 pact or funding agreement, or provision thereof, (in-
4 cluding lesser funding amount, if any), that the Sec-
5 retary did not reject, subject to any additional alter-
6 ations necessary to conform the compact or funding
7 agreement to the severed provisions. If an Indian
8 tribe exercises the option specified herein, it shall re-
9 tain the right to appeal the Secretary’s rejection
10 under this section, and paragraphs (1), (2), and (3)
11 shall only apply to that portion of the proposed final
12 compact, funding agreement or provision thereof that
13 was rejected by the Secretary.

14 “(d) *BURDEN OF PROOF.*—With respect to any hear-
15 ing or appeal or civil action conducted pursuant to this
16 section, the Secretary shall have the burden of demonstrat-
17 ing by clear and convincing evidence the validity of the
18 grounds for rejecting the offer (or a provision thereof) made
19 under subsection (b).

20 “(e) *GOOD FAITH.*—In the negotiation of compacts
21 and funding agreements the Secretary shall at all times ne-
22 gotiate in good faith to maximize implementation of the
23 Self-Governance policy. The Secretary shall carry out this
24 title in a manner that maximizes the policy of tribal Self-
25 Governance, consistent with section 3.

1 “(f) *SAVINGS.*—*To the extent that programs, functions,*
2 *services, or activities (or portions thereof) carried out by*
3 *Indian tribes under this title reduce the administrative or*
4 *other responsibilities of the Secretary with respect to the*
5 *operation of Indian programs and result in savings that*
6 *have not otherwise been included in the amount of tribal*
7 *shares and other funds determined under section 509(d), the*
8 *Secretary shall make such savings available to the Indian*
9 *tribes, inter-tribal consortia, or tribal organizations for the*
10 *provision of additional services to program beneficiaries in*
11 *a manner equitable to directly served, contracted, and com-*
12 *pacted programs.*

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

19 “(h) *DECISIONMAKER.*—*A decision that constitutes*
20 *final agency action and relates to an appeal within the De-*
21 *partment of Health and Human Services conducted under*
22 *subsection (c) shall be made either—*

23 “(1) *by an official of the Department who holds*
24 *a position at a higher organizational level within the*
25 *Department than the level of the departmental agency*

1 *in which the decision that is the subject of the appeal*
2 *was made; or*

3 *“(2) by an administrative judge.*

4 **“SEC. 509. TRANSFER OF FUNDS.**

5 *“(a) IN GENERAL.—Pursuant to the terms of any com-*
6 *pact or funding agreement entered into under this title, the*
7 *Secretary shall transfer to the Indian tribe all funds pro-*
8 *vided for in the funding agreement, pursuant to subsection*
9 *(d), and provide funding for periods covered by joint resolu-*
10 *tion adopted by Congress making continuing appropria-*
11 *tions, to the extent permitted by such resolutions. In any*
12 *instance where a funding agreement requires an annual*
13 *transfer of funding to be made at the beginning of a fiscal*
14 *year, or requires semi-annual or other periodic transfers of*
15 *funding to be made commencing at the beginning of a fiscal*
16 *year, the first such transfer shall be made not later than*
17 *10 days after the apportionment of such funds by the Office*
18 *of Management and Budget to the Department, unless the*
19 *funding agreement provides otherwise.*

20 *“(b) MULTI-YEAR FUNDING.—The Secretary is hereby*
21 *authorized to employ, upon tribal request, multi-year fund-*
22 *ing agreements for construction or other multi-year activi-*
23 *ties, and references in this title to funding agreements shall*
24 *include such multi-year agreements.*

1 “(c) *FUNDING FOR CONSTRUCTION PROGRAMS.*—Com-
2 *pacts or funding agreements authorized by this title, includ-*
3 *ing agreements encompassing construction programs, shall*
4 *provide for advance transfers of funding to the Indian tribe*
5 *in the form of full funding or annual or semi-annual in-*
6 *stallments, at the discretion of the Indian tribe.*

7 “(d) *AMOUNT OF FUNDING.*—*The Secretary shall pro-*
8 *vide funds under a funding agreement under this title in*
9 *an amount equal to the amount that the Indian tribe would*
10 *have been entitled to receive under self-determination con-*
11 *tracts under this Act, including amounts for direct program*
12 *costs specified under section 106(a)(1) and amounts for con-*
13 *tract support costs specified under sections 106(a)(2),*
14 *(a)(3), (a)(5), and (a)(6), including any funds that are spe-*
15 *cifically or functionally related to the provision by the Sec-*
16 *retary of services and benefits to the Indian tribe or its*
17 *members, all without regard to the organizational level*
18 *within the Department where such functions are carried*
19 *out.*

