TRIBAL SELF-GOVERNANCE AMENDMENTS OF 1998

SPEECH OF
HON. GEORGE MILLER
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Monday, October 5, 1998

Mr. MILLER of California. Mr. Speaker, I am proud to have sponsored this bill, the Tribal Self-Governance Amendments of 1998, which I believe will mark yet another milestone in the history of Indian self-determination. This major legislation is the product of more than two years of hard work and consultation with Indian tribes and the Administration. We have worked diligently with the tribes and the Department of Health and Human Services to make this bill as fair as possible. I would like to extend my appreciation to the tribal leaders, their representatives, and the Departmental staff who have made passage of this bill possible.

It is important to note that subsequent to the full committee mark up that occurred this spring, the tribes and the Department were able to work out additional differences. Thus there are several changes that I want to highlight. We were able to come to agreement on issues regarding reassumption, regulation waiver, trial de novo, rejection of final offer, and the creation of a new title VI to carry out the non-IHS demonstration project study.

Let me briefly explain what this bill does. H.R. 1833, 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 services 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 of Indian-related programs outside the IHS but within the Department of Health and Human Services on a demonstration project basis.

Although this issue was not addressed in this legislation, I want to express my continued concern about the poor labor relations at various Indian Health Service facilities throughout the West, but particularly the IHS facilities at Sacaton and Owyhee, Nevada. Contrary to both the law and agency decisions, the IHS has refused to complete its obligation to meet and negotiate with the Laborers’ International Union which represents workers at these facilities. I also understand that the IHS continues to commit unfair labor practices. I want to send a strong message to the IHS that I will continue to monitor labor relations at IHS facilities and that continued indifference to the law and agency decisions will not be ignored by Congress. I understand that the Administration is aware of my concerns and has agreed to correct these issues in the very near future.

I firmly believe that this bill advances the principle focus of the Self-Governance program—to remove needless and sometimes harmful layers of federal bureaucracy that dictate Indian affairs. By giving tribes direct control over federal programs run for their benefit and making them directly accountable to their members, we are enabling Indian tribes to run programs more efficiently and more innovatively than federal officials have in the past. And, allowing tribes to run these programs further the Congressional policy of strengthening and promoting tribal governments.

The Self-Governance program recognizes that Indian tribes care for the health, safety, and welfare of their own members as well as that of non-Indians who either live on their reservations or conduct business with the tribes and are thus committed to safe and fair working conditions and policies.

A comprehensive description of the substitute follows. I strongly urge my colleagues to pass this legislation.

SECTION 3. DECLARATION OF POLICY

This section provides that it is Congress’ policy to permanently establish and implement tribal self-governance within the Department of Health and Human Services with the full cooperation of its agencies. Among the key policy objectives Congress seeks to achieve through the self-governance program are to (1) maintain and continue the United States’ unique relationship with Indian tribes; (2) allow Indian tribes the flexibility to choose whether they wish to participate in self-governance; (3) ensure the continuation and fulfillment of the United States’ trust responsibility and other responsibilities towards Indian tribes that are contained in treaties and other laws; (4) permit a transition to tribal control and authority over programs, functions, services, or activities (or portions thereof); and (5) provide a corresponding parallel reduction in the Federal bureaucracy.

SECTION 4. TRIBAL SELF GOVERNANCE

This section sets out the substantive provisions of the Self-Governance program within the Indian Health Service and authorizes a feasibility study of the applicability of Self-Governance to other Departmental agencies by adding Titles V and VI to the Indian Self-Determination and Education Assistance Act.

SECTION 505. ESTABLISHMENT

This provision directs the Secretary of the Indian Health Service to establish a permanent Tribal Self-Governance Program in the Indian Health Service.

SECTION 502. DEFINITIONS

This provision sets forth the short title, “The Tribal Self-Governance Act Amendments of 1998.”
intend this legislation to preclude agreements between self-governance tribes and the Indian Health Service for carrying out sanitary facilities construction projects pursuant to the Indian Sanitation Facilities Act of 1974. The definition of "Memorandum of Agreement" as an addendum to a Title V Annual Funding Agreement as authorized by Section 7(a)(3) of Public Law 88-121, 73 Stat. 257 (42 U.S.C. § 2004(a)).

