

Calendar No. 412

106TH CONGRESS
1ST SESSION

S. 979

[Report No. 106-221]

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.

NOVEMBER 9, 1999

Reported with an amendment

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 IN THE SENATE OF THE UNITED STATES

MAY 6, 1999

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

NOVEMBER 9, 1999

Reported by Mr. CAMPBELL, with an amendment

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

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”.~~

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the tribal right of self-government flows
4 from the inherent sovereignty of Indian tribes and
5 nations;

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

12 (3) although progress has been made, the Fed-
13 eral bureaucracy, with its centralized rules and regu-
14 lations, has eroded tribal self-governance and domi-
15 nates tribal affairs;

16 (4) the Tribal Self-Governance Demonstration
17 Project, established under title III of the Indian
18 Self-Determination and Education Assistance Act
19 (25 U.S.C. 450f note) was designed to improve and
20 perpetuate the government-to-government relation-
21 ship between Indian tribes and the United States
22 and to strengthen tribal control over Federal fund-
23 ing and program management;

24 (5) although the Federal Government has made
25 considerable strides in improving Indian health care,
26 it has failed to fully meet its trust responsibilities

1 and to satisfy its obligations to the Indian tribes
2 under treaties and other laws; and

3 (6) Congress has reviewed the results of the
4 Tribal Self-Governance Demonstration Project and
5 finds that transferring full control and funding to
6 tribal governments, upon tribal request, over deci-
7 sion making for Federal programs, services, func-
8 tions, and activities (or portions thereof)—

9 (A) is an appropriate and effective means
10 of implementing the Federal policy of govern-
11 ment-to-government relations with Indian
12 tribes; and

13 (B) strengthens the Federal policy of In-
14 dian self-determination.

15 **SEC. 3. DECLARATION OF POLICY.**

16 It is the policy of Congress—

17 (1) to permanently establish and implement
18 tribal self-governance within the Department of
19 Health and Human Services;

20 (2) to call for full cooperation from the Depart-
21 ment of Health and Human Services and its con-
22 stituent agencies in the implementation of tribal self-
23 governance—

24 (A) to enable the United States to main-
25 tain and improve its unique and continuing re-

1 relationship with, and responsibility to, Indian
2 tribes;

3 (B) to permit each Indian tribe to choose
4 the extent of its participation in self-governance
5 in accordance with the provisions of the Indian
6 Self-Determination and Education Assistance
7 Act relating to the provision of Federal services
8 to Indian tribes;

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

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

15 (E) to strengthen the government-to-gov-
16 ernment relationship between the United States
17 and Indian tribes through direct and meaning-
18 ful consultation with all tribes;

19 (F) to permit an orderly transition from
20 Federal domination of programs and services to
21 provide Indian tribes with meaningful authority,
22 control, funding, and discretion to plan, con-
23 duct, redesign, and administer programs, serv-
24 ices, functions, and activities (or portions there-

1 of) that meet the needs of the individual tribal
2 communities;

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

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

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

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

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

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

3 **“SEC. 501. DEFINITIONS.**

4 “(a) IN GENERAL.—In this title:

5 “(1) CONSTRUCTION PROJECT.—The term ‘con-

6 struction project’—

7 “(A) means an organized noncontinuous

8 undertaking to complete a specific set of pre-

9 determined objectives for the planning, environ-

10 mental determination, design, construction, re-

11 pair, improvement, or expansion of buildings or

12 facilities, as described in a construction project

13 agreement; and

14 “(B) does not include construction pro-

15 gram administration and activities described in

16 paragraphs (1) through (3) of section 4(m),

17 that may otherwise be included in a funding

18 agreement under this title.

19 “(2) CONSTRUCTION PROJECT AGREEMENT.—

20 The term ‘construction project agreement’ means a

21 negotiated agreement between the Secretary and an

22 Indian tribe, that at a minimum—

23 “(A) establishes project phase start and

24 completion dates;

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

3 “(C) identifies the responsibilities of the
4 Indian tribe and the Secretary;

5 “(D) addresses environmental consider-
6 ations;

7 “(E) identifies the owner and operations
8 and maintenance entity of the proposed work;

9 “(F) provides a budget;

10 “(G) provides a payment process; and

11 “(H) establishes the duration of the agree-
12 ment based on the time necessary to complete
13 the specified scope of work, which may be 1 or
14 more years.

15 “(3) INHERENT FEDERAL FUNCTIONS.—The
16 term ‘inherent Federal functions’ means those Fed-
17 eral functions which cannot legally be delegated to
18 Indian tribes.

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

24 “(5) GROSS MISMANAGEMENT.—The term
25 ‘gross mismanagement’ means a significant, clear,

1 and convincing violation of a compact, funding
2 agreement, or regulatory, or statutory requirements
3 applicable to Federal funds transferred to an Indian
4 tribe by a compact or funding agreement that re-
5 sults in a significant reduction of funds available for
6 the programs, services, functions, or activities (or
7 portions thereof) assumed by an Indian tribe.

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

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

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

19 “(b) INDIAN TRIBE.—In any case in which an Indian
20 tribe has authorized another Indian tribe, an inter-tribal
21 consortium, or a tribal organization to plan for or carry
22 out programs, services, functions, or activities (or portions
23 thereof) on its behalf under this title, the authorized In-
24 dian tribe, inter-tribal consortium, or tribal organization
25 shall have the rights and responsibilities of the authorizing

1 Indian tribe (except as otherwise provided in the author-
 2 izing resolution or in this title). In such event, the term
 3 ‘Indian tribe’ as used in this title shall include such other
 4 authorized Indian tribe, inter-tribal consortium, or tribal
 5 organization.

6 **“SEC. 502. ESTABLISHMENT.**

7 “**The Secretary of Health and Human Services shall**
 8 **establish and carry out a program within the Indian**
 9 **Health Service of the Department of Health and Human**
 10 **Services to be known as the ‘Tribal Self-Governance Pro-**
 11 **gram’ in accordance with this title.**

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

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

19 “(b) **ADDITIONAL PARTICIPANTS.—**

20 “(1) **IN GENERAL.—**In addition to those Indian
 21 tribes participating in self-governance under sub-
 22 section (a), each year an additional 50 Indian tribes
 23 that meet the eligibility criteria specified in sub-
 24 section (c) shall be entitled to participate in self-gov-
 25 ernance.

1 “(2) TREATMENT OF CERTAIN INDIAN
2 TRIBES.—

3 “(A) IN GENERAL.—An Indian tribe that
4 has withdrawn from participation in an inter-
5 tribal consortium or tribal organization, in
6 whole or in part, shall be entitled to participate
7 in self-governance provided the Indian tribe
8 meets the eligibility criteria specified in sub-
9 section (c).

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

19 “(C) PARTICIPATION IN SELF-GOVERN-
20 ANCE.—In no event shall the withdrawal of an
21 Indian tribe from an inter-tribal consortium or
22 tribal organization affect the eligibility of the
23 inter-tribal consortium or tribal organization to
24 participate in self-governance.

25 “(c) APPLICANT POOL.—

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

4 “(A) successfully completes the planning
5 phase described in subsection (d);

6 “(B) has requested participation in self-
7 governance by resolution or other official action
8 by the governing body of each Indian tribe to
9 be served; and

10 “(C) has demonstrated, for the preceding
11 period of 3 full fiscal years, financial stability
12 and financial management capability.

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

23 “(d) PLANNING PHASE.—Each Indian tribe seeking
24 participation in self-governance shall complete a planning

1 phase. The planning phase shall be conducted to the satis-
 2 faction of the Indian tribe and shall include—

3 “(1) legal and budgetary research; and

4 “(2) internal tribal government planning and
 5 organizational preparation relating to the adminis-
 6 tration of health care programs.

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

11 “(1) to plan for participation in self-governance;
 12 and

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

17 “(f) RECEIPT OF GRANT NOT REQUIRED.—Receipt
 18 of a grant under subsection (c) shall not be a requirement
 19 of participation in self-governance.

20 **“SEC. 504. COMPACTS.**

21 “(a) COMPACT REQUIRED.—The Secretary shall ne-
 22 gotiate and enter into a written compact with each Indian
 23 tribe participating in self-governance in a manner con-
 24 sistent with the Federal Government’s trust responsibility;

1 treaty obligations, and the government-to-government re-
2 lationship between Indian tribes and the United States.

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

9 “(c) EXISTING COMPACTS.—An Indian tribe partici-
10 pating in the Tribal Self-Governance Demonstration
11 Project under title III on the date of enactment of this
12 title shall have the option at any time after the date of
13 enactment of this title to—

14 “(1) retain the Tribal Self-Governance Dem-
15 onstration Project compact of that Indian tribe (in
16 whole or in part) to the extent that the provisions
17 of that compact are not directly contrary to any ex-
18 press provision of this title; or

19 “(2) instead of retaining a compact or portion
20 thereof under paragraph (1), negotiate a new com-
21 pact in a manner consistent with the requirements
22 of this title.

23 “(d) TERM AND EFFECTIVE DATE.—The effective
24 date of a compact shall be the date of the approval and
25 execution by the Indian tribe or another date agreed upon

1 by the parties, and shall remain in effect for so long as
2 permitted by Federal law or until terminated by mutual
3 written agreement, retrocession, or reassumption.

4 **“SEC. 505. FUNDING AGREEMENTS.**

5 “(a) FUNDING AGREEMENT REQUIRED.—The Sec-
6 retary shall negotiate and enter into a written funding
7 agreement with each Indian tribe participating in self-gov-
8 ernance in a manner consistent with the Federal Govern-
9 ment’s trust responsibility, treaty obligations, and the gov-
10 ernment-to-government relationship between Indian tribes
11 and the United States.

12 “(b) CONTENTS.—

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

1 within which the program, service, function, or activ-
2 ity (or portion thereof) is performed.

3 ~~“(2) INCLUSION OF CERTAIN PROGRAMS, SERV-~~
4 ~~ICES, FUNCTIONS, AND ACTIVITIES.—Such pro-~~
5 ~~grams, services, functions, or activities (or portions~~
6 ~~thereof) include all programs, services, functions, ac-~~
7 ~~tivities (or portions thereof) with respect to which~~
8 ~~Indian tribes or Indians are primary or significant~~
9 ~~beneficiaries, administered by the Department of~~
10 ~~Health and Human Services through the Indian~~
11 ~~Health Service and grants (which may be added to~~
12 ~~a funding agreement after award of such grants)~~
13 ~~and all local, field, service unit, area, regional, and~~
14 ~~central headquarters or national office functions ad-~~
15 ~~ministered under the authority of—~~

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

18 ~~“(B) the Act of April 16, 1934 (48 Stat.~~
19 ~~596, chapter 147; 25 U.S.C. 452 et seq.);~~

20 ~~“(C) the Act of August 5, 1954 (68 Stat.~~
21 ~~674, chapter 658);~~

22 ~~“(D) the Indian Health Care Improvement~~
23 ~~Act (25 U.S.C. 1601 et seq.);~~

1 “(E) the Indian Alcohol and Substance
2 Abuse Prevention and Treatment Act of 1986
3 (25 U.S.C. 2401 et seq.);

4 “(F) any other Act of Congress author-
5 izing any agency of the Department of Health
6 and Human Services to administer, carry out,
7 or provide financial assistance to such a pro-
8 gram, service, function or activity (or portions
9 thereof) described in this section; or

10 “(G) any other Act of Congress author-
11 izing such a program, service, function, or ac-
12 tivity (or portions thereof) under which appro-
13 priations are made available to any agency
14 other than an agency within the Department of
15 Health and Human Services, in any case in
16 which the Secretary administers that program,
17 service, function, or activity (or portion there-
18 of).

