

***In the Senate of the United States,***

*April 4, 2000.*

*Resolved*, That the bill from the House of Representatives (H.R. 1167) entitled “An Act to amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Tribal Self-Governance*  
3 *Amendments of 2000”.*

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-govern-*

1        *ance, as reflected in the Constitution, treaties, Federal*  
2        *statutes, and the course of dealings of the United*  
3        *States with Indian tribes;*

4                *(3) although progress has been made, the Federal*  
5        *bureaucracy, with its centralized rules and regula-*  
6        *tions, has eroded tribal self-governance and dominates*  
7        *tribal affairs;*

8                *(4) the Tribal Self-Governance Demonstration*  
9        *Project, established under title III of the Indian Self-*  
10       *Determination and Education Assistance Act (25*  
11       *U.S.C. 450f note) was designed to improve and per-*  
12       *petuate the government-to-government relationship be-*  
13       *tween Indian tribes and the United States and to*  
14       *strengthen tribal control over Federal funding and*  
15       *program management;*

16               *(5) although the Federal Government has made*  
17       *considerable strides in improving Indian health care,*  
18       *it has failed to fully meet its trust responsibilities and*  
19       *to satisfy its obligations to the Indian tribes under*  
20       *treaties and other laws; and*

21               *(6) Congress has reviewed the results of the Trib-*  
22       *al Self-Governance Demonstration Project and finds*  
23       *that transferring full control and funding to tribal*  
24       *governments, upon tribal request, over decision mak-*

1        *ing for Federal programs, services, functions, and ac-*  
2        *tivities (or portions thereof)—*

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

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

8        **SEC. 3. DECLARATION OF POLICY.**

9        *It is the policy of Congress—*

10                *(1) to permanently establish and implement trib-*  
11                *al self-governance within the Department of Health*  
12                *and Human Services;*

13                *(2) to call for full cooperation from the Depart-*  
14                *ment of Health and Human Services and its con-*  
15                *stituent agencies in the implementation of tribal self-*  
16                *governance—*

17                *(A) to enable the United States to maintain*  
18                *and improve its unique and continuing relation-*  
19                *ship with, and responsibility to, Indian tribes;*

20                *(B) to permit each Indian tribe to choose*  
21                *the extent of its participation in self-governance*  
22                *in accordance with the provisions of the Indian*  
23                *Self-Determination and Education Assistance*  
24                *Act relating to the provision of Federal services*  
25                *to Indian tribes;*

1           (C) to ensure the continuation of the trust  
2 responsibility of the United States to Indian  
3 tribes and Indian individuals;

4           (D) to affirm and enable the United States  
5 to fulfill its obligations to the Indian tribes  
6 under treaties and other laws;

7           (E) to strengthen the government-to-govern-  
8 ment relationship between the United States and  
9 Indian tribes through direct and meaningful  
10 consultation with all tribes;

11           (F) to permit an orderly transition from  
12 Federal domination of programs and services to  
13 provide Indian tribes with meaningful authority,  
14 control, funding, and discretion to plan, conduct,  
15 redesign, and administer programs, services,  
16 functions, and activities (or portions thereof)  
17 that meet the needs of the individual tribal com-  
18 munities;

19           (G) to provide for a measurable parallel re-  
20 duction in the Federal bureaucracy as programs,  
21 services, functions, and activities (or portion  
22 thereof) are assumed by Indian tribes;

23           (H) to encourage the Secretary to identify  
24 all programs, services, functions, and activities  
25 (or portions thereof) of the Department of Health

1           *and Human Services that may be managed by*  
2           *an Indian tribe under this Act and to assist In-*  
3           *Indian tribes in assuming responsibility for such*  
4           *programs, services, functions, and activities (or*  
5           *portions thereof); and*

6                     *(I) to provide Indian tribes with the earliest*  
7           *opportunity to administer programs, services,*  
8           *functions, and activities (or portions thereof)*  
9           *from throughout the Department of Health and*  
10           *Human Services.*

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

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

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

17 **“SEC. 501. DEFINITIONS.**

18           “(a) *IN GENERAL.*—*In this title:*

19                     “(1) *CONSTRUCTION PROJECT.*—*The term ‘con-*  
20 *struction project’—*

21                             “(A) *means an organized noncontinuous*  
22 *undertaking to complete a specific set of pre-*  
23 *determined objectives for the planning, environ-*  
24 *mental determination, design, construction, re-*  
25 *pair, improvement, or expansion of buildings or*

1        *facilities, as described in a construction project*  
2        *agreement; and*

3                *“(B) does not include construction program*  
4        *administration and activities described in para-*  
5        *graphs (1) through (3) of section 4(m), that may*  
6        *otherwise be included in a funding agreement*  
7        *under this title.*

8                *“(2) CONSTRUCTION PROJECT AGREEMENT.—The*  
9        *term ‘construction project agreement’ means a nego-*  
10       *tiated agreement between the Secretary and an In-*  
11       *dian tribe, that at a minimum—*

12                *“(A) establishes project phase start and*  
13        *completion dates;*

14                *“(B) defines a specific scope of work and*  
15        *standards by which it will be accomplished;*

16                *“(C) identifies the responsibilities of the In-*  
17        *dian tribe and the Secretary;*

18                *“(D) addresses environmental consider-*  
19        *ations;*

20                *“(E) identifies the owner and operations*  
21        *and maintenance entity of the proposed work;*

22                *“(F) provides a budget;*

23                *“(G) provides a payment process; and*

24                *“(H) establishes the duration of the agree-*  
25        *ment based on the time necessary to complete the*

1           *specified scope of work, which may be 1 or more*  
2           *years.*

3           “(3) *GROSS MISMANAGEMENT.*—*The term ‘gross*  
4           *mismanagement’ means a significant, clear, and con-*  
5           *vincing violation of a compact, funding agreement, or*  
6           *regulatory, or statutory requirements applicable to*  
7           *Federal funds transferred to an Indian tribe by a*  
8           *compact or funding agreement that results in a sig-*  
9           *nificant reduction of funds available for the pro-*  
10          *grams, services, functions, or activities (or portions*  
11          *thereof) assumed by an Indian tribe.*

12          “(4) *INHERENT FEDERAL FUNCTIONS.*—*The term*  
13          *‘inherent Federal functions’ means those Federal func-*  
14          *tions which cannot legally be delegated to Indian*  
15          *tribes.*

16          “(5) *INTER-TRIBAL CONSORTIUM.*—*The term*  
17          *‘inter-tribal consortium’ means a coalition of 2 or*  
18          *more separate Indian tribes that join together for the*  
19          *purpose of participating in self-governance, including*  
20          *tribal organizations.*

21          “(6) *SECRETARY.*—*The term ‘Secretary’ means*  
22          *the Secretary of Health and Human Services.*

23          “(7) *SELF-GOVERNANCE.*—*The term ‘self-govern-*  
24          *ance’ means the program of self-governance estab-*  
25          *lished under section 502.*

1           “(8) *TRIBAL SHARE*.—The term ‘tribal share’  
2           *means an Indian tribe’s portion of all funds and re-*  
3           *sources that support secretarial programs, services,*  
4           *functions, and activities (or portions thereof) that are*  
5           *not required by the Secretary for performance of in-*  
6           *herent Federal functions.*

7           “(b) *INDIAN TRIBE*.—In any case in which an Indian  
8           *tribe has authorized another Indian tribe, an inter-tribal*  
9           *consortium, or a tribal organization to plan for or carry*  
10           *out programs, services, functions, or activities (or portions*  
11           *thereof) on its behalf under this title, the authorized Indian*  
12           *tribe, inter-tribal consortium, or tribal organization shall*  
13           *have the rights and responsibilities of the authorizing In-*  
14           *dian tribe (except as otherwise provided in the authorizing*  
15           *resolution or in this title). In such event, the term ‘Indian*  
16           *tribe’ as used in this title shall include such other author-*  
17           *ized Indian tribe, inter-tribal consortium, or tribal organi-*  
18           *zation.*

19           **“SEC. 502. ESTABLISHMENT.**

20           *“The Secretary shall establish and carry out a pro-*  
21           *gram within the Indian Health Service of the Department*  
22           *of Health and Human Services to be known as the ‘Tribal*  
23           *Self-Governance Program’ in accordance with this title.*



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

2       “(a) *CONTINUING PARTICIPATION.*—*Each Indian tribe*  
3 *that is participating in the Tribal Self-Governance Dem-*  
4 *onstrations Project under title III on the date of enactment*  
5 *of this title may elect to participate in self-governance*  
6 *under this title under existing authority as reflected in trib-*  
7 *al resolution.*

8       “(b) *ADDITIONAL PARTICIPANTS.*—

9               “(1) *IN GENERAL.*—*In addition to those Indian*  
10 *tribes participating in self-governance under sub-*  
11 *section (a), each year an additional 50 Indian tribes*  
12 *that meet the eligibility criteria specified in sub-*  
13 *section (c) shall be entitled to participate in self-gov-*  
14 *ernance.*