20 “(e) *PROHIBITIONS.*—*The Secretary is expressly pro-*
21 *hibited from—*

22 “(1) *failing or refusing to transfer to an Indian*
23 *tribe its full share of any central, headquarters, re-*
24 *gional, area, or service unit office or other funds due*

1 *under this Act, except as required by other Federal*
2 *law;*

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

5 “(3) *reducing the amount of funds required here-*
6 *in—*

7 “(A) *to make funding available for Self-*
8 *Governance monitoring or administration by the*
9 *Secretary;*

10 “(B) *in subsequent years, except pursuant*
11 *to—*

12 “(i) *a reduction in appropriations*
13 *from the previous fiscal year for the pro-*
14 *gram or function to be included in a com-*
15 *compact or funding agreement;*

16 “(ii) *a congressional directive in legis-*
17 *lation or accompanying report;*

18 “(iii) *a tribal authorization;*

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

22 “(v) *completion of a project, activity,*
23 *or program for which such funds were pro-*
24 *vided;*

1 “(C) to pay for Federal functions, including
2 Federal pay costs, Federal employee retirement
3 benefits, automated data processing, technical as-
4 sistance, and monitoring of activities under this
5 Act; or

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

9 except that such funds may be increased by the Secretary
10 if necessary to carry out this Act or as provided in section
11 105(c)(2).

12 “(f) OTHER RESOURCES.—In the event an Indian
13 tribe elects to carry out a compact or funding agreement
14 with the use of Federal personnel, Federal supplies (includ-
15 ing supplies available from Federal warehouse facilities),
16 Federal supply sources (including lodging, airline transpor-
17 tation, and other means of transportation including the use
18 of Interagency Motor Pool vehicles) or other Federal re-
19 sources (including supplies, services, and resources avail-
20 able to the Secretary under any procurement contracts in
21 which the Department is eligible to participate), the Sec-
22 retary is authorized to and shall acquire and transfer such
23 personnel, supplies, or resources to the Indian tribe.

24 “(g) REIMBURSEMENT TO INDIAN HEALTH SERV-
25 ICE.—With respect to functions transferred by the Indian

1 *health Service to an Indian tribe, the Indian Health Service*
2 *is authorized to provide goods and services to the Indian*
3 *tribe, on a reimbursable basis, including payment in ad-*
4 *vance with subsequent adjustment, and the reimbursements*
5 *received therefrom, along with the funds received from the*
6 *Indian tribe pursuant to this title, may be credited to the*
7 *same or subsequent appropriation account which provided*
8 *the funding, such amounts to remain available until ex-*
9 *pended.*

10 “(h) *PROMPT PAYMENT ACT.*—Chapter 39 of title 31,
11 *United States Code, shall apply to the transfer of funds due*
12 *under a compact or funding agreement authorized under*
13 *this title.*

14 “(i) *INTEREST OR OTHER INCOME ON TRANSFERS.*—
15 *An Indian tribe is entitled to retain interest earned on any*
16 *funds paid under a compact or funding agreement to carry*
17 *out governmental or health purposes and such interest shall*
18 *not diminish the amount of funds the Indian tribe is au-*
19 *thorized to receive under its funding agreement in the year*
20 *the interest is earned or in any subsequent fiscal year.*
21 *Funds transferred under this Act shall be managed using*
22 *the prudent investment standard.*

23 “(j) *CARRYOVER FUNDS.*—All funds paid to an Indian
24 *tribe in accordance with a compact or funding agreement*
25 *shall remain available until expended. In the event that an*

1 *Indian tribe elects to carry over funding from one year to*
2 *the next, such carryover shall not diminish the amount of*
3 *funds the Indian tribe is authorized to receive under its*
4 *funding agreement in that or any subsequent fiscal year.*