19 “(e) INCLUSION IN COMPACT OR FUNDING AGREE-
20 MENT.—It shall not be a requirement that an Indian tribe
21 or Indians be identified in the authorizing statute for a
22 program or element of a program to be eligible for inclu-
23 sion in a compact or funding agreement under this title.

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

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

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

5 “(A) the general budget category assigned;

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

8 “(C) the time and method of transfer of
9 the funds;

10 “(D) the responsibilities of the Secretary;
11 and

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

14 “(e) **SUBSEQUENT FUNDING AGREEMENTS.**—Absent
15 notification from an Indian tribe that is withdrawing or
16 retroceding the operation of 1 or more programs, services,
17 functions, or activities (or portions thereof) identified in
18 a funding agreement, or unless otherwise agreed to by the
19 parties, each funding agreement shall remain in full force
20 and effect until a subsequent funding agreement is exe-
21 cuted, and the terms of the subsequent funding agreement
22 shall be retroactive to the end of the term of the preceding
23 funding agreement.

24 “(f) **EXISTING FUNDING AGREEMENTS.**—Each In-
25 dian tribe participating in the Tribal Self-Governance

1 Demonstration Project established under title III on the
 2 date of enactment of this title shall have the option at
 3 any time thereafter to—

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

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

13 “(g) STABLE BASE FUNDING.—At the option of an
 14 Indian tribe, a funding agreement may provide for a stable
 15 base budget specifying the recurring funds (including, for
 16 purposes of this provision, funds available under section
 17 106(a)) to be transferred to such Indian tribe, for such
 18 period as may be specified in the funding agreement, sub-
 19 ject to annual adjustment only to reflect changes in con-
 20 gressional appropriations by sub-sub activity excluding
 21 earmarks.

22 **“SEC. 506. GENERAL PROVISIONS.**

23 “(a) APPLICABILITY.—The provisions of this section
 24 shall apply to compacts and funding agreements nego-
 25 tiated under this title and an Indian tribe may, at its op-

1 tion, include provisions that reflect such requirements in
2 a compact or funding agreement.

3 “(b) CONFLICTS OF INTEREST.—Indian tribes par-
4 ticipating in self-governance under this title shall ensure
5 that internal measures are in place to address conflicts
6 of interest in the administration of self-governance pro-
7 grams, services, functions, or activities (or portions there-
8 of).

9 “(c) AUDITS.—

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

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

1 “(d) RECORDS.—

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

7 “(2) RECORDKEEPING SYSTEM.—The Indian
8 tribe shall maintain a recordkeeping system, and,
9 after 30 days advance notice, provide the Secretary
10 with reasonable access to such records to enable the
11 Department of Health and Human Services to meet
12 its minimum legal recordkeeping system require-
13 ments under sections 3101 through 3106 of title 44,
14 United States Code.

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

1 “(f) RETROCESSION.—An Indian tribe may retro-
 2 cede, fully or partially, to the Secretary programs, serv-
 3 ices, functions, or activities (or portions thereof) included
 4 in the compact or funding agreement. Unless the Indian
 5 tribe rescinds the request for retrocession, such retroces-
 6 sion will become effective within the timeframe specified
 7 by the parties in the compact or funding agreement. In
 8 the absence of such a specification, such retrocession shall
 9 become effective on—

10 “(1) the earlier of—

11 “(A) 1 year after the date of submission of
 12 such request; or

13 “(B) the date on which the funding agree-
 14 ment expires; or

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

17 “(g) WITHDRAWAL.—

18 “(1) PROCESS.—

19 “(A) IN GENERAL.—An Indian tribe may
 20 fully or partially withdraw from a participating
 21 inter-tribal consortium or tribal organization its
 22 share of any program, function, service, or ac-
 23 tivity (or portions thereof) included in a com-
 24 pact or funding agreement.

1 “(B) EFFECTIVE DATE.—The withdrawal
2 referred to in subparagraph (A) shall become
3 effective within the timeframe specified in the
4 resolution which authorizes transfer to the par-
5 ticipating tribal organization or inter-tribal con-
6 sortium. In the absence of a specific timeframe
7 set forth in the resolution, such withdrawal
8 shall become effective on—

9 “(i) the earlier of—

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

12 “(II) the date on which the fund-
13 ing agreement expires; or

14 “(ii) such date as may be mutually
15 agreed upon by the Secretary, the with-
16 drawing Indian tribe, and the participating
17 tribal organization or inter-tribal Consor-
18 tium that has signed the compact or fund-
19 ing agreement on behalf of the with-
20 drawing Indian tribe, inter-tribal Consor-
21 tium, or tribal organization.

22 “(2) DISTRIBUTION OF FUNDS.—When an In-
23 dian tribe or tribal organization eligible to enter into
24 a self-determination contract under title I or a com-
25 pact or funding agreement under this title fully or

1 partially withdraws from a participating inter-tribal
2 consortium or tribal organization—

3 “(A) the withdrawing Indian tribe or tribal
4 organization shall be entitled to its tribal share
5 of funds supporting those programs, services,
6 functions, or activities (or portions thereof) that
7 the Indian tribe will be carrying out under its
8 own self-determination contract or compact and
9 funding agreement (calculated on the same
10 basis as the funds were initially allocated in the
11 funding agreement of the inter-tribal consor-
12 tium or tribal organization); and

13 “(B) the funds referred to in subparagraph
14 (A) shall be transferred from the funding agree-
15 ment of the inter-tribal consortium or tribal or-
16 ganization, on the condition that the provisions
17 of sections 102 and 105(i), as appropriate, shall
18 apply to that withdrawing Indian tribe.

19 “(3) REGAINING MATURE CONTRACT STATUS.—

20 If an Indian tribe elects to operate all or some pro-
21 grams, services, functions, or activities (or portions
22 thereof) carried out under a compact or funding
23 agreement under this title through a self-determina-
24 tion contract under title I, at the option of the In-

1 dian tribe, the resulting self-determination contract
2 shall be a mature self-determination contract.

3 “(h) NONDUPLICATION.—For the period for which,
4 and to the extent to which, funding is provided under this
5 title or under the compact or funding agreement, the In-
6 dian tribe shall not be entitled to contract with the Sec-
7 retary for such funds under section 102, except that such
8 Indian tribe shall be eligible for new programs on the same
9 basis as other Indian tribes.

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

11 “(a) MANDATORY PROVISIONS.—

12 “(1) HEALTH STATUS REPORTS.—Compacts or
13 funding agreements negotiated between the Sec-
14 retary and an Indian tribe shall include a provision
15 that requires the Indian tribe to report on health
16 status and service delivery—

17 “(A) to the extent such data is not other-
18 wise available to the Secretary and specific
19 funds for this purpose are provided by the Sec-
20 retary under the funding agreement; and

21 “(B) if such reporting shall impose mini-
22 mal burdens on the participating Indian tribe
23 and such requirements are promulgated under
24 section 517.

25 “(2) REASSUMPTION.—

1 “(A) IN GENERAL.—Contracts or funding
2 agreements negotiated between the Secretary
3 and an Indian tribe shall include a provision
4 authorizing the Secretary to reassume operation
5 of a program, service, function, or activity (or
6 portions thereof) and associated funding if
7 there is a specific finding relative to that pro-
8 gram, service, function, or activity (or portion
9 thereof) of—

10 “(i) imminent endangerment of the
11 public health caused by an act or omission
12 of the Indian tribe, and the imminent
13 endangerment arises out of a failure to
14 carry out the compact or funding agree-
15 ment; or

16 “(ii) gross mismanagement with re-
17 spect to funds transferred to a tribe by a
18 compact or funding agreement, as deter-
19 mined by the Secretary in consultation
20 with the Inspector General, as appropriate.

21 “(B) PROHIBITION.—The Secretary shall
22 not reassume operation of a program, service,
23 function, or activity (or portions thereof)
24 unless—

1 “(i) the Secretary has first provided
2 written notice and a hearing on the record
3 to the Indian tribe; and

4 “(ii) the Indian tribe has not taken
5 corrective action to remedy the imminent
6 endangerment to public health or gross
7 mismanagement.

8 “(C) EXCEPTION.—

9 “(i) IN GENERAL.—Notwithstanding
10 subparagraph (B), the Secretary may,
11 upon written notification to the Indian
12 tribe, immediately reassume operation of a
13 program, service, function, or activity (or
14 portion thereof) if—

15 “(I) the Secretary makes a find-
16 ing of imminent substantial and irrep-
17 arable endangerment of the public
18 health caused by an act or omission of
19 the Indian tribe; and

20 “(II) the endangerment arises
21 out of a failure to carry out the com-
22 pact or funding agreement.

23 “(ii) REASSUMPTION.—If the Sec-
24 retary reassumes operation of a program,
25 service, function, or activity (or portion

1 thereof) under this subparagraph, the Sec-
2 retary shall provide the Indian tribe with a
3 hearing on the record not later than 10
4 days after such reassumption.

5 “(D) HEARINGS.—In any hearing or ap-
6 peal involving a decision to reassume operation
7 of a program, service, function, or activity (or
8 portion thereof), the Secretary shall have the
9 burden of proof of demonstrating by clear and
10 convincing evidence the validity of the grounds
11 for the reassumption.

12 “(b) FINAL OFFER.—In the event the Secretary and
13 a participating Indian tribe are unable to agree, in whole
14 or in part, on the terms of a compact or funding agree-
15 ment (including funding levels), the Indian tribe may sub-
16 mit a final offer to the Secretary. Not more than 45 days
17 after such submission, or within a longer time agreed upon
18 by the Indian tribe, the Secretary shall review and make
19 a determination with respect to such offer. In the absence
20 of a timely rejection of the offer, in whole or in part, made
21 in compliance with subsection (c), the offer shall be
22 deemed agreed to by the Secretary.

23 “(c) REJECTION OF FINAL OFFERS.—

24 “(1) IN GENERAL.—If the Secretary rejects an
25 offer made under subsection (b) (or 1 or more provi-

1 sions or funding levels in such offer); the Secretary
2 shall provide—

3 “(A) a timely written notification to the
4 Indian tribe that contains a specific finding
5 that clearly demonstrates, or that is supported
6 by a controlling legal authority, that—

7 “(i) the amount of funds proposed in
8 the final offer exceeds the applicable fund-
9 ing level to which the Indian tribe is enti-
10 tled under this title;

11 “(ii) the program, function, service, or
12 activity (or portion thereof) that is the
13 subject of the final offer is an inherent
14 Federal function that cannot legally be del-
15 egated to an Indian tribe;

16 “(iii) the Indian tribe cannot carry
17 out the program, function, service, or ac-
18 tivity (or portion thereof) in a manner that
19 would not result in significant danger or
20 risk to the public health; or

21 “(iv) the Indian tribe is not eligible to
22 participate in self-governance under section
23 503;

1 “(B) technical assistance to overcome the
2 objections stated in the notification required by
3 subparagraph (A);

4 “(C) the Indian tribe with a hearing on the
5 record with the right to engage in full discovery
6 relevant to any issue raised in the matter and
7 the opportunity for appeal on the objections
8 raised, except that the Indian tribe may, in lieu
9 of filing such appeal, directly proceed to initiate
10 an action in a Federal district court pursuant
11 to section 110(a); and

12 “(D) the Indian tribe with the option of
13 entering into the severable portions of a final
14 proposed compact or funding agreement, or
15 provision thereof, (including a lesser funding
16 amount, if any), that the Secretary did not re-
17 ject, subject to any additional alterations nec-
18 essary to conform the compact or funding
19 agreement to the severed provisions.