15               “(2) *TREATMENT OF CERTAIN INDIAN TRIBES.*—

16                       “(A) *IN GENERAL.*—*An Indian tribe that*  
17 *has withdrawn from participation in an inter-*  
18 *tribal consortium or tribal organization, in*  
19 *whole or in part, shall be entitled to participate*  
20 *in self-governance provided the Indian tribe*  
21 *meets the eligibility criteria specified in sub-*  
22 *section (c).*

23                       “(B) *EFFECT OF WITHDRAWAL.*—*If an In-*  
24 *Indian tribe has withdrawn from participation in*  
25 *an inter-tribal consortium or tribal organiza-*  
26 *tion, that Indian tribe shall be entitled to its*

1           *tribal share of funds supporting those programs,*  
2           *services, functions, and activities (or portions*  
3           *thereof) that the Indian tribe will be carrying*  
4           *out under the compact and funding agreement of*  
5           *the Indian tribe.*

6           “(C) *PARTICIPATION IN SELF-GOVERN-*  
7           *ANCE.—In no event shall the withdrawal of an*  
8           *Indian tribe from an inter-tribal consortium or*  
9           *tribal organization affect the eligibility of the*  
10           *inter-tribal consortium or tribal organization to*  
11           *participate in self-governance.*

12           “(c) *APPLICANT POOL.—*

13           “(1) *IN GENERAL.—The qualified applicant pool*  
14           *for self-governance shall consist of each Indian tribe*  
15           *that—*

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

18           “(B) *has requested participation in self-gov-*  
19           *ernance by resolution or other official action by*  
20           *the governing body of each Indian tribe to be*  
21           *served; and*

22           “(C) *has demonstrated, for 3 fiscal years, fi-*  
23           *nancial stability and financial management ca-*  
24           *pability.*

1           “(2) *CRITERIA FOR DETERMINING FINANCIAL*  
2           *STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—*  
3           *For purposes of this subsection, evidence that, during*  
4           *the 3-year period referred to in paragraph (1)(C), an*  
5           *Indian tribe had no uncorrected significant and ma-*  
6           *terial audit exceptions in the required annual audit*  
7           *of the Indian tribe’s self-determination contracts or*  
8           *self-governance funding agreements with any Federal*  
9           *agency shall be conclusive evidence of the required sta-*  
10          *bility and capability.*

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

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

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

19          “(e) *GRANTS.—Subject to the availability of appro-*  
20          *priations, any Indian tribe meeting the requirements of*  
21          *paragraph (1) (B) and (C) of subsection (c) shall be eligible*  
22          *for grants—*

23                 “(1) *to plan for participation in self-governance;*  
24                 *and*

1           “(2) to negotiate the terms of participation by  
2           the Indian tribe or tribal organization in self-govern-  
3           ance, as set forth in a compact and a funding agree-  
4           ment.

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 con-  
12          sistent 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 Demonstration  
23          Project under title III on the date of enactment of this title  
24          shall have the option at any time after the date of enact-  
25          ment of this title to—

1           “(1) retain the Tribal Self-Governance Dem-  
2           onstration Project compact of that Indian tribe (in  
3           whole or in part) to the extent that the provisions of  
4           that funding agreement are not directly contrary to  
5           any express provision of this title; or

6           “(2) instead of retaining a compact or portion  
7           thereof under paragraph (1), negotiate a new compact  
8           in a manner consistent with the requirements of this  
9           title.

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

16          **“SEC. 505. FUNDING AGREEMENTS.**

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

24          “(b) *CONTENTS.*—

1           “(1) *IN GENERAL.*—*Each funding agreement re-*  
2           *quired under subsection (a) shall, as determined by*  
3           *the Indian tribe, authorize the Indian tribe to plan,*  
4           *conduct, consolidate, administer, and receive full trib-*  
5           *al share funding, including tribal shares of discre-*  
6           *tionary Indian Health Service competitive grants (ex-*  
7           *cluding congressionally earmarked competitive*  
8           *grants), for all programs, services, functions, and ac-*  
9           *tivities (or portions thereof), that are carried out for*  
10          *the benefit of Indians because of their status as Indi-*  
11          *ans without regard to the agency or office of the In-*  
12          *dian Health Service (or of such other agency) within*  
13          *which the program, service, function, or activity (or*  
14          *portion thereof) is performed.*

15           “(2) *INCLUSION OF CERTAIN PROGRAMS, SERV-*  
16          *ICES, FUNCTIONS, AND ACTIVITIES.*—*Such programs,*  
17          *services, functions, or activities (or portions thereof)*  
18          *include all programs, services, functions, activities (or*  
19          *portions thereof), including grants (which may be*  
20          *added to a funding agreement after an award of such*  
21          *grants), with respect to which Indian tribes or Indi-*  
22          *ans are primary or significant beneficiaries, adminis-*  
23          *tered by the Department of Health and Human Serv-*  
24          *ices through the Indian Health Service and all local,*  
25          *field, service unit, area, regional, and central head-*

1        *quarters or national office functions administered*  
2        *under the authority of—*

3                *“(A) the Act of November 2, 1921 (42 Stat.*  
4                *208, chapter 115; 25 U.S.C. 13);*

5                *“(B) the Act of April 16, 1934 (48 Stat.*  
6                *596, chapter 147; 25 U.S.C. 452 et seq.);*

7                *“(C) the Act of August 5, 1954 (68 Stat.*  
8                *674, chapter 658);*

9                *“(D) the Indian Health Care Improvement*  
10               *Act (25 U.S.C. 1601 et seq.);*

11               *“(E) the Indian Alcohol and Substance*  
12               *Abuse Prevention and Treatment Act of 1986 (25*  
13               *U.S.C. 2401 et seq.);*

14               *“(F) any other Act of Congress authorizing*  
15               *any agency of the Department of Health and*  
16               *Human Services to administer, carry out, or*  
17               *provide financial assistance to such a program,*  
18               *service, function or activity (or portions thereof)*  
19               *described in this section that is carried out for*  
20               *the benefit of Indians because of their status as*  
21               *Indians; or*

22               *“(G) any other Act of Congress authorizing*  
23               *such a program, service, function, or activity (or*  
24               *portions thereof) carried out for the benefit of In-*  
25               *dians under which appropriations are made*

1           *available to any agency other than an agency*  
2           *within the Department of Health and Human*  
3           *Services, in any case in which the Secretary ad-*  
4           *ministers that program, service, function, or ac-*  
5           *tivity (or portion thereof).*

6           “(c) *INCLUSION IN COMPACT OR FUNDING AGREE-*  
7           *MENT.—It shall not be a requirement that an Indian tribe*  
8           *or Indians be identified in the authorizing statute for a pro-*  
9           *gram or element of a program to be eligible for inclusion*  
10           *in a compact or funding agreement under this title.*

11           “(d) *FUNDING AGREEMENT TERMS.—Each funding*  
12           *agreement under this title shall set forth—*

13                   “(1) *terms that generally identify the programs,*  
14                   *services, functions, and activities (or portions thereof)*  
15                   *to be performed or administered; and*

16                   “(2) *for the items identified in paragraph (1)—*

17                           “(A) *the general budget category assigned;*

18                           “(B) *the funds to be provided, including*  
19                           *those funds to be provided on a recurring basis;*

20                           “(C) *the time and method of transfer of the*  
21                           *funds;*

22                           “(D) *the responsibilities of the Secretary;*  
23                   *and*

24                           “(E) *any other provision with respect to*  
25                   *which the Indian tribe and the Secretary agree.*



1       “(e) *SUBSEQUENT FUNDING AGREEMENTS.*—Absent  
2 *notification from an Indian tribe that is withdrawing or*  
3 *retroceding the operation of 1 or more programs, services,*  
4 *functions, or activities (or portions thereof) identified in a*  
5 *funding agreement, or unless otherwise agreed to by the par-*  
6 *ties, each funding agreement shall remain in full force and*  
7 *effect until a subsequent funding agreement is executed, and*  
8 *the terms of the subsequent funding agreement shall be ret-*  
9 *roactive to the end of the term of the preceding funding*  
10 *agreement.*

11       “(f) *EXISTING FUNDING AGREEMENTS.*—Each Indian  
12 *tribe participating in the Tribal Self-Governance Dem-*  
13 *onstration Project established under title III on the date*  
14 *of enactment of this title shall have the option at any time*  
15 *thereafter to—*

16               “(1) *retain the Tribal Self-Governance Dem-*  
17 *onstration Project funding agreement of that Indian*  
18 *tribe (in whole or in part) to the extent that the pro-*  
19 *visions of that funding agreement are not directly*  
20 *contrary to any express provision of this title; or*

21               “(2) *instead of retaining a funding agreement or*  
22 *portion thereof under paragraph (1), negotiate a new*  
23 *funding agreement in a manner consistent with the*  
24 *requirements of this title.*

1       “(g) *STABLE BASE FUNDING.*—At the option of an In-  
2       dian tribe, a funding agreement may provide for a stable  
3       base budget specifying the recurring funds (including, for  
4       purposes of this provision, funds available under section  
5       106(a)) to be transferred to such Indian tribe, for such pe-  
6       riod as may be specified in the funding agreement, subject  
7       to annual adjustment only to reflect changes in congres-  
8       sional appropriations by sub-sub activity excluding ear-  
9       marks.

