

106TH CONGRESS
1ST SESSION

S. 979

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

IN THE SENATE OF THE UNITED STATES

MAY 6, 1999

Mr. CAMPBELL (for himself and Mr. MCCAIN) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Self-Governance
5 Amendments of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the tribal right of self-government flows
9 from the inherent sovereignty of Indian tribes and
10 nations;

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

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

11 (4) the Tribal Self-Governance Demonstration
12 Project, established under title III of the Indian
13 Self-Determination and Education Assistance Act
14 (25 U.S.C. 450f note) was designed to improve and
15 perpetuate the government-to-government relation-
16 ship between Indian tribes and the United States
17 and to strengthen tribal control over Federal fund-
18 ing and program management;

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

24 (6) Congress has reviewed the results of the
25 Tribal Self-Governance Demonstration Project and

1 finds that transferring full control and funding to
2 tribal governments, upon tribal request, over deci-
3 sion making for Federal programs, services, func-
4 tions, and activities (or portions thereof)—

5 (A) is an appropriate and effective means
6 of implementing the Federal policy of govern-
7 ment-to-government relations with Indian
8 tribes; and

9 (B) strengthens the Federal policy of In-
10 dian self-determination.

11 **SEC. 3. DECLARATION OF POLICY.**

12 It is the policy of Congress—

13 (1) to permanently establish and implement
14 tribal self-governance within the Department of
15 Health and Human Services;

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

20 (A) to enable the United States to main-
21 tain and improve its unique and continuing re-
22 lationship with, and responsibility to, Indian
23 tribes;

24 (B) to permit each Indian tribe to choose
25 the extent of its participation in self-governance

1 in accordance with the provisions of the Indian
2 Self-Determination and Education Assistance
3 Act relating to the provision of Federal services
4 to Indian tribes;

5 (C) to ensure the continuation of the trust
6 responsibility of the United States to Indian
7 tribes and Indian individuals;

8 (D) to affirm and enable the United States
9 to fulfill its obligations to the Indian tribes
10 under treaties and other laws;

11 (E) to strengthen the government-to-gov-
12 ernment relationship between the United States
13 and Indian tribes through direct and meaning-
14 ful consultation with all tribes;

15 (F) to permit an orderly transition from
16 Federal domination of programs and services to
17 provide Indian tribes with meaningful authority,
18 control, funding, and discretion to plan, con-
19 duct, redesign, and administer programs, serv-
20 ices, functions, and activities (or portions there-
21 of) that meet the needs of the individual tribal
22 communities;

23 (G) to provide for a measurable parallel re-
24 duction in the Federal bureaucracy as pro-

1 grams, services, functions, and activities (or
2 portion thereof) are assumed by Indian tribes;

3 (H) to encourage the Secretary to identify
4 all programs, services, functions, and activities
5 (or portions thereof) of the Department of
6 Health and Human Services that may be man-
7 aged by an Indian tribe under this Act and to
8 assist Indian tribes in assuming responsibility
9 for such programs, services, functions, and ac-
10 tivities (or portions thereof); and

11 (I) to provide Indian tribes with the ear-
12 liest opportunity to administer programs, serv-
13 ices, functions, and activities (or portions there-
14 of) from throughout the Department of Health
15 and Human Services.

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

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

20 **“TITLE V—TRIBAL SELF-**
21 **GOVERNANCE**

22 **“SEC. 501. DEFINITIONS.**

23 “(a) IN GENERAL.—In this title:

24 “(1) CONSTRUCTION PROJECT.—The term ‘con-
25 struction project’—

1 “(A) means an organized noncontinuous
2 undertaking to complete a specific set of pre-
3 determined objectives for the planning, environ-
4 mental determination, design, construction, re-
5 pair, improvement, or expansion of buildings or
6 facilities, as described in a construction project
7 agreement; and

8 “(B) does not include construction pro-
9 gram administration and activities described in
10 paragraphs (1) through (3) of section 4(m),
11 that may otherwise be included in a funding
12 agreement under this title.

13 “(2) CONSTRUCTION PROJECT AGREEMENT.—

14 The term ‘construction project agreement’ means a
15 negotiated agreement between the Secretary and an
16 Indian tribe, that at a minimum—

17 “(A) establishes project phase start and
18 completion dates;

19 “(B) defines a specific scope of work and
20 standards by which it will be accomplished;

21 “(C) identifies the responsibilities of the
22 Indian tribe and the Secretary;

23 “(D) addresses environmental consider-
24 ations;

1 “(E) identifies the owner and operations
2 and maintenance entity of the proposed work;

3 “(F) provides a budget;

4 “(G) provides a payment process; and

5 “(H) establishes the duration of the agree-
6 ment based on the time necessary to complete
7 the specified scope of work, which may be 1 or
8 more years.

9 “(3) INHERENT FEDERAL FUNCTIONS.—The
10 term ‘inherent Federal functions’ means those Fed-
11 eral functions which cannot legally be delegated to
12 Indian tribes.

13 “(4) INTER-TRIBAL CONSORTIUM.—The term
14 ‘inter-tribal consortium’ means a coalition of 2 or
15 more separate Indian tribes that join together for
16 the purpose of participating in self-governance, in-
17 cluding a tribal organization.

18 “(5) GROSS MISMANAGEMENT.—The term
19 ‘gross mismanagement’ means a significant, clear,
20 and convincing violation of a compact, funding
21 agreement, or regulatory, or statutory requirements
22 applicable to Federal funds transferred to an Indian
23 tribe by a compact or funding agreement that re-
24 sults in a significant reduction of funds available for

1 the programs, services, functions, or activities (or
2 portions thereof) assumed by an Indian tribe.

3 “(6) SECRETARY.—The term ‘Secretary’ means
4 the Secretary of Health and Human Services.

5 “(7) SELF-GOVERNANCE.—The term ‘self-gov-
6 ernance’ means the program of self-governance es-
7 tablished under section 502.

8 “(8) TRIBAL SHARE.—The term ‘tribal share’
9 means an Indian tribe’s portion of all funds and re-
10 sources that support secretarial programs, services,
11 functions, and activities (or portions thereof) that
12 are not required by the Secretary for performance of
13 inherent Federal functions.

14 “(b) INDIAN TRIBE.—In any case in which an Indian
15 tribe has authorized another Indian tribe, an inter-tribal
16 consortium, or a tribal organization to plan for or carry
17 out programs, services, functions, or activities (or portions
18 thereof) on its behalf under this title, the authorized In-
19 dian tribe, inter-tribal consortium, or tribal organization
20 shall have the rights and responsibilities of the authorizing
21 Indian tribe (except as otherwise provided in the author-
22 izing resolution or in this title). In such event, the term
23 ‘Indian tribe’ as used in this title shall include such other
24 authorized Indian tribe, inter-tribal consortium, or tribal
25 organization.