20 “(2) EFFECT OF EXERCISING CERTAIN OP-
21 TION.—If an Indian tribe exercises the option speci-
22 fied in paragraph (1)(D), that Indian tribe shall re-
23 tain the right to appeal the Secretary’s rejection
24 under this section, and subparagraphs (A), (B), and
25 (C) of that paragraph shall only apply to that por-

1 tion of the proposed final compact, funding agree-
2 ment, or provision thereof that was rejected by the
3 Secretary.

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

10 “(e) GOOD FAITH.—In the negotiation of compacts
11 and funding agreements the Secretary shall at all times
12 negotiate in good faith to maximize implementation of the
13 self-governance policy. The Secretary shall carry out this
14 title in a manner that maximizes the policy of tribal self-
15 governance, in a manner consistent with the purposes
16 specified in section 3 of the Tribal Self-Governance
17 Amendments of 1999.

18 “(f) SAVINGS.—To the extent that programs, func-
19 tions, services, or activities (or portions thereof) carried
20 out by Indian tribes under this title reduce the administra-
21 tive or other responsibilities of the Secretary with respect
22 to the operation of Indian programs and result in savings
23 that have not otherwise been included in the amount of
24 tribal shares and other funds determined under section
25 508(c), the Secretary shall make such savings available

1 to the Indian tribes, inter-tribal consortia, or tribal organi-
2 zations for the provision of additional services to program
3 beneficiaries in a manner equitable to directly served, con-
4 tracted, and compacted programs.

5 “(g) TRUST RESPONSIBILITY.—The Secretary is pro-
6 hibited from waiving, modifying, or diminishing in any
7 way the trust responsibility of the United States with re-
8 spect to Indian tribes and individual Indians that exists
9 under treaties, Executive orders, other laws, or court deci-
10 sions.

11 “(h) DECISIONMAKER.—A decision that constitutes
12 final agency action and relates to an appeal within the
13 Department of Health and Human Services conducted
14 under subsection (c) shall be made either—

15 “(1) by an official of the Department who holds
16 a position at a higher organizational level within the
17 Department than the level of the departmental agen-
18 cy in which the decision that is the subject of the
19 appeal was made; or

20 “(2) by an administrative judge.

21 **“SEC. 508. TRANSFER OF FUNDS.**

22 “(a) IN GENERAL.—Pursuant to the terms of any
23 compact or funding agreement entered into under this
24 title, the Secretary shall transfer to the Indian tribe all
25 funds provided for in the funding agreement, pursuant to

1 subsection (c), and provide funding for periods covered by
2 joint resolution adopted by Congress making continuing
3 appropriations, to the extent permitted by such resolu-
4 tions. In any instance where a funding agreement requires
5 an annual transfer of funding to be made at the beginning
6 of a fiscal year, or requires semiannual or other periodic
7 transfers of funding to be made commencing at the begin-
8 ning of a fiscal year, the first such transfer shall be made
9 not later than 10 days after the apportionment of such
10 funds by the Office of Management and Budget to the
11 Department, unless the funding agreement provides other-
12 wise.

13 “(b) MULTIYEAR FUNDING.—The Secretary may em-
14 ploy, upon tribal request, multiyear funding agreements.
15 References in this title to funding agreements shall include
16 such multiyear funding agreements.

17 “(c) AMOUNT OF FUNDING.—The Secretary of
18 Health and Human Services shall provide funds under a
19 funding agreement under this title in an amount equal to
20 the amount that the Indian tribe would have been entitled
21 to receive under self-determination contracts under this
22 Act, including amounts for direct program costs specified
23 under section 106(a)(1) and amounts for contract support
24 costs specified under section 106(a) (2), (3), (5), and (6),
25 including any funds that are specifically or functionally

1 related to the provision by the Secretary of services and
2 benefits to the Indian tribe or its members, all without
3 regard to the organizational level within the Department
4 where such functions are carried out.

5 “(d) PROHIBITIONS.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the Secretary is expressly prohibited
8 from—

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

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

16 “(C) reducing the use of funds, from the
17 the amount of funds that the Secretary is au-
18 thorized to use under this title—

19 “(i) to make funding available for
20 self-governance monitoring or administra-
21 tion by the Secretary;

22 “(ii) in subsequent years, except pur-
23 suant to—

24 “(I) a reduction in appropria-
25 tions from the previous fiscal year for

1 the program or function to be in-
2 cluded in a compact or funding agree-
3 ment;

4 “(II) a congressional directive in
5 legislation or accompanying report;

6 “(III) a tribal authorization;

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

10 “(V) completion of a project, ac-
11 tivity, or program for which such
12 funds were provided;

13 “(iii) to pay for Federal functions, in-
14 cluding Federal pay costs, Federal em-
15 ployee retirement benefits, automated data
16 processing, technical assistance, and moni-
17 toring of activities under this Act; or

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

21 “(2) EXCEPTION.—The funds described in
22 paragraph (1)(C) may be increased by the Secretary
23 if necessary to carry out this Act or as provided in
24 section 105(c)(2).

1 “(e) OTHER RESOURCES.—In the event an Indian
2 tribe elects to carry out a compact or funding agreement
3 with the use of Federal personnel, Federal supplies (in-
4 cluding supplies available from Federal warehouse facili-
5 ties), Federal supply sources (including lodging, airline
6 transportation, and other means of transportation includ-
7 ing the use of interagency motor pool vehicles) or other
8 Federal resources (including supplies, services, and re-
9 sources available to the Secretary under any procurement
10 contracts in which the Department is eligible to partici-
11 pate); to the extent allowable under law, the Secretary
12 shall acquire and transfer such personnel, supplies, or re-
13 sources to the Indian tribe.

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

1 “(g) PROMPT PAYMENT ACT.—Chapter 39 of title
2 31, United States Code, shall apply to the transfer of
3 funds due under a compact or funding agreement author-
4 ized under this title.

5 “(h) INTEREST OR OTHER INCOME ON TRANS-
6 FERS.—An Indian tribe is entitled to retain interest
7 earned on any funds paid under a compact or funding
8 agreement to carry out governmental or health purposes
9 and such interest shall not diminish the amount of funds
10 the Indian tribe is authorized to receive under its funding
11 agreement in the year the interest is earned or in any sub-
12 sequent fiscal year. Funds transferred under this title
13 shall be managed using the prudent investment standard.

14 “(i) CARRYOVER OF FUNDS.—All funds paid to an
15 Indian tribe in accordance with a compact or funding
16 agreement shall remain available until expended. In the
17 event that an Indian tribe elects to carry over funding
18 from 1 year to the next, such carryover shall not diminish
19 the amount of funds the Indian tribe is authorized to re-
20 ceive under its funding agreement in that or any subse-
21 quent fiscal year.

22 “(j) PROGRAM INCOME.—All medicare, medicaid, or
23 other program income earned by an Indian tribe shall be
24 treated as supplemental funding to that negotiated in the
25 funding agreement. The Indian tribe may retain all such

1 income and expend such funds in the current year or in
2 future years except to the extent that the Indian Health
3 Care Improvement Act (25 U.S.C. 1601 et seq.) provides
4 otherwise for medicare and medicaid receipts. Such funds
5 shall not result in any offset or reduction in the amount
6 of funds the Indian tribe is authorized to receive under
7 its funding agreement in the year the program income is
8 received or for any subsequent fiscal year.

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

21 **“SEC. 509. CONSTRUCTION PROJECTS.**

22 “(a) **IN GENERAL.**—Indian tribes participating in
23 tribal self-governance may carry out construction projects
24 under this title if they elect to assume all Federal respon-
25 sibilities under the National Environmental Policy Act of

1 1969 (42 U.S.C. 4321 et seq.); the National Historic
2 Preservation Act (16 U.S.C. 470 et seq.); and related pro-
3 visions of law that would apply if the Secretary were to
4 undertake a construction project, by adopting a
5 resolution—

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

9 “(2) accepting the jurisdiction of the Federal
10 court for the purpose of enforcement of the respon-
11 sibilities of the responsible Federal official under
12 such environmental laws.

13 “(b) NEGOTIATIONS.—Construction project proposals
14 shall be negotiated pursuant to the statutory process in
15 section 105(m) and resulting construction project agree-
16 ments shall be incorporated into funding agreements as
17 addenda.

18 “(c) CODES AND STANDARDS.—The Indian tribe and
19 the Secretary shall agree upon and specify appropriate
20 building codes and architectural and engineering stand-
21 ards (including health and safety) which shall be in con-
22 formity with nationally recognized standards for com-
23 parable projects.

24 “(d) RESPONSIBILITY FOR COMPLETION.—The In-
25 dian tribe shall assume responsibility for the successful

1 completion of the construction project in accordance with
2 the negotiated construction project agreement.

3 “(e) FUNDING.—Funding for construction projects
4 carried out under this title shall be included in funding
5 agreements as annual advance payments, with semiannual
6 payments at the option of the Indian tribe. Annual ad-
7 vance and semiannual payment amounts shall be deter-
8 mined based on mutually agreeable project schedules re-
9 flecting work to be accomplished within the advance pay-
10 ment period, work accomplished and funds expended in
11 previous payment periods, and the total prior payments.
12 The Secretary shall include associated project contingency
13 funds with each advance payment installment. The Indian
14 tribe shall be responsible for the management of the con-
15 tingency funds included in funding agreements.

16 “(f) APPROVAL.—The Secretary shall have at least
17 1 opportunity to approve project planning and design doc-
18 uments prepared by the Indian tribe in advance of con-
19 struction of the facilities specified in the scope of work
20 for each negotiated construction project agreement or
21 amendment thereof which results in a significant change
22 in the original scope of work. The Indian tribe shall pro-
23 vide the Secretary with project progress and financial re-
24 ports not less than semiannually. The Secretary may con-
25 duct onsite project oversight visits semiannually or on an

1 alternate schedule agreed to by the Secretary and the In-
2 dian tribe.

3 “(g) WAGES.—All laborers and mechanics employed
4 by contractors and subcontractors in the construction, al-
5 teration, or repair, including painting or decorating of a
6 building or other facilities in connection with construction
7 projects undertaken by self-governance Indian tribes
8 under this Act, shall be paid wages at not less than those
9 prevailing wages on similar construction in the locality as
10 determined by the Indian tribe.

11 “(h) APPLICATION OF OTHER LAWS.—Unless other-
12 wise agreed to by the Indian tribe, no provision of the Of-
13 fice of Federal Procurement Policy Act, the Federal Ac-
14 quisition Regulations issued pursuant thereto, or any
15 other law or regulation pertaining to Federal procurement
16 (including Executive orders) shall apply to any construc-
17 tion project conducted under this title.

18 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**
19 **TIONS.**

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

1 by the Secretary), except to the extent that such laws ex-
 2 pressly apply to Indian tribes.

3 **“SEC. 511. CIVIL ACTIONS.**

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

7 “(b) **APPLICABILITY OF CERTAIN LAWS.**—Section
 8 2103 of the Revised Statutes (25 U.S.C. 81) and section
 9 16 of the Act of June 18, 1934 (48 Stat. 987; chapter
 10 576; 25 U.S.C. 476), shall not apply to attorney and other
 11 professional contracts entered into by Indian tribes par-
 12 ticipating in self-governance under this title.

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

18 **“SEC. 512. FACILITATION.**

19 “(a) **SECRETARIAL INTERPRETATION.**—Except as
 20 otherwise provided by law, the Secretary shall interpret
 21 all Federal laws, Executive orders and regulations in a
 22 manner that will facilitate—

23 “(1) the inclusion of programs, services, func-
 24 tions, and activities (or portions thereof) and funds

1 associated therewith, in the agreements entered into
2 under this section;

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

5 “(3) the achievement of tribal health goals and
6 objectives.