Subsection (a)(2) provides that a "construction and agreement" is one between the Secretary and the Indian tribe that, at a minimum, establishes start and completion dates, scope of work and standards, identifies participants involved, and addresses financial considerations, identifies the owner and maintenance entity of the proposed work, provides a budget, provides a payment process, and establishes a duration of the construction project agreement.

Subsection (a)(3) defines "inherent federal functions" as those functions which cannot be legally delegated to Indian tribes. This definition states the obvious. Inherent federal functions are functions which the Executive Branch cannot by law delegate to other branches of government, or non-governmental entities. The Committee's definition is consistent with the Department of Interior's memorandum of August 7, 1996 entitled "Inherently Federal Functions under the Tribal Self-Governance Act of 1994." The Committee's definition is expressed in order to provide flexibility as to allow the Secretary and the tribes to come to agreement on which functions are inherently federal on a case-by-case basis. It is important to note that, in the tribes' procurement context, there is another factor the Committee has considered—when the federal government is returning tribal government functions that are inherent in tribes governmental status such as those possessed by tribes before the establishment of the federal Indian bureaucracy, the scope of allowable transfers is broader than in the transfer of federal government powers to private or other governmental entities.

Subsection (a)(4) defines "inter-tribal consortium." The Committee notes that during the Title III Demonstration Project the HS authorized Indian tribes to sign a compact with the state to form a consortium, such agreement as the compact with the state to form the Alaska Tribal Health Compact, to participate in the Project and that participation has had great success. The definition is intended to include "tribal organizations" as that term is defined in Section 4(i) of the Indian Self-Determination Act, Pub. L. No. 93-638, which authorizes the Secretary to enter into contracts with those involved in the Alaska Tribal Health Consortium. It is the Committee's intent that inter-tribal consortia and tribal organizations shall count as one tribe for purposes of the 50 tribe per year limitation contained in section 503(a).

Subsection (a)(5) defines "gross mismanagement." The Committee intends that there be an immunity of the tribe, therefore the Committee defines gross mismanagement as not being the same as simply a failure to meet a performance standard, in this case gross mismanagement, is also an appropriate grounds for re-assumption. Gross mismanagement is defined as the lack of a clear, and consistent, monitoring violation of compact, funding agreement, regulatory or statutory requirements related to the transfer of Self-Governance funds to the tribe, a significant variance in the accounting and utilization of funds to the tribe's Self-Governance program. The Committee's definition of gross mismanagement is narrowly tailored and will require a high degree of proof by the Secretary. The Committee is well aware of tribal concerns and agrees that the inclusion of this provision would not be acceptable by the Secretary, or other Indian tribes. The Committee expects to amend the Act in such a manner as to needlessly impose monitoring and auditing requirements that hinder the efficient and effective operations of federal programs. Intrusive and overburdening monitoring and auditing activities are antithetical to the goals of Self-Governance.

Subsection (a)(6) defines "tribal shares." This definition is consistent with the Title IV Rule-making Committee's determination that residual funds are those "necessary to carry on the inherent federal functions that must be performed by federal officials if all tribes assume responsibilities for all BIA programs." Fed. Reg. Vol. 63, No. 29, 7235, (February 17, 1998) (25 CFR Sec. 1000.91). All funds appropriated under the Indian Self-Determination and Education Assistance Act are either tribal shares or Agency residual.

Subsection (a)(7) defines "Secretary." The Secretary of Health and Human Services. Subsection (a)(8) defines "Self-Governance." The Committee states the same as the definition provided in the permanent program.

SECTION 503. SELECTION OF PARTICIPATING TRIBES

This section describes the eligibility criteria that must be satisfied by any Indian tribe interested in participating.

