Mr. YOUNG of Alaska. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 333) to amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes, as amended.

The Clerk read as follows:

H.R. 333

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Tribal Self-Governance Amendments of 1998.”

SEC. 2. FINDINGS.
Congress finds that—

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

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

(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance of tribes in Indian affairs;

(4) the Tribal Self-Governance Demonstration Project, established under title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 note) was designed to improve and perpetuate the government-to-government relationship between the United States and to strengthen tribal control over Federal funding and program management;

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

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

(A) establishes project phase start and completion dates;

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

(C) identifies the responsibilities of the authorizing Indian tribe; and

(D) to permit each Indian tribe to choose the extent to which it chooses to participate in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Federal services to Indian tribes;

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

(F) to permit orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

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

SEC. 3. DECLARATION OF POLICY.

Tribal Self-Governance Demonstration Project and finds that transferring full control from Federal and Tribal Governments to Indian tribes in Indian affairs—

(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(B) to permit each Indian tribe to choose the extent to which it chooses to participate in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Federal services to Indian tribes;

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

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

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

(F) to permit orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

(G) to provide a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) are assumed by Indian tribes;

(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) that are required by Indian tribes;

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

SEC. 4. TRIBAL SELF-GOVERNANCE.
The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following new title—

“TITLE V—TRIBAL SELF-GOVERNANCE

SEC. 501. ESTABLISHMENT.

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

SEC. 502. DEFINITIONS.

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

(1) the term ‘construction project’ means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or renovation of housing, health care, or similar facilities, as described in a construction project agreement. The term ‘construction project’ does not mean construction program administration, planning, programming, or planning project agreements.

(b) the term ‘construction project agreement’ means a negotiated agreement between the Secretary and an Indian tribe which at a minimum—

(1) establishes project phase start and completion dates;

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

(3) identifies the responsibilities of the authorizing Indian tribe and the Secretary;

(4) addresses environmental considerations;

(5) identifies the owner and operations/maintenance entity of the proposed work;

(6) provides a budget;

(7) provides a payment process; and

(8) is the agreement or portion of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years;

(c) the term ‘inherent Federal functions’ means those Federal functions which cannot legally be delegated to Indian tribes;

(d) the term ‘inter-tribal consortium’ means an organized, noncontinuous undertaking to provide services, functions, and activities to more than 1 Indian tribe that join together for the purpose of participating in self-governance, including, but not limited to, a tribal organization;

(e) the term ‘gross mismanagement’ means a significant, clear, and convincing violation of compact, funding agreement, or regulatory, or statutory requirements applicable to Federal funds transferred to a tribe by a compact or funding agreement that result in a significant funds available for the programs, services, functions, or activities (or portions thereof) assumed by an Indian tribe;

(f) the term ‘Secretary’ means the Secretary of Health and Human Services; and

(2) in addition to those Indian tribes participating in self-governance under subpart (a), each year an additional 50 Indian tribes that meet the eligibility criteria specified in subsection (c) shall be entitled to participate in self-governance.

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

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

(9) In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance.

(c) APPLICANT POOL.—The qualified applicants for self-governance shall consist of each Indian tribe that—

(1) successfully completes the planning phase described in subsection (d);

(2) has requested participation in self-governance by resolution or other official action by the governing body (or bodies) of the Indian tribe or tribes to be served; and

(3) is the governing body (or bodies) of the Indian tribe or tribes to be served.
Evidence that during such years the Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe’s self-determination contract or self-governance funding agreements shall be conclusive evidence of the required stability and capability for the purposes of this subsection.

(2) Negotiate—Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the satisfaction of the Indian tribe and shall include—

(1) legal and budgetary research; and

(2) internal tribal government planning and operating procedures required for the administration of health care programs.

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

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

(2) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

(f) Receipt of Grant Not Required.—Receipt of a grant under subsection (e) shall not be a requirement of participation in self-governance.

SEC. 504. COMPACTS.

(a) Compact Required.—The Secretary shall negotiate and enter into a compact with each Indian tribe participating in self-governance in a manner consistent with the Federal Government’s trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

(b) Contents.—Each compact required under subsection (a) shall set forth the general terms of the government-to-government relationship between Indian tribes and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties.

