Mr. UDALL of New Mexico. I yield to the gentleman from California.

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman for yielding to me. I simply rise in support of the legislation that he and other Members of the Appropriations Committee have supported and brought to the floor and commend them for their efforts on behalf of the Apache Reservation, due to the fact that the Environmental Protection Agency has found these very serious and serious violations.

I think in fact that this legislation does what is necessary, and that is, to redeem the trust responsibility of the Federal Government to ensure that this Federal water system supplies the tribe with water that is safe and adequate to meet the health, economic, and environmental needs of the Jicarilla Apaches. I want to thank the gentleman for bringing this matter to this floor and urge support of this legislation.

Mr. Speaker, H.R. 3051 directs the Secretary of Interior to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the residents of the Jicarilla Apache Reservation in New Mexico. The study is to be conducted by the Bureau of Reclamation and in consultation and cooperation with the tribe. Further, the bill provides a report be submitted to Congress 1 year after funds are appropriated to carry out the study and authorizes $200,000 to implement the provisions of the legislation.

The Jicarilla Apache Reservation was established in 1867 by executive order and is located in the state of New Mexico, north-central New Mexico. The reservation consists of 742,315 acres and ranges in elevation from 6,500 to 9,000 feet.

The existing municipal water system was built by the Bureau of Indian Affairs (BIA) in 1950, and has been unable to meet the minimum Federal water requirements necessary for discharging wastewater into a public watercourse and has been operating without a Federal discharge permit.

Over the last several years the tribe has spent over $4.5 million in tribal funds for repair and replacement of portions of the system. This patchwork process will not address the overall and comprehensive system as need to be overhauled or replaced. The Federal Government has a trust responsibility to ensure that the Federal water system supplies the tribe with safe and adequate water to meet the health, economic and environmental needs of tribal members.

I want to commend our colleague, Mr. Tom Udall from New Mexico, for his hard work in getting this bill before us today. It is an important first step toward ensuring future health and economic progress for the Jicarilla Apache Tribe. I urge my colleagues to support the bill.

Mr. UDALL of New Mexico. Mr. Speaker, I also, just to finally summarize, here want to thank very much the gentleman from Utah (Mr. Hansen), chairman of the Subcommittee on National Parks and Public Lands, for his hard work on this and for his being able to address this very quickly.

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

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

The SPEAKER pro tempore (Mr. LaHood). The question is on the motion offered by the gentleman from Utah (Mr. Hansen) that the House suspend the rules and pass the bill, H.R. 3051, 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.

TRIBAL SELF-GOVERNANCE AMENDMENTS OF 1999

Mr. HANSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1167) 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. 1167

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

SEC. 1. SHORT TITLE. This Act may be cited as the "Tribal Self-Gov ernance Amendments of 1999".

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-governance, 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 and dominates tribal affairs;

(4) the Tribal Self-Governance Demonstration Project, established under title III of the Indian Self-Determination and Education Assistance Act (125 U.S.C. 450e note) was designed to improve and perpetuate the relationship between the Federal Government and Indian tribes 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; and

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

(B) strengthens the Federal policy of Indian self-determination.
SEC. 502. DEFINITIONS.

It is the policy of Congress to—

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

(2) call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance;

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

(B) to permit each Indian tribe to choose the extent of its participation 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 responsibilities of the United States to Indian tribes and Indian individuals;

(D) to affirm and 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 Indian tribes;

(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, and responsibility 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 for 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) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

(I) to provide Indian tribes with the earliest 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 hereby 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 carry out this program within 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 effort undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement. The term 'construction project' does not mean construction program administration and activities described in paragraphs (1) through (3) of section 4(m), which may otherwise be included in a funding agreement under this title;

(2) the term 'construction project agreement' means an agreement to provide for the planning, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement, but does not mean construction program administration and activities described in paragraphs (1) through (3) of section 4(m), which may otherwise be included in a funding agreement under this title;

(b) AN INDIAN TRIBE.—An Indian tribe which is—

(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 of the Indian tribe or tribes to be served; and

(3) has demonstrated, for the previous 3 fiscal years, financial stability and financial management.

"SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES.

(a) CONTINUING PARTICIPATION.—Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III on the date of enactment of this title shall continue to participate in self-governance, as set forth in a compact and a funding agreement.