(a) Continuing Participation. All tribes that have participated in the Title V Section 503 compact, and any Indian tribe interested in participating, may, at the option of the Indian tribe, enter into a written agreement with the Secretary which shall provide that the Secretary may, at the option of the Indian tribe, enter into a written agreement with the Secretary, which shall provide that the title V Tribal Self-Governance Demonstration Project under Title III of the Indian Self-Determination and Education Assistance Act may elect to participate in the permanent Self-Governance program. The Indian tribe may, at the option of the Secretary, elect to participate in the permanent Self-Governance program. The Indian tribe may, at the option of the Secretary, elect to participate in the permanent Self-Governance program.

(b) Additional Participants. (1) This section allows an Indian tribe to participate in two 5-year periods, and will require a high degree of proof by the Secretary. The Committee is well aware of tribal concerns and agrees that the inclusion of this provision would not be acceptable by the Secretary, or other Indian tribes. The Committee expects to amend the Act in such a manner as to needlessly impose monitoring and auditing requirements that hinder the efficient and effective operations of federal programs. Intrusive and overburdening monitoring and auditing activities are antithetical to the goals of Self-Governance.

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SECTION 504. COMPACTS

This section authorizes Indian tribes to negotiate compacts with the Secretary and identifies generally the contents of compacts. Similar to section 503(b)(2), this section may only be amended by agreement of both parties.

(a) Compact Required. The Secretary is required to negotiate and enter into a written compact consistent with the trust responsibility, treaty obligations and the government-to-government relations between the United States and each participating tribe.

(b) Contents. This section requires that Compacts state the terms of the government-to-government relationship between the Indian Tribe and the United States. Both parties may only be amended by agreement of both parties.

(c) Existing Compacts. Upon enactment of Title V, Indian tribes have the option of replacing their existing compacts, or any portion of the Compacts that do not contradict the provisions of Title V.

(d) Term and Effective Date. The date of agreement and execution of the Compact is generally the effective date of a Compact, unless otherwise agreed to by the parties. A Compact will remain in effect as long as permitted by federal law or until terminated by written agreement of the parties, or by retrocession or re-assembly.

SECTION 505. FUNDING AGREEMENTS

This section authorizes Indian tribes to negotiate funding agreements with the Secretary and identifies generally the contents of those agreements.

(a) Funding Agreement Required. The Secretary is required to negotiate and enter into a written funding agreement consistent with the trust responsibility, treaty obligations and the government-to-government relationship between the United States and each participating tribe.

(b) Contents. An Indian tribe may include in an agreement all programs, functions, services, or activities (or portion thereof) that it is authorized to carry out under Title I of the Act. Funding agreements may, at the option of the Indian tribe, authorize the tribe to plan and carry out all programs, functions, services, or activities (or portion thereof) administered by the IHS...
that are carried out for the benefit of Indians because of their status as Indians or where Indian tribes or Indian beneficiaries are the primary or significant beneficiaries, as set forth in such program, function, service, or activity (or portion thereof) included in a funding agreement, an Indian tribe is entitled to receive its full tribal share of funds. This section contains the procedures for calculating the tribe’s recurring funding amounts and for transfer of the funds in a predictable and consistent manner over a specific period. The tribe is required to receive funding annually only if there are changes in the level of funds appropriated by Congress. Non-recurring funds are not included and must be requested in advance. If the tribe’s final offer is rejected from the Secretary, the tribe’s share of funds must be removed from the funding agreement of the participating organization or inter-tribal consortium and included in the withdrawing tribe’s agreement or contract. If the withdrawing tribe is to receive services directly from the Secretary, the tribe’s share of funds must be transferred to the Secretary to provide services. Finally, an Indian tribe that chooses to terminate its participation in the self-governance program may, at its option, continue to receive services, functions, or activities, (or portions thereof) in a Title I contract of Self-Governance funding-agreement and retain its status as a contractor.

(a) Applicability. The provisions in this section may, at the tribe’s option, be included in a Compact or funding agreement negotiated under Title V.

(b) Conflicts of Interest. Indian tribes are to assure that internal measures are in place to address conflicts of interest in the administration of programs, functions, services, or activities, (or portions thereof).