10       “**SEC. 506. GENERAL PROVISIONS.**

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

16       “(b) *CONFLICTS OF INTEREST.*—Indian tribes partici-  
17       pating in self-governance under this title shall ensure that  
18       internal measures are in place to address conflicts of inter-  
19       est in the administration of self-governance programs, serv-  
20       ices, functions, or activities (or portions thereof).

21       “(c) *AUDITS.*—

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

1           “(2) *COST PRINCIPLES.*—*An Indian tribe shall*  
2 *apply cost principles under the applicable Office of*  
3 *Management and Budget circular, except as modified*  
4 *by section 106, or by any exemptions to applicable*  
5 *Office of Management and Budget circulars subse-*  
6 *quently granted by the Office of Management and*  
7 *Budget. No other audit or accounting standards shall*  
8 *be required by the Secretary. Any claim by the Fed-*  
9 *eral Government against the Indian tribe relating to*  
10 *funds received under a funding agreement based on*  
11 *any audit under this subsection shall be subject to the*  
12 *provisions of section 106(f).*

13           “(d) *RECORDS.*—

14           “(1) *IN GENERAL.*—*Unless an Indian tribe*  
15 *specifies otherwise in the compact or funding agree-*  
16 *ment, records of the Indian tribe shall not be consid-*  
17 *ered Federal records for purposes of chapter 5 of title*  
18 *5, United States Code.*

19           “(2) *RECORDKEEPING SYSTEM.*—*The Indian*  
20 *tribe shall maintain a recordkeeping system, and,*  
21 *after 30 days advance notice, provide the Secretary*  
22 *with reasonable access to such records to enable the*  
23 *Department of Health and Human Services to meet*  
24 *its minimum legal recordkeeping system requirements*

1        *under sections 3101 through 3106 of title 44, United*  
2        *States Code.*

3        “(e) *REDESIGN AND CONSOLIDATION.*—*An Indian*  
4        *tribe may redesign or consolidate programs, services, func-*  
5        *tions, and activities (or portions thereof) included in a*  
6        *funding agreement under section 305 and reallocate or redi-*  
7        *rect funds for such programs, services, functions, and activi-*  
8        *ties (or portions thereof) in any manner which the Indian*  
9        *tribe deems to be in the best interest of the health and wel-*  
10       *fare of the Indian community being served, only if the rede-*  
11       *sign or consolidation does not have the effect of denying eli-*  
12       *gibility for services to population groups otherwise eligible*  
13       *to be served under applicable Federal law.*

14       “(f) *RETROCESSION.*—*An Indian tribe may retrocede,*  
15       *fully or partially, to the Secretary programs, services, func-*  
16       *tions, or activities (or portions thereof) included in the com-*  
17       *pact or funding agreement. Unless the Indian tribe rescinds*  
18       *the request for retrocession, such retrocession will become*  
19       *effective within the timeframe specified by the parties in*  
20       *the compact or funding agreement. In the absence of such*  
21       *a specification, such retrocession shall become effective on—*

22                    “(1) *the earlier of—*

23                                “(A) *1 year after the date of submission of*  
24                    *such request; or*

1           “(B) the date on which the funding agree-  
2           ment expires; or

3           “(2) such date as may be mutually agreed upon  
4           by the Secretary and the Indian tribe.

5           “(g) WITHDRAWAL.—

6           “(1) PROCESS.—

7           “(A) IN GENERAL.—An Indian tribe may  
8           fully or partially withdraw from a participating  
9           inter-tribal consortium or tribal organization its  
10          share of any program, function, service, or activ-  
11          ity (or portions thereof) included in a compact  
12          or funding agreement.

13          “(B) EFFECTIVE DATE.—The withdrawal  
14          referred to in subparagraph (A) shall become ef-  
15          fective within the timeframe specified in the reso-  
16          lution which authorizes transfer to the partici-  
17          pating tribal organization or inter-tribal consor-  
18          tium. In the absence of a specific timeframe set  
19          forth in the resolution, such withdrawal shall be-  
20          come effective on—

21                  “(i) the earlier of—

22                          “(I) 1 year after the date of sub-  
23                          mission of such request; or

24                          “(II) the date on which the fund-  
25                          ing agreement expires; or

1           “(ii) such date as may be mutually  
2           agreed upon by the Secretary, the with-  
3           drawing Indian tribe, and the participating  
4           tribal organization or inter-tribal consor-  
5           tium that has signed the compact or fund-  
6           ing agreement on behalf of the withdrawing  
7           Indian tribe, inter-tribal consortium, or  
8           tribal organization.

9           “(2) *DISTRIBUTION OF FUNDS.*—When an In-  
10          dian tribe or tribal organization eligible to enter into  
11          a self-determination contract under title I or a com-  
12          pact or funding agreement under this title fully or  
13          partially withdraws from a participating inter-tribal  
14          consortium or tribal organization—

15                 “(A) the withdrawing Indian tribe or tribal  
16                 organization shall be entitled to its tribal share  
17                 of funds supporting those programs, services,  
18                 functions, or activities (or portions thereof) that  
19                 the Indian tribe will be carrying out under its  
20                 own self-determination contract or compact and  
21                 funding agreement (calculated on the same basis  
22                 as the funds were initially allocated in the fund-  
23                 ing agreement of the inter-tribal consortium or  
24                 tribal organization); and

1           “(B) the funds referred to in subparagraph  
2           (A) shall be transferred from the funding agree-  
3           ment of the inter-tribal consortium or tribal or-  
4           ganization, on the condition that the provisions  
5           of sections 102 and 105(i), as appropriate, shall  
6           apply to that withdrawing Indian tribe.

7           “(3) *REGAINING MATURE CONTRACT STATUS.*—If  
8           an Indian tribe elects to operate all or some pro-  
9           grams, services, functions, or activities (or portions  
10          thereof) carried out under a compact or funding  
11          agreement under this title through a self-determina-  
12          tion contract under title I, at the option of the Indian  
13          tribe, the resulting self-determination contract shall be  
14          a mature self-determination contract.

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

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

23          “(a) *MANDATORY PROVISIONS.*—

24                  “(1) *HEALTH STATUS REPORTS.*—Compacts or  
25          funding agreements negotiated between the Secretary

1       *and an Indian tribe shall include a provision that re-*  
2       *quires the Indian tribe to report on health status and*  
3       *service delivery—*

4               “(A) *to the extent such data is not otherwise*  
5               *available to the Secretary and specific funds for*  
6               *this purpose are provided by the Secretary under*  
7               *the funding agreement; and*

8               “(B) *if such reporting shall impose mini-*  
9               *mal burdens on the participating Indian tribe*  
10              *and such requirements are promulgated under*  
11              *section 517.*

12       “(2) *REASSUMPTION.—*

13              “(A) *IN GENERAL.—Compacts or funding*  
14              *agreements negotiated between the Secretary and*  
15              *an Indian tribe shall include a provision author-*  
16              *izing the Secretary to reassume operation of a*  
17              *program, service, function, or activity (or por-*  
18              *tions thereof) and associated funding if there is*  
19              *a specific finding relative to that program, serv-*  
20              *ice, function, or activity (or portion thereof) of—*

21                      “(i) *imminent endangerment of the*  
22                      *public health caused by an act or omission*  
23                      *of the Indian tribe, and the imminent*  
24                      *endangerment arises out of a failure to*



1           *carry out the compact or funding agree-*  
2           *ment; or*

3           “(ii) *gross mismanagement with re-*  
4           *spect to funds transferred to a tribe by a*  
5           *compact or funding agreement, as deter-*  
6           *mined by the Secretary in consultation with*  
7           *the Inspector General, as appropriate.*

8           “(B) *PROHIBITION.—The Secretary shall*  
9           *not reassume operation of a program, service,*  
10          *function, or activity (or portions thereof)*  
11          *unless—*

12           “(i) *the Secretary has first provided*  
13           *written notice and a hearing on the record*  
14           *to the Indian tribe; and*

15           “(ii) *the Indian tribe has not taken*  
16           *corrective action to remedy the imminent*  
17           *endangerment to public health or gross mis-*  
18           *management.*

19          “(C) *EXCEPTION.—*

20           “(i) *IN GENERAL.—Notwithstanding*  
21           *subparagraph (B), the Secretary may, upon*  
22           *written notification to the Indian tribe, im-*  
23           *mediately reassume operation of a program,*  
24           *service, function, or activity (or portion*  
25           *thereof) if—*

1                   “(I) the Secretary makes a find-  
2                   ing of imminent substantial and irrep-  
3                   arable endangerment of the public  
4                   health caused by an act or omission of  
5                   the Indian tribe; and

6                   “(II) the endangerment arises out  
7                   of a failure to carry out the compact or  
8                   funding agreement.