(b) ADDITIONAL PARTICIPANTS.—

(1) In addition to those Indian tribes participating in self-governance under subsection (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) An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall not be entitled to participate in self-governance provided the Indian tribe meets the eligibility criteria specified in subsection (c).

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

(d) FUNDING AGREEMENTS.

(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 of the Indian tribe or tribes to be served; and

(3) has demonstrated, for the previous 3 fiscal years, financial stability and financial management.

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 contracts or self-governance funding agreements shall be conclusive evidence of the required stability and capability for the purposes of this subsection.

(d) PLANNING PHASE.—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 organizational preparation relating to the administration of health care programs.

(e) GRANTS.—Subject to the availability of appropriations, any Indian tribe meeting the requirements 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 written 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 the Indian tribe 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.

Existing COMPACTS.—Any existing compact between 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 optional time thereafter to—

(1) retain its Tribal Self-Governance Demonstration Project compact (in whole or in part) to the extent the provisions of such compact are not directly contrary to any express provision of this title, 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 mutual written agreement, retrocession, or reassignment.

"SEC. 505. FUNDING AGREEMENTS.

(a) FUNDING AGREEMENT REQUIRED.—The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe 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 receive full tribal share funding, including tribal shares of Indian Health Service competitive grants (including, for purposes of this section, any 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, regardless of the existence of any other provisions to which the Indian tribe agree.

and the Secretary agree.

any other provisions to which the Indian tribe agree.

including those to be provided on a recurring basis, the time and method of transfer of the funds to be provided, in accordance with the Secretary’s priorities, the functions, or activities (or portions thereof) to be performed or administered, the general budget and assistance arrangements that reflect such requirements in a compact or funding agreement, or terms that will become effective within the time frame specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium, or the agency specifically designated in the resolution which authorizes the effective date specified in the resolution.

SEC. 506. PROVISIONS RELATING TO THE SECRETARY.

MANDATORY PROVISIONS.

(1) I N GENERAL. Ð Unless an Indian tribe or a compact or funding agreement under this title specifically provides otherwise, a self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization), and such funds shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, provided that the provisions of sections 102 and 105(i), as appropriate, apply to such withdrawing Indian tribe.

(2) DISTRIBUTION OF FUNDS. Ð 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 this title fully or partially withdraws from a participating inter-tribal consortium or tribal organization, the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) which it will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization), and such funds shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, provided that the provisions of sections 102 and 105(i), as appropriate, apply to such withdrawing Indian tribe.

(3) REGAINING MATURE CONTRACT STATUS. Ð If an Indian tribe elects to operate all or some programs, services, functions, or activities (or portions thereof) under a compact or funding agreement under this title through a self-determination contract under title I, at the request of the Indian tribe, a self-determination contract shall be a mature self-determination contract.

(4) NONDUPLICATION. Ð For the purpose of avoiding duplication to the extent to which, funding is provided under this title or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 102, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

SEC. 507. PROVISIONS RELATING TO THE SECRETARY.

(1) STABLE BASE FUNDING. Ð 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 section, any competitive grants), 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 on a recurring basis, to the extent that such tribes elect to be provided with stable base funding in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium, or the agency specifically designated in the resolution which authorizes the effective date specified in the resolution.

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

(3) WITHDRAWAL. Ð An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement, or part thereof, the absence of which would impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 517.

(4) DEEPISSUATION. Ð (A) Compacts and 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—

(1) to the extent such data is not otherwise available to the Indian tribe and specific funds for this purpose are provided by the Secretary under the funding agreement; and

(2) such data shall be reported to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement.

(5) I N GENERAL. Ð The provisions of this section shall be subject to the provisions of 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 audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds, assets, or records under a funding agreement based on any audit under this section shall be subject to the provisions of section 106(f).

(6) RECORDS. Ð (1) I N GENERAL. Ð 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 5 of title 5, United States Code.

(2) RECORDKEEPING SYSTEM. Ð The Indian tribe shall maintain a recordkeeping system, and, after 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 set forth in section 3106 of title 44, United States Code.

(3) REDESIGN AND CONSOLIDATION. Ð 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 or redirect funds for the purpose of reflecting such requirements in a compact or funding agreement on behalf of the participating tribal organization or inter-tribal consortium, or tribal organization.