(c) Audits. The Single Agency Audit Act applies to Title V funding agreements. Indian tribes are required to apply cost principles developed under negotiated rulemaking, as modified by section 106 of Title I or by any exemptions that may be applicable to future OMB Circulars. No other audit or accounting standards are required. Claims against Indian tribes by the Federal Government based on any audit of funds received under a Title V funding agreement are subject to the provisions of section 304(f) of Title I.

(d) Records. An Indian tribe’s records are not considered federal records for purposes of the Federal Paperwork Reduction Act, as otherwise stated in the Compact or funding agreement. Indian tribes are required to maintain a record keeping system and, upon reasonable request, provide the Secretary with reasonable access to records to enable HHS to meet its minimum legal record keeping requirements under the Federal Records Act. Indian tribes that redesign or consolidate programs, functions, services, or activities, (or portions thereof) and reallocate or redirect funds in accordance with their authorizing legislation must be trusted to do so in the best interest of the Indian community. Any redesign or consolidation, however, must not have the effect of unfairly denying eligibility to people otherwise eligible to be served under federal law.

(e) Subsequent Funding Agreements. Each funding agreement remains in full force and effect unless the Secretary receives notice from the Indian tribe that it will no longer operate one or more of the programs, functions, services, or activities, (or portions thereof) to be performed by the Indian tribe. A new funding agreement is signed to each program, function, service, or activity (or portion thereof), the funds to be transferred, the time and method of payment and other provisions that the parties agree to.

(f) Existing Funding Agreements. Upon enactment of Title V, Tribes may either retain the funding agreement or participate in the new Federal Indian Health Service on a true government-to-government basis. The Committee believes the retroactive provision is fair because of the impact that the act or omission of the federal government endangers the health and welfare of tribal members.

(g) Stable Base Funding. An Indian tribe may include a stable base budget in its funding agreement, as developed under negotiated rulemaking to assure that no act or omission of the Federal Government endangers the health and welfare of tribal members.

(h) Nonduplication. This section provides that a tribe operating programs under a Self-Governance compact may not contract under Title I ("GAO contract") for the same programs.
firms that the protection of the federal trust responsibility to Indian tribes and individuals is a key element of Self Governance. The ultimate and legal responsibility for the management of tribal trust resources resides with the United States as Trustee. The Committee believes that health care is a trust resource consistent with federal trust responsibilities and continues the practice of permitting substantial tribal management of its trust resources provided that tribal activities do not replace the trustee’s specific responsibilities. Section 507(a)(2) (reassumption) with its concept of imminent endangerment of the public health provides guidance in defining the Secretary’s trust obligation in the health context.

(h) Decisionmaker. Final agency action is a decision by either an official in the Department at any higher organizational level than the initial decision maker or an administrative law judge. Subparagraph (h)(2) is included to assure that the persons deciding an administrative appeal are not the same individuals who made the initial decision to reject a tribe’s “final offer.”

SECTION 509. TRANSFER OF FUNDS

(a) General. The Secretary is required to transfer all funds provided for in a funding agreement, pursuant to Section 509(c) below. Funds transferred for periods covered by continuing resolutions adopted by Congress, to the extent permitted by such resolutions. When a funding agreement expires, the Secretary shall provide, a number of months prior to expiration, to the Secretary for review, a final offer (``final offer’’) for approval. The Secretary must also offer assistance to Indian beneficiaries, with the equally important goal of fostering maximum tribal self-determination in administering health care programs transferred under Title V. Where there is no final offer, the Secretary is to utilize the funding agreement in lieu of an administrative hearing.

(b) Final Offer. The Secretary is required to provide an Indian tribe with the same funding, including indirect costs (including indirect costs that are not available from the Secretary but are reasonably necessary to operate the program), for any program transferred under the Act in lieu of an administrative hearing. The bill states that the offer is the subject of the offer is an inherent federal trustee’s specific legal responsibilities. Section 507(a)(2) (reassumption) with its concept of imminent endangerment of the public health provides guidance in defining the Secretary’s trust obligation in the health context.