(c) Existing Compacts.—An Indian tribe participating in the Tribal Self-Governance Demonstration Project under title III on the date of enactment of this title shall have the option at any time thereafter to—

(1) retain its Tribal Self-Governance Demonstration Project compact (in whole or in part) as it existed on the date such compact was executed, or

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

(d) Term and Effective Date.—The effective date of a compact shall be the date of the approval and execution by the Indian tribe or another date agreed upon by the parties, and shall remain in effect for so long as permitted by Federal law or until terminated by the Secretary in writing, agreement, retrocession, or reassumption.

SEC. 505. FUNDING AGREEMENTS.

(a) Funding Agreement Required.—The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe participating in self-governance in a manner consistent with the Federal Government’s trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

(b) Contents.—Each funding agreement required under subsection (a) shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and operate such tribal self-governance activities, including tribal shares of Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), for all programs, services, functions, and activities (or portions thereof) that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed. Such agreements shall include all programs, services, functions, activities (or portions thereof) that Indian tribes or Indians are permitted by law to receive, administered by the Department of Health and Human Services through the Indian Health Service, without additional funding (or portions thereof) that shall be added to a funding agreement after award of such grants) and all local, field, service unit, area, regional, and central headquarters or other positions established under the authority of—

(1) the Act of November 2, 1921 (25 U.S.C. 130);

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

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

(4) the Indian Health Care Improvement Act (25 U.S.C. 151 et seq.);

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

(6) the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450 et seq.);

(7) the Early Head Start Research and Evaluation Demonstration Project compact (in whole or in part) as it existed on the date such compact was executed, or

(8) negotiate in lieu thereof (in whole or in part) a new agreement in conformity with this title.

(c) Subsequent Funding Agreements.—(b) (1) Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) to a Federal department, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement includes terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

(d) Existing Funding Agreements.—Each Indian tribe participating in the Tribal Self-Governance Demonstration Project established under title III on the date of enactment of this title shall have the option at any time thereafter to—

(1) retain its Tribal Self-Governance Demonstration Project compact (in whole or in part) as it existed on the date such compact was executed, or

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

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

SEC. 506. GENERAL PROVISIONS.

(a) Applicability.—The provisions of this section shall apply to compacts and funding agreements negotiated under this title and shall include provisions that reflect such requirements in a compact or funding agreement.

(b) Conflicts of Interest.—Indian tribes participating in self-governance under this title shall ensure that internal measures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

(c) Audits.—(1) Single Agency Audit Act.—The provisions of chapter 75 of title 2 U.S.C., requiring a single agency audit report shall apply to funding agreements under this title.

(2) Cost Principles.—An Indian tribe shall apply cost principles under the applicable Office of Management and Budget Circular, except as modified by section 106 or other provisions of law, or by any exemptions to applicable Office of Management and Budget Circulars subsequently granted by Office of Management and Budget. No other accounting or legal recordkeeping system requirements beyond the requirements of this subsection shall be subject to the provisions of section 106(f).

(3) Records.—In General.—Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of the Indian tribe shall not be considered Federal records for purposes of chapter 75 of title 5, United States Code.

(2) Recordkeeping System.—The Indian tribe shall maintain a recordkeeping system, and shall, within 30 days advance notice, provide the Secretary with reasonable access to such records to enable the Department of Health and Human Services to meet its minimum legal recordkeeping system requirements under sections 3101 through 3106 of title 44, United States Code.

(3) Redesign and Consolidation.—An Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement under section 505 and reallocate funds to such programs, services, functions, and activities (or portions thereof) in any manner which the Indian tribe deems to be in the best interest of the health and welfare of the Indian people being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under Federal law.

(4) Retrocession.—An Indian tribe may retrocede, fully or partially, to the Secretary provisions for services, functions, or activities (or portions thereof) included in a compact or funding agreement. Unless the Indian tribe rescinds the request for retrocession, such retrocession will become effective within the time frame specified by the parties in the compact or funding agreement. In the absence of such a specification, such retrocession shall become effective on—

(i) the earlier of—

(A) one year from the date of submission of such request; or

(B) such date as may be mutually agreed by the Secretary and the Indian tribe.