7 “(b) REGULATION WAIVER.—

8 “(1) IN GENERAL.—An Indian tribe may sub-
9 mit a written request to waive application of a regu-
10 lation for a compact or funding agreement entered
11 into with the Indian Health Service under this title,
12 to the Secretary identifying the applicable Federal
13 regulation sought to be waived and the basis for the
14 request.

15 “(2) APPROVAL.—Not later than 90 days after
16 receipt by the Secretary of a written request by an
17 Indian tribe to waive application of a regulation for
18 a compact or funding agreement entered into under
19 this title, the Secretary shall either approve or deny
20 the requested waiver in writing. A denial may be
21 made only upon a specific finding by the Secretary
22 that identified language in the regulation may not be
23 waived because such waiver is prohibited by Federal
24 law. A failure to approve or deny a waiver request
25 not later than 90 days after receipt shall be deemed

1 an approval of such request. The Secretary's deci-
2 sion shall be final for the Department.

3 ~~“(e) ACCESS TO FEDERAL PROPERTY.—~~In connec-
4 tion with any compact or funding agreement executed pur-
5 suant to this title or an agreement negotiated under the
6 Tribal Self-Governance Demonstration Project established
7 under title III, as in effect before the enactment of the
8 Tribal Self-Governance Amendments of 1999, upon the re-
9 quest of an Indian tribe, the Secretary—

10 “(1) shall permit an Indian tribe to use existing
11 school buildings, hospitals, and other facilities and
12 all equipment therein or appertaining thereto and
13 other personal property owned by the Government
14 within the Secretary's jurisdiction under such terms
15 and conditions as may be agreed upon by the Sec-
16 retary and the Indian tribe for their use and mainte-
17 nance;

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

22 “(A) subject to the provisions of subpara-
23 graph (B), title to property and equipment fur-
24 nished by the Federal Government for use in
25 the performance of the compact or funding

1 agreement or purchased with funds under any
2 compact or funding agreement shall, unless oth-
3 erwise requested by the Indian tribe, vest in the
4 appropriate Indian tribe;

5 “(B) if property described in subparagraph
6 (A) has a value in excess of \$5,000 at the time
7 of retrocession, withdrawal, or reassumption, at
8 the option of the Secretary upon the retroces-
9 sion, withdrawal, or reassumption, title to such
10 property and equipment shall revert to the De-
11 partment of Health and Human Services; and

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

17 “(3) shall acquire excess or surplus Government
18 personal or real property for donation to an Indian
19 tribe if the Secretary determines the property is ap-
20 propriate for use by the Indian tribe for any purpose
21 for which a compact or funding agreement is author-
22 ized under this title.

23 “(d) MATCHING OR COST-PARTICIPATION REQUIRE-
24 MENT.—All funds provided under compacts, funding
25 agreements, or grants made pursuant to this Act, shall

1 be treated as non-Federal funds for purposes of meeting
2 matching or cost participation requirements under any
3 other Federal or non-Federal program.

4 “(e) STATE FACILITATION.—States are hereby au-
5 thorized and encouraged to enact legislation, and to enter
6 into agreements with Indian tribes to facilitate and supple-
7 ment the initiatives, programs, and policies authorized by
8 this title and other Federal laws benefiting Indians and
9 Indian tribes.

10 “(f) RULES OF CONSTRUCTION.—Each provision of
11 this title and each provision of a compact or funding
12 agreement shall be liberally construed for the benefit of
13 the Indian tribe participating in self-governance and any
14 ambiguity shall be resolved in favor of the Indian tribe.

15 **“SEC. 513. BUDGET REQUEST.**

16 “(a) IN GENERAL.—

17 “(1) IN GENERAL.—The President shall iden-
18 tify in the annual budget request submitted to Con-
19 gress under section 1105 of title 31, United States
20 Code, all funds necessary to fully fund all funding
21 agreements authorized under this title, including
22 funds specifically identified to fund tribal base budg-
23 ets. All funds so appropriated shall be apportioned
24 to the Indian Health Service. Such funds shall be
25 provided to the Office of Tribal Self-Governance

1 which shall be responsible for distribution of all
2 funds provided under section 505.

3 “(2) **RULE OF CONSTRUCTION.**—Nothing in
4 this subsection shall be construed to authorize the
5 Indian Health Service to reduce the amount of funds
6 that a self-governance tribe is otherwise entitled to
7 receive under its funding agreement or other appli-
8 cable law, whether or not such funds are appor-
9 tioned to the Office of Tribal Self-Governance under
10 this section.

11 “(b) **PRESENT FUNDING; SHORTFALLS.**—In such
12 budget request, the President shall identify the level of
13 need presently funded and any shortfall in funding (in-
14 cluding direct program and contract support costs) for
15 each Indian tribe, either directly by the Secretary of
16 Health and Human Services, under self-determination
17 contracts, or under compacts and funding agreements au-
18 thorized under this title.

19 **“SEC. 514. REPORTS.**

20 “(a) **ANNUAL REPORT.**—

21 “(1) **IN GENERAL.**—Not later than January 1
22 of each year after the date of enactment of the Trib-
23 al Self-Governance Amendments of 1999, the Sec-
24 retary shall submit to the Committee on Indian Af-
25 fairs of the Senate and the Committee on Resources

1 of the House of Representatives a written report re-
2 garding the administration of this title.

3 “(2) ANALYSIS.—The report under paragraph
4 (1) shall include a detailed analysis of the level of
5 need being presently funded or unfunded for each
6 Indian tribe, either directly by the Secretary, under
7 self-determination contracts under title I, or under
8 compacts and funding agreements authorized under
9 this Act. In compiling reports pursuant to this sec-
10 tion, the Secretary may not impose any reporting re-
11 quirements on participating Indian tribes or tribal
12 organizations, not otherwise provided in this Act.

13 “(b) CONTENTS.—The report under subsection (a)
14 shall—

15 “(1) be compiled from information contained in
16 funding agreements, annual audit reports, and data
17 of the Secretary regarding the disposition of Federal
18 funds; and

19 “(2) identify—

20 “(A) the relative costs and benefits of self-
21 governance;

22 “(B) with particularity, all funds that are
23 specifically or functionally related to the provi-
24 sion by the Secretary of services and benefits to

1 self-governance Indian tribes and their mem-
2 bers;

3 ~~“(C) the funds transferred to each self-~~
4 ~~governance Indian tribe and the corresponding~~
5 ~~reduction in the Federal bureaucracy;~~

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

11 ~~“(E) amounts expended in the preceding~~
12 ~~fiscal year to carry out inherent Federal func-~~
13 ~~tions, including an identification of those func-~~
14 ~~tions by type and location;~~

15 ~~“(2) contain a description of the method or~~
16 ~~methods (or any revisions thereof) used to determine~~
17 ~~the individual tribal share of funds controlled by all~~
18 ~~components of the Indian Health Service (including~~
19 ~~funds assessed by any other Federal agency) for in-~~
20 ~~clusion in self-governance compacts or funding~~
21 ~~agreements;~~

22 ~~“(3) before being submitted to Congress, be dis-~~
23 ~~tributed to the Indian tribes for comment (with a~~
24 ~~comment period of no less than 30 days, beginning~~
25 ~~on the date of distribution); and~~

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

3 “(e) REPORT ON FUND DISTRIBUTION METHOD.—

4 Not later than 180 days after the date of enactment of
5 the Tribal Self-Governance Amendments of 1999, the Sec-
6 retary shall, after consultation with Indian tribes, submit
7 a written report to the Committee on Resources of the
8 House of Representatives and the Committee on Indian
9 Affairs of the Senate which describes the method or meth-
10 ods used to determine the individual tribal share of funds
11 controlled by all components of the Indian Health Service
12 (including funds assessed by any other Federal agency)
13 for inclusion in self-governance compacts or funding
14 agreements.

15 **“SEC. 515. DISCLAIMERS.**

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

23 “(b) FEDERAL TRUST AND TREATY RESPONSIBIL-
24 ITIES.—Nothing in this Act shall be construed to diminish
25 in any way the trust responsibility of the United States

1 to Indian tribes and individual Indians that exists under
 2 treaties, Executive orders, or other laws and court deci-
 3 sions.

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

11 “(d) OBLIGATIONS OF THE UNITED STATES.—The
 12 Indian 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
 17 sections 5(b), 6, 7, 102 (e) and (d), 104, 105 (k) and (l),
 18 106 (e) through (k), and 111 of this Act and section 314
 19 of Public Law 101–512 (coverage under chapter 171 of
 20 title 28, United States Code, commonly known as the
 21 ‘Federal Tort Claims Act’), to the extent not in conflict
 22 with this title, shall apply to compacts and funding agree-
 23 ments authorized by this title.

24 “(b) DISCRETIONARY APPLICATION.—At the request
 25 of 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 pact entered into under this title. The Secretary is obli-
4 gated to include such provision at the option of the partici-
5 pating Indian tribe or tribes. If such provision is incor-
6 porated it shall have the same force and effect as if it
7 were set out in full in this title. In the event an Indian
8 tribe requests such incorporation at the negotiation stage
9 of a compact or funding agreement, such incorporation
10 shall be deemed effective immediately and shall control the
11 negotiation and 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-Gov-
16 ernance Amendments of 1999, the Secretary shall
17 initiate procedures under subchapter III of chapter
18 5 of title 5, United States Code, to negotiate and
19 promulgate such regulations as are necessary to
20 carry out this 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
24 Secretary no later than 1 year after the date of en-

1 actment of the Tribal Self-Governance Amendments
2 of 1999.

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
6 of the Tribal Self-Governance Amendments of 1999.

7 “(b) COMMITTEE.—

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

15 “(2) REQUIREMENTS.—The committee shall
16 confer 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 of Health and Human Services shall adapt the negotiated
21 rulemaking procedures to the unique context of self-gov-
22 ernance and the government-to-government relationship
23 between the United States and Indian 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 as pro-
 7 vided in section 105(g).

8 **“SEC. 518. APPEALS.**

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

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

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

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

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

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

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

1 **“TITLE VI—TRIBAL SELF-GOV-**
 2 **ERNANCE—DEPARTMENT OF**
 3 **HEALTH AND HUMAN SERV-**
 4 **ICES**

5 **“SEC. 601. DEFINITIONS.**

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

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

9 “(1) AGENCY.—The term the term ‘agency’
 10 means any agency or other organizational unit of the
 11 Department of Health and Human Services, other
 12 than the Indian Health Service.

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

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

16 “(a) STUDY.—The Secretary shall conduct a study
 17 to determine the feasibility of a tribal self-governance
 18 demonstration project for appropriate programs, services,
 19 functions, and activities (or portions thereof) of the agen-
 20 cy.

21 “(b) CONSIDERATIONS.—In conducting the study,
 22 the Secretary shall consider—

23 “(1) the probable effects on specific programs
 24 and program beneficiaries of such a demonstration
 25 project;

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

4 “(3) strategies for implementing such a dem-
5 onstration project;

6 “(4) probable costs or savings associated with
7 such a demonstration project;

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

10 “(6) such other issues that may be determined
11 by the Secretary or developed through consultation
12 pursuant to section 605.

13 “(c) REPORT.—Not later than 18 months after the
14 date of enactment of this title, the Secretary shall submit
15 a report to the Committee on Indian Affairs of the Senate
16 and the Committee on Resources of the House of Rep-
17 resentatives. The report shall contain—

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

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

23 “(3) a list of programs, services, functions, and
24 activities (or portions thereof) included in the list
25 provided pursuant to paragraph (2) that could be in-

1 eluded in a tribal self-governance demonstration
 2 project without amending statutes, or waiving regu-
 3 lations that the Secretary may not waive;

4 “(4) a list of legislative actions required in
 5 order to include those programs, services, functions,
 6 and activities (or portions thereof) included in the
 7 list provided pursuant to paragraph (2) but not in-
 8 cluded in the list provided pursuant to paragraph
 9 (3) in a tribal self-governance demonstration project;
 10 and

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

15 **“SEC. 603. CONSULTATION.**

16 “(a) **STUDY PROTOCOL.—**

17 “(1) **CONSULTATION WITH INDIAN TRIBES.—**
 18 The Secretary shall consult with Indian tribes to de-
 19 termine a protocol for consultation under subsection
 20 (b) prior to consultation under such subsection with
 21 the other entities described in such subsection.