1 **“SEC. 502. ESTABLISHMENT.**

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

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

8 “(a) CONTINUING PARTICIPATION.—Each Indian
9 tribe that is participating in the Tribal Self-Governance
10 Demonstration Project under title III on the date of enact-
11 ment of this title may elect to participate in self-govern-
12 ance under this title under existing authority as reflected
13 in tribal resolution.

14 “(b) ADDITIONAL PARTICIPANTS.—

15 “(1) IN GENERAL.—In addition to those Indian
16 tribes participating in self-governance under sub-
17 section (a), each year an additional 50 Indian tribes
18 that meet the eligibility criteria specified in sub-
19 section (c) shall be entitled to participate in self-gov-
20 ernance.

21 “(2) TREATMENT OF CERTAIN INDIAN
22 TRIBES.—

23 “(A) IN GENERAL.—An Indian tribe that
24 has withdrawn from participation in an inter-
25 tribal consortium or tribal organization, in
26 whole or in part, shall be entitled to participate

1 in self-governance provided the Indian tribe
2 meets the eligibility criteria specified in sub-
3 section (c).

4 “(B) EFFECT OF WITHDRAWAL.—If an In-
5 dian tribe has withdrawn from participation in
6 an inter-tribal consortium or tribal organiza-
7 tion, that Indian tribe shall be entitled to its
8 tribal share of funds supporting those pro-
9 grams, services, functions, and activities (or
10 portions thereof) that the Indian tribe will be
11 carrying out under the compact and funding
12 agreement of the Indian tribe.

13 “(C) PARTICIPATION IN SELF-GOVERN-
14 ANCE.—In no event shall the withdrawal of an
15 Indian tribe from an inter-tribal consortium or
16 tribal organization affect the eligibility of the
17 inter-tribal consortium or tribal organization to
18 participate in self-governance.

19 “(c) APPLICANT POOL.—

20 “(1) IN GENERAL.—The qualified applicant
21 pool for self-governance shall consist of each Indian
22 tribe that—

23 “(A) successfully completes the planning
24 phase described in subsection (d);

1 “(B) has requested participation in self-
2 governance by resolution or other official action
3 by the governing body of each Indian tribe to
4 be served; and

5 “(C) has demonstrated, for the preceding
6 period of 3 full fiscal years, financial stability
7 and financial management capability.

8 “(2) CRITERIA FOR DETERMINING FINANCIAL
9 STABILITY AND FINANCIAL MANAGEMENT CAPAC-
10 ITY.—For purposes of this subsection, evidence that,
11 during the 3-year period referred to in paragraph
12 (1)(C), an Indian tribe had no uncorrected signifi-
13 cant and material audit exceptions in the required
14 annual audit of the Indian tribe’s self-determination
15 contracts or self-governance funding agreements
16 with any Federal agency shall be conclusive evidence
17 of the required stability and capability.

18 “(d) PLANNING PHASE.—Each Indian tribe seeking
19 participation in self-governance shall complete a planning
20 phase. The planning phase shall be conducted to the satis-
21 faction of the Indian tribe and shall include—

22 “(1) legal and budgetary research; and

23 “(2) internal tribal government planning and
24 organizational preparation relating to the adminis-
25 tration of health care programs.

1 “(e) GRANTS.—Subject to the availability of appro-
2 priations, any Indian tribe meeting the requirements of
3 paragraphs (2) and (3) of subsection (c) shall be eligible
4 for grants—

5 “(1) to plan for participation in self-governance;
6 and

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

11 “(f) RECEIPT OF GRANT NOT REQUIRED.—Receipt
12 of a grant under subsection (e) shall not be a requirement
13 of participation in self-governance.

14 **“SEC. 504. COMPACTS.**

15 “(a) COMPACT REQUIRED.—The Secretary shall ne-
16 gotiate and enter into a written compact with each Indian
17 tribe participating in self-governance in a manner con-
18 sistent with the Federal Government’s trust responsibility,
19 treaty obligations, and the government-to-government re-
20 lationship between Indian tribes and the United States.

21 “(b) CONTENTS.—Each compact required under sub-
22 section (a) shall set forth the general terms of the govern-
23 ment-to-government relationship between the Indian tribe
24 and the Secretary, including such terms as the parties in-

1 tend shall control year after year. Such compacts may only
2 be amended by mutual agreement of the parties.

3 “(c) **EXISTING COMPACTS.**—An Indian tribe partici-
4 pating in the Tribal Self-Governance Demonstration
5 Project under title III on the date of enactment of this
6 title shall have the option at any time after the date of
7 enactment of this title to—

8 “(1) retain the Tribal Self-Governance Dem-
9 onstration Project compact of that Indian tribe (in
10 whole or in part) to the extent that the provisions
11 of that compact are not directly contrary to any ex-
12 press provision of this title; or

13 “(2) instead of retaining a compact or portion
14 thereof under paragraph (1), negotiate a new com-
15 pact in a manner consistent with the requirements
16 of this title.

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

23 **“SEC. 505. FUNDING AGREEMENTS.**

24 “(a) **FUNDING AGREEMENT REQUIRED.**—The Sec-
25 retary shall negotiate and enter into a written funding

1 agreement with each Indian tribe participating in self-gov-
2 ernance in a manner consistent with the Federal Govern-
3 ment's trust responsibility, treaty obligations, and the gov-
4 ernment-to-government relationship between Indian tribes
5 and the United States.

6 “(b) CONTENTS.—

7 “(1) IN GENERAL.—Each funding agreement
8 required under subsection (a) shall, as determined
9 by the Indian tribe, authorize the Indian tribe to
10 plan, conduct, consolidate, administer, and receive
11 full tribal share funding, including tribal shares of
12 discretionary Indian Health Service competitive
13 grants (excluding congressionally earmarked com-
14 petitive grants), for all programs, services, functions,
15 and activities (or portions thereof), that are carried
16 out for the benefit of Indians because of their status
17 as Indians without regard to the agency or office of
18 the Indian Health Service (or of such other agency)
19 within which the program, service, function, or activ-
20 ity (or portion thereof) is performed.