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days, (8) corporate bonds of U.S. Corporations that have Moody's, Standard and Poor's, or Fitch's rating of A or equivalent and where no more than 10% of portfolio at time of purchase is in the securities of any one issuer, (9) dollar denominated short term bonds of the G7 Nations or World Bank only if the yields exceed those of U.S. instruments at equivalent maturity and quality, and where no more than 25% of portfolio at time of purchase is invested in this asset category, (10) properly registered short term obligations of any agency or corporate mutual funds with a safety rating and average fund quality of A or higher, which demonstrate low volatility, and where no more than 10% of portfolio at time of purchase is invested in any one fund.

Carryover of Funds. All funds paid to an Indian tribe under a Compact or funding agreement are "no year" funds and may be spent in the year they are received or in any future fiscal year. Carryover funds are not to reduce the amount of funds that the tribe may receive in subsequent years.

(j) Program Income. All program income (including Medicare/Medicaid) earned by an Indian tribe is supplemental to the funding that is included in its funding agreement. The Secretary may not reduce the amount of funds that the Indian tribe may receive under a Compact or funding agreement for future fiscal years. The Indian tribe may retain such income and spend it in either the current or future years.

(1) Determination of Costs. An Indian tribe is not required to continue performance of a Program, function, service, or activity (or portion thereof) included in a funding agreement or additional funds more funds were provided under the funding agreement. If an Indian tribe believes that the amount of funds transferred is not enough to carry out all of the functions, services, or activities (or portion thereof) for the full year, the Indian tribe may notify the Secretary. If the Secretary does not supply additional funds or additional activities to the tribe, the Indian tribe may suspend performance of the program, function, service, or activity (or portion thereof) until additional funds are provided.

SECTION 509. CONSTRUCTION PROJECTS

(a) General. Indian tribes are authorized to conduct construction projects authorized under this Section. The tribes are to assume full responsibility for the projects, including responsibility for enforcement of all federal, state, and local environmental laws, including the National Historic Preservation Act of 1966 and the National Environmental Policy Act of 1969. A tribe undertaking a construction project must designate a certifying officer to represent the tribe and accept federal court jurisdiction for purposes of the enforcement of federal environmental laws.

(b) Negotiations. This subsection provides that negotiation of construction projects are negotiated pursuant to Section 100(m) of the Act and any project agreements included in the funding agreement as an addendum.

(c) Codes and Standards. The tribes and the IHS may establish national, state, or Indian tribal codes and standards for the construction project. The agreement will be in conformance with nationally accepted standards for comparable projects.

(d) Responsibility for Completion. This subsection provides that the Indian tribe must assume responsibility for the successful completion of the project according to the terms of the construction project agreement.

(e) Funding. This subsection provides that funding of construction projects will be throughout the year, on either biannual or semi-annual basis. Payment amounts will be determined by project schedules, work already completed, and the amount of funds already expended. Flexibility in payment schedules will be maintained by the IHS through contingency funds to take account of circumstances such as weather and supply.

(f) Approval. This subsection allows the Secretary to have at least one opportunity to inspect any proposed design documents or significant amendments to the original scope of work before construction.

The tribe is to provide at least semiannual reports to the Secretary. The Secretary is allowed to conduct semiannual site visits or on another basis if agreed to by the tribe.

(g) Waives. This subsection mirros section 7(a) of the Indian Self-Determination and Education Assistance Act which incorporates Davis-Bacon wage protections for workers.

h) Application of Other Laws. This subsection provides that provisions of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations, and other federal procurement laws and regulations do not apply to construction projects, unless agreed to by the participating tribe.

SECTION 510. FEDERAL PROCUREMENT LAWS AND POLICIES

This section provides that unless otherwise agreed to by the parties, Compacts and funding agreements are not subject to federal contracting or cooperative agreement laws unless an exception is required (agreement may include exceptions to the extent that they are not inconsistent with federal laws), and federal laws applicable to Indian tribes.

Compacts and funding agreements are also not subject to program regulations that apply to the Secretary's operations.

SECTION 511. CIVIL ACTIONS

(a) Contract Defined. The Committee intends that Section 110 of Title I of the Act, which grants tribes access to Federal District Courts and wherever applicable to the Indian tribes, shall apply to this Title.