(4) INCLUSIONS IN COMPACT OR FUNDING AGREEMENT. Ð Indian tribes or Indians need not be identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or funding agreement under this title.

(5) FUNDING AGREEMENT TERMS. Ð Each funding agreement shall set forth terms that generally identify the programs, services, functions, and activities (or portions thereof) under which appropriations are made to agencies other than agencies within the Department of Health and Human Services when the Secretary self-determines Indian tribes, or portions thereof.

(6) I NCLUSION. Ð A tribal council or other body of an Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) to the extent the provisions of such funding agreement are not directly contrary to any express provision of this title or to the extent that such provisions do not apply to the tribe as a whole or in part.

(7) FUNDING AGREEMENT. Ð Each funding agreement under title III shall be subject to the provisions of section 505 and reallocate or redirect funds for the purpose of reflecting such requirements in a compact or funding agreement on behalf of the participating tribal organization or inter-tribal consortium, or tribal organization.

(8) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the participating tribal organization or inter-tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

(9) I NCLUSIVE DESCRIPTION. Ð An Indian tribe shall have the option at any time thereafter to request a retrocession, such retrocession will become effective within the time frame specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium, or the agency specifically designated in the resolution which authorizes the effective date specified in the resolution.

(10) I NCLUSION. Ð An Indian tribe shall have the option at any time thereafter to request a retrocession, such retrocession will become effective within the time frame specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium, or the agency specifically designated in the resolution which authorizes the effective date specified in the resolution.

(11) I NCLUSIVE DESCRIPTION. Ð An Indian tribe shall have the option at any time thereafter to request a retrocession, such retrocession will become effective within the time frame specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium, or the agency specifically designated in the resolution which authorizes the effective date specified in the resolution.

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

(13) PROCESS. Ð An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement, or part thereof, the absence of which would impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 517.

(14) DEEPISSUATION. Ð (A) Compacts and 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—

(1) to the extent such data is not otherwise available to the Indian tribe and specific funds for this purpose are provided by the Secretary under the funding agreement; and

(2) such data shall be reported to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement.

(15) I NCLUSIVE DESCRIPTION. Ð An Indian tribe shall have the option at any time thereafter to request a retrocession, such retrocession will become effective within the time frame specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium, or the agency specifically designated in the resolution which authorizes the effective date specified in the resolution.
service, function, or activity (or portion thereof) of—

(i) imminent endangerment of the public health caused by an act or omission of the Indian tribe that cannot legally be delegated to an Indian tribe; or

(ii) gross mismanagement.

(a) in general.—Pursuant to the terms of any compact or funding agreement entered into under this title, the Secretary shall transfer to the Indian tribe all funds provided for in the funding agreement, pursuant to subsection (c), and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by law, for Indian health services, 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 diabetes services provided pursuant to sections 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 identified by the Department for the provision by the Secretary of services and benefits to the Indian tribe or its members, all without regard to the organizational level within the Department with respect to such functions are carried out by the Department.

(b) in subsequent years, except pursuant to—

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

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

(3) a tribal authorization; and

(4) other resources.

In the event an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation), automated data processing, technical assistance, and monitoring of activities under this Act; or

(c) the Secretary is authorized to employ, upon tribal request, multiyear funding agreements, and references in this title to funding agreements shall include such agreements, to the extent permitted by law, for Indian health services, 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 diabetes services provided pursuant to sections 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 identified by the Department for the provision by the Secretary of services and benefits to the Indian tribe or its members, all without regard to the organizational level within the Department with respect to such functions are carried out by the Department.
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 fiscal year. Funds 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 and not spent or used in the current year, or in any subsequent fiscal year, shall be treated as supplemental funds and shall be managed using the prudent investment standard.

(ii) **SECRETARY.**—The Secretary does not increase the amount of funds transferred under a compact or funding agreement or amendment thereof which results in a significant change in the scope of work. The Indian tribe shall provide the Secretary with project plans and full 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.

(j) **PROGRAM INCOME.**—All laborers and mechanics employed by contractors and subcontractors in the construction, alteration, or repair, including painting or decorating of buildings 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 prevailing wages on similar construction projects in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.) and the Babe Ruth Act of May 13, 1914 (49 Stat. 1494).