(ii) (1) Process.—An Indian tribe may fully or partially withdraw from a participating

(iii) (1)
INTER-TRIBAL CONSORTIUM OR TRIBAL ORGANIZATION ITS SHARE OF ANY PROGRAM, SERVICE, OR ACTIVITY (OR PORTIONS THEREOF) INCLUDED IN A COMPACT OR FUNDING AGREEMENT. SUCH WITHDRAWAL SHALL BE EFFECTIVE AT THE END OF THE TIME PERIOD SPECIFIED IN THE PROVISION, AS DETERMINED BY THE SECRETARY IN CONSONANCE WITH THE LEGAL RIGHTS OF THE INDIAN TRIBE AND OTHER PARTIES AFFECTED THEREBY.

(2) DISTRIBUTION OF FUNDS.—When an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I or a compact or funding agreement under title II proposes to withdraw all or partially withdraw from a participating tribe or tribal organization, the withdrawing tribe shall be entitled to its tribal share of funds for the purposes specified in subsection (b). The funds shall be transferred to the Indian tribe or tribal organization that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, tribal organization, or inter-tribal organization.

(3) REGAINING MATURE CONTRACT STATUS.—If an Indian tribe elects to operate under a self-determination contract that is a compact or funding agreement under this title, it shall be entitled to a new contract under section 503, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

SEC. 507. TRANSFER OF FUNDS.

(1) MANDATORY PROVISIONS.—(U) HEALTH STATUS REPORTS.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Indian tribe to report on health status and service delivery on a timely basis.

(2) ASSUMPTION OF PROGRAMS.—(A) Compacts and funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Secretary to assume operation of a program, service, function, or activity (or portions thereof) and associated funding if there is a specific finding relative to that program, service, function, or activity (or portion thereof) of—

(I) imminent endangerment of the public health caused by an omission of the Indian tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

(II) gross mismanagement with respect to a compact or funding agreement if—

(i) the Secretary makes a finding that gross mismanagement has occurred, and

(ii) the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence that the Indian tribe is not eligible to participate in self-governance under section 503; and

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

(A) the Indian tribe; or

(B) an administrative judge.

SEC. 508. TRANSFER OF FUNDS.

(1) MANDATORY PROVISIONS.—(U) HEALTH STATUS REPORTS.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Indian tribe to report on health status and service delivery on a timely basis.

(2) ASSUMPTION OF PROGRAMS.—(A) Compacts and funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Secretary to assume operation of a program, service, function, or activity (or portions thereof) and associated funding if there is a specific finding relative to that program, service, function, or activity (or portion thereof) of—

(I) imminent endangerment of the public health caused by an omission of the Indian tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

(II) gross mismanagement with respect to a compact or funding agreement if—

(i) the Secretary makes a finding that gross mismanagement has occurred, and

(ii) the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence that the Indian tribe is not eligible to participate in self-governance under section 503;
resolutions. In any instance where a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year, or requires semiannual or other periodic transfers to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

(b) Prohibitions. The Secretary is hereby authorized to employ, upon tribal request, multiyear funding agreements, and references in this title to funding agreements shall include such multiyear agreements.

(c) Amount of Funding. — The Secretary shall provide funds under a funding agreement in this title in an amount equal to the amount that the Indian tribe would have been entitled to receive under self-determination contracts under this Act, including amounts for direct program costs specified under section 106(a)(1) and amounts for contract support costs specified under sections 106(a)(2), (a)(3), (a)(5), and (a)(6), including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe without regard to the organizational level within the Department where such functions are carried out.