(b) Applicability of Certain Laws. This subsection provides that Section 805 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 470) shall not apply to attorney and other professional contracts with Self-Governance tribes.

SECTION 512. FACILITATION

(a) Secretarial Interpretation. This section requires the Secretary to interpret all executive orders, regulations and federal laws for a tribe in a manner that will facilitate the inclusion of programs, functions, services or activities (or portions thereof) and funds associated therewith under Title V, implementation of Title V Compacts and funding agreements and the achievement of Tribal health goals and objectives where they are not inconsistent with Federal law. This section reinforces the Secretary's obligation not merely to provide health care services to Native American tribes, but to facilitate the efforts of tribes to manage those programs for the maximum benefit of the tribes' members. The Secretary is authorized to adopt regulations as necessary.

(b) Regulation Waiver. An Indian tribe participating in Self-Governance under Title V may seek a waiver of an applicable Indian Self-Governance Act regulation by submitting a written waiver request to the Secretary. The Secretary has 90 days to respond and a failure to act within that period is deemed an approval. If the request is not acted upon within 90 days, the Secretary is deemed an approval.

(c) Access to Federal Property. This subsection provides that Indian tribes may use federal buildings, hospitals and other facilities, as well as the transfer to tribes of title to excess personal or real property. At the request of an Indian tribe the Secretary is required to permit the Indian tribe to use government-owned real or personal property under the terms and conditions set forth under such terms as the parties may agree to.

The Secretary is required to notify the tribe if any property is under the Secretary's jurisdiction, which the Secretary determines that the tribe will be using the property to administer mental health services.

Title to property furnished by the government or purchased with funds received under a Compact or funding agreement vests in the Indian tribe if it so chooses. Such property also remains eligible for replacement, maintenance or improvement terms as if the United States had title to it. Any property that is worth $5,000 or more at the time of the transfer or reversion may revert to the United States at the option of the Secretary.

(d) Matching or Cost-Participation Requirements. Funds transferred under Compacts and funding agreements are to be considered non-federal funds for purposes of meeting matching or cost participation requirements under federal or non-federal programs.

(e) State Facilitation. This section encourages and authorizes states to enter agreements with tribes that facilitate Title V and other federal laws that benefit Indians and Indian tribes, for example welfare reform. It is designed to provide federal authority so as to remove equal protection objections where states enter into special arrangements with tribes.

The Committee wants to foster enlightened and productive partnerships between state and local governments, on the one hand, and Indian tribes on the other; and, the Committee wants to be sure that states are not privileged by the federal government to undertake such initiatives, as part of the Federal Government's constitutional authority to deal with Indian tribes as political entities. Where states have from time to time been argued might otherwise exist with respect to state action under either state constitutional provisions or other provisions of the Constitution. Many state and tribal governments have undertaken positive initiatives both in health care issues and in natural resource management, and it is the Committee's desire to fully support, authorize and encourage such cooperative efforts.

(f) Rules of Construction. Provisions in Title V and in Compacts and funding agreements shall be liberally construed and ambiguities decided for the benefit of the Indian tribes participating in the program.

SECTION 513. BUDGET REQUEST

(a) The President is required to annually identify in his/her budget all funds needed to fully fund all Title V Compacts and funding agreements. These funds are to be apportioned to the Indian Health Service which will then be transferred to the Office of Tribal Self-Governance. The IHS may not hereafter reduce the funds a tribe is otherwise entitled to receive whether or not such funds have been apportioned to the Office of Tribal Self-Governance.
The Committee has been made aware that the current system for payment and approval of funding and amendments for Annual Funding Agreements for Self-Governance tribes is inefficient and time consuming. In addition, by leaving authority and responsibility for distributions to Area Offices, there have been reported instances of corruption and unexplained disbursement of funds to non-Indian individuals. Any new formula or revision of the current one will be able to achieve the following ends: more accurately gauge the amount of funding flowing directly to Tribes through participation in self-governance; generate savings through decreasing the bureaucratic burden on the payment and approval process in the Indian Health Service; expedite the transfer of funding to tribal operating units; and, aid in the implementation of true government to government relationships and tribal self-determination.