9                   “(ii) REASSUMPTION.—If the Secretary  
10                  reassumes operation of a program, service,  
11                  function, or activity (or portion thereof)  
12                  under this subparagraph, the Secretary  
13                  shall provide the Indian tribe with a hear-  
14                  ing on the record not later than 10 days  
15                  after such reassumption.

16                  “(D) HEARINGS.—In any hearing or ap-  
17                  peal involving a decision to reassume operation  
18                  of a program, service, function, or activity (or  
19                  portion thereof), the Secretary shall have the bur-  
20                  den of proof of demonstrating by clear and con-  
21                  vincing evidence the validity of the grounds for  
22                  the reassumption.

23                  “(b) FINAL OFFER.—In the event the Secretary and  
24                  a participating Indian tribe are unable to agree, in whole  
25                  or in part, on the terms of a compact or funding agreement

1 *(including funding levels), the Indian tribe may submit a*  
2 *final offer to the Secretary. Not more than 45 days after*  
3 *such submission, or within a longer time agreed upon by*  
4 *the Indian tribe, the Secretary shall review and make a de-*  
5 *termination with respect to such offer. In the absence of a*  
6 *timely rejection of the offer, in whole or in part, made in*  
7 *compliance with subsection (c), the offer shall be deemed*  
8 *agreed to by the Secretary.*

9 “(c) *REJECTION OF FINAL OFFERS.*—

10 “(1) *IN GENERAL.*—*If the Secretary rejects an*  
11 *offer made under subsection (b) (or 1 or more provi-*  
12 *sions or funding levels in such offer), the Secretary*  
13 *shall provide—*

14 “(A) *a timely written notification to the In-*  
15 *dian tribe that contains a specific finding that*  
16 *clearly demonstrates, or that is supported by a*  
17 *controlling legal authority, that—*

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

22 “(ii) *the program, function, service, or*  
23 *activity (or portion thereof) that is the sub-*  
24 *ject of the final offer is an inherent Federal*

1           *function that cannot legally be delegated to*  
2           *an Indian tribe;*

3           “(iii) *the Indian tribe cannot carry*  
4           *out the program, function, service, or activ-*  
5           *ity (or portion thereof) in a manner that*  
6           *would not result in significant danger or*  
7           *risk to the public health; or*

8           “(iv) *the Indian tribe is not eligible to*  
9           *participate in self-governance under section*  
10          *503;*

11          “(B) *technical assistance to overcome the*  
12          *objections stated in the notification required by*  
13          *subparagraph (A);*

14          “(C) *the Indian tribe with a hearing on the*  
15          *record with the right to engage in full discovery*  
16          *relevant to any issue raised in the matter and*  
17          *the opportunity for appeal on the objections*  
18          *raised, except that the Indian tribe may, in lieu*  
19          *of filing such appeal, directly proceed to initiate*  
20          *an action in a Federal district court pursuant to*  
21          *section 110(a); and*

22          “(D) *the Indian tribe with the option of en-*  
23          *tering into the severable portions of a final pro-*  
24          *posed compact or funding agreement, or provi-*  
25          *sion thereof, (including a lesser funding amount,*

1           *if any), that the Secretary did not reject, subject*  
2           *to any additional alterations necessary to con-*  
3           *form the compact or funding agreement to the*  
4           *severed provisions.*

5           “(2) *EFFECT OF EXERCISING CERTAIN OPTION.—*  
6           *If an Indian tribe exercises the option specified in*  
7           *paragraph (1)(D), that Indian tribe shall retain the*  
8           *right to appeal the Secretary’s rejection under this*  
9           *section, and subparagraphs (A), (B), and (C) of that*  
10          *paragraph shall only apply to that portion of the pro-*  
11          *posed final compact, funding agreement, or provision*  
12          *thereof that was rejected by the Secretary.*

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

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

1 *fied in section 3 of the Tribal Self-Governance Amendments*  
2 *of 2000.*

3       “(f) *SAVINGS.*—*To the extent that programs, functions,*  
4 *services, or activities (or portions thereof) carried out by*  
5 *Indian tribes under this title reduce the administrative or*  
6 *other responsibilities of the Secretary with respect to the*  
7 *operation of Indian programs and result in savings that*  
8 *have not otherwise been included in the amount of tribal*  
9 *shares and other funds determined under section 508(c), the*  
10 *Secretary shall make such savings available to the Indian*  
11 *tribes, inter-tribal consortia, or tribal organizations for the*  
12 *provision of additional services to program beneficiaries in*  
13 *a manner equitable to directly served, contracted, and com-*  
14 *pacted programs.*

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

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

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

6           “(2) by an administrative judge.

7   **“SEC. 508. TRANSFER OF FUNDS.**

8           “(a) *IN GENERAL.*—Pursuant to the terms of any com-  
9           pact or funding agreement entered into under this title, the  
10          Secretary shall transfer to the Indian tribe all funds pro-  
11          vided for in the funding agreement, pursuant to subsection  
12          (c), and provide funding for periods covered by joint resolu-  
13          tion adopted by Congress making continuing appropri-  
14          ations, to the extent permitted by such resolutions. In any  
15          instance where a funding agreement requires an annual  
16          transfer of funding to be made at the beginning of a fiscal  
17          year, or requires semiannual or other periodic transfers of  
18          funding to be made commencing at the beginning of a fiscal  
19          year, the first such transfer shall be made not later than  
20          10 days after the apportionment of such funds by the Office  
21          of Management and Budget to the Department, unless the  
22          funding agreement provides otherwise.

23          “(b) *MULTIYEAR FUNDING.*—The Secretary may em-  
24          ploy, upon tribal request, multiyear funding agreements.

1 *References in this title to funding agreements shall include*  
2 *such multiyear funding agreements.*

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

15       “(d) *PROHIBITIONS.*—

16               “(1) *IN GENERAL.*—*Except as provided in para-*  
17 *graph (2), the Secretary is expressly prohibited*  
18 *from—*

19                       “(A) *failing or refusing to transfer to an*  
20 *Indian tribe its full share of any central, head-*  
21 *quarters, regional, area, or service unit office or*  
22 *other funds due under this Act, except as re-*  
23 *quired by Federal law;*

24                       “(B) *withholding portions of such funds for*  
25 *transfer over a period of years; and*



1           “(C) *reducing the amount of funds required*  
2           *under this Act—*

3                   “(i) *to make funding available for self-*  
4                   *governance monitoring or administration*  
5                   *by the Secretary;*

6                   “(ii) *in subsequent years, except pursu-*  
7                   *ant to—*

8                           “(I) *a reduction in appropria-*  
9                           *tions from the previous fiscal year for*  
10                           *the program or function to be included*  
11                           *in a compact or funding agreement;*

12                           “(II) *a congressional directive in*  
13                           *legislation or accompanying report;*

14                           “(III) *a tribal authorization;*

15                           “(IV) *a change in the amount of*  
16                           *pass-through funds subject to the terms*  
17                           *of the funding agreement; or*

18                           “(V) *completion of a project, ac-*  
19                           *tivity, or program for which such*  
20                           *funds were provided;*

21                           “(iii) *to pay for Federal functions, in-*  
22                           *cluding Federal pay costs, Federal employee*  
23                           *retirement benefits, automated data proc-*  
24                           *essing, technical assistance, and monitoring*  
25                           *of activities under this Act; or*

1                   “(iv) to pay for costs of Federal per-  
2                   sonnel displaced by self-determination con-  
3                   tracts under this Act or self-governance;

4                   “(2) *EXCEPTION.*—The funds described in para-  
5                   graph (1)(C) may be increased by the Secretary if  
6                   necessary to carry out this Act or as provided in sec-  
7                   tion 105(c)(2).