5 “(k) *PROGRAM INCOME.*—*All Medicare, Medicaid, or*
6 *other program income earned by an Indian tribe shall be*
7 *treated as supplemental funding to that negotiated in the*
8 *funding agreement and the Indian tribe may retain all such*
9 *income and expend such funds in the current year or in*
10 *future years except to the extent that the Indian Health*
11 *Care Improvement Act (25 U.S.C. 1601 et seq.) provides*
12 *otherwise for Medicaid and Medicare receipts, and such*
13 *funds shall not result in any offset or reduction in the*
14 *amount of funds the Indian tribe is authorized to receive*
15 *under its funding agreement in the year the program in-*
16 *come is received or for any subsequent fiscal year.*

17 “(l) *LIMITATION OF COSTS.*—*An Indian tribe shall not*
18 *be obligated to continue performance that requires an ex-*
19 *penditure of funds in excess of the amount of funds trans-*
20 *ferred under a compact or funding agreement. If at any*
21 *time the Indian tribe has reason to believe that the total*
22 *amount provided for a specific activity in the compact or*
23 *funding agreement is insufficient the Indian tribe shall pro-*
24 *vide reasonable notice of such insufficiency to the Secretary.*
25 *If the Secretary does not increase the amount of funds*

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

4 **“SEC. 510. CONSTRUCTION PROJECTS.**

5 “(a) *IN GENERAL.*—Unless agreed to by the partici-
6 pating Indian tribe, no provision of the Office of Federal
7 Procurement Policy Act or the Federal acquisition regula-
8 tions or any other general law or regulation pertaining to
9 Federal procurement (including executive orders), shall
10 apply to any construction activity included in a compact
11 or funding agreement.

12 “(b) *HEALTH AND SAFETY STANDARDS.*—In all con-
13 struction projects performed pursuant to this title, the par-
14 ties shall specify appropriate health and safety standards
15 relevant to the construction activity which shall be in con-
16 formity with nationally recognized standards for com-
17 parable projects.

18 **“SEC. 511. FEDERAL PROCUREMENT LAWS AND REGULA-**
19 **TIONS.**

20 “Notwithstanding any other provision of law, unless
21 expressly agreed to by the participating Indian tribe, the
22 compacts and funding agreements entered into under this
23 title shall not be subject to Federal contracting or coopera-
24 tive agreement laws and regulations (including executive
25 orders and the Secretary’s procurement regulations), except

1 *to the extent that such laws expressly apply to Indian*
2 *tribes.*

3 **“SEC. 512. CIVIL ACTIONS.**

4 “(a) *CONTRACT DEFINED.*—*For the purposes of section*
5 *110, the term ‘contract’ shall include compacts and funding*
6 *agreements entered into under this title.*

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

13 **“SEC. 513. FACILITATION.**

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

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

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

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

1 “(b) *REGULATION WAIVER.*—

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

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

21 “(c) *ACCESS TO FEDERAL PROPERTY.*—*In connection*
22 *with any compact or funding agreement executed pursuant*
23 *to this title or an agreement negotiated under the Tribal*
24 *Self-Governance Project established under title III, as in ef-*
25 *fect before the enactment of the Tribal Self-Governance*

1 *Amendments of 1998, upon the request of an Indian tribe,*
2 *the Secretary—*

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

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

14 “(A) *subject to the provisions of subpara-*
15 *graph (B), title to property and equipment fur-*
16 *nished by the Federal Government for use in the*
17 *performance of the compact or funding agree-*
18 *ment or purchased with funds under any com-*
19 *compact or funding agreement shall, unless otherwise*
20 *requested by the Indian tribe, vest in the appro-*
21 *priate Indian tribe;*

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

1 *withdrawal, or reassumption, title to such prop-*
2 *erty and equipment shall revert to the Depart-*
3 *ment of Health and Human Services; and*

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

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

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

21 “(e) *STATE FACILITATION.—States are hereby author-*
22 *ized and encouraged to enact legislation, and to enter into*
23 *agreements with Indian tribes to facilitate and supplement*
24 *the initiatives, programs, and policies authorized by this*

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

3 “(f) *RULES OF CONSTRUCTION.*—*Each provision of*
4 *this title and each provision of a compact or funding agree-*
5 *ment shall be liberally construed for the benefit of the In-*
6 *dian tribe participating in Self-Governance and any ambi-*
7 *guity shall be resolved in favor of the Indian tribe.*