(a) Annual Report. The Secretary is required to submit to Congress on January 1 of every year a written report on the Self-Governance program. The report is to include the level of need presently funded or un-funded by the tribe in the United States that receives services directly from the Secretary, through a Title I contract or in a Title V Compact and funding agreement. The report must include requirements on Indian tribes unless specified in Title V.

(b) Consultation. The Secretary’s report must identify: (1) the costs and benefits of self-governance; (2) all funds related to the Secretary’s provision of services and benefits to self-governance tribes and their members; (3) all funds transferred to self-governance tribes and the corresponding reduction in the federal bureaucracy; (4) the funding formula for individual tribal shares; (5) the amount expended by the Secretary during the preceding fiscal year to carry out inherent federal functions; and (6) a description of the method used to determine tribal shares. The Secretary must be obligated to Indian tribes for comment no less than 30 days prior to its submission to Congress and include the separate views of Indian tribes.

(c) Report on IHS Funds. This section requires the Secretary to consult with Indian tribes and report, within 30 days after Title V is enacted, on funding formulae used to determine tribal shares of funds controlled by IHS. The formulae are to become a part of the annual report to Congress discussed above. This provision is intended to relieve HHS from its obligation under Title V to make all funds controlled by the central office, national, headquarters, or regional offices available to Indian tribes.

(d) Effect. The effect of Title V shall not be limited if regulations are not published.

(e) Effect of Circulars, Policies, Manuals, and Rules. Unless an Indian tribe agrees otherwise in a Compact or funding agreement, no agency circulars, policies, manuals, guidelines or rules adopted by the IHS may be applied to the tribe.
programs outside of the IHS that should be ready to participate in the Self-Governance program at the conclusion of the study and anticipates the introduction of legislation at that time to authorize such participation.

SECTION 602. CONSULTATION
(a) Study Protocol. This Provision requires the Secretary, with the IHS, to determine a protocol for conducting the study. The protocol shall require that the government-to-government relationship between the United States and the Indian tribes forms the basis for the study, that consultations are jointly conducted by the tribes and the Secretary, and that the consultation process allow for input from Indian tribes and other entities who wish to comment.

(b) Conducting Study. This provision requires that when the Secretary conducts the study, she is to consult with Indian tribes, states, counties, municipalities, program beneficiaries, and interested public interest groups.

SECTION 603. DEFINITIONS
(a) This subsection is intended to incorporate into Title VI the definitions used in Title V.

(b) This subsection defines ‘agency’ to mean any agency in the Department of Health and Human Services other than the Indian Health Service.

SECTION 604. AUTHORIZATION OF APPROPRIATIONS
This section authorizes the appropriation of such sums as necessary for fiscal years 1999 and 2000 in order to carry out Title VI.

SECTION 5. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS
(a) This provision amends Section 102(e)(1) of the Act to clarify that the Secretary has the burden of proof in any civil action pursuant to Section 110(a).

(b) The provision provides that the amendment to Section 102(e)(1) set out subsection (a) shall apply to any proceeding commenced after October 25, 1994.

SECTION 6. SPEEDY ACQUISITION OF GOODS AND SERVICES
This section requires the Secretary to enter into agreements for acquisition of goods and services, including pharmaceuticals at the best price and in as fast a manner as is possible, similar to those obtained by agreement by the Veterans Administration.

SECTION 7. PATIENT RECORDS
This section provides that Indian patient records may be deemed to be federal records under the Federal Records Acts in order to allow tribes to store patient records in the Federal Records Center.

SECTION 8. REPEALS
This Section repeals Title III of the Indian Self-Determination and Education Assistance Act which authorizes the Demonstration Project replaced by this Act.

SECTION 9. SAVINGS PROVISION
This section provides that funds already appropriated for Title III of the Indian Self-Determination and Education Assistance Act shall remain available for use under the new Title V.

SECTION 10. EFFECTIVE DATE
This section provides that the Act shall take effect on the date of enactment.