(k) **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 to section 122 of the Federal Property and Administrative Services Act of 1949, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction project conducted under this title.

SEC. 512. FEDERAL PROCUREMENT LAWS AND REGULATIONS.

Notwithstanding any other provision of law, unless expressly agreed to by the participating Indian tribe, the 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 relating to Federal contracting issued by the Secretary), except to the extent that such laws expressly apply to Indian tribes.

SEC. 513. CIVIL ACTIONS.

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


SEC. 514. FACILITATION.

(a) **SECRETARIAL INTERPRETATION.**—Except as otherwise provided by law, the Secretary shall issue regulations, order or regulations in a manner that will facilitate—

(1) the inclusion of programs, services, functions, and activities (or any combination thereof) and funds associated therewith, in the agreements entered into under this section;

(2) the implementation and funding agreements entered into under this title;

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

(b) **REGULATION WAIVER.**—

(1) An Indian tribe may submit a written request to the Secretary of the Interior to waive any provisions promulgated under this Act for a compact or funding agreement entered into with the Indian tribe under this title. The Secretary shall either approve or deny the requested waiver within 90 days. A denial may be made only upon a specific finding by the Secretary that the waiver is prohibited by Federal law. A failure to approve or deny a waiver request not later than 90 days after receipt shall be deemed to be approval of the request.

(2) Any Indian tribe may carry over funding from one year to the next, subject to Federal contracting or cooperative agreement laws and regulations in a manner that will facilitate and supplement the initiatives, programs, and policies authorized by this title and

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other Federal laws benefiting Indian and Indian tribes.

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

"SEC. 511. FUNDING REQUIREMENTS.

"(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 specifically identified to fund tribal base budgets. All funds so appropriated shall be distributed to the Indian tribe or tribes. If such provision of title I, to the extent such provision is in violation of this section may apply the provisions of section 110.

"(b) FEDERAL TRUST AND TREATY RESPONSIBILITIES.—Nothing in this Act shall be construed to diminish the trust responsibility of the United States to Indian tribes and individual Indians that exists under treaties, Executive orders, or other laws and court decisions.

"(c) TRIBAL EMPLOYMENT.—For purposes of section 2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter 372) (commonly known as the National Labor Relations Act), an Indian 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 exclusive right to give pay for services, nor require any Indian tribe to do so.

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

"(a) MANDATORY APPLICATION.—All provisions of sections 5(b), 6, 7, 102(c), and 104, 105(k) and (l), 106(a) through (k), and 111 of title 31, United States Code, shall apply to self-governance demonstration projects.

"(b) DISCRETIONARY APPLICATION.—At the request of the Secretary, any 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 into under this title. The Secretary shall have the exclusive right to give pay for services, and shall not be considered an employer.

"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 subsection (c) of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out this title.

"(2) Prior to promulgation of regulations implementing this title shall be published in the Federal Register by the Secretary no later than 1 year after the date of entry into force of this title.

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

"(b) COMMITTEE.—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 Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this Act, and the Committee shall confer with representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

"(c) ADAPTATION OF PROCEDURES.—The Secretary shall adopt negotiated rulemaking procedures to the unique context of self-governance, such as the 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, GUIDANCES, AND RULES.—Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of section 105.

"SEC. 518. APPEALS.

"(a) GENERAL.—In any appeal (including civil actions) involving decisions made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

"(1) the validity of the grounds for the decision made; and

"(2) the decision is fully consistent with provisions and policies of this title.

"SEC. 519. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary to carry out this title.

"TITLE VI—TRIBAL SELF-GOVERNANCE—DEPARTMENT OF HEALTH AND HUMAN SERVICES

"SEC. 601. DEMONSTRATION PROJECT FEASIBILITY.

"(a) STUDY.—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) CONCLUSIONS.—When conducting the study, the Secretary shall consider—

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

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

"(3) 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 and the Committee on Indian Affairs 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) included in the program or program 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 amendment of, or waiver of, any statute, or waiving regulations that the Secretary may not waive;

"(4) a demonstration project plan;

"(5) a demonstration project schedule;

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

"(d) RULES OF CONSTRUCTION.—Each provision of this title and each provision of a compact or funding agreement shall be construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.