8 **“SEC. 514. BUDGET REQUEST.**

9 “(a) *IN GENERAL.*—*The President shall identify in the*
10 *annual budget request submitted to the Congress under sec-*
11 *tion 1105 of title 31, United States Code, all funds nec-*
12 *essary to fully fund all funding agreements authorized*
13 *under this title, including funds specifically identified to*
14 *fund tribal base budgets. All funds so identified shall be ap-*
15 *portioned to the Indian Health Service, Office of Tribal*
16 *Self-Governance. The Office shall be responsible for distribu-*
17 *tion of all funds provided under section 505. Nothing in*
18 *this provision shall be construed to authorize the IHS to*
19 *reduce the amount of funds that a Self-Governance tribe is*
20 *otherwise entitled to receive under its funding agreement*
21 *or other applicable law, whether or not such funds are ap-*
22 *portioned to the Office of Tribal Self-Governance under this*
23 *section.*

24 “(b) *PRESENT FUNDING; SHORTFALLS.*—*In such*
25 *budget request, the President shall identify the level of need*

1 *presently funded and any shortfall in funding (including*
2 *direct program and contract support costs) for each Indian*
3 *tribe in the United States, either directly by the Secretary,*
4 *under self-determination contracts, or under compacts and*
5 *funding agreements authorized under this title.*

6 **“SEC. 515. REPORTS.**

7 “(a) *ANNUAL REPORT.—The Secretary shall submit to*
8 *Congress on January 1 of each year following the date of*
9 *enactment of this title a written report regarding the ad-*
10 *ministration of this title. Such report shall include a de-*
11 *tailed report on the level of need being presently funded or*
12 *unfunded for each Indian tribe in the United States, either*
13 *directly by the Secretary, under self-determination con-*
14 *tracts under this Act, or under compacts and funding agree-*
15 *ments authorized under this Act.*

16 “(b) *CONTENTS.—The report shall be compiled from*
17 *information contained in funding agreements, annual*
18 *audit reports, and Secretarial data regarding the disposi-*
19 *tion of Federal funds and shall—*

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

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

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

4 “(4) identify the funding formula for individual
5 tribal shares of all central and headquarters funds, to-
6 gether with the comments of affected Indian tribes or
7 tribal organizations, developed under subsection (c);

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

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

14 “(7) prior to being submitted to Congress, be dis-
15 tributed to the Indian tribes for comment, such com-
16 ment period to be for no less than 30 days.

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

20 “(c) *REPORT ON IHS FUNDS.*—Not later than 180
21 days after the date of enactment of this title, the Secretary
22 shall, in consultation with Indian tribes, report on funding
23 formula or formulas used to determine the individual tribal
24 share of funds controlled by all components of the Indian
25 Health Service (including funds assessed by any other Fed-

1 eral agency) for inclusion in Self-Governance compacts or
2 funding agreements. The Secretary shall include such for-
3 mula or formulas (or any revisions thereof) in the annual
4 report submitted to the Congress under subsection (b), to-
5 gether with the views of the affected Indian tribes and tribal
6 organizations.

7 **“SEC. 516. DISCLAIMERS.**

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

15 “(b) *FEDERAL TRUST AND TREATY RESPONSIBIL-*
16 *ITIES.*—Nothing in this Act shall be construed to diminish
17 in any way the trust responsibility of the United States
18 to Indian tribes and individual Indians that exist under
19 treaties, Executive orders, or other laws and court decisions.

20 “(c) *TRIBAL EMPLOYMENT.*—For purposes of section
21 2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter 372)
22 (commonly known as the National Labor Relations Act),
23 an Indian tribe carrying out a self-determination contract,
24 compact, annual funding agreement, grant, or cooperative

1 *agreement under this Act shall not be considered an em-*
2 *ployer.*

3 “(d) *OBLIGATIONS OF THE UNITED STATES.—The In-*
4 *dian Health Service shall neither bill nor charge those Indi-*
5 *ans who may have the economic means to pay for services,*
6 *nor require any Indian tribe to do so.*

7 **“SEC. 517. APPLICATION OF OTHER SECTIONS OF THE ACT.**

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

15 “(b) *DISCRETIONARY APPLICATION.—At the request of*
16 *a participating Indian tribe, any other provision of title*
17 *I, to the extent such provision is not in conflict with this*
18 *title, shall be made a part of a funding agreement or com-*
19 *pact entered into under this title. The Secretary is obligated*
20 *to include such provision at the option of the participating*
21 *Indian tribe or tribes. If such provision is incorporated it*
22 *shall have the same force and effect as if it were set out*
23 *in full in this title. In the event an Indian tribe requests*
24 *such incorporation at the negotiation stage of a compact*
25 *or funding agreement, such incorporation shall be deemed*