21 “(2) INCLUSION OF CERTAIN PROGRAMS, SERV-
22 ICES, FUNCTIONS, AND ACTIVITIES.—Such pro-
23 grams, services, functions, or activities (or portions
24 thereof) include all programs, services, functions, ac-
25 tivities (or portions thereof) with respect to which

1 Indian tribes or Indians are primary or significant
2 beneficiaries, administered by the Department of
3 Health and Human Services through the Indian
4 Health Service and grants (which may be added to
5 a funding agreement after award of such grants)
6 and all local, field, service unit, area, regional, and
7 central headquarters or national office functions ad-
8 ministered under the authority of—

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

11 “(B) the Act of April 16, 1934 (48 Stat.
12 596, chapter 147; 25 U.S.C. 452 et seq.);

13 “(C) the Act of August 5, 1954 (68 Stat.
14 674, chapter 658);

15 “(D) the Indian Health Care Improvement
16 Act (25 U.S.C. 1601 et seq.);

17 “(E) the Indian Alcohol and Substance
18 Abuse Prevention and Treatment Act of 1986
19 (25 U.S.C. 2401 et seq.);

20 “(F) any other Act of Congress author-
21 izing any agency of the Department of Health
22 and Human Services to administer, carry out,
23 or provide financial assistance to such a pro-
24 gram, service, function or activity (or portions
25 thereof) described in this section; or

1 “(G) any other Act of Congress author-
2 izing such a program, service, function, or ac-
3 tivity (or portions thereof) under which appro-
4 priations are made available to any agency
5 other than an agency within the Department of
6 Health and Human Services, in any case in
7 which the Secretary administers that program,
8 service, function, or activity (or portion there-
9 of).

10 “(c) INCLUSION IN COMPACT OR FUNDING AGREE-
11 MENT.—It shall not be a requirement that an Indian tribe
12 or Indians be identified in the authorizing statute for a
13 program or element of a program to be eligible for inclu-
14 sion in a compact or funding agreement under this title.

15 “(d) FUNDING AGREEMENT TERMS.—Each funding
16 agreement under this title shall set forth—

17 “(1) terms that generally identify the programs,
18 services, functions, and activities (or portions there-
19 of) to be performed or administered; and

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

21 “(A) the general budget category assigned;

22 “(B) the funds to be provided, including
23 those funds to be provided on a recurring basis;

24 “(C) the time and method of transfer of
25 the funds;

1 “(D) the responsibilities of the Secretary;
2 and

3 “(E) any other provision with respect to
4 which the Indian tribe and the Secretary agree.

5 “(e) SUBSEQUENT FUNDING AGREEMENTS.—Absent
6 notification from an Indian tribe that is withdrawing or
7 retroceding the operation of 1 or more programs, services,
8 functions, or activities (or portions thereof) identified in
9 a funding agreement, or unless otherwise agreed to by the
10 parties, each funding agreement shall remain in full force
11 and effect until a subsequent funding agreement is exe-
12 cuted, and the terms of the subsequent funding agreement
13 shall be retroactive to the end of the term of the preceding
14 funding agreement.

15 “(f) EXISTING FUNDING AGREEMENTS.—Each In-
16 dian tribe participating in the Tribal Self-Governance
17 Demonstration Project established under title III on the
18 date of enactment of this title shall have the option at
19 any time thereafter to—

20 “(1) retain the Tribal Self-Governance Dem-
21 onstration Project funding agreement of that Indian
22 tribe (in whole or in part) to the extent that the pro-
23 visions of that compact are not directly contrary to
24 any express provision of this title; or

1 “(2) instead of retaining a funding agreement
2 portion thereof under paragraph (1), negotiate a
3 new funding agreement in a manner consistent with
4 the requirements of this title.

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

14 **“SEC. 506. GENERAL PROVISIONS.**

15 “(a) APPLICABILITY.—The provisions of this section
16 shall apply to compacts and funding agreements nego-
17 tiated under this title and an Indian tribe may, at its op-
18 tion, include provisions that reflect such requirements in
19 a compact or funding agreement.

20 “(b) CONFLICTS OF INTEREST.—Indian tribes par-
21 ticipating in self-governance under this title shall ensure
22 that internal measures are in place to address conflicts
23 of interest in the administration of self-governance pro-
24 grams, services, functions, or activities (or portions there-
25 of).

1 “(c) AUDITS.—

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

6 “(2) COST PRINCIPLES.—An Indian tribe shall
7 apply cost principles under the applicable Office of
8 Management and Budget Circular, except as modi-
9 fied by section 106, or by any exemptions to applica-
10 ble Office of Management and Budget Circulars sub-
11 sequently granted by the Office of Management and
12 Budget. No other audit or accounting standards
13 shall be required by the Secretary. Any claim by the
14 Federal Government against the Indian tribe relat-
15 ing to funds received under a funding agreement
16 based on any audit under this subsection shall be
17 subject to the provisions of section 106(f).

18 “(d) RECORDS.—

19 “(1) IN GENERAL.—Unless an Indian tribe
20 specifies otherwise in the compact or funding agree-
21 ment, records of the Indian tribe shall not be consid-
22 ered Federal records for purposes of chapter 5 of
23 title 5, United States Code.

24 “(2) RECORDKEEPING SYSTEM.—The Indian
25 tribe shall maintain a recordkeeping system, and,

1 after 30 days advance notice, provide the Secretary
2 with reasonable access to such records to enable the
3 Department of Health and Human Services to meet
4 its minimum legal recordkeeping system require-
5 ments under sections 3101 through 3106 of title 44,
6 United States Code.

7 “(e) REDESIGN AND CONSOLIDATION.—An Indian
8 tribe may redesign or consolidate programs, services, func-
9 tions, and activities (or portions thereof) included in a
10 funding agreement under section 313 and reallocate or re-
11 direct funds for such programs, services, functions, and
12 activities (or portions thereof) in any manner which the
13 Indian tribe deems to be in the best interest of the health
14 and welfare of the Indian community being served, only
15 if the redesign or consolidation does not have the effect
16 of denying eligibility for services to population groups oth-
17 erwise eligible to be served.

18 “(f) RETROCESSION.—An Indian tribe may retro-
19 cede, fully or partially, to the Secretary programs, serv-
20 ices, functions, or activities (or portions thereof) included
21 in the compact or funding agreement. Unless the Indian
22 tribe rescinds the request for retrocession, such retroces-
23 sion will become effective within the timeframe specified
24 by the parties in the compact or funding agreement. In

1 the absence of such a specification, such retrocession shall
2 become effective on—

3 “(1) the earlier of—

4 “(A) 1 year after the date of submission of
5 such request; or

6 “(B) the date on which the funding agree-
7 ment expires; or

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

10 “(g) WITHDRAWAL.—

11 “(1) PROCESS.—

12 “(A) IN GENERAL.—An Indian tribe may
13 fully or partially withdraw from a participating
14 inter-tribal consortium or tribal organization its
15 share of any program, function, service, or ac-
16 tivity (or portions thereof) included in a com-
17 pact or funding agreement.