22 “(2) **REQUIREMENTS FOR PROTOCOL.—**The
 23 protocol shall require, at a minimum, that—

1 “(A) the government-to-government rela-
2 tionship with Indian tribes forms the basis for
3 the consultation process;

4 “(B) the Indian tribes and the Secretary
5 jointly conduct the consultations required by
6 this section; and

7 “(C) the consultation process allows for
8 separate and direct recommendations from the
9 Indian tribes and other entities described in
10 subsection (b).

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

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

17 “There are authorized to be appropriated for fiscal
18 years 2000 and 2001 such sums as may be necessary to
19 carry out this title. Such sums shall remain available until
20 expended.”.

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

22 (a) BURDEN OF PROOF IN DISTRICT COURT AC-
23 TIONS.—Section 102(e)(1) of the Indian Self-Determina-
24 tion and Education Assistance Act (25 U.S.C. 450f(e)(1))
25 is amended by inserting after “subsection (b)(3)” the fol-

1 lowing: “or any civil action conducted pursuant to section
2 110(a)”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 subsection (a) shall apply to any proceedings commenced
5 after October 25, 1994.

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

8 Section 105(k) of the Indian Self-Determination and
9 Education Assistance Act (25 U.S.C. 450j(k)) is
10 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: “At the
15 request of an Indian tribe, the Secretary shall enter
16 into an agreement for the acquisition, on behalf of
17 the Indian tribe, of any goods, services, or supplies
18 available to the Secretary from the General Services
19 Administration or other Federal agencies that are
20 not directly available to the Indian tribe under this
21 section or any other Federal law, including acquisi-
22 tions from prime vendors. All such acquisitions shall
23 be undertaken through the most efficient and speedy
24 means practicable, including electronic ordering ar-
25 rangements.

1 **SEC. 8. REPEAL.**

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

5 (b) ~~EFFECTIVE DATE.~~—This section shall take effect
 6 on October 1, 1999.

7 **SEC. 9. SAVINGS PROVISION.**

8 Funds appropriated for title III of the Indian Self-
 9 Determination and Education Assistance Act (25 U.S.C.
 10 450f note) shall be available for use under title V of such
 11 Act.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Tribal Self-Governance*
 14 *Amendments of 1999”.*

15 **SEC. 2. FINDINGS.**

16 *Congress finds that—*

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

19 (2) *the United States recognizes a special govern-*
 20 *ment-to-government relationship with Indian tribes,*
 21 *including the right of the Indian tribes to self-govern-*
 22 *ance, as reflected in the Constitution, treaties, Federal*
 23 *statutes, and the course of dealings of the United*
 24 *States with Indian tribes;*

25 (3) *although progress has been made, the Federal*
 26 *bureaucracy, with its centralized rules and regula-*

1 *tions, has eroded tribal self-governance and dominates*
2 *tribal affairs;*

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

11 *(5) although the Federal Government has made*
12 *considerable strides in improving Indian health care,*
13 *it has failed to fully meet its trust responsibilities and*
14 *to satisfy its obligations to the Indian tribes under*
15 *treaties and other laws; and*

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

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

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

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

4 *It is the policy of Congress—*

5 (1) to permanently establish and implement trib-
6 al self-governance within the Department of Health
7 and Human Services;

8 (2) to call for full cooperation from the Depart-
9 ment of Health and Human Services and its con-
10 stituent agencies in the implementation of tribal self-
11 governance—

12 (A) to enable the United States to maintain
13 and improve its unique and continuing relation-
14 ship with, and responsibility to, Indian tribes;

15 (B) to permit each Indian tribe to choose
16 the extent of its participation in self-governance
17 in accordance with the provisions of the Indian
18 Self-Determination and Education Assistance
19 Act relating to the provision of Federal services
20 to Indian tribes;

21 (C) to ensure the continuation of the trust
22 responsibility of the United States to Indian
23 tribes and Indian individuals;

1 (D) to affirm and enable the United States
2 to fulfill its obligations to the Indian tribes
3 under treaties and other laws;

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

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

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

20 (H) to encourage the Secretary to identify
21 all programs, services, functions, and activities
22 (or portions thereof) of the Department of Health
23 and Human Services that may be managed by
24 an Indian tribe under this Act and to assist In-
25 dian tribes in assuming responsibility for such

1 *programs, services, functions, and activities (or*
 2 *portions thereof); and*

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

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

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

12 **“TITLE V—TRIBAL SELF-**
 13 **GOVERNANCE**

14 **“SEC. 501. DEFINITIONS.**

15 *“(a) IN GENERAL.—In this title:*

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

18 *“(A) means an organized noncontinuous*
 19 *undertaking to complete a specific set of pre-*
 20 *determined objectives for the planning, environ-*
 21 *mental determination, design, construction, re-*
 22 *pair, improvement, or expansion of buildings or*
 23 *facilities, as described in a construction project*
 24 *agreement; and*

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

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

10 “(A) establishes project phase start and
11 completion dates;

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

14 “(C) identifies the responsibilities of the In-
15 dian tribe and the Secretary;

16 “(D) addresses environmental consider-
17 ations;

18 “(E) identifies the owner and operations
19 and maintenance entity of the proposed work;

20 “(F) provides a budget;

21 “(G) provides a payment process; and

22 “(H) establishes the duration of the agree-
23 ment based on the time necessary to complete the
24 specified scope of work, which may be 1 or more
25 years.

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

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

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

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

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

24 “(8) *TRIBAL SHARE.*—*The term ‘tribal share’*
25 *means an Indian tribe’s portion of all funds and re-*

1 sources that support secretarial programs, services,
2 functions, and activities (or portions thereof) that are
3 not required by the Secretary for performance of in-
4 herent Federal functions.

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

17 **“SEC. 502. ESTABLISHMENT.**

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

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

23 “(a) *CONTINUING PARTICIPATION*.—Each Indian tribe
24 that is participating in the Tribal Self-Governance Dem-
25 onstration Project under title III on the date of enactment

1 of this title may elect to participate in self-governance
2 under this title under existing authority as reflected in trib-
3 al resolution.

4 “(b) *ADDITIONAL PARTICIPANTS.*—

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

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

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

19 “(B) *EFFECT OF WITHDRAWAL.*—If an In-
20 dian tribe has withdrawn from participation in
21 an inter-tribal consortium or tribal organiza-
22 tion, that Indian tribe shall be entitled to its
23 tribal share of funds supporting those programs,
24 services, functions, and activities (or portions
25 thereof) that the Indian tribe will be carrying

1 *out under the compact and funding agreement of*
 2 *the Indian tribe.*

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

9 “(c) *APPLICANT POOL.—*

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

13 “(A) *successfully completes the planning*
 14 *phase described in subsection (d);*

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

19 “(C) *has demonstrated, for 3 fiscal years, fi-*
 20 *nancial stability and financial management ca-*
 21 *pability.*

22 “(2) *CRITERIA FOR DETERMINING FINANCIAL*
 23 *STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—*
 24 *For purposes of this subsection, evidence that, during*
 25 *the 3-year period referred to in paragraph (1)(C), an*

1 *Indian tribe had no uncorrected significant and ma-*
2 *terial audit exceptions in the required annual audit*
3 *of the Indian tribe’s self-determination contracts or*
4 *self-governance funding agreements with any Federal*
5 *agency shall be conclusive evidence of the required sta-*
6 *bility and capability.*

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

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

12 *“(2) internal tribal government planning and*
13 *organizational preparation relating to the adminis-*
14 *tration of health care programs.*

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

19 *“(1) to plan for participation in self-governance;*
20 *and*

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

1 “(f) *RECEIPT OF GRANT NOT REQUIRED.*—Receipt of
 2 a grant under subsection (e) shall not be a requirement of
 3 participation in self-governance.

4 “**SEC. 504. COMPACTS.**

5 “(a) *COMPACT REQUIRED.*—The Secretary shall nego-
 6 tiate and enter into a written compact with each Indian
 7 tribe participating in self-governance in a manner con-
 8 sistent with the Federal Government’s trust responsibility,
 9 treaty obligations, and the government-to-government rela-
 10 tionship between Indian tribes and the United States.

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

17 “(c) *EXISTING COMPACTS.*—An Indian tribe partici-
 18 pating in the Tribal Self-Governance Demonstration
 19 Project under title III on the date of enactment of this title
 20 shall have the option at any time after the date of enact-
 21 ment of this title to—

22 “(1) retain the Tribal Self-Governance Dem-
 23 onstration Project compact of that Indian tribe (in
 24 whole or in part) to the extent that the provisions of

1 *that funding agreement are not directly contrary to*
2 *any express provision of this title; or*

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

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

13 **“SEC. 505. FUNDING AGREEMENTS.**

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

21 “(b) *CONTENTS.—*

22 “(1) *IN GENERAL.—Each funding agreement re-*
23 *quired under subsection (a) shall, as determined by*
24 *the Indian tribe, authorize the Indian tribe to plan,*
25 *conduct, consolidate, administer, and receive full trib-*

1 *al share funding, including tribal shares of discre-*
2 *tionary Indian Health Service competitive grants (ex-*
3 *cluding congressionally earmarked competitive*
4 *grants), for all programs, services, functions, and ac-*
5 *tivities (or portions thereof), that are carried out for*
6 *the benefit of Indians because of their status as Indi-*
7 *ans without regard to the agency or office of the In-*
8 *dian Health Service (or of such other agency) within*
9 *which the program, service, function, or activity (or*
10 *portion thereof) is performed.*

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

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

1 “(B) the Act of April 16, 1934 (48 Stat.
2 596, chapter 147; 25 U.S.C. 452 et seq.);

3 “(C) the Act of August 5, 1954 (68 Stat.
4 674, chapter 658);

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

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

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

18 “(G) any other Act of Congress authorizing
19 such a program, service, function, or activity (or
20 portions thereof) carried out for the benefit of In-
21 dians under which appropriations are made
22 available to any agency other than an agency
23 within the Department of Health and Human
24 Services, in any case in which the Secretary ad-

1 *ministers that program, service, function, or ac-*
2 *tivity (or portion thereof).*

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

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

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

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

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

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

17 “(C) *the time and method of transfer of the*
18 *funds;*

19 “(D) *the responsibilities of the Secretary;*
20 *and*

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

23 “(e) *SUBSEQUENT FUNDING AGREEMENTS.—Absent*
24 *notification from an Indian tribe that is withdrawing or*
25 *retroceding the operation of 1 or more programs, services,*

1 *functions, or activities (or portions thereof) identified in a*
 2 *funding agreement, or unless otherwise agreed to by the par-*
 3 *ties, each funding agreement shall remain in full force and*
 4 *effect until a subsequent funding agreement is executed, and*
 5 *the terms of the subsequent funding agreement shall be ret-*
 6 *roactive to the end of the term of the preceding funding*
 7 *agreement.*

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

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

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

22 “(g) *STABLE BASE FUNDING.—At the option of an In-*
 23 *dian tribe, a funding agreement may provide for a stable*
 24 *base budget specifying the recurring funds (including, for*
 25 *purposes of this provision, funds available under section*

1 106(a)) to be transferred to such Indian tribe, for such pe-
2 riod as may be specified in the funding agreement, subject
3 to annual adjustment only to reflect changes in congres-
4 sional appropriations by sub-sub activity excluding ear-
5 marks.