1 *effective immediately and shall control the negotiation and*
2 *resulting compact and funding agreement.*

3 **“SEC. 518. REGULATIONS.**

4 “(a) *IN GENERAL.*—

5 “(1) *Not later than 90 days after the date of en-*
6 *actment of this title, the Secretary shall initiate pro-*
7 *cedures under subchapter III of chapter 5 of title 5,*
8 *United States Code, to negotiate and promulgate such*
9 *regulations as are necessary to carry out this title.*

10 “(2) *Proposed regulations to implement this title*
11 *shall be published in the Federal Register by the Sec-*
12 *retary no later than 1 year after the date of enact-*
13 *ment of this title.*

14 “(3) *No regulations to implement this title may*
15 *be published unless they are recommended by the com-*
16 *mittee formed under subsection (b).*

17 “(4) *The authority to promulgate regulations*
18 *under this title shall expire 21 months after the date*
19 *of enactment of this title.*

20 “(b) *COMMITTEE.*—*A negotiated rulemaking commit-*
21 *tee established pursuant to section 565 of title 5, United*
22 *States Code, to carry out this section shall have as its mem-*
23 *bers only Federal and tribal government representatives, a*
24 *majority of whom shall be nominated by and be representa-*
25 *tives of Indian tribes with funding agreements under this*

1 *title, and the Committee shall confer with, and accommo-*
2 *date participation by, representatives of Indian tribes,*
3 *inter-tribal consortia, tribal organizations, and individual*
4 *tribal members.*

5 “(c) *ADAPTATION OF PROCEDURES.—The Secretary*
6 *shall adapt the negotiated rulemaking procedures to the*
7 *unique context of Self-Governance and the government-to-*
8 *government relationship between the United States and In-*
9 *dian tribes.*

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

12 “(e) *EFFECT OF CIRCULARS, POLICIES, MANUALS,*
13 *GUIDANCES, AND RULES.—Unless expressly agreed to by*
14 *the participating Indian tribe in the compact or funding*
15 *agreement, the participating Indian tribe shall not be sub-*
16 *ject to any agency circular, policy, manual, guidance, or*
17 *rule adopted by the Indian Health Service, except as pro-*
18 *vided in section 105(g) and 510.*

19 “**SEC. 519. APPEALS.**

20 “*In any appeal (including civil actions) involving de-*
21 *cisions made by the Secretary under this title, the Secretary*
22 *shall have the burden of proof of demonstrating by clear*
23 *and convincing evidence—*

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

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

3 **“SEC. 520. AUTHORIZATION OF APPROPRIATIONS.**

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

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

7 (a) *BURDEN OF PROOF IN DISTRICT COURT AC-*
8 *TIONS.—Section 102(e)(1) of the Indian Self-Determination*
9 *and Education Assistance Act (25 U.S.C. 450f(e)(1)) is*
10 *amended by inserting after “subsection (b)(3)” the follow-*
11 *ing: “or any civil action conducted pursuant to section*
12 *110(a)”*.

13 (b) *CONFIRMATION OF TRIAL DE NOVO.—Section*
14 *110(a) of the Indian Self-Determination and Education As-*
15 *sistance Act (25 U.S.C. 450m–1) is amended by adding at*
16 *the end the following new sentence: “In any action brought*
17 *under this subsection, the district courts shall conduct a*
18 *trial de novo with full rights of discovery and proceed in*
19 *accordance with the Federal Rules of Civil Procedure.”*

20 (c) *EFFECTIVE DATE.—This section shall apply to any*
21 *proceedings commenced after October 25, 1994.*

22 **SEC. 6. REPEAL.**

23 (a) *IN GENERAL.—Title III of the Indian Self-Deter-*
24 *mination and Education Assistance Act (25 U.S.C. 450f*
25 *note) is hereby repealed.*

1 **(b) EFFECTIVE DATE.**—*This section shall take effect*
2 *on October 1, 1998.*

3 **SEC. 7. EFFECTIVE DATE.**

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