18 “(B) EFFECTIVE DATE.—The withdrawal
19 referred to in subparagraph (A) shall become
20 effective within the timeframe specified in the
21 resolution which authorizes transfer to the par-
22 ticipating tribal organization or inter-tribal con-
23 sortium. In the absence of a specific timeframe
24 set forth in the resolution, such withdrawal
25 shall become effective on—

1 “(i) the earlier of—

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

4 “(II) the date on which the fund-
5 ing agreement expires; or

6 “(ii) such date as may be mutually
7 agreed upon by the Secretary, the with-
8 drawing Indian tribe, and the participating
9 tribal organization or inter-tribal consor-
10 tium that has signed the compact or fund-
11 ing agreement on behalf of the with-
12 drawing Indian tribe, inter-tribal consor-
13 tium, or tribal organization.

14 “(2) DISTRIBUTION OF FUNDS.—When an In-
15 dian tribe or tribal organization eligible to enter into
16 a self-determination contract under title I or a com-
17 pact or funding agreement under this title fully or
18 partially withdraws from a participating inter-tribal
19 consortium or tribal organization—

20 “(A) the withdrawing Indian tribe or tribal
21 organization shall be entitled to its tribal share
22 of funds supporting those programs, services,
23 functions, or activities (or portions thereof) that
24 the Indian tribe will be carrying out under its
25 own self-determination contract or compact and

1 funding agreement (calculated on the same
2 basis as the funds were initially allocated in the
3 funding agreement of the inter-tribal consor-
4 tium or tribal organization); and

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

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

19 “(h) NONDUPLICATION.—For the period for which,
20 and to the extent to which, funding is provided under this
21 title or under the compact or funding agreement, the In-
22 dian tribe shall not be entitled to contract with the Sec-
23 retary for such funds under section 102, except that such
24 Indian tribe shall be eligible for new programs on the same
25 basis as other Indian tribes.

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

2 “(a) MANDATORY PROVISIONS.—

3 “(1) HEALTH STATUS REPORTS.—Compacts or
4 funding agreements negotiated between the Sec-
5 retary and an Indian tribe shall include a provision
6 that requires the Indian tribe to report on health
7 status and service delivery—

8 “(A) to the extent such data is not other-
9 wise available to the Secretary and specific
10 funds for this purpose are provided by the Sec-
11 retary under the funding agreement; and

12 “(B) if such reporting shall impose mini-
13 mal burdens on the participating Indian tribe
14 and such requirements are promulgated under
15 section 517.

16 “(2) REASSUMPTION.—

17 “(A) IN GENERAL.—Contracts or funding
18 agreements negotiated between the Secretary
19 and an Indian tribe shall include a provision
20 authorizing the Secretary to reassume operation
21 of a program, service, function, or activity (or
22 portions thereof) and associated funding if
23 there is a specific finding relative to that pro-
24 gram, service, function, or activity (or portion
25 thereof) of—

1 “(i) imminent endangerment of the
2 public health caused by an act or omission
3 of the Indian tribe, and the imminent
4 endangerment arises out of a failure to
5 carry out the compact or funding agree-
6 ment; or

7 “(ii) gross mismanagement with re-
8 spect to funds transferred to a tribe by a
9 compact or funding agreement, as deter-
10 mined by the Secretary in consultation
11 with the Inspector General, as appropriate.

12 “(B) PROHIBITION.—The Secretary shall
13 not reassume operation of a program, service,
14 function, or activity (or portions thereof)
15 unless—

16 “(i) the Secretary has first provided
17 written notice and a hearing on the record
18 to the Indian tribe; and

19 “(ii) the Indian tribe has not taken
20 corrective action to remedy the imminent
21 endangerment to public health or gross
22 mismanagement.

23 “(C) EXCEPTION.—

24 “(i) IN GENERAL.—Notwithstanding
25 subparagraph (B), the Secretary may,

1 upon written notification to the Indian
2 tribe, immediately reassume operation of a
3 program, service, function, or activity (or
4 portion thereof) if—

5 “(I) the Secretary makes a find-
6 ing of imminent substantial and irrep-
7 arable endangerment of the public
8 health caused by an act or omission of
9 the Indian tribe; and

10 “(II) the endangerment arises
11 out of a failure to carry out the com-
12 pact or funding agreement.

13 “(ii) REASSUMPTION.—If the Sec-
14 retary reassumes operation of a program,
15 service, function, or activity (or portion
16 thereof) under this subparagraph, the Sec-
17 retary shall provide the Indian tribe with a
18 hearing on the record not later than 10
19 days after such reassumption.

20 “(D) HEARINGS.—In any hearing or ap-
21 peal involving a decision to reassume operation
22 of a program, service, function, or activity (or
23 portion thereof), the Secretary shall have the
24 burden of proof of demonstrating by clear and

1 convincing evidence the validity of the grounds
2 for the reassumption.

3 “(b) FINAL OFFER.—In the event the Secretary and
4 a participating Indian tribe are unable to agree, in whole
5 or in part, on the terms of a compact or funding agree-
6 ment (including funding levels), the Indian tribe may sub-
7 mit a final offer to the Secretary. Not more than 45 days
8 after such submission, or within a longer time agreed upon
9 by the Indian tribe, the Secretary shall review and make
10 a determination with respect to such offer. In the absence
11 of a timely rejection of the offer, in whole or in part, made
12 in compliance with subsection (c), the offer shall be
13 deemed agreed to by the Secretary.

14 “(c) REJECTION OF FINAL OFFERS.—

15 “(1) IN GENERAL.—If the Secretary rejects an
16 offer made under subsection (b) (or 1 or more provi-
17 sions or funding levels in such offer), the Secretary
18 shall provide—

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

23 “(i) the amount of funds proposed in
24 the final offer exceeds the applicable fund-

1 ing level to which the Indian tribe is enti-
2 tled under this title;

3 “(ii) the program, function, service, or
4 activity (or portion thereof) that is the
5 subject of the final offer is an inherent
6 Federal function that cannot legally be del-
7 egated to an Indian tribe;

8 “(iii) the Indian tribe cannot carry
9 out the program, function, service, or ac-
10 tivity (or portion thereof) in a manner that
11 would not result in significant danger or
12 risk to the public health; or

13 “(iv) the Indian tribe is not eligible to
14 participate in self-governance under section
15 503;

16 “(B) technical assistance to overcome the
17 objections stated in the notification required by
18 subparagraph (A);

19 “(C) the Indian tribe with a hearing on the
20 record with the right to engage in full discovery
21 relevant to any issue raised in the matter and
22 the opportunity for appeal on the objections
23 raised, except that the Indian tribe may, in lieu
24 of filing such appeal, directly proceed to initiate

1 an action in a Federal district court pursuant
2 to section 110(a); and

3 “(D) the Indian tribe with the option of
4 entering into the severable portions of a final
5 proposed compact or funding agreement, or
6 provision thereof, (including a lesser funding
7 amount, if any), that the Secretary did not re-
8 ject, subject to any additional alterations nec-
9 essary to conform the compact or funding
10 agreement to the severed provisions.