(d) Prohibitions. — The Secretary is expressly and explicitly prohibited from—

(I) failing or refusing to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this Act, except as required by Federal law;

(II) withholding portions of such funds for transfers over a period of years; and

(III) reducing the amount of funds required herein—

(A) to make funding available for self-governance monitoring or administration by the Secretary;

(B) in subsequent years, except pursuant to—

(i) a reduction in appropriations from the previous fiscal year for the program or function to be included in a compact or funding agreement;

(ii) a congressional directive in legislation or accompanying report;

(iii) a tribal authorization;

(iv) a change in the amount of pass-through funds required to the terms of the funding agreement; or

(v) completion of a project, activity, or program for which such funds were provided;

(C) withholding, adjusting, or ceilings Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under this Act; or

(D) to pay for costs of Federal personnel displaced by self-determination contracts under this Act or self-governance, except that such funds may be increased by the Secretary to carry out this Act or as provided in section 105(c)(2).

(e) Other Resources. — In the event an Indian tribe fails to negotiate out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies, services available from Federal warehouse facilities, emergency response, lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles) or other Federal facilities (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), including such personnel, supplies, or resources to the Indian tribe.

(f) Reimbursement to Indian Health Service. — With respect to functions transferred by the Indian Health Service to an Indian tribe, the Indian Health Service is authorized to participate in the Indian tribe, on a reimbursable basis, including payment in advance with subsequent adjustment, and the reimbursements received therefrom are transferred from the Indian tribe pursuant to this title, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

(g) Prompt Payment Act. — Chapter 39 of title 31, United States Code, shall apply to Indian tribes and to a compact or funding agreement authorized under this title.

(h) Interest or Other Income on Transfers. — An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or health purposes and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent year if the interest is transferred under this Act shall be managed using the prudent investment standard.

(i) Carryover of Funds. — All funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from one year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

(j) Program Income. — All Medicare, Medicaid, or other program income earned by an Indian tribe shall be treated as supplemental funding to the funding agreement and the Indian tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) provides otherwise for Medicare and Medicaid receivables, and such funds shall not result in any offset against the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

(k) Limitation of Costs. — An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of such transfers of funds as transferred under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

SEC. 509. CONSTRUCTION PROJECTS.

(a) In General. — Indian tribes participating in tribal self-governance may carry out construction projects under this Act and the Secretary may notify any tribe that it would apply if the Secretary were to undertake a construction project, by adopting a resolution (1) designating a certifying officer to be responsible to the Indian tribe for the status of a responsible Federal official under such laws, and (2) accepting the jurisdiction of the Federal court for the purpose of enforcing the responsibilities of the responsible Federal official under such environmental laws.

(b) Construction Project Proposals. — Construction project proposals shall be negotiated pursuant to the statutory process in section 105(m) and resulting construction project agreements shall be incorporated into funding agreements as addenda.

(c) Codes and Standards. — The Indian tribe shall agree with the Secretary to specify appropriate design standards and specify appropriate building codes and architectural engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

(d) Responsibility for Completion. — The Indian tribe shall assume responsibility for completion of the construction project in accordance with the negotiated construction project agreement.

(e) Funding. — Funding for construction projects carried out under this title shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance payments shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished prior to advance payments, and the total prior payments. The Secretary shall be associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

(f) Approval. — The Secretary shall have at least one opportunity to approve project planning and design documents prepared by the Indian tribe in conjunction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually. The Secretary may conduct on-site project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

(g) Wages. — All laborers and mechanics employed by contractors and subcontractors in the construction, alteration, or repair, including painting or decorating of building or other facilities in connection with construction projects undertaken by self-governance Indian tribes under this Act, shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (40 Stat. 949). With respect to laborers and mechanics employed by contractors and subcontractors in connection with construction projects undertaken by self-governance Indian tribes under this Act, shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (40 Stat. 949).

(h) Application of Other Laws. — Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction project carried out under this Act.

SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULATIONS.

Notwithstanding any other provision of law, nothing in this Act shall apply to any construction project carried out under this Act.
title shall not be subject to Federal contracting or cooperative agreement laws and regulations (including Executive orders and the Secretary’s regulations), except to the extent such laws expressly apply to Indian tribes.

SEC. 511. CIVIL ACTIONS.