"SEC. 602. DEMONSTRATION PROJECT.

"(a) IN GENERAL.—

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

"(2) Prior to promulgation of regulations implementing 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 Secretary shall promulgate regulations under this title shall expire 21 months after the date of enactment of this title.
"(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) in any Indian tribe or tribal organization's tribal self-governance compact and funding agreement.

SEC. 102. CONSULTATION.

(a) STUDY PROVISION.—(1) CONSULTATION WITH INDIAN TRIBES.—The Secretary shall consult with Indian tribes to determine a protocol for consultation under subsection (b) that will be consistent with the protocol and allow a period of not less than 30 days for comment by entities described in subsection (b). The protocol shall require, at a minimum, that—

(A) the government-to-government relationship with Indian tribes forms the basis for the consultation process;

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

(C) the consultation process allow for separate and direct recommendations from the Indian tribes and other entities described in subsection (b).

(2) OPPORTUNITY FOR PUBLIC COMMENT.—In determining the protocol described in paragraph (1), the Secretary shall publish the proposed protocol and allow a period of not less than 30 days for comment by entities described in subsection (b) or any interested individuals, and shall take all comments received into account in determining the final protocol.

(b) CONDUCTING STUDY.—In conducting the study required under this title, the Secretary shall consult with Indian tribes, States, counties, municipalities, program beneficiaries, and interested public interest groups, and may consult with other entities as appropriate.

SEC. 103. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, the Secretary may use definitions provided in title V.

(b) 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.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years 2000 and 2001 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. 450f(el)(1)) is amended by inserting after 'subsection (b)(3) the following: "or any civil proceeding.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any proceedings commenced on or after December 23, 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. 450l(k)) is amended—

(1) by striking "carrying out a contract" and all that follows through "eligible" and inserting the following: "or Indian tribe shall be deemed an executive agency and a part of the Indian Health Service, and the employees of the tribal organization or the Indian tribe, as the case may be, are deemed eligible"; and

(2) by adding at the end thereof the following: "At the request of an Indian tribe, the Secretary shall enter into an agreement for the acquisition, on behalf of the Indian tribe, of any 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.

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

"(4) A list of legislative actions required in order to include those programs, services, functions, and activities (or portions thereof) described in subsection (b) in any Indian tribe or tribal organization's tribal self-governance compact and funding agreement.

Pursuant to H.R. 1167, tribes which have already contracted for IHS services would continue under the provisions of their contracts while an additional 50 new tribes would be selected each year to enter into contracts.

H.R. 1167 also authorizes fee-for-service reimbursement of Indian tribes entering into self-governance compacts.
Department of Health and Human Services under which the American Indian and Alaska Native tribes may enter into compacts with the Secretary for direct operation control and rede- sign of Indian health service activities. Tribes entering into self-governance programs have to meet four eligibility requirements. First, the tribe must, in the case of the consortium, be federally recognized. Second, the tribe must document with official action of the tribal governing body a formal request to enter into compacts with the Department of Interior. Third, the tribe must demonstrate financial stability and financial management capabilities as evidenced through the administration of the prior 638 contracts. Fourth, the tribe must submit three years’ worth of financial statements for its annual budget for the subsequent seven years.

Recognizing that Termination as a policy was as a disaster, President Kennedy campaigned in 1960 promising the Indian tribes no changes in treaty or contractual relationships without tribal consent, protection of Indian lands base, and assistance with credit and tribal economic development. Indian reservations were included in many of the “Great Society” programs of the late 1960s, bringing a much-needed infusion of federal dollars onto many reservations. In 1968, President Lyndon B. Johnson delivered a message to Congress which stated support for the Indian Health Service.

In 1970, President Richard Nixon’s “Special Message on Indian Affairs” also called for increased tribal self-determination as he stated: This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian’s sense of autonomy without threat to his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal community and we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.

Together, these messages sparked Congress to work with the Indians that laid the foundation of modern federal Indian policy for the remainder of this century. And so, five years later, Congress enacted one of the most profound and powerful pieces of Indian legislation in this Nation’s history. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638. This legislation gave Indian tribes and Alaska Native villages the right to assume responsibility for the administration of federal programs which benefited Indians. In order to do so, the tribes had to make operating and administrative decisions regarding the way these federal programs would be run. It also required that the tribes, for the first time, would be able to enter into compacts with the Secretary of the Interior and the Indian Health Service (IHS) and the Indian tribes’ main concern and Federal support.