11 “(2) EFFECT OF EXERCISING CERTAIN OP-
12 TION.—If an Indian tribe exercises the option speci-
13 fied in paragraph (1)(D), that Indian tribe shall re-
14 tain the right to appeal the Secretary’s rejection
15 under this section, and subparagraphs (A), (B), and
16 (C) of that paragraph shall only apply to that por-
17 tion of the proposed final compact, funding agree-
18 ment, or provision thereof that was rejected by the
19 Secretary.

20 “(d) BURDEN OF PROOF.—With respect to any hear-
21 ing or appeal or civil action conducted pursuant to this
22 section, the Secretary shall have the burden of dem-
23 onstrating by clear and convincing evidence the validity
24 of the grounds for rejecting the offer (or a provision there-
25 of) made under subsection (b).

1 “(e) GOOD FAITH.—In the negotiation of compacts
2 and funding agreements the Secretary shall at all times
3 negotiate in good faith to maximize implementation of the
4 self-governance policy. The Secretary shall carry out this
5 title in a manner that maximizes the policy of tribal self-
6 governance, in a manner consistent with the purposes
7 specified in section 3 of the Tribal Self-Governance
8 Amendments of 1999.

9 “(f) SAVINGS.—To the extent that programs, func-
10 tions, services, or activities (or portions thereof) carried
11 out by Indian tribes under this title reduce the administra-
12 tive or other responsibilities of the Secretary with respect
13 to the operation of Indian programs and result in savings
14 that have not otherwise been included in the amount of
15 tribal shares and other funds determined under section
16 508(c), the Secretary shall make such savings available
17 to the Indian tribes, inter-tribal consortia, or tribal organi-
18 zations for the provision of additional services to program
19 beneficiaries in a manner equitable to directly served, con-
20 tracted, and compacted programs.

21 “(g) TRUST RESPONSIBILITY.—The Secretary is pro-
22 hibited from waiving, modifying, or diminishing in any
23 way the trust responsibility of the United States with re-
24 spect to Indian tribes and individual Indians that exists

1 under treaties, Executive orders, other laws, or court deci-
2 sions.

3 “(h) **DECISIONMAKER.**—A decision that constitutes
4 final agency action and relates to an appeal within the
5 Department of Health and Human Services conducted
6 under subsection (c) shall be made either—

7 “(1) by an official of the Department who holds
8 a position at a higher organizational level within the
9 Department than the level of the departmental agen-
10 cy in which the decision that is the subject of the
11 appeal was made; or

12 “(2) by an administrative judge.

13 **“SEC. 508. TRANSFER OF FUNDS.**

14 “(a) **IN GENERAL.**—Pursuant to the terms of any
15 compact or funding agreement entered into under this
16 title, the Secretary shall transfer to the Indian tribe all
17 funds provided for in the funding agreement, pursuant to
18 subsection (c), and provide funding for periods covered by
19 joint resolution adopted by Congress making continuing
20 appropriations, to the extent permitted by such resolu-
21 tions. In any instance where a funding agreement requires
22 an annual transfer of funding to be made at the beginning
23 of a fiscal year, or requires semiannual or other periodic
24 transfers of funding to be made commencing at the begin-
25 ning of a fiscal year, the first such transfer shall be made

1 not later than 10 days after the apportionment of such
2 funds by the Office of Management and Budget to the
3 Department, unless the funding agreement provides other-
4 wise.

5 “(b) MULTIYEAR FUNDING.—The Secretary may em-
6 ploy, upon tribal request, multiyear funding agreements.
7 References in this title to funding agreements shall include
8 such multiyear funding agreements.

9 “(c) AMOUNT OF FUNDING.—The Secretary of
10 Health and Human Services shall provide funds under a
11 funding agreement under this title in an amount equal to
12 the amount that the Indian tribe would have been entitled
13 to receive under self-determination contracts under this
14 Act, including amounts for direct program costs specified
15 under section 106(a)(1) and amounts for contract support
16 costs specified under section 106(a) (2), (3), (5), and (6),
17 including any funds that are specifically or functionally
18 related to the provision by the Secretary of services and
19 benefits to the Indian tribe or its members, all without
20 regard to the organizational level within the Department
21 where such functions are carried out.

22 “(d) PROHIBITIONS.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), the Secretary is expressly prohibited
25 from—

1 “(A) failing or refusing to transfer to an
2 Indian tribe its full share of any central, head-
3 quarters, regional, area, or service unit office or
4 other funds due under this Act, except as re-
5 quired by Federal law;

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

8 “(C) reducing the use of funds, from the
9 the amount of funds that the Secretary is au-
10 thorized to use under this title—

11 “(i) to make funding available for
12 self-governance monitoring or administra-
13 tion by the Secretary;

14 “(ii) in subsequent years, except pur-
15 suant to—

16 “(I) a reduction in appropria-
17 tions from the previous fiscal year for
18 the program or function to be in-
19 cluded in a compact or funding agree-
20 ment;

21 “(II) a congressional directive in
22 legislation or accompanying report;

23 “(III) a tribal authorization;

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

4 “(V) completion of a project, ac-
5 tivity, or program for which such
6 funds were provided;

7 “(iii) to pay for Federal functions, in-
8 cluding Federal pay costs, Federal em-
9 ployee retirement benefits, automated data
10 processing, technical assistance, and moni-
11 toring of activities under this Act; or

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

15 “(2) EXCEPTION.—The funds described in
16 paragraph (1)(C) may be increased by the Secretary
17 if necessary to carry out this Act or as provided in
18 section 105(e)(2).

19 “(e) OTHER RESOURCES.—In the event an Indian
20 tribe elects to carry out a compact or funding agreement
21 with the use of Federal personnel, Federal supplies (in-
22 cluding supplies available from Federal warehouse facili-
23 ties), Federal supply sources (including lodging, airline
24 transportation, and other means of transportation includ-
25 ing the use of interagency motor pool vehicles) or other

1 Federal resources (including supplies, services, and re-
2 sources available to the Secretary under any procurement
3 contracts in which the Department is eligible to partici-
4 pate), to the extent allowable under law, the Secretary
5 shall acquire and transfer such personnel, supplies, or re-
6 sources to the Indian tribe.

7 “(f) REIMBURSEMENT TO INDIAN HEALTH SERV-
8 ICE.—With respect to functions transferred by the Indian
9 Health Service to an Indian tribe, the Indian Health Serv-
10 ice is authorized to provide goods and services to the In-
11 dian tribe, on a reimbursable basis, including payment in
12 advance with subsequent adjustment. The reimbursements
13 received from those goods and services, along with the
14 funds received from the Indian tribe pursuant to this title,
15 may be credited to the same or subsequent appropriation
16 account which provided the funding, such amounts to re-
17 main available until expended.