6 **“SEC. 506. GENERAL PROVISIONS.**

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

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

17 “(c) *AUDITS.*—

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

22 “(2) *COST PRINCIPLES.*—An Indian tribe shall
23 apply cost principles under the applicable Office of
24 Management and Budget circular, except as modified
25 by section 106, or by any exemptions to applicable

1 *Office of Management and Budget circulars subse-*
2 *quently granted by the Office of Management and*
3 *Budget. No other audit or accounting standards shall*
4 *be required by the Secretary. Any claim by the Fed-*
5 *eral Government against the Indian tribe relating to*
6 *funds received under a funding agreement based on*
7 *any audit under this subsection shall be subject to the*
8 *provisions of section 106(f).*

9 “(d) *RECORDS.*—

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

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

23 “(e) *REDESIGN AND CONSOLIDATION.*—*An Indian*
24 *tribe may redesign or consolidate programs, services, func-*
25 *tions, and activities (or portions thereof) included in a*

1 *funding agreement under section 305 and reallocate or redi-*
 2 *rect funds for such programs, services, functions, and activi-*
 3 *ties (or portions thereof) in any manner which the Indian*
 4 *tribe deems to be in the best interest of the health and wel-*
 5 *fare of the Indian community being served, only if the rede-*
 6 *sign or consolidation does not have the effect of denying eli-*
 7 *gibility for services to population groups otherwise eligible*
 8 *to be served under applicable Federal law.*

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

17 “(1) *the earlier of—*

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

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

22 “(2) *such date as may be mutually agreed upon*
 23 *by the Secretary and the Indian tribe.*

24 “(g) *WITHDRAWAL.—*

25 “(1) *PROCESS.—*

1 “(A) *IN GENERAL.*—*An Indian tribe may*
2 *fully or partially withdraw from a participating*
3 *inter-tribal consortium or tribal organization its*
4 *share of any program, function, service, or activ-*
5 *ity (or portions thereof) included in a compact*
6 *or funding agreement.*

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

15 “(i) *the earlier of—*

16 “(I) *1 year after the date of sub-*
17 *mission of such request; or*

18 “(II) *the date on which the fund-*
19 *ing agreement expires; or*

20 “(ii) *such date as may be mutually*
21 *agreed upon by the Secretary, the with-*
22 *drawing Indian tribe, and the participating*
23 *tribal organization or inter-tribal consor-*
24 *tium that has signed the compact or fund-*
25 *ing agreement on behalf of the withdrawing*

1 *Indian tribe, inter-tribal consortium, or*
2 *tribal organization.*

3 “(2) *DISTRIBUTION OF FUNDS.—When an In-*
4 *dian tribe or tribal organization eligible to enter into*
5 *a self-determination contract under title I or a com-*
6 *compact or funding agreement under this title fully or*
7 *partially withdraws from a participating inter-tribal*
8 *consortium or tribal organization—*

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

19 “(B) *the funds referred to in subparagraph*
20 *(A) shall be transferred from the funding agree-*
21 *ment of the inter-tribal consortium or tribal or-*
22 *ganization, on the condition that the provisions*
23 *of sections 102 and 105(i), as appropriate, shall*
24 *apply to that withdrawing Indian tribe.*

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

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

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

17 “(a) *MANDATORY PROVISIONS.*—

18 “(1) *HEALTH STATUS REPORTS.*—*Compacts or*
19 *funding agreements negotiated between the Secretary*
20 *and an Indian tribe shall include a provision that re-*
21 *quires the Indian tribe to report on health status and*
22 *service delivery—*

23 “(A) *to the extent such data is not otherwise*
24 *available to the Secretary and specific funds for*

1 *this purpose are provided by the Secretary under*
2 *the funding agreement; and*

3 “(B) *if such reporting shall impose mini-*
4 *mal burdens on the participating Indian tribe*
5 *and such requirements are promulgated under*
6 *section 517.*

7 “(2) *REASSUMPTION.—*

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

16 “(i) *imminent endangerment of the*
17 *public health caused by an act or omission*
18 *of the Indian tribe, and the imminent*
19 *endangerment arises out of a failure to*
20 *carry out the compact or funding agree-*
21 *ment; or*

22 “(ii) *gross mismanagement with re-*
23 *spect to funds transferred to a tribe by a*
24 *compact or funding agreement, as deter-*

1 *mined by the Secretary in consultation with*
2 *the Inspector General, as appropriate.*

3 “(B) *PROHIBITION.—The Secretary shall*
4 *not reassume operation of a program, service,*
5 *function, or activity (or portions thereof)*
6 *unless—*

7 *“(i) the Secretary has first provided*
8 *written notice and a hearing on the record*
9 *to the Indian tribe; and*

10 *“(ii) the Indian tribe has not taken*
11 *corrective action to remedy the imminent*
12 *endangerment to public health or gross mis-*
13 *management.*

14 “(C) *EXCEPTION.—*

15 *“(i) IN GENERAL.—Notwithstanding*
16 *subparagraph (B), the Secretary may, upon*
17 *written notification to the Indian tribe, im-*
18 *mediately reassume operation of a program,*
19 *service, function, or activity (or portion*
20 *thereof) if—*

21 *“(I) the Secretary makes a find-*
22 *ing of imminent substantial and irrepar-*
23 *able endangerment of the public*
24 *health caused by an act or omission of*
25 *the Indian tribe; and*

1 “(II) *the endangerment arises out*
2 *of a failure to carry out the compact or*
3 *funding agreement.*

4 “(i) *REASSUMPTION.—If the Secretary*
5 *reassumes operation of a program, service,*
6 *function, or activity (or portion thereof)*
7 *under this subparagraph, the Secretary*
8 *shall provide the Indian tribe with a hear-*
9 *ing on the record not later than 10 days*
10 *after such reassumption.*

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

18 “(b) *FINAL OFFER.—In the event the Secretary and*
19 *a participating Indian tribe are unable to agree, in whole*
20 *or in part, on the terms of a compact or funding agreement*
21 *(including funding levels), the Indian tribe may submit a*
22 *final offer to the Secretary. Not more than 45 days after*
23 *such submission, or within a longer time agreed upon by*
24 *the Indian tribe, the Secretary shall review and make a de-*
25 *termination with respect to such offer. In the absence of a*

1 *timely rejection of the offer, in whole or in part, made in*
2 *compliance with subsection (c), the offer shall be deemed*
3 *agreed to by the Secretary.*

4 “(c) *REJECTION OF FINAL OFFERS.—*

5 “(1) *IN GENERAL.—If the Secretary rejects an*
6 *offer made under subsection (b) (or 1 or more provi-*
7 *sions or funding levels in such offer), the Secretary*
8 *shall provide—*

9 “(A) *a timely written notification to the In-*
10 *Indian tribe that contains a specific finding that*
11 *clearly demonstrates, or that is supported by a*
12 *controlling legal authority, that—*

13 “(i) *the amount of funds proposed in*
14 *the final offer exceeds the applicable funding*
15 *level to which the Indian tribe is entitled*
16 *under this title;*

17 “(ii) *the program, function, service, or*
18 *activity (or portion thereof) that is the sub-*
19 *ject of the final offer is an inherent Federal*
20 *function that cannot legally be delegated to*
21 *an Indian tribe;*

22 “(iii) *the Indian tribe cannot carry*
23 *out the program, function, service, or activ-*
24 *ity (or portion thereof) in a manner that*

1 *would not result in significant danger or*
2 *risk to the public health; or*

3 *“(iv) the Indian tribe is not eligible to*
4 *participate in self-governance under section*
5 *503;*

6 *“(B) technical assistance to overcome the*
7 *objections stated in the notification required by*
8 *subparagraph (A);*

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

17 *“(D) the Indian tribe with the option of en-*
18 *tering into the severable portions of a final pro-*
19 *posed compact or funding agreement, or provi-*
20 *sion thereof, (including a lesser funding amount,*
21 *if any), that the Secretary did not reject, subject*
22 *to any additional alterations necessary to con-*
23 *form the compact or funding agreement to the*
24 *severed provisions.*

1 “(2) *EFFECT OF EXERCISING CERTAIN OPTION.*—

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

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

15 “(e) *GOOD FAITH.*—*In the negotiation of compacts*
16 *and funding agreements the Secretary shall at all times ne-*
17 *gotiate in good faith to maximize implementation of the*
18 *self-governance policy. The Secretary shall carry out this*
19 *title in a manner that maximizes the policy of tribal self-*
20 *governance, in a manner consistent with the purposes speci-*
21 *fied in section 3 of the Tribal Self-Governance Amendments*
22 *of 1999.*

23 “(f) *SAVINGS.*—*To the extent that programs, functions,*
24 *services, or activities (or portions thereof) carried out by*
25 *Indian tribes under this title reduce the administrative or*

1 *other responsibilities of the Secretary with respect to the*
2 *operation of Indian programs and result in savings that*
3 *have not otherwise been included in the amount of tribal*
4 *shares and other funds determined under section 508(c), the*
5 *Secretary shall make such savings available to the Indian*
6 *tribes, inter-tribal consortia, or tribal organizations for the*
7 *provision of additional services to program beneficiaries in*
8 *a manner equitable to directly served, contracted, and com-*
9 *pacted programs.*

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

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

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

25 “(2) *by an administrative judge.*

1 **“SEC. 508. TRANSFER OF FUNDS.**

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

17 “(b) *MULTIYEAR FUNDING.*—The Secretary may em-
18 ploy, upon tribal request, multiyear funding agreements.
19 References in this title to funding agreements shall include
20 such multiyear funding agreements.

21 “(c) *AMOUNT OF FUNDING.*—The Secretary shall pro-
22 vide funds under a funding agreement under this title in
23 an amount equal to the amount that the Indian tribe would
24 have been entitled to receive under self-determination con-
25 tracts under this Act, including amounts for direct program
26 costs specified under section 106(a)(1) and amounts for con-

1 *tract support costs specified under section 106(a) (2), (3),*
 2 *(5), and (6), including any funds that are specifically or*
 3 *functionally related to the provision by the Secretary of*
 4 *services and benefits to the Indian tribe or its members, all*
 5 *without regard to the organizational level within the De-*
 6 *partment where such functions are carried out.*

7 “(d) *PROHIBITIONS.—*

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

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

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

18 “(C) *reducing the amount of funds required*
 19 *under this Act—*

20 “(i) *to make funding available for self-*
 21 *governance monitoring or administration*
 22 *by the Secretary;*

23 “(ii) *in subsequent years, except pursu-*
 24 *ant to—*

1 “(I) a reduction in appropria-
2 tions from the previous fiscal year for
3 the program or function to be included
4 in a compact or funding agreement;

5 “(II) a congressional directive in
6 legislation or accompanying report;

7 “(III) a tribal authorization;

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

11 “(V) completion of a project, ac-
12 tivity, or program for which such
13 funds were provided;

14 “(iii) to pay for Federal functions, in-
15 cluding Federal pay costs, Federal employee
16 retirement benefits, automated data proc-
17 essing, technical assistance, and monitoring
18 of activities under this Act; or

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

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

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

13 “(f) *REIMBURSEMENT TO INDIAN HEALTH SERVICE.*—
14 *With respect to functions transferred by the Indian Health*
15 *Service to an Indian tribe, the Indian Health Service shall*
16 *provide goods and services to the Indian tribe, on a reim-*
17 *bursable basis, including payment in advance with subse-*
18 *quent adjustment. The reimbursements received from those*
19 *goods and services, along with the funds received from the*
20 *Indian tribe pursuant to this title, may be credited to the*
21 *same or subsequent appropriation account which provided*
22 *the funding, such amounts to remain available until ex-*
23 *pended.*