(a) CONTRACT DEFINED.—For the purposes of section 2103 of the Revised Statutes of the United States Code (25 U.S.C. 81) and section 16 of the Act of June 26, 1936 (25 U.S.C. 476), shall not apply to attorney and other professional fees and funds contributed to the Indian tribe for any purpose for which a compact or funding agreement is authorized under this title.

(b) APPLICABILITY OF CERTAIN LAWS.—Section 2(2) of the Act of July 5, 1935 (49 Stat. 105), section 2103 of the Revised Statutes of the United States Code (25 U.S.C. 81), and section 16 of the Act of June 26, 1936 (25 U.S.C. 476), shall apply only if the agreement entered into under this title is for the purpose of facilitating and supplementing Federal funds for purposes of meeting matching or cost-participation requirements.


SEC. 512. FACILITATION.

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

(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds contributed thereto, in the agreements entered into under this section;

(2) the implementation of compacts and funding agreements entered into under this section; and

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

(b) REGULATION WAIVER.—

(1) An Indian tribe may submit a written request to waive application of a regulation promulgated under this Act for a compact or funding agreement entered into under this title, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

(2) Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation promulgated under this Act, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only on the basis of a finding that the regulation that is identified in the regulation governing the regulation may not be waived because such waiver is prohibited by Federal law. A failure to approve or deny the requested waiver in writing not later than 90 days after receipt shall be deemed an approval of such request. The Secretary’s decision shall be final for the Department.

(c) TO FEDERAL PROPERTY.—In connection with any compact or funding agreement executed pursuant to this title or an agreement negotiated under the Tribal Self-Governance Amendments of 1998, upon the request of an Indian tribe, the Secretary—

(1) shall permit an Indian tribe to use existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary’s jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the tribe for their use and maintenance;

(2) may donate to an Indian tribe title to any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

(3) the implementation of compacts and funding agreements entered into under this title shall not be subject to Federal contracting or cooperative agreement laws and regulations (including Executive orders and the Secretary’s regulations), except to the extent such laws expressly apply to Indian tribes.

SEC. 513. BUDGET REQUEST.

(a) IN GENERAL.—The President shall identify in the annual budget request submitted to the Congress under section 1105 of title 31, United States Code, all funds necessary to fully fund all funding agreements authorized under this title, including funds authorized pursuant to section 2103 of the Revised Statutes of the United States Code (25 U.S.C. 81) and section 16 of the Act of June 26, 1936 (25 U.S.C. 476), and funds appropriated under section 505. Nothing in this provision shall be construed to authorize the Secretary to reduce any amount of funds controlled by any component of the Indian Health Service (including funds authorized pursuant to any other Federal law) for inclusion in other self-governance compacts or funding agreements.

(b) REPORT ON FUND DISTRIBUTION METHOD.—Not later than 180 days after the date of enactment of this title, the Secretary shall, after consultation with Indian tribes, submit a written report to the Committee on Resources of the House of Representatives and the Committee on Indian Affairs of the Senate which describes the methods and procedures to be used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds controlled by any other Federal agency) for inclusion in self-governance compacts or funding agreements.

SEC. 514. REPORTS.

(a) ANNUAL REPORT.—Not later than January 1 of each year after the date of enactment of this title, the Secretary shall provide an annual report to the Committee on Indian Affairs of the House of Representatives and the Committee on Indian Affairs of the Senate a written report regarding the administration of this title. Such report shall include a detailed analysis of the level of need being presently funded or unfunded for each Indian tribe and tribe group either directly by the Federal Government under self-determination contracts under title I, or under compacts and funding agreements authorized under this Act. In compiling reports under this section, the Secretary may not impose any reporting requirements on participating Indian tribes or tribal organizations, not otherwise provided in this Act.

(b) GENERAL.—Nothing in any other Federal law shall be construed to limit or reduce in any way the funding for any program, project, or activity serving an Indian tribe under this title or any other applicable Federal law. Any Indian tribe that alleges that a compact or funding agreement is in violation of this section may apply the provisions of section 1108 for the recovery of any such sums.
tribe carrying out a self-determination contract, compact, annual funding agreement, grant, or cooperative agreement under this Act shall not be considered an employer.