18 “(g) PROMPT PAYMENT ACT.—Chapter 39 of title
19 31, United States Code, shall apply to the transfer of
20 funds due under a compact or funding agreement author-
21 ized under this title.

22 “(h) INTEREST OR OTHER INCOME ON TRANS-
23 FERS.—An Indian tribe is entitled to retain interest
24 earned on any funds paid under a compact or funding
25 agreement to carry out governmental or health purposes

1 and such interest shall not diminish the amount of funds
2 the Indian tribe is authorized to receive under its funding
3 agreement in the year the interest is earned or in any sub-
4 sequent fiscal year. Funds transferred under this title
5 shall be managed using the prudent investment standard.

6 “(i) CARRYOVER OF FUNDS.—All funds paid to an
7 Indian tribe in accordance with a compact or funding
8 agreement shall remain available until expended. In the
9 event that an Indian tribe elects to carry over funding
10 from 1 year to the next, such carryover shall not diminish
11 the amount of funds the Indian tribe is authorized to re-
12 ceive under its funding agreement in that or any subse-
13 quent fiscal year.

14 “(j) PROGRAM INCOME.—All medicare, medicaid, or
15 other program income earned by an Indian tribe shall be
16 treated as supplemental funding to that negotiated in the
17 funding agreement. The Indian tribe may retain all such
18 income and expend such funds in the current year or in
19 future years except to the extent that the Indian Health
20 Care Improvement Act (25 U.S.C. 1601 et seq.) provides
21 otherwise for medicare and medicaid receipts. Such funds
22 shall not result in any offset or reduction in the amount
23 of funds the Indian tribe is authorized to receive under
24 its funding agreement in the year the program income is
25 received or for any subsequent fiscal year.

1 “(k) LIMITATION OF COSTS.—An Indian tribe shall
2 not be obligated to continue performance that requires an
3 expenditure of funds in excess of the amount of funds
4 transferred under a compact or funding agreement. If at
5 any time the Indian tribe has reason to believe that the
6 total amount provided for a specific activity in the com-
7 pact or funding agreement is insufficient the Indian tribe
8 shall provide reasonable notice of such insufficiency to the
9 Secretary. If the Secretary does not increase the amount
10 of funds transferred under the funding agreement, the In-
11 dian tribe may suspend performance of the activity until
12 such time as additional funds are transferred.

13 **“SEC. 509. CONSTRUCTION PROJECTS.**

14 “(a) IN GENERAL.—Indian tribes participating in
15 tribal self-governance may carry out construction projects
16 under this title if they elect to assume all Federal respon-
17 sibilities under the National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.), the National Historic
19 Preservation Act (16 U.S.C. 470 et seq.), and related pro-
20 visions of law that would apply if the Secretary were to
21 undertake a construction project, by adopting a
22 resolution—

23 “(1) designating a certifying officer to rep-
24 resent the Indian tribe and to assume the status of
25 a responsible Federal official under such laws; and

1 “(2) accepting the jurisdiction of the Federal
2 court for the purpose of enforcement of the respon-
3 sibilities of the responsible Federal official under
4 such environmental laws.

5 “(b) NEGOTIATIONS.—Construction project proposals
6 shall be negotiated pursuant to the statutory process in
7 section 105(m) and resulting construction project agree-
8 ments shall be incorporated into funding agreements as
9 addenda.

10 “(c) CODES AND STANDARDS.—The Indian tribe and
11 the Secretary shall agree upon and specify appropriate
12 building codes and architectural and engineering stand-
13 ards (including health and safety) which shall be in con-
14 formity with nationally recognized standards for com-
15 parable projects.

16 “(d) RESPONSIBILITY FOR COMPLETION.—The In-
17 dian tribe shall assume responsibility for the successful
18 completion of the construction project in accordance with
19 the negotiated construction project agreement.

20 “(e) FUNDING.—Funding for construction projects
21 carried out under this title shall be included in funding
22 agreements as annual advance payments, with semiannual
23 payments at the option of the Indian tribe. Annual ad-
24 vance and semiannual payment amounts shall be deter-
25 mined based on mutually agreeable project schedules re-

1 fleeting work to be accomplished within the advance pay-
2 ment period, work accomplished and funds expended in
3 previous payment periods, and the total prior payments.
4 The Secretary shall include associated project contingency
5 funds with each advance payment installment. The Indian
6 tribe shall be responsible for the management of the con-
7 tingency funds included in funding agreements.

8 “(f) APPROVAL.—The Secretary shall have at least
9 1 opportunity to approve project planning and design doc-
10 uments prepared by the Indian tribe in advance of con-
11 struction of the facilities specified in the scope of work
12 for each negotiated construction project agreement or
13 amendment thereof which results in a significant change
14 in the original scope of work. The Indian tribe shall pro-
15 vide the Secretary with project progress and financial re-
16 ports not less than semiannually. The Secretary may con-
17 duct onsite project oversight visits semiannually or on an
18 alternate schedule agreed to by the Secretary and the In-
19 dian tribe.

20 “(g) WAGES.—All laborers and mechanics employed
21 by contractors and subcontractors in the construction, al-
22 teration, or repair, including painting or decorating of a
23 building or other facilities in connection with construction
24 projects undertaken by self-governance Indian tribes
25 under this Act, shall be paid wages at not less than those

1 prevailing wages on similar construction in the locality as
2 determined by the Indian tribe.

3 “(h) APPLICATION OF OTHER LAWS.—Unless other-
4 wise agreed to by the Indian tribe, no provision of the Of-
5 fice of Federal Procurement Policy Act, the Federal Ac-
6 quisition Regulations issued pursuant thereto, or any
7 other law or regulation pertaining to Federal procurement
8 (including Executive orders) shall apply to any construc-
9 tion project conducted under this title.

10 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**
11 **TIONS.**

12 “Notwithstanding any other provision of law, unless
13 expressly agreed to by the participating Indian tribe, the
14 compacts and funding agreements entered into under this
15 title shall not be subject to Federal contracting or coopera-
16 tive agreement laws and regulations (including Executive
17 orders and the regulations relating to procurement issued
18 by the Secretary), except to the extent that such laws ex-
19 pressly apply to Indian tribes.

20 **“SEC. 511. CIVIL ACTIONS.**

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

24 “(b) APPLICABILITY OF CERTAIN LAWS.—Section
25 2103 of the Revised Statutes (25 U.S.C. 81) and section

1 16 of the Act of June 18, 1934 (48 Stat. 987; chapter
2 576; 25 U.S.C. 476), shall not apply to attorney and other
3 professional contracts entered into by Indian tribes par-
4 ticipating in self-governance under this title.