24 “(g) *PROMPT PAYMENT ACT.*—*Chapter 39 of title 31,*
25 *United States Code, shall apply to the transfer of funds due*

1 *under a compact or funding agreement authorized under*
 2 *this title.*

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

12 “(i) *CARRYOVER OF FUNDS.*—*All funds paid to an In-*
 13 *dian tribe in accordance with a compact or funding agree-*
 14 *ment shall remain available until expended. In the event*
 15 *that an Indian tribe elects to carry over funding from 1*
 16 *year to the next, such carryover shall not diminish the*
 17 *amount of funds the Indian tribe is authorized to receive*
 18 *under its funding agreement in that or any subsequent fis-*
 19 *cal year.*

20 “(j) *PROGRAM INCOME.*—*All medicare, medicaid, or*
 21 *other program income earned by an Indian tribe shall be*
 22 *treated as supplemental funding to that negotiated in the*
 23 *funding agreement. The Indian tribe may retain all such*
 24 *income and expend such funds in the current year or in*
 25 *future years except to the extent that the Indian Health*

1 *Care Improvement Act (25 U.S.C. 1601 et seq.) provides*
2 *otherwise for medicare and medicaid receipts. Such funds*
3 *shall not result in any offset or reduction in the amount*
4 *of funds the Indian tribe is authorized to receive under its*
5 *funding agreement in the year the program income is re-*
6 *ceived or for any subsequent fiscal year.*

7 “(k) *LIMITATION OF COSTS.—An Indian tribe shall*
8 *not be obligated to continue performance that requires an*
9 *expenditure of funds in excess of the amount of funds trans-*
10 *ferred under a compact or funding agreement. If at any*
11 *time the Indian tribe has reason to believe that the total*
12 *amount provided for a specific activity in the compact or*
13 *funding agreement is insufficient the Indian tribe shall pro-*
14 *vide reasonable notice of such insufficiency to the Secretary.*
15 *If the Secretary does not increase the amount of funds*
16 *transferred under the funding agreement, the Indian tribe*
17 *may suspend performance of the activity until such time*
18 *as additional funds are transferred.*

19 **“SEC. 509. CONSTRUCTION PROJECTS.**

20 “(a) *IN GENERAL.—Indian tribes participating in*
21 *tribal self-governance may carry out construction projects*
22 *under this title if they elect to assume all Federal respon-*
23 *sibilities under the National Environmental Policy Act of*
24 *1969 (42 U.S.C. 4321 et seq.), the National Historic Preser-*
25 *vation Act (16 U.S.C. 470 et seq.), and related provisions*

1 of law that would apply if the Secretary were to undertake
2 a construction project, by adopting a resolution—

3 “(1) designating a certifying officer to represent
4 the Indian tribe and to assume the status of a respon-
5 sible Federal official under such laws; and

6 “(2) accepting the jurisdiction of the Federal
7 court for the purpose of enforcement of the responsibil-
8 ities of the responsible Federal official under such en-
9 vironmental laws.

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

14 “(c) *CODES AND STANDARDS.*—The Indian tribe and
15 the Secretary shall agree upon and specify appropriate
16 building codes and architectural and engineering standards
17 (including health and safety) which shall be in conformity
18 with nationally recognized standards for comparable
19 projects.

20 “(d) *RESPONSIBILITY FOR COMPLETION.*—The Indian
21 tribe shall assume responsibility for the successful comple-
22 tion of the construction project in accordance with the nego-
23 tiated construction project agreement.

24 “(e) *FUNDING.*—Funding for construction projects car-
25 ried out under this title shall be included in funding agree-

1 *ments as annual advance payments, with semiannual pay-*
2 *ments at the option of the Indian tribe. Annual advance*
3 *and semiannual payment amounts shall be determined*
4 *based on mutually agreeable project schedules reflecting*
5 *work to be accomplished within the advance payment pe-*
6 *riod, work accomplished and funds expended in previous*
7 *payment periods, and the total prior payments. The Sec-*
8 *retary shall include associated project contingency funds*
9 *with each advance payment installment. The Indian tribe*
10 *shall be responsible for the management of the contingency*
11 *funds included in funding agreements.*

12 “(f) *APPROVAL.—The Secretary shall have at least 1*
13 *opportunity to approve project planning and design docu-*
14 *ments prepared by the Indian tribe in advance of construc-*
15 *tion of the facilities specified in the scope of work for each*
16 *negotiated construction project agreement or amendment*
17 *thereof which results in a significant change in the original*
18 *scope of work. The Indian tribe shall provide the Secretary*
19 *with project progress and financial reports not less than*
20 *semiannually. The Secretary may conduct onsite project*
21 *oversight visits semiannually or on an alternate schedule*
22 *agreed to by the Secretary and the Indian tribe.*

23 “(g) *WAGES.—All laborers and mechanics employed by*
24 *contractors and subcontractors in the construction, alter-*
25 *ation, or repair, including painting or decorating of a*

1 *building or other facilities in connection with construction*
2 *projects undertaken by self-governance Indian tribes under*
3 *this Act, shall be paid wages at not less than those pre-*
4 *vailing wages on similar construction in the locality as de-*
5 *termined by the Indian tribe.*

6 “(h) *APPLICATION OF OTHER LAWS.—Unless other-*
7 *wise agreed to by the Indian tribe, no provision of the Office*
8 *of Federal Procurement Policy Act, the Federal Acquisition*
9 *Regulations issued pursuant thereto, or any other law or*
10 *regulation pertaining to Federal procurement (including*
11 *Executive orders) shall apply to any construction project*
12 *conducted under this title.*

13 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**
14 **TIONS.**

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

1 **“SEC. 511. CIVIL ACTIONS.**

2 “(a) *CONTRACT DEFINED.*—*For the purposes of section*
3 *110, the term ‘contract’ shall include compacts and funding*
4 *agreements entered into under this title.*

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

11 “(c) *REFERENCES.*—*All references in this Act to sec-*
12 *tion 1 of the Act of June 26, 1936 (49 Stat. 1967; chapter*
13 *831) are hereby deemed to include the first section of the*
14 *Act of July 3, 1952 (66 Stat. 323, chapter 549; 25 U.S.C.*
15 *82a).*

16 **“SEC. 512. FACILITATION.**

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

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

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

1 “(3) *the achievement of tribal health goals and*
2 *objectives.*

3 “(b) *REGULATION WAIVER.—*

4 “(1) *IN GENERAL.—An Indian tribe may submit*
5 *a written request to waive application of a regulation*
6 *promulgated under section 517 or the authorities*
7 *specified in section 505(b) for a compact or funding*
8 *agreement entered into with the Indian Health Serv-*
9 *ice under this title, to the Secretary identifying the*
10 *applicable Federal regulation sought to be waived and*
11 *the basis for the request.*

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

1 “(c) *ACCESS TO FEDERAL PROPERTY.*—*In connection*
2 *with any compact or funding agreement executed pursuant*
3 *to this title or an agreement negotiated under the Tribal*
4 *Self-Governance Demonstration Project established under*
5 *title III, as in effect before the enactment of the Tribal Self-*
6 *Governance Amendments of 1999, upon the request of an*
7 *Indian tribe, the Secretary—*

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

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

19 “(A) *subject to the provisions of subpara-*
20 *graph (B), title to property and equipment fur-*
21 *nished by the Federal Government for use in the*
22 *performance of the compact or funding agree-*
23 *ment or purchased with funds under any com-*
24 *compact or funding agreement shall, unless otherwise*

1 *requested by the Indian tribe, vest in the appro-*
2 *priate Indian tribe;*

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

10 “(C) all property referred to in subpara-
11 graph (A) shall remain eligible for replacement,
12 maintenance, and improvement on the same
13 basis as if title to such property were vested in
14 the United States; and

15 “(3) shall acquire excess or surplus Government
16 personal or real property for donation to an Indian
17 tribe if the Secretary determines the property is ap-
18 propriate for use by the Indian tribe for any purpose
19 for which a compact or funding agreement is author-
20 ized under this title.

21 “(d) *MATCHING OR COST-PARTICIPATION REQUIRE-*
22 *MENT.—All funds provided under compacts, funding agree-*
23 *ments, or grants made pursuant to this Act, shall be treated*
24 *as non-Federal funds for purposes of meeting matching or*

1 *cost participation requirements under any other Federal or*
2 *non-Federal program.*

3 “(e) *STATE FACILITATION.*—*States are hereby author-*
4 *ized and encouraged to enact legislation, and to enter into*
5 *agreements with Indian tribes to facilitate and supplement*
6 *the initiatives, programs, and policies authorized by this*
7 *title and other Federal laws benefiting Indians and Indian*
8 *tribes.*

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

14 **“SEC. 513. BUDGET REQUEST.**

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

16 “(1) *IN GENERAL.*—*The President shall identify*
17 *in the annual budget request submitted to Congress*
18 *under section 1105 of title 31, United States Code, all*
19 *funds necessary to fully fund all funding agreements*
20 *authorized under this title, including funds specifi-*
21 *cally identified to fund tribal base budgets. All funds*
22 *so appropriated shall be apportioned to the Indian*
23 *Health Service. Such funds shall be provided to the*
24 *Office of Tribal Self-Governance which shall be re-*

1 *sponsible for distribution of all funds provided under*
2 *section 505.*

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

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

17 **“SEC. 514. REPORTS.**

18 *“(a) ANNUAL REPORT.—*

19 *“(1) IN GENERAL.—Not later than January 1 of*
20 *each year after the date of enactment of the Tribal*
21 *Self-Governance Amendments of 1999, the Secretary*
22 *shall submit to the Committee on Indian Affairs of*
23 *the Senate and the Committee on Resources of the*
24 *House of Representatives a written report regarding*
25 *the administration of this title.*

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

11 “(b) *CONTENTS.*—*The report under subsection (a)*
12 *shall—*

13 “(1) *be compiled from information contained in*
14 *funding agreements, annual audit reports, and data*
15 *of the Secretary regarding the disposition of Federal*
16 *funds; and*

17 “(2) *identify—*

18 “(A) *the relative costs and benefits of self-*
19 *governance;*

20 “(B) *with particularity, all funds that are*
21 *specifically or functionally related to the provi-*
22 *sion by the Secretary of services and benefits to*
23 *self-governance Indian tribes and their members;*

1 “(C) the funds transferred to each self-gov-
2 ernance Indian tribe and the corresponding re-
3 duction in the Federal bureaucracy;

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

9 “(E) amounts expended in the preceding fis-
10 cal year to carry out inherent Federal functions,
11 including an identification of those functions by
12 type and location;

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

20 “(4) before being submitted to Congress, be dis-
21 tributed to the Indian tribes for comment (with a
22 comment period of no less than 30 days, beginning on
23 the date of distribution); and

24 “(5) include the separate views and comments of
25 the Indian tribes or tribal organizations.

1 “(c) *REPORT ON FUND DISTRIBUTION METHOD.*—Not
2 later than 180 days after the date of enactment of the Tribal
3 Self-Governance Amendments of 1999, the Secretary shall,
4 after consultation with Indian tribes, submit a written re-
5 port to the Committee on Resources of the House of Rep-
6 resentatives and the Committee on Indian Affairs of the
7 Senate that describes the method or methods used to deter-
8 mine the individual tribal share of funds controlled by all
9 components of the Indian Health Service (including funds
10 assessed by any other Federal agency) for inclusion in self-
11 governance compacts or funding agreements.