Congress enacted the Indian Self-Determination Act with the expectation that the direct responsibility for running these programs would enhance and strengthen tribal governments. As a means of supervise the tribes’ activities, “638” contracts required volumes of paperwork to be filed. If a tribe wanted to operate more than one program, it would have to exercise an additional 638 contract which required a separate approval process. Though the Act was intended to decrease Federal involvement in the daily lives of reservation Indians, its specific performance and reporting requirements except BIA as a pervasive force in Indian affairs.

At the time of its enactment, the 638 contract program did not allow tribes to move funds between programs to adapt to changing unforeseen circumstances during a funding period. Thus, the tribes’ powers to design or adapt programs according to tribal needs remained restricted.

The inflexibility of 638 contracts also created problems, such as those made to tribes on a cost-reimbursement basis, often many months after the tribe might have incurred major expenses. The tribes’ main complaint, however, was that the 638 contract process made tribal staff primarily accountable to and measured by, not their own tribal councilmen, but the Area and Central Officers. They had to follow strict federal laws, rules and regulations that were often of little relevance to day-to-day existence on an Indian reservation. Furthermore, if trust assets were involved, the BIA had to concur in all decisions made.

Thus, while the Indian Self-Determination Act was and is still acknowledged as a watershed moment in the history of tribal self-governance, by the mid-1980s many tribal leaders agreed that it was time for even greater change. They felt that the Indian Self-Determination Act was the most pro-independence legislation to the Self-Determination Act. At the same time, a group of tribal representatives began meeting to discuss proposals for trimming the BIA bureaucracy and amending the Indian Self-Determination Act as well.

But during the fall of 1987, a series of articles appeared in the Arizona Republic entitled Fraud in Indian Country, that detailed an egregious history of waste and mismanagement within the BIA. These articles spurred House Appropriations Subcommittee on Interior and Related Agencies Chairman Sidney Yates (D–IL) to conduct an oversight hearing on these alleged abuses.

At the hearing, Department of Interior officials proposed that funds appropriated to the Bureau of Indian Affairs be turned over to the tribes to let them manage their own affairs in an attempt to address these charges. But, the officials testified, by accepting the federal funds, the tribes would release the federal government from its trust responsibility. Tribal leaders disagreed with this quid pro quo, but supported the concept of removing BIA middlemen from the funding process. With Chairman Yates’ encouragement, tribal representa- tives met with the Secretary of the Interior and other Department officials the very next day to work out this concept. By mid-December of 1987, ten tribes had agreed to test the Department’s proposal.

Out of this proposal the Tribal Self-Governance Demonstration Project was born. In 1988 Congress enacted Pub. L. No. 100–472 and established Title III of the Indian Self-Determination Act which authorized the Secretary of Interior to negotiate Self-Governance compacts with up to twenty tribes. These tribes, for the first time, would be able to “Plan, conduct, consolidate, and administer programs, services, and functions” heretofore performed by Interior officials. The Act required that these programs be “otherwise available to Indian tribes or Indians,” but within these parameters the tribes were authorized.
to redesign programs and reallocated funding according to terms negotiated in the compacts. Tribes would be able to prioritize spending on a systemic level, dramatically reducing the Federal role in the tribal decision-making process. But perhaps the biggest difference is that under Self-Governance programs and services to negotiate Self-Governance compacts and annual funding agreements under Title III of the Indian Self-Determination Act with Indian tribes. The Self-Governance Demonstration Project proved to be a success both in the Interior Department and the Department of Health and Human Services. Thus, in 1991, Congress responded by passing the “Tribal Self-Governance Act of 1994” and permanently established the Self-Governance program within the Department of Interior.

This action solidified the Federal government’s policy of negotiating with Indian Tribes and Alaska Native villages on a government-to-government basis while retaining the federal trust relationship. The Tribal Self-Governance Act allowed so-called “Self-Governance tribes” to compact all programs and services that tribes previously contracted under Title I of the Indian Self-Determination Act. The Act required an “orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities.”