5 “(c) REFERENCES.—All references in this Act to sec-
6 tion 1 of the Act of June 26, 1936 (49 Stat. 1967; chapter
7 831) are hereby deemed to include the first section of the
8 Act of July 3, 1952 (66 Stat. 323, chapter 549; 25 U.S.C.
9 82a).

10 **“SEC. 512. FACILITATION.**

11 “(a) SECRETARIAL INTERPRETATION.—Except as
12 otherwise provided by law, the Secretary shall interpret
13 all Federal laws, Executive orders and regulations in a
14 manner that will facilitate—

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

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

21 “(3) the achievement of tribal health goals and
22 objectives.

23 “(b) REGULATION WAIVER.—

24 “(1) IN GENERAL.—An Indian tribe may sub-
25 mit a written request to waive application of a regu-

1 lation for a compact or funding agreement entered
2 into with the Indian Health Service under this title,
3 to the Secretary identifying the applicable Federal
4 regulation sought to be waived and the basis for the
5 request.

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

19 “(c) ACCESS TO FEDERAL PROPERTY.—In connec-
20 tion with any compact or funding agreement executed pur-
21 suant to this title or an agreement negotiated under the
22 Tribal Self-Governance Demonstration Project established
23 under title III, as in effect before the enactment of the
24 Tribal Self-Governance Amendments of 1999, upon the re-
25 quest of an Indian tribe, the Secretary—

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

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

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

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

1 property and equipment shall revert to the De-
2 partment of Health and Human Services; and

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

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

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

20 “(e) STATE FACILITATION.—States are hereby au-
21 thorized and encouraged to enact legislation, and to enter
22 into agreements with Indian tribes to facilitate and supple-
23 ment the initiatives, programs, and policies authorized by
24 this title and other Federal laws benefiting Indians and
25 Indian tribes.

1 “(f) RULES OF CONSTRUCTION.—Each provision of
2 this title and each provision of a compact or funding
3 agreement shall be liberally construed for the benefit of
4 the Indian tribe participating in self-governance and any
5 ambiguity shall be resolved in favor of the Indian tribe.

6 **“SEC. 513. BUDGET REQUEST.**

7 “(a) IN GENERAL.—

8 “(1) IN GENERAL.—The President shall iden-
9 tify in the annual budget request submitted to Con-
10 gress under section 1105 of title 31, United States
11 Code, all funds necessary to fully fund all funding
12 agreements authorized under this title, including
13 funds specifically identified to fund tribal base budg-
14 ets. All funds so appropriated shall be apportioned
15 to the Indian Health Service. Such funds shall be
16 provided to the Office of Tribal Self-Governance
17 which shall be responsible for distribution of all
18 funds provided under section 505.

19 “(2) RULE OF CONSTRUCTION.—Nothing in
20 this subsection shall be construed to authorize the
21 Indian Health Service to reduce the amount of funds
22 that a self-governance tribe is otherwise entitled to
23 receive under its funding agreement or other appli-
24 cable law, whether or not such funds are appor-

1 tioned to the Office of Tribal Self-Governance under
2 this section.

3 “(b) **PRESENT FUNDING; SHORTFALLS.**—In such
4 budget request, the President shall identify the level of
5 need presently funded and any shortfall in funding (in-
6 cluding direct program and contract support costs) for
7 each Indian tribe, either directly by the Secretary of
8 Health and Human Services, under self-determination
9 contracts, or under compacts and funding agreements au-
10 thorized under this title.

11 **“SEC. 514. REPORTS.**

12 “(a) **ANNUAL REPORT.**—

13 “(1) **IN GENERAL.**—Not later than January 1
14 of each year after the date of enactment of the Trib-
15 al Self-Governance Amendments of 1999, the Sec-
16 retary shall submit to the Committee on Indian Af-
17 fairs of the Senate and the Committee on Resources
18 of the House of Representatives a written report re-
19 garding the administration of this title.

20 “(2) **ANALYSIS.**—The report under paragraph
21 (1) shall include a detailed analysis of the level of
22 need being presently funded or unfunded for each
23 Indian tribe, either directly by the Secretary, under
24 self-determination contracts under title I, or under
25 compacts and funding agreements authorized under

1 this Act. In compiling reports pursuant to this sec-
2 tion, the Secretary may not impose any reporting re-
3 quirements on participating Indian tribes or tribal
4 organizations, not otherwise provided in this Act.

5 “(b) CONTENTS.—The report under subsection (a)
6 shall—

7 “(1) be compiled from information contained in
8 funding agreements, annual audit reports, and data
9 of the Secretary regarding the disposition of Federal
10 funds; and

11 “(2) identify—

12 “(A) the relative costs and benefits of self-
13 governance;

14 “(B) with particularity, all funds that are
15 specifically or functionally related to the provi-
16 sion by the Secretary of services and benefits to
17 self-governance Indian tribes and their mem-
18 bers;

19 “(C) the funds transferred to each self-
20 governance Indian tribe and the corresponding
21 reduction in the Federal bureaucracy;

22 “(D) the funding formula for individual
23 tribal shares of all headquarters funds, together
24 with the comments of affected Indian tribes or

1 tribal organizations, developed under subsection
2 (c); and

3 “(E) amounts expended in the preceding
4 fiscal year to carry out inherent Federal func-
5 tions, including an identification of those func-
6 tions by type and location;

7 “(2) contain a description of the method or
8 methods (or any revisions thereof) used to determine
9 the individual tribal share of funds controlled by all
10 components of the Indian Health Service (including
11 funds assessed by any other Federal agency) for in-
12 clusion in self-governance compacts or funding
13 agreements;

14 “(3) before being submitted to Congress, be dis-
15 tributed to the Indian tribes for comment (with a
16 comment period of no less than 30 days, beginning
17 on the date of distribution); and

18 “(4) include the separate views and comments
19 of the Indian tribes or tribal organizations.

20 “(c) REPORT ON FUND DISTRIBUTION METHOD.—

21 Not later than 180 days after the date of enactment of
22 the Tribal Self-Governance Amendments of 1999, the Sec-
23 retary shall, after consultation with Indian tribes, submit
24 a written report to the Committee on Resources of the
25 House of Representatives and the Committee on Indian

1 Affairs of the Senate which describes the method or meth-
2 ods used to determine the individual tribal share of funds
3 controlled by all components of the Indian Health Service
4 (including funds assessed by any other Federal agency)
5 for inclusion in self-governance compacts or funding
6 agreements.

7 **“SEC. 515. DISCLAIMERS.**

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

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

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

1 cooperative agreement under this Act shall not be consid-
2 ered an employer.

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

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

8 “(a) MANDATORY APPLICATION.—All provisions of
9 sections 5(b), 6, 7, 102 (c) and (d), 104, 105 (k) and (l),
10 106 (e) through (k), and 111 of this Act and section 314
11 of Public Law 101–512 (coverage under chapter 171 of
12 title 28, United States Code, commonly known as the
13 ‘Federal Tort Claims Act’), to the extent not in conflict
14 with this title, shall apply to compacts and funding agree-
15 ments authorized by this title.