12 **“SEC. 515. DISCLAIMERS.**

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

20 “(b) *FEDERAL TRUST AND TREATY RESPONSIBIL-*
21 *ITIES.*—Nothing in this Act shall be construed to diminish
22 in any way the trust responsibility of the United States
23 to Indian tribes and individual Indians that exists under
24 treaties, Executive orders, or other laws and court decisions.

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

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

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

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

21 “(b) *DISCRETIONARY APPLICATION.*—At the request of
22 a participating Indian tribe, any other provision of title
23 I, to the extent such provision is not in conflict with this
24 title, shall be made a part of a funding agreement or com-
25 pact entered into under this title. The Secretary is obligated

1 *to include such provision at the option of the participating*
2 *Indian tribe or tribes. If such provision is incorporated it*
3 *shall have the same force and effect as if it were set out*
4 *in full in this title. In the event an Indian tribe requests*
5 *such incorporation at the negotiation stage of a compact*
6 *or funding agreement, such incorporation shall be deemed*
7 *effective immediately and shall control the negotiation and*
8 *resulting compact and funding agreement.*

9 **“SEC. 517. REGULATIONS.**

10 “(a) *IN GENERAL.*—

11 “(1) *PROMULGATION.*—*Not later than 90 days*
12 *after the date of enactment of the Tribal Self-Govern-*
13 *ance Amendments of 1999, the Secretary shall initiate*
14 *procedures under subchapter III of chapter 5 of title*
15 *5, United States Code, to negotiate and promulgate*
16 *such regulations as are necessary to carry out this*
17 *title.*

18 “(2) *PUBLICATION OF PROPOSED REGULA-*
19 *TIONS.*—*Proposed regulations to implement this title*
20 *shall be published in the Federal Register by the Sec-*
21 *retary no later than 1 year after the date of enact-*
22 *ment of the Tribal Self-Governance Amendments of*
23 *1999.*

24 “(3) *EXPIRATION OF AUTHORITY.*—*The author-*
25 *ity to promulgate regulations under paragraph (1)*

1 *shall expire 21 months after the date of enactment of*
2 *the Tribal Self-Governance Amendments of 1999.*

3 “(b) *COMMITTEE.—*

4 “(1) *IN GENERAL.—A negotiated rulemaking*
5 *committee established pursuant to section 565 of title*
6 *5, United States Code, to carry out this section shall*
7 *have as its members only Federal and tribal govern-*
8 *ment representatives, a majority of whom shall be*
9 *nominated by and be representatives of Indian tribes*
10 *with funding agreements under this Act.*

11 “(2) *REQUIREMENTS.—The committee shall con-*
12 *fer with, and accommodate participation by, rep-*
13 *resentatives of Indian tribes, inter-tribal consortia,*
14 *tribal organizations, and individual tribal members.*

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

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

22 “(e) *EFFECT OF CIRCULARS, POLICIES, MANUALS,*
23 *GUIDANCES, AND RULES.—Unless expressly agreed to by*
24 *the participating Indian tribe in the compact or funding*
25 *agreement, the participating Indian tribe shall not be sub-*

1 *ject to any agency circular, policy, manual, guidance, or*
2 *rule adopted by the Indian Health Service, except for the*
3 *eligibility provisions of section 105(g) and regulations pro-*
4 *mulgated under section 517.*

5 **“SEC. 518. APPEALS.**

6 *“In any appeal (including civil actions) involving de-*
7 *isions made by the Secretary under this title, the Secretary*
8 *shall have the burden of proof of demonstrating by clear*
9 *and convincing evidence—*

10 *“(1) the validity of the grounds for the decision*
11 *made; and*

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

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

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

18 *“(b) ASSUMPTION OF NEW OR EXPANDED PRO-*
19 *GRAMS.—*

20 *“(1) IN GENERAL.—Notwithstanding any other*
21 *provision of law, in fiscal year 2000 the Secretary*
22 *may enter into contracts, compacts, or annual fund-*
23 *ing agreements with an Indian tribe or tribal organi-*
24 *zation to operate a new or expanded program, service,*
25 *function, or activity of the Indian Health Service*

1 *pursuant to the Indian Self-Determination and Edu-*
2 *cation Assistance Act (25 U.S.C. 450 et seq.) only*
3 *if—*

4 “(A) *and to the extent that, sufficient con-*
5 *tract support costs are appropriated and are spe-*
6 *cifically earmarked for the assumption of new or*
7 *expanded programs, functions, services, or activi-*
8 *ties; and*

9 “(B) *the Indian Health Service determines*
10 *that the percentage of contract support costs pro-*
11 *vided to existing contractors will not be reduced*
12 *as a result of the assumption of any new or ex-*
13 *panded programs, functions, services, or activi-*
14 *ties under this title.*

15 “(2) *RULE OF CONSTRUCTION.—Nothing in this*
16 *subsection shall be construed to affect the allocation of*
17 *funds other than contract support cost funds.”.*

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

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

1 **“TITLE VI—TRIBAL SELF-GOV-**
2 **ERNANCE—DEPARTMENT OF**
3 **HEALTH AND HUMAN SERV-**
4 **ICES**

5 **“SEC. 601. DEFINITIONS.**

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

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

9 *“(1) AGENCY.—The term the term ‘agency’*
10 *means any agency or other organizational unit of the*
11 *Department of Health and Human Services, other*
12 *than the Indian Health Service.*

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

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

16 *“(a) STUDY.—The Secretary shall conduct a study to*
17 *determine the feasibility of a tribal self-governance dem-*
18 *onstration project for appropriate programs, services, func-*
19 *tions, and activities (or portions thereof) of the agency.*

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

22 *“(1) the probable effects on specific programs*
23 *and program beneficiaries of such a demonstration*
24 *project;*

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

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

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

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

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

12 “(c) *REPORT.—Not later than 18 months after the date*
13 *of enactment of this title, the Secretary shall submit a re-*
14 *port to the Committee on Indian Affairs of the Senate and*
15 *the Committee on Resources of the House of Representatives.*

16 *The report shall contain—*

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

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

22 “(3) *a list of programs, services, functions, and*
23 *activities (or portions thereof) included in the list*
24 *provided pursuant to paragraph (2) that could be in-*
25 *cluded in a tribal self-governance demonstration*

1 *project without amending statutes, or waiving regula-*
 2 *tions that the Secretary may not waive;*

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

9 *“(5) any separate views of tribes and other enti-*
 10 *ties consulted pursuant to section 603 related to the*
 11 *information provided pursuant to paragraphs (1)*
 12 *through (4).*

13 **“SEC. 603. CONSULTATION.**

14 *“(a) STUDY PROTOCOL.—*

15 *“(1) CONSULTATION WITH INDIAN TRIBES.—The*
 16 *Secretary shall consult with Indian tribes to deter-*
 17 *mine a protocol for consultation under subsection (b)*
 18 *prior to consultation under such subsection with the*
 19 *other entities described in such subsection.*

20 *“(2) REQUIREMENTS FOR PROTOCOL.—The pro-*
 21 *tol shall require, at a minimum, that—*

22 *“(A) the government-to-government relation-*
 23 *ship with Indian tribes forms the basis for the*
 24 *consultation process;*

1 “(B) the Indian tribes and the Secretary
2 jointly conduct the consultations required by this
3 section; and

4 “(C) the consultation process allows for sep-
5 arate and direct recommendations from the In-
6 dian tribes and other entities described in sub-
7 section (b).

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

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

14 “*There are authorized to be appropriated for fiscal*
15 *years 2000 and 2001 such sums as may be necessary to*
16 *carry out this title. Such sums shall remain available until*
17 *expended.”.*

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

19 (a) *BURDEN OF PROOF IN DISTRICT COURT AC-*
20 *TIONS.*—Section 102(e)(1) of the Indian Self-Determination
21 and Education Assistance Act (25 U.S.C. 450f(e)(1)) is
22 amended by inserting after “subsection (b)(3)” the fol-
23 lowing: “or any civil action conducted pursuant to section
24 110(a)”.

1 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
2 *section (a) shall apply to any proceedings commenced after*
3 *October 25, 1994.*

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

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

8 (1) *by striking “deemed an executive agency”*
9 *and inserting “deemed an executive agency and part*
10 *of the Indian Health Service”; and*

11 (2) *by adding at the end the following: “At the*
12 *request of an Indian tribe, the Secretary shall enter*
13 *into an agreement for the acquisition, on behalf of the*
14 *Indian tribe, of any goods, services, or supplies avail-*
15 *able to the Secretary from the General Services Ad-*
16 *ministration or other Federal agencies that are not*
17 *directly available to the Indian tribe under this sec-*
18 *tion or any other Federal law, including acquisitions*
19 *from prime vendors. All such acquisitions shall be un-*
20 *dertaken through the most efficient and speedy means*
21 *practicable, including electronic ordering arrange-*
22 *ments.*

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. RECOVERY ACTIONS.**

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

26 “(p) *RECOVERY ACTIONS.*—

1 “(1) *CREDITING OF FACILITY ACCOUNTS.*—All
2 *funds recovered under the first section of Public Law*
3 *87-693 (42 U.S.C. 2651) that are related to health*
4 *care provided by a tribally-administered facility or*
5 *program of the Indian Health Service, whether pro-*
6 *vided before or after the facility’s or program’s trans-*
7 *fer to tribal administration, shall be credited to the*
8 *account of the facility or program providing the serv-*
9 *ice and shall be available without fiscal year limita-*
10 *tion.*

11 “(2) *TREATMENT OF TRIBES AND ORGANIZA-*
12 *TIONS.*—*For purposes of the first section of Public*
13 *Law 87-693 (42 U.S.C. 2651), an Indian tribe or*
14 *tribal organization carrying out a contract, compact,*
15 *grant, or cooperative agreement pursuant to this Act*
16 *shall be deemed to be the United States and shall have*
17 *the same right to recover as the United States for the*
18 *reasonable value of past or future care and treatment*
19 *provided under such contract, compact, grant, or co-*
20 *operative agreement. Nothing in this paragraph shall*
21 *be construed to affect a tribe’s or tribal organization’s*
22 *right to recover under any other applicable Federal,*
23 *State, or tribal law.”.*

1 **SEC. 10. ANNUAL REPORTS.**

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

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

6 *(2) by inserting after subsection (b), the fol-*
7 *lowing:*

8 *“(c) ANNUAL REPORTS.—Not later than May 15 of*
9 *each year, the Secretary shall prepare and submit to Con-*
10 *gress an annual report on the implementation of this Act.*

11 *Such report shall include—*

12 *“(1) an accounting of the total amounts of funds*
13 *provided for each program and the budget activity for*
14 *direct program costs and contract support costs of*
15 *tribal organizations under self-determination;*

16 *“(2) an accounting of any deficiency in funds*
17 *needed to provide required contract support costs to*
18 *all contractors for the fiscal year for which the report*
19 *is being submitted;*

20 *“(3) the indirect cost rate and type of rate for*
21 *each tribal organization that has been negotiated with*
22 *the appropriate Secretary;*

23 *“(4) the direct cost base and type of base from*
24 *which the indirect cost rate is determined for each*
25 *tribal organization;*

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

3 “(6) an accounting of any deficiency in funds
4 needed to maintain the preexisting level of services to
5 any Indian tribes affected by contracting activities
6 under this Act, and a statement of the amount of
7 funds needed for transitional purposes to enable con-
8 tractors to convert from a Federal fiscal year account-
9 ing cycle, as authorized by section 105(d).”.

10 **SEC. 11. REPEAL.**

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

14 (b) *EFFECTIVE DATE.*—This section shall take effect
15 on October 1, 1999.

16 **SEC. 12. SAVINGS PROVISION.**

17 Funds appropriated for title III of the Indian Self-
18 Determination and Education Assistance Act (25 U.S.C.
19 450f note) shall be available for use under title V of such
20 Act.