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

20                  “(f) *REIMBURSEMENT TO INDIAN HEALTH SERVICE.*—  
21                  With respect to functions transferred by the Indian Health  
22                  Service to an Indian tribe, the Indian Health Service shall  
23                  provide goods and services to the Indian tribe, on a reim-  
24                  bursable basis, including payment in advance with subse-  
25                  quent adjustment. The reimbursements received from those

1 *goods and services, along with the funds received from the*  
2 *Indian tribe pursuant to this title, may be credited to the*  
3 *same or subsequent appropriation account which provided*  
4 *the funding, such amounts to remain available until ex-*  
5 *pended.*

6       “(g) *PROMPT PAYMENT ACT.*—Chapter 39 of title 31,  
7 *United States Code, shall apply to the transfer of funds due*  
8 *under a compact or funding agreement authorized under*  
9 *this title.*

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

19       “(i) *CARRYOVER OF FUNDS.*—All funds paid to an In-  
20 *dian tribe in accordance with a compact or funding agree-*  
21 *ment shall remain available until expended. In the event*  
22 *that an Indian tribe elects to carry over funding from 1*  
23 *year to the next, such carryover shall not diminish the*  
24 *amount of funds the Indian tribe is authorized to receive*

1 *under its funding agreement in that or any subsequent fis-*  
2 *cal year.*

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

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

1 *may suspend performance of the activity until such time*  
2 *as additional funds are transferred.*

3 **“SEC. 509. CONSTRUCTION PROJECTS.**

4       “(a) *IN GENERAL.*—*Indian tribes participating in*  
5 *tribal self-governance may carry out construction projects*  
6 *under this title if they elect to assume all Federal respon-*  
7 *sibilities under the National Environmental Policy Act of*  
8 *1969 (42 U.S.C. 4321 et seq.), the National Historic Preser-*  
9 *vation Act (16 U.S.C. 470 et seq.), and related provisions*  
10 *of law that would apply if the Secretary were to undertake*  
11 *a construction project, by adopting a resolution—*

12               “(1) *designating a certifying officer to represent*  
13 *the Indian tribe and to assume the status of a respon-*  
14 *sible Federal official under such laws; and*

15               “(2) *accepting the jurisdiction of the Federal*  
16 *court for the purpose of enforcement of the responsibil-*  
17 *ities of the responsible Federal official under such en-*  
18 *vironmental laws.*

19       “(b) *NEGOTIATIONS.*—*Construction project proposals*  
20 *shall be negotiated pursuant to the statutory process in sec-*  
21 *tion 105(m) and resulting construction project agreements*  
22 *shall be incorporated into funding agreements as addenda.*

23       “(c) *CODES AND STANDARDS.*—*The Indian tribe and*  
24 *the Secretary shall agree upon and specify appropriate*  
25 *building codes and architectural and engineering standards*

1 *(including health and safety) which shall be in conformity*  
2 *with nationally recognized standards for comparable*  
3 *projects.*

4       “(d) *RESPONSIBILITY FOR COMPLETION.*—*The Indian*  
5 *tribe shall assume responsibility for the successful comple-*  
6 *tion of the construction project in accordance with the nego-*  
7 *tiated construction project agreement.*

8       “(e) *FUNDING.*—*Funding for construction projects car-*  
9 *ried out under this title shall be included in funding agree-*  
10 *ments as annual advance payments, with semiannual pay-*  
11 *ments at the option of the Indian tribe. Annual advance*  
12 *and semiannual payment amounts shall be determined*  
13 *based on mutually agreeable project schedules reflecting*  
14 *work to be accomplished within the advance payment pe-*  
15 *riod, work accomplished and funds expended in previous*  
16 *payment periods, and the total prior payments. The Sec-*  
17 *retary shall include associated project contingency funds*  
18 *with each advance payment installment. The Indian tribe*  
19 *shall be responsible for the management of the contingency*  
20 *funds included in funding agreements.*

21       “(f) *APPROVAL.*—*The Secretary shall have at least 1*  
22 *opportunity to approve project planning and design docu-*  
23 *ments prepared by the Indian tribe in advance of construc-*  
24 *tion of the facilities specified in the scope of work for each*  
25 *negotiated construction project agreement or amendment*

1 *thereof which results in a significant change in the original*  
2 *scope of work. The Indian tribe shall provide the Secretary*  
3 *with project progress and financial reports not less than*  
4 *semiannually. The Secretary may conduct onsite project*  
5 *oversight visits semiannually or on an alternate schedule*  
6 *agreed to by the Secretary and the Indian tribe.*

7       “(g) *WAGES.—All laborers and mechanics employed by*  
8 *contractors and subcontractors in the construction, alter-*  
9 *ation, or repair, including painting or decorating of a*  
10 *building or other facilities in connection with construction*  
11 *projects undertaken by self-governance Indian tribes under*  
12 *this Act, shall be paid wages at not less than those pre-*  
13 *vailing wages on similar construction in the locality as de-*  
14 *termined by the Indian tribe.*

15       “(h) *APPLICATION OF OTHER LAWS.—Unless other-*  
16 *wise agreed to by the Indian tribe, no provision of the Office*  
17 *of Federal Procurement Policy Act, the Federal Acquisition*  
18 *Regulations issued pursuant thereto, or any other law or*  
19 *regulation pertaining to Federal procurement (including*  
20 *Executive orders) shall apply to any construction project*  
21 *conducted under this title.*

22 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**  
23 **TIONS.**

24       “*Notwithstanding any other provision of law, unless*  
25 *expressly agreed to by the participating Indian tribe, the*

1 compacts and funding agreements entered into under this  
2 title shall not be subject to Federal contracting or coopera-  
3 tive agreement laws and regulations (including Executive  
4 orders and the regulations relating to procurement issued  
5 by the Secretary), except to the extent that such laws ex-  
6 pressly apply to Indian tribes.

7 **“SEC. 511. CIVIL ACTIONS.**

8       “(a) *CONTRACT DEFINED.*—For the purposes of section  
9 110, the term ‘contract’ shall include compacts and funding  
10 agreements entered into under this title.

11       “(b) *APPLICABILITY OF CERTAIN LAWS.*—Section 2103  
12 of the Revised Statutes (25 U.S.C. 81) and section 16 of  
13 the Act of June 18, 1934 (48 Stat. 987; chapter 576; 25  
14 U.S.C. 476), shall not apply to attorney and other profes-  
15 sional contracts entered into by Indian tribes participating  
16 in self-governance under this title.

17       “(c) *REFERENCES.*—All references in this Act to sec-  
18 tion 1 of the Act of June 26, 1936 (49 Stat. 1967; chapter  
19 831) are hereby deemed to include the first section of the  
20 Act of July 3, 1952 (66 Stat. 323, chapter 549; 25 U.S.C.  
21 82a).

22 **“SEC. 512. FACILITATION.**

23       “(a) *SECRETARIAL INTERPRETATION.*—Except as oth-  
24 erwise provided by law, the Secretary shall interpret all



1 *Federal laws, Executive orders and regulations in a manner*  
2 *that will facilitate—*

3           “(1) *the inclusion of programs, services, func-*  
4 *tions, and activities (or portions thereof) and funds*  
5 *associated therewith, in the agreements entered into*  
6 *under this section;*

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

9           “(3) *the achievement of tribal health goals and*  
10 *objectives.*

11       “(b) *REGULATION WAIVER.—*

12           “(1) *IN GENERAL.—An Indian tribe may submit*  
13 *a written request to waive application of a regulation*  
14 *promulgated under section 517 or the authorities*  
15 *specified in section 505(b) for a compact or funding*  
16 *agreement entered into with the Indian Health Serv-*  
17 *ice under this title, to the Secretary identifying the*  
18 *applicable Federal regulation sought to be waived and*  
19 *the basis for the request.*

20           “(2) *APPROVAL.—Not later than 90 days after*  
21 *receipt by the Secretary of a written request by an*  
22 *Indian tribe to waive application of a regulation for*  
23 *a compact or funding agreement entered into under*  
24 *this title, the Secretary shall either approve or deny*  
25 *the requested waiver in writing. A denial may be*

1       *made only upon a specific finding by the Secretary*  
2       *that identified language in the regulation may not be*  
3       *waived because such waiver is prohibited by Federal*  
4       *law. A failure to approve or deny a waiver request*  
5       *not later than 90 days after receipt shall be deemed*  
6       *an approval of such request. The Secretary’s decision*  
7       *shall be final for the Department.*

8       “(c) *ACCESS TO FEDERAL PROPERTY.—In connection*  
9       *with any compact or funding agreement executed pursuant*  
10       *to this title or an agreement negotiated under the Tribal*  
11       *Self-Governance Demonstration Project established under*  
12       *title III, as in effect before the enactment of the Tribal Self-*  
13       *Governance Amendments of 2000, upon the request of an*  
14       *Indian tribe, the Secretary—*

15               “(1) *shall permit an Indian tribe to use existing*  
16       *school buildings, hospitals, and other facilities and all*  
17       *equipment therein or appertaining thereto and other*  
18       *personal property owned by the Government within*  
19       *the Secretary’s jurisdiction under such terms and con-*  
20       *ditions as may be agreed upon by the Secretary and*  
21       *the Indian tribe for their use and maintenance;*