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

1 of a compact or funding agreement, such incorporation
2 shall be deemed effective immediately and shall control the
3 negotiation and resulting compact and funding agreement.

4 **“SEC. 517. REGULATIONS.**

5 “(a) IN GENERAL.—

6 “(1) PROMULGATION.—Not later than 90 days
7 after the date of enactment of the Tribal Self-Gov-
8 ernance Amendments of 1999, the Secretary shall
9 initiate procedures under subchapter III of chapter
10 5 of title 5, United States Code, to negotiate and
11 promulgate such regulations as are necessary to
12 carry out this title.

13 “(2) PUBLICATION OF PROPOSED REGULA-
14 TIONS.—Proposed regulations to implement this title
15 shall be published in the Federal Register by the
16 Secretary no later than 1 year after the date of en-
17 actment of the Tribal Self-Governance Amendments
18 of 1999.

19 “(3) EXPIRATION OF AUTHORITY.—The author-
20 ity to promulgate regulations under paragraph (1)
21 shall expire 21 months after the date of enactment
22 of the Tribal Self-Governance Amendments of 1999.

23 “(b) COMMITTEE.—

24 “(1) IN GENERAL.—A negotiated rulemaking
25 committee established pursuant to section 565 of

1 title 5, United States Code, to carry out this section
2 shall have as its members only Federal and tribal
3 government representatives, a majority of whom
4 shall be nominated by and be representatives of In-
5 dian tribes with funding agreements under this Act.

6 “(2) REQUIREMENTS.—The committee shall
7 confer with, and accommodate participation by, rep-
8 resentatives of Indian tribes, inter-tribal consortia,
9 tribal organizations, and individual tribal members.

10 “(c) ADAPTATION OF PROCEDURES.—The Secretary
11 of Health and Human Services shall adapt the negotiated
12 rulemaking procedures to the unique context of self-gov-
13 ernance and the government-to-government relationship
14 between the United States and Indian tribes.

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

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

1 **“SEC. 518. APPEALS.**

2 “In any appeal (including civil actions) involving deci-
3 sions made by the Secretary under this title, the Secretary
4 shall have the burden of proof of demonstrating by clear
5 and convincing evidence—

6 “(1) the validity of the grounds for the decision
7 made; and

8 “(2) that the decision is fully consistent with
9 provisions and policies of this title.

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

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

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

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

17 **“TITLE VI—TRIBAL SELF-GOV-**
18 **ERNANCE—DEPARTMENT OF**
19 **HEALTH AND HUMAN SERV-**
20 **ICES**

21 **“SEC. 601. DEFINITIONS.**

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

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

25 “(1) AGENCY.—The term the term ‘agency’
26 means any agency or other organizational unit of the

1 Department of Health and Human Services, other
2 than the Indian Health Service.

3 “(2) SECRETARY.—The term ‘Secretary’ means
4 the Secretary of Health and Human Services.

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

6 “(a) STUDY.—The Secretary shall conduct a study
7 to determine the feasibility of a tribal self-governance
8 demonstration project for appropriate programs, services,
9 functions, and activities (or portions thereof) of the agen-
10 cy.

11 “(b) CONSIDERATIONS.—In conducting the study,
12 the Secretary shall consider—

13 “(1) the probable effects on specific programs
14 and program beneficiaries of such a demonstration
15 project;

16 “(2) statutory, regulatory, or other impedi-
17 ments to implementation of such a demonstration
18 project;

19 “(3) strategies for implementing such a dem-
20 onstration project;

21 “(4) probable costs or savings associated with
22 such a demonstration project;

23 “(5) methods to assure quality and account-
24 ability in such a demonstration project; and

1 “(6) such other issues that may be determined
2 by the Secretary or developed through consultation
3 pursuant to section 605.

4 “(c) REPORT.—Not later than 18 months after the
5 date of enactment of this title, the Secretary shall submit
6 a report to the Committee on Indian Affairs of the Senate
7 and the Committee on Resources of the House of Rep-
8 resentatives. The report shall contain—

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

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

14 “(3) a list of programs, services, functions, and
15 activities (or portions thereof) included in the list
16 provided pursuant to paragraph (2) that could be in-
17 cluded in a tribal self-governance demonstration
18 project without amending statutes, or waiving regu-
19 lations that the Secretary may not waive;

20 “(4) a list of legislative actions required in
21 order to include those programs, services, functions,
22 and activities (or portions thereof) included in the
23 list provided pursuant to paragraph (2) but not in-
24 cluded in the list provided pursuant to paragraph

1 (3) in a tribal self-governance demonstration project;
2 and

3 “(5) any separate views of tribes and other en-
4 tities consulted pursuant to section 603 related to
5 the information provided pursuant to paragraphs (1)
6 through (4).

7 **“SEC. 603. CONSULTATION.**

8 “(a) STUDY PROTOCOL.—

9 “(1) CONSULTATION WITH INDIAN TRIBES.—

10 The Secretary shall consult with Indian tribes to de-
11 termine a protocol for consultation under subsection
12 (b) prior to consultation under such subsection with
13 the other entities described in such subsection.

14 “(2) REQUIREMENTS FOR PROTOCOL.—The
15 protocol shall require, at a minimum, that—

16 “(A) the government-to-government rela-
17 tionship with Indian tribes forms the basis for
18 the consultation process;

19 “(B) the Indian tribes and the Secretary
20 jointly conduct the consultations required by
21 this section; and

22 “(C) the consultation process allows for
23 separate and direct recommendations from the
24 Indian tribes and other entities described in
25 subsection (b).

1 (1) by striking “deemed an executive agency”
2 and inserting “deemed an executive agency and part
3 of the Indian Health Service”; and

4 (2) by adding at the end the following: “At the
5 request of an Indian tribe, the Secretary shall enter
6 into an agreement for the acquisition, on behalf of
7 the Indian tribe, of any goods, services, or supplies
8 available to the Secretary from the General Services
9 Administration or other Federal agencies that are
10 not directly available to the Indian tribe under this
11 section or any other Federal law, including acquisi-
12 tions from prime vendors. All such acquisitions shall
13 be undertaken through the most efficient and speedy
14 means practicable, including electronic ordering ar-
15 rangements.

16 **SEC. 8. REPEAL.**

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

20 (b) EFFECTIVE DATE.—This section shall take effect
21 on October 1, 1999.

22 **SEC. 9. SAVINGS PROVISION.**

23 Funds appropriated for title III of the Indian Self-
24 Determination and Education Assistance Act (25 U.S.C.

- 1 450f note) shall be available for use under title V of such
- 2 Act.