Tribes entering the Self-Governance program had to meet four eligibility requirements. First, the tribe (or tribes in the case of a consortium) had to be generally recognized. Second, the tribe must document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior. Third, the tribe must demonstrate financial stability and financial management evidenced through the administration of prior 638 contracts. Fourth, the tribe must have successfully completed a planning phase, requiring the submission of a final planning report which demonstrates that the tribe has conducted legal and budgetary research and internal tribal government and organizational planning.

The 1994 Act, however, did not make changes to the demonstration project status of the Self-Governance program within the Indian Health Service. The IHS authority remained on a demonstration project basis within Title III of the Indian Self-Determination Act.

The Indian tribes and the Administration agree that it is now time to take the next logical step in implementing the principles of Self-Governance and make the Self-Governance program permanent within the Department of Health and Human Service. H.R. 1167 establishes a permanent Self-Governance Program within the Department of Health and Human Services and authorizes the administration of prior 638 contracts and annual funding agreements under Title I of the Indian Self-Determination Act since 1991 (so-called “638 contracting”). In brief, the legislation would expand the number of tribes eligible to participate in Self-Governance, make it a permanent authority within the IHS and authorize the Secretary of Health and Human Services to conduct a feasibility study for the execution of Self-Governance compacts with Indian tribes for programs outside of the IHS but still within HHS.

This legislation is modeled on the existing permanent Self-Governance legislation for Indian Health Services contained in Title IV of the Indian Self-Determination Act and reflects years of planning and negotiation among Indian tribes, Alaska Native villages, the Department of Health and Human Services, and the Administration. H.R. 1167 is 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, Congress had enabled Indian tribes to run programs more efficiently and more innovatively than federal officials have in the past. Allowing tribes to run these programs furthers the Congressional policy of strengthening and promoting tribal governments which began with passage of the first Self-Determination Act in 1975.

Often we need to look to the past in order to understand our proper relationship with Indian tribes. More than two centuries ago, Congress set forth what should be our guiding principles. In 1789, Congress passed the Northwest Ordinance, a set of seven articles intended to govern the addition of new states to the Union. These articles served as a compact between the people and the States, and were “to forever remain unalterable, unless by common consent.” Article Three set forth the Nation’s policy towards Indian tribes:

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken away from them, without their consent; but laws found in justice and humanity shall from time to time be made, for preventing wrongs being done to them.

The Foundation in this Nation carefully and wisely chose these principles to govern the conduct of our government in its dealings with American Indian tribes. Over the years, these principles have at times been forgotten.

Two hundred years later, Justice Thurgood Marshall delivered a unanimous Supreme Court in 1983 stating that, “Moreover, both the tribes and the Federal Government are firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous federal statutes. We have stressed that Congress’ objective of furthering tribal self-government encompasses far more than encouraging tribal management of disputes between members, but includes Congress’ overriding goal of encouraging ‘tribal self-sufficiency and economic development.’”

If we are to adhere and remain faithful to the principles that our Founders set forth—the principles of good faith, consent, justice and humanity—then we must continue to promote tribal self-governance as is done in the legislation I bring before the House today.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah (Mr. HANSEN) that the House suspend the rules and pass the bill, H.R. 1167, 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.

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and add extraneous material on H.R. 1167, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. HANSEN. Mr. Speaker, I ask unanimous consent to move to suspend the rules and pass the Senate bill (S. 1398) to clarify certain boundaries on maps relating to the Coastal Barrier Resources System.

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent to move to suspend the rules and pass the Senate bill (S. 1398) to clarify certain boundaries on maps relating to the Coastal Barrier Resources System.

There was no objection.

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent to move to suspend the rules and pass the Senate bill (S. 1398) to clarify certain boundaries on maps relating to the Coastal Barrier Resources System.

Mr. Speaker, I ask unanimous consent to move to suspend the rules and pass the Senate bill (S. 1398) to clarify certain boundaries on maps relating to the Coastal Barrier Resources System.

There was no objection.

The Clerk read as follows:

S. 1398

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

SECTION 1. REPLACEMENT OF COASTAL BARRIER RESOURCES SYSTEM BOUNDARIES

(a) IN GENERAL. The 7 maps described in subsection (b) are replaced by 14 maps entitled “Dare County, North Carolina, Coastal