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

8. SEC. 516. APPLICATION OF OTHER SECTIONS OF THE ACT.

(a) MANDATORY APPLICATION.—All provisions of sections 5(b), 6, 7, 102(c) and (d), 104, 105(k) and (l), 106(a) through (k), and 111 of this Act and section 314 of Public Law 101-512 (covering the Federal Tribal Health Care Arrangements Act), to the extent not in conflict with this title, shall apply to compacts and funding agreements authorized by this title.

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

SEC. 517. REGULATIONS.

(a) IN GENERAL.—

(1) Not later than 90 days after the date of enactment of this title, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out this title.

(2) Proposed regulations to implement this title shall be published in the Federal Register by the Secretary no later than 1 year after the date of enactment of this title.

(3) The authority to promulgate regulations under this title shall expire 21 months after the date of enactment of this title.

(b) COMMITTEE AND A negotiated rulemaking committee established pursuant to section 565 of title 5, United States Code, to carry out this section shall have as its members only Indian tribe representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this Act and shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

(c) ADAPTATION OF PROCEDURES.—The Secretary shall submit the negotiated rulemaking procedures to the unique context of self-governance government-to-government relationship between the United States and Indian tribes.

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

(e) EFFECT OF CIRCULARS, POLICIES, MANUALS, AND RULES.—Unless the Secretary and the participating Indian tribe expressly agree to such an agreement, the participating Indian tribe shall not be subject to any circular, policy, manual, guidance, or rule adopted by the Indian Health Service and the eligibility provisions of section 103(g).

SEC. 518. GUIDANCES, AND RULES. —Unless the Secretary and the participating Indian tribe expressly agree to such an agreement, the participating Indian tribe shall not be subject to any circular, policy, manual, guidance, or rule adopted by the Indian Health Service and the eligibility provisions of section 103(g).

SEC. 519. APPEALS. —(a) STUDY PROTOCOL.

The Secretary shall conduct a study to determine the feasibility a Tribal Self-Governance Demonstration Project for appropriate programs, services, functions, and activities (or portions thereof) of the agency.

(b) CONSIDERATIONS. —When conducting the study, the Secretary shall consider:

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

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

(3) strategies for implementing such a demonstration project;

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

(5) methods to assure quality and accountability in such a demonstration project; and

(6) such other issues that may be determined by the Secretary or developed through consultation pursuant to section 602.

(c) REPORT. —Not later than 18 months after the date of enactment of this title, the Secretary shall submit a report to the Committee on Resources of the House of Representatives of the Senate. The report shall contain:

(1) the results of the study;

(2) a list of programs, services, functions, and activities (or portions thereof) within the agency which it would be feasible to include in a Tribal Self-Governance Demonstration Project;

(3) a list of programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) which could be included in a Tribal Self-Governance Demonstration Project without amending statutory, regulatory, or other impediments to implementation of such a demonstration project.

(4) a list of legislative actions required in order to include those programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) but not included in the list provided pursuant to paragraph (3) in a Tribal Self-Governance Demonstration Project;

(5) any separate views of tribes and other entities consulted pursuant to section 602 related to the information provided pursuant to paragraph (1) through (4).

SEC. 602. CONSULTATION.

(a) STUDY PROTOCOL.

The Secretary shall consult with Indian tribes to determine a protocol for consultation pursuant to section 602.

(b) IN GENERAL.—For purposes of this title, the Secretary may use definitions provided in titles IV, V, and VI.

(c) AGENCY.—For purposes of this title, the term 'agency' shall mean any agency or other organizational unit of the Department of Health and Human Services, other than the Indian Health Service.

(d) AUTHORIZATION OF APPOINTMENTS.—There are authorized to be appropriated for years 1999 and 2000 such sums as may be necessary to carry out this title. Such sums shall remain available until expended.

SEC. 5. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS.

(a) BURDEN OF PROOF IN DISTRICT COURT ACTIONS.—Section 102(e)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j)(e)(1)) is amended by inserting after 'subsection (b)(3)' the following: "or any civil action conducted pursuant to section 1313(b)'.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any proceedings commenced after October 25, 1994.