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

1           “(A) subject to the provisions of subpara-  
2 graph (B), title to property and equipment fur-  
3 nished by the Federal Government for use in the  
4 performance of the compact or funding agree-  
5 ment or purchased with funds under any com-  
6 pact or funding agreement shall, unless otherwise  
7 requested by the Indian tribe, vest in the appro-  
8 priate Indian tribe;

9           “(B) if property described in subparagraph  
10 (A) has a value in excess of \$5,000 at the time  
11 of retrocession, withdrawal, or reassumption, at  
12 the option of the Secretary upon the retrocession,  
13 withdrawal, or reassumption, title to such prop-  
14 erty and equipment shall revert to the Depart-  
15 ment of Health and Human Services; and

16           “(C) all property referred to in subpara-  
17 graph (A) shall remain eligible for replacement,  
18 maintenance, and improvement on the same  
19 basis as if title to such property were vested in  
20 the United States; and

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

1       *for which a compact or funding agreement is author-*  
2       *ized under this title.*

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

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

15       “(f) *RULES OF CONSTRUCTION.—Each provision of*  
16       *this title and each provision of a compact or funding agree-*  
17       *ment shall be liberally construed for the benefit of the In-*  
18       *dian tribe participating in self-governance and any ambi-*  
19       *guity shall be resolved in favor of the Indian tribe.*

20       **“SEC. 513. BUDGET REQUEST.**

21       “(a) *REQUIREMENT OF ANNUAL BUDGET REQUEST.—*

22               “(1) *IN GENERAL.—The President shall identify*  
23       *in the annual budget request submitted to Congress*  
24       *under section 1105 of title 31, United States Code, all*  
25       *funds necessary to fully fund all funding agreements*

1 *authorized under this title, including funds specifi-*  
2 *cally identified to fund tribal base budgets. All funds*  
3 *so appropriated shall be apportioned to the Indian*  
4 *Health Service. Such funds shall be provided to the*  
5 *Office of Tribal Self-Governance which shall be re-*  
6 *sponsible for distribution of all funds provided under*  
7 *section 505.*

8 *“(2) RULE OF CONSTRUCTION.—Nothing in this*  
9 *subsection shall be construed to authorize the Indian*  
10 *Health Service to reduce the amount of funds that a*  
11 *self-governance tribe is otherwise entitled to receive*  
12 *under its funding agreement or other applicable law,*  
13 *whether or not such funds are apportioned to the Of-*  
14 *fice of Tribal Self-Governance under this section.*

15 *“(b) PRESENT FUNDING; SHORTFALLS.—In such*  
16 *budget request, the President shall identify the level of need*  
17 *presently funded and any shortfall in funding (including*  
18 *direct program and contract support costs) for each Indian*  
19 *tribe, either directly by the Secretary of Health and Human*  
20 *Services, under self-determination contracts, or under com-*  
21 *pacts and funding agreements authorized under this title.*

22 **“SEC. 514. REPORTS.**

23 *“(a) ANNUAL REPORT.—*

24 *“(1) IN GENERAL.—Not later than January 1 of*  
25 *each year after the date of enactment of the Tribal*

1       *Self-Governance Amendments of 2000, the Secretary*  
2       *shall submit to the Committee on Indian Affairs of*  
3       *the Senate and the Committee on Resources of the*  
4       *House of Representatives a written report regarding*  
5       *the administration of this title.*

6               “(2) *ANALYSIS.*—*The report under paragraph*  
7       *(1) shall include a detailed analysis of the level of*  
8       *need being presently funded or unfunded for each In-*  
9       *Indian tribe, either directly by the Secretary, under self-*  
10       *determination contracts under title I, or under com-*  
11       *pacts and funding agreements authorized under this*  
12       *Act. In compiling reports pursuant to this section, the*  
13       *Secretary may not impose any reporting require-*  
14       *ments on participating Indian tribes or tribal organi-*  
15       *zations, not otherwise provided in this Act.*

16               “(b) *CONTENTS.*—*The report under subsection (a)*  
17       *shall—*

18                       “(1) *be compiled from information contained in*  
19       *funding agreements, annual audit reports, and data*  
20       *of the Secretary regarding the disposition of Federal*  
21       *funds; and*

22                       “(2) *identify—*

23                               “(A) *the relative costs and benefits of self-*  
24       *governance;*

1           “(B) with particularity, all funds that are  
2 specifically or functionally related to the provi-  
3 sion by the Secretary of services and benefits to  
4 self-governance Indian tribes and their members;

5           “(C) the funds transferred to each self-gov-  
6 ernance Indian tribe and the corresponding re-  
7 duction in the Federal bureaucracy;

8           “(D) the funding formula for individual  
9 tribal shares of all headquarters funds, together  
10 with the comments of affected Indian tribes or  
11 tribal organizations, developed under subsection  
12 (c); and

13           “(E) amounts expended in the preceding fis-  
14 cal year to carry out inherent Federal functions,  
15 including an identification of those functions by  
16 type and location;

17           “(3) contain a description of the method or  
18 methods (or any revisions thereof) used to determine  
19 the individual tribal share of funds controlled by all  
20 components of the Indian Health Service (including  
21 funds assessed by any other Federal agency) for inclu-  
22 sion in self-governance compacts or funding agree-  
23 ments;

24           “(4) before being submitted to Congress, be dis-  
25 tributed to the Indian tribes for comment (with a

1       *comment period of no less than 30 days, beginning on*  
2       *the date of distribution); and*

3               *“(5) include the separate views and comments of*  
4       *the Indian tribes or tribal organizations.*

5       *“(c) REPORT ON FUND DISTRIBUTION METHOD.—Not*  
6       *later than 180 days after the date of enactment of the Tribal*  
7       *Self-Governance Amendments of 2000, the Secretary shall,*  
8       *after consultation with Indian tribes, submit a written re-*  
9       *port to the Committee on Resources of the House of Rep-*  
10       *resentatives and the Committee on Indian Affairs of the*  
11       *Senate that describes the method or methods used to deter-*  
12       *mine the individual tribal share of funds controlled by all*  
13       *components of the Indian Health Service (including funds*  
14       *assessed by any other Federal agency) for inclusion in self-*  
15       *governance compacts or funding agreements.*

16       **“SEC. 515. DISCLAIMERS.**

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

24               *“(b) FEDERAL TRUST AND TREATY RESPONSIBIL-*  
25       *ITIES.—Nothing in this Act shall be construed to diminish*



1 *in any way the trust responsibility of the United States*  
2 *to Indian tribes and individual Indians that exists under*  
3 *treaties, Executive orders, or other laws and court decisions.*

4       “(c) *TRIBAL EMPLOYMENT.*—*For purposes of section*  
5 *2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter 372)*  
6 *(commonly known as the ‘National Labor Relations Act’),*  
7 *an Indian tribe carrying out a self-determination contract,*  
8 *compact, annual funding agreement, grant, or cooperative*  
9 *agreement under this Act shall not be considered an em-*  
10 *ployer.*

11       “(d) *OBLIGATIONS OF THE UNITED STATES.*—*The In-*  
12 *dian Health Service under this Act shall neither bill nor*  
13 *charge those Indians who may have the economic means*  
14 *to pay for services, nor require any Indian tribe to do so.*

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

16       “(a) *MANDATORY APPLICATION.*—*All provisions of sec-*  
17 *tions 5(b), 6, 7, 102 (c) and (d), 104, 105 (k) and (l), 106*  
18 *(a) through (k), and 111 of this Act and section 314 of Pub-*  
19 *lic Law 101–512 (coverage under chapter 171 of title 28,*  
20 *United States Code, commonly known as the ‘Federal Tort*  
21 *Claims Act’), to the extent not in conflict with this title,*  
22 *shall apply to compacts and funding agreements authorized*  
23 *by this title.*

24       “(b) *DISCRETIONARY APPLICATION.*—*At the request of*  
25 *a participating Indian tribe, any other provision of title*

1 *I, to the extent such provision is not in conflict with this*  
2 *title, shall be made a part of a funding agreement or com-*  
3 *compact entered into under this title. The Secretary is obligated*  
4 *to include such provision at the option of the participating*  
5 *Indian tribe or tribes. If such provision is incorporated it*  
6 *shall have the same force and effect as if it were set out*  
7 *in full in this title. In the event an Indian tribe requests*  
8 *such incorporation at the negotiation stage of a compact*  
9 *or funding agreement, such incorporation shall be deemed*  
10 *effective immediately and shall control the negotiation and*  
11 *resulting compact and funding agreement.*

12 **“SEC. 517. REGULATIONS.**

13 *“(a) IN GENERAL.—*

14 *“(1) PROMULGATION.—Not later than 90 days*  
15 *after the date of enactment of the Tribal Self-Govern-*  
16 *ance Amendments of 2000, the Secretary shall initiate*  
17 *procedures under subchapter III of chapter 5 of title*  
18 *5, United States Code, to negotiate and promulgate*  
19 *such regulations as are necessary to carry out this*  
20 *title.*

21 *“(2) PUBLICATION OF PROPOSED REGULA-*  
22 *TIONS.—Proposed regulations to implement this title*  
23 *shall be published in the Federal Register by the Sec-*  
24 *retary no later than 1 year after the date of enact-*

1 *ment of the Tribal Self-Governance Amendments of*  
2 *2000.*

3 “(3) *EXPIRATION OF AUTHORITY.*—*The author-*  
4 *ity to promulgate regulations under paragraph (1)*  
5 *shall expire 21 months after the date of enactment of*  
6 *the Tribal Self-Governance Amendments of 2000.*

7 “(b) *COMMITTEE.*—

8 “(1) *IN GENERAL.*—*A negotiated rulemaking*  
9 *committee established pursuant to section 565 of title*  
10 *5, United States Code, to carry out this section shall*  
11 *have as its members only Federal and tribal govern-*  
12 *ment representatives, a majority of whom shall be*  
13 *nominated by and be representatives of Indian tribes*  
14 *with funding agreements under this Act.*

15 “(2) *REQUIREMENTS.*—*The committee shall con-*  
16 *fer with, and accommodate participation by, rep-*  
17 *resentatives of Indian tribes, inter-tribal consortia,*  
18 *tribal organizations, and individual tribal members.*

19 “(c) *ADAPTATION OF PROCEDURES.*—*The Secretary*  
20 *shall adapt the negotiated rulemaking procedures to the*  
21 *unique context of self-governance and the government-to-*  
22 *government relationship between the United States and In-*  
23 *dian tribes.*

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

1       “(e) *EFFECT OF CIRCULARS, POLICIES, MANUALS,*  
2 *GUIDANCES, AND RULES.*—Unless expressly agreed to by  
3 *the participating Indian tribe in the compact or funding*  
4 *agreement, the participating Indian tribe shall not be sub-*  
5 *ject to any agency circular, policy, manual, guidance, or*  
6 *rule adopted by the Indian Health Service, except for the*  
7 *eligibility provisions of section 105(g) and regulations pro-*  
8 *mulgated under section 517.*

9       **“SEC. 518. APPEALS.**

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

14               *“(1) the validity of the grounds for the decision*  
15       *made; and*

16               *“(2) that the decision is fully consistent with*  
17       *provisions and policies of this title.*

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

19       *“(a) IN GENERAL.*—There are authorized to be appro-  
20 *priated such sums as may be necessary to carry out this*  
21 *title.*

22       *“(b) AVAILABILITY OF APPROPRIATIONS.*—Notwith-  
23 *standing any other provision of this Act, the provision of*  
24 *funds under this Act shall be subject to the availability of*  
25 *appropriations and the Secretary is not required to reduce*

1 *funding for programs, projects, or activities serving a tribe*  
 2 *in order to make funds available to another tribe or tribal*  
 3 *organization under this Act.”.*

4 **SEC. 5. TRIBAL SELF-GOVERNANCE DEPARTMENT.**

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

8 **“TITLE VI—TRIBAL SELF-GOV-**  
 9 **ERNANCE—DEPARTMENT OF**  
 10 **HEALTH AND HUMAN SERV-**  
 11 **ICES**

12 **“SEC. 601. DEFINITIONS.**

13 *“(a) IN GENERAL.—In this title, the Secretary may*  
 14 *apply the definitions contained in title V.*

15 *“(b) OTHER DEFINITIONS.—In this title:*

16 *“(1) AGENCY.—The term the term ‘agency’*  
 17 *means any agency or other organizational unit of the*  
 18 *Department of Health and Human Services, other*  
 19 *than the Indian Health Service.*

20 *“(2) SECRETARY.—The term ‘Secretary’ means*  
 21 *the Secretary of Health and Human Services.*

22 **“SEC. 602. DEMONSTRATION PROJECT FEASIBILITY.**

23 *“(a) STUDY.—The Secretary shall conduct a study to*  
 24 *determine the feasibility of a tribal self-governance dem-*

1 *onstration project for appropriate programs, services, func-*  
2 *tions, and activities (or portions thereof) of the agency.*

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

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

8 “(2) *statutory, regulatory, or other impediments*  
9 *to implementation of such a demonstration project;*

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

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

14 “(5) *methods to assure quality and account-*  
15 *ability in such a demonstration project; and*

16 “(6) *such other issues that may be determined by*  
17 *the Secretary or developed through consultation pur-*  
18 *suant to section 603.*

19 “(c) *REPORT.—Not later than 18 months after the date*  
20 *of enactment of this title, the Secretary shall submit a re-*  
21 *port to the Committee on Indian Affairs of the Senate and*  
22 *the Committee on Resources of the House of Representatives.*  
23 *The report shall contain—*

24 “(1) *the results of the study under this section;*

1           “(2) a list of programs, services, functions, and  
2           activities (or portions thereof) within each agency  
3           with respect to which it would be feasible to include  
4           in a tribal self-governance demonstration project;

5           “(3) a list of programs, services, functions, and  
6           activities (or portions thereof) included in the list  
7           provided pursuant to paragraph (2) that could be in-  
8           cluded in a tribal self-governance demonstration  
9           project without amending statutes, or waiving regula-  
10          tions that the Secretary may not waive;

11          “(4) a list of legislative actions required in order  
12          to include those programs, services, functions, and ac-  
13          tivities (or portions thereof) included in the list pro-  
14          vided pursuant to paragraph (2) but not included in  
15          the list provided pursuant to paragraph (3) in a trib-  
16          al self-governance demonstration project; and

17          “(5) any separate views of tribes and other enti-  
18          ties consulted pursuant to section 603 related to the  
19          information provided pursuant to paragraphs (1)  
20          through (4).

21       **“SEC. 603. CONSULTATION.**

22           “(a) *STUDY PROTOCOL.*—

23           “(1) *CONSULTATION WITH INDIAN TRIBES.*—*The*  
24           *Secretary shall consult with Indian tribes to deter-*  
25           *mine a protocol for consultation under subsection (b)*

1       *prior to consultation under such subsection with the*  
2       *other entities described in such subsection.*

3               “(2) *REQUIREMENTS FOR PROTOCOL.*—*The pro-*  
4       *tocol shall require, at a minimum, that—*

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

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

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

15       “(b) *CONDUCTING STUDY.*—*In conducting the study*  
16       *under this title, the Secretary shall consult with Indian*  
17       *tribes, States, counties, municipalities, program bene-*  
18       *ficiaries, and interested public interest groups, and may*  
19       *consult with other entities as appropriate.*

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

21               *“There are authorized to be appropriated for fiscal*  
22       *years 2000 and 2001 such sums as may be necessary to*  
23       *carry out this title. Such sums shall remain available until*  
24       *expended.”.*



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

2 *Section 102(e)(1) of the Indian Self-Determination*  
3 *and Education Assistance Act (25 U.S.C. 450f(e)(1)) is*  
4 *amended by inserting after “subsection (b)(3)” the fol-*  
5 *lowing: “or any civil action conducted pursuant to section*  
6 *110(a)”.*

7 **SEC. 7. SPEEDY ACQUISITION OF GOODS, SERVICES, OR**  
8 **SUPPLIES.**

9 *Section 105(k) of the Indian Self-Determination and*  
10 *Education Assistance Act (25 U.S.C. 450j(k)) is amended—*

11 *(1) by striking “deemed an executive agency”*  
12 *and inserting “deemed an executive agency and part*  
13 *of the Indian Health Service”; and*

14 *(2) by adding at the end the following: “For pur-*  
15 *poses of carrying out such contract, grant, or agree-*  
16 *ment, the Secretary shall, at the request of an Indian*  
17 *tribe, enter into an agreement for the acquisition, on*  
18 *behalf of the Indian tribe, of any goods, services, or*  
19 *supplies available to the Secretary from the General*  
20 *Services Administration or other Federal agencies*  
21 *that are not directly available to the Indian tribe*  
22 *under this section or under any other Federal law, in-*  
23 *cluding acquisitions from prime vendors. All such ac-*  
24 *quisitions shall be undertaken through the most effi-*  
25 *cient and speedy means practicable, including elec-*  
26 *tronic ordering arrangements.”.*

1 **SEC. 8. PATIENT RECORDS.**

2 *Section 105 of the Indian Self-Determination and*  
3 *Education Assistance Act (25 U.S.C. 450j) is amended by*  
4 *adding at the end the following:*

5 “(o) *PATIENT RECORDS.*—

6 “(1) *IN GENERAL.*—*At the option of an Indian*  
7 *tribe or tribal organization, patient records may be*  
8 *deemed to be Federal records under those provisions*  
9 *of title 44, United States Code, that are commonly re-*  
10 *ferred to as the ‘Federal Records Act of 1950’ for the*  
11 *limited purposes of making such records eligible for*  
12 *storage by Federal Records Centers to the same extent*  
13 *and in the same manner as other Department of*  
14 *Health and Human Services patient records.*

15 “(2) *TREATMENT OF RECORDS.*—*Patient records*  
16 *that are deemed to be Federal records under those pro-*  
17 *visions of title 44, United States Code, that are com-*  
18 *monly referred to as the ‘Federal Records Act of 1950’*  
19 *pursuant to this subsection shall not be considered*  
20 *Federal records for the purposes of chapter 5 of title*  
21 *5, United States Code.”.*

22 **SEC. 9. ANNUAL REPORTS.**

23 *Section 106 of the Indian Self-Determination and*  
24 *Education Assistance Act (25 U.S.C. 450j-1) is amended—*

25 (1) *by redesignating subsections (c) through (n)*  
26 *as subsections (d) through (o), respectively; and*

1           (2) by inserting after subsection (b), the fol-  
2           lowing:

3           “(c) *ANNUAL REPORTS.*—Not later than May 15 of  
4 each year, the Secretary shall prepare and submit to Con-  
5 gress an annual report on the implementation of this Act.  
6 Such report shall include—

7           “(1) an accounting of the total amounts of funds  
8           provided for each program and the budget activity for  
9           direct program costs and contract support costs of  
10          tribal organizations under self-determination;

11          “(2) an accounting of any deficiency in funds  
12          needed to provide required contract support costs to  
13          all contractors for the fiscal year for which the report  
14          is being submitted;

15          “(3) the indirect cost rate and type of rate for  
16          each tribal organization that has been negotiated with  
17          the appropriate Secretary;

18          “(4) the direct cost base and type of base from  
19          which the indirect cost rate is determined for each  
20          tribal organization;

21          “(5) the indirect cost pool amounts and the types  
22          of costs included in the indirect cost pool; and

23          “(6) an accounting of any deficiency in funds  
24          needed to maintain the preexisting level of services to  
25          any Indian tribes affected by contracting activities



1           (2) *promote consultation on matters related to*  
2           *Indian health.*

3           (b) *ASSISTANT SECRETARY FOR INDIAN HEALTH.—In*  
4           *addition to the functions performed on the date of enact-*  
5           *ment of this Act by the Director of the Indian Health Serv-*  
6           *ice, the Assistant Secretary for Indian Health shall perform*  
7           *such functions as the Secretary of Health and Human Serv-*  
8           *ices (referred to in this section as the “Secretary”) may des-*  
9           *ignate. The Assistant Secretary for Indian Health shall—*

10           (1) *report directly to the Secretary concerning*  
11           *all policy- and budget-related matters affecting In-*  
12           *dian health;*

13           (2) *collaborate with the Assistant Secretary for*  
14           *Health concerning appropriate matters of Indian*  
15           *health that affect the agencies of the Public Health*  
16           *Service;*

17           (3) *advise each Assistant Secretary of the De-*  
18           *partment of Health and Human Services concerning*  
19           *matters of Indian health with respect to which that*  
20           *Assistant Secretary has authority and responsibility;*

21           (4) *advise the heads of other agencies and pro-*  
22           *grams of the Department of Health and Human Serv-*  
23           *ices concerning matters of Indian health with respect*  
24           *to which those heads have authority and responsi-*  
25           *bility; and*

1           (5) *coordinate the activities of the Department of*  
2           *Health and Human Services concerning matters of*  
3           *Indian health.*

4           (c) *REFERENCES.*—*Reference in any other Federal*  
5           *law, Executive order, rule, regulation, or delegation of au-*  
6           *thority, or any document of or relating to the Director of*  
7           *the Indian Health Service shall be deemed to refer to the*  
8           *Assistant Secretary for Indian Health.*

9           (d) *RATE OF PAY.*—

10           (1) *POSITIONS AT LEVEL IV.*—*Section 5315 of*  
11           *title 5, United States Code, is amended—*

12                   (A) *by striking the following:*

13                   “*Assistant Secretaries of Health and Human*  
14                   *Services (6).*”; and

15                   (B) *by inserting the following:*

16                   “*Assistant Secretaries of Health and Human*  
17                   *Services (7).*”.

18           (2) *POSITIONS AT LEVEL V.*—*Section 5316 of*  
19           *title 5, United States Code, is amended by striking*  
20           *the following:*

21                   “*Director, Indian Health Service, Department of*  
22                   *Health and Human Services.*”.

23           (e) *DUTIES OF ASSISTANT SECRETARY FOR INDIAN*  
24           *HEALTH.*—*Section 601(a) of the Indian Health Care Im-*  
25           *provement Act (25 U.S.C. 1661(a)) is amended—*

1           (1) by inserting “(1)” after “(a)”;

2           (2) in the second sentence of paragraph (1), as  
3 so designated, by striking “a Director,” and inserting  
4 “the Assistant Secretary for Indian Health,”; and

5           (3) by striking the third sentence of paragraph  
6 (1) and all that follows through the end of the sub-  
7 section and inserting the following: “The Assistant  
8 Secretary for Indian Health shall carry out the duties  
9 specified in paragraph (2).

10          “(2) The Assistant Secretary for Indian Health  
11 shall—

12           “(A) report directly to the Secretary concerning  
13 all policy- and budget-related matters affecting In-  
14 dian health;

15           “(B) collaborate with the Assistant Secretary for  
16 Health concerning appropriate matters of Indian  
17 health that affect the agencies of the Public Health  
18 Service;

19           “(C) advise each Assistant Secretary of the De-  
20 partment of Health and Human Services concerning  
21 matters of Indian health with respect to which that  
22 Assistant Secretary has authority and responsibility;

23           “(D) advise the heads of other agencies and pro-  
24 grams of the Department of Health and Human Serv-  
25 ices concerning matters of Indian health with respect

1       to which those heads have authority and responsi-  
2       bility; and

3               “(E) coordinate the activities of the Department  
4       of Health and Human Services concerning matters of  
5       Indian health.”.

6       (f) *CONTINUED SERVICE BY INCUMBENT.*—The indi-  
7       vidual serving in the position of Director of the Indian  
8       Health Service on the date preceding the date of enactment  
9       of this Act may serve as Assistant Secretary for Indian  
10      Health, at the pleasure of the President after the date of  
11      enactment of this Act.

12      (g) *CONFORMING AMENDMENTS.*—

13              (1) *AMENDMENTS TO INDIAN HEALTH CARE IM-*  
14      *PROVEMENT ACT.*—The Indian Health Care Improve-  
15      ment Act (25 U.S.C. 1601 et seq.) is amended—

16              (A) in section 601—

17                      (i) in subsection (c), by striking “Di-  
18                      rector of the Indian Health Service” both  
19                      places it appears and inserting “Assistant  
20                      Secretary for Indian Health”; and

21                      (ii) in subsection (d), by striking “Di-  
22                      rector of the Indian Health Service” and  
23                      inserting “Assistant Secretary for Indian  
24                      Health”; and



1           (B) in section 816(c)(1), by striking “Direc-  
2           tor of the Indian Health Service” and inserting  
3           “Assistant Secretary for Indian Health”.

4           (2) AMENDMENTS TO OTHER PROVISIONS OF  
5           LAW.—The following provisions are each amended by  
6           striking “Director of the Indian Health Service” each  
7           place it appears and inserting “Assistant Secretary  
8           for Indian Health”:

9           (A) Section 203(a)(1) of the Rehabilitation  
10          Act of 1973 (29 U.S.C. 761b(a)(1)).

11          (B) Subsections (b) and (e) of section 518 of  
12          the Federal Water Pollution Control Act (33  
13          U.S.C. 1377 (b) and (e)).

14          (C) Section 803B(d)(1) of the Native Amer-  
15          ican Programs Act of 1974 (42 U.S.C. 2991b-  
16          2(d)(1)).

17 **SEC. 13. APPLICATION TO ALASKA.**

18          (a) Notwithstanding any other provision of law, noth-  
19          ing in this Act, the amendments made thereby, nor its im-  
20          plementation, shall affect—

21               (1) the right of the Consortium of Southcentral  
22               Foundation to carry out the programs, functions,  
23               services and activities as specified in section 325 of  
24               Public Law 105–83 (111 Stat. 55–56), or

1           (2) *the prohibitions in section 351 of section*  
2           *101(e) of Division A, Public Law 105–277.*

3           (b) *Section 351 of section 101(e) of Division A, Public*  
4           *Law 105–277 and section 326 of Public Law 105–83 (111*  
5           *Stat. 57) are amended by inserting “as amended” after the*  
6           *phrase “Public Law 93–638 (25 U.S.C. 450 et seq.)” where*  
7           *such phrase appears in each section.*

Attest:

*Secretary.*

106TH CONGRESS  
2D SESSION

**H. R. 1167**

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**AMENDMENT**

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