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

Section 105(k) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450k) is amended by striking "deemed an executive agency" and inserting "deemed an executive agency and part of the Indian Health Service".

Sec. 105(k).—At the request of an Indian tribe, the Secretary shall enter into an agreement for the acquisition, on behalf of the Indian tribe, of goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.

SEC. 7. PATIENT RECORDS.

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

(4) At the option of an Indian tribe or tribal organization, Indian patient records may be deemed to be Federal records under the Federal Records Act of 1950 for the limited purposes of making such records eligible for preservation and protection by Federal agencies to the same extent and in the same manner as other Department of Health and Human Services patient records.

SEC. 8. REPEAL.

(a) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 note) is hereby repealed.
Mr. Speaker, let me briefly explain what the bill does: the bill, the Tribal Self-Governance Amendments Act of 1998, would create two new titles in the 1975 Indian Self-Determination and Education Assistance Act. The 1975 act allows Indian tribes to contract for or take over the administration and operation of certain Federal programs which provide service to Indian tribes. Subsequent amendments to the 1975 Act created title III of the act, which provided for a self-governance demonstration project that allows for large-scale tribal self-governance compacts and funding agreements on a demonstration basis.

Mr. Speaker, this bill is important especially for the Indian communities, but more importantly, the responsibility this Congress should take to provide for the needs of the Indian nations.

I also want to, again, commend my good friend, the gentleman from Alaska (Mr. Young) for his work on solving the problem that we have had over the years in giving proper recognition to Indian tribes. I want to make a note of this to my colleagues. There is nowhere in the current bill that provides better streamlining of the Indian community if they were to apply to the Federal Government that gaming of any form is ever at all involved. I want to reassure my colleagues that that is the basis of that bill that has taken this Member over 6 years to help develop with the administration, with the staffs, with the majority party. Members as well as the members of the committee on this side of the aisle.

So, again, I plead with my colleagues, that bill to better streamline the recognition of Indian tribes, given the fact that California was not even a State when in the current bill that provides for a self-governance demonstration project that allows for large-scale tribal self-governance compacts and funding agreements on a demonstration basis.

Mr. Speaker, I reserve the balance of my time.

Mr. Speaker, I yield back the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2742) to provide for the transfer of public lands to certain California Indian Tribes, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CALIFORNIA INDIAN LAND TRANSFER ACT

Mr. YOUNG of Alaska. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2742) to provide for the transfer of public lands to certain California Indian Tribes, as amended.

The Clerk read as follows:

H.R. 2742

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. SHORT TITLE.

This Act may be cited as the "California Indian Land Transfer Act".

SECTION 2. LANDS HELD IN TRUST FOR VARIOUS TRIBES OF CALIFORNIA INDIGENS.

(a) In General. Subject to valid existing rights, all right, title, and interest of the United States in and to the lands, including improvements and appurtenances, described in a paragraph of subsection (b) in connection with the respective tribe, band, or group of Indians named in such paragraph are hereby declared to be held in trust by the United States for the benefit of such tribe, band, or group.

The lands described in this subsection, comprising approximately 561.69 acres, and the respective tribe, band, or group, are as follows:

(1) Pit River Tribe. Lands to be held in trust for the Pit River Tribe are comprised of approximately 561.69 acres described as follows:

Mount Diablo Base and Meridian Township 42 North, Range 13 East

Section 3: 5½ NW¼, NW¼ NW¼, 120 acres.

Township 43 North, Range 13 East

Section 1: N½ NE¼, 80 acres.

Section 2: S½ SE¼, 4 acres.

Section 5: SE¼ NW¼, 4 acres.

Section 6: SW¼ SE¼, 4 acres.

Section 27: SE¼ NW¼, 4 acres.

And where is fairness, Mr. Speaker, if I were to elaborate a little further on this issue? But the fact that this bill should be approved, again I want to commend the gentleman from Alaska. Give tribute and credence to the fact that this recognition process has failed miserably, and we should vote in support of H.R. 1154.

Mr. Speaker, I yield back the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield back the balance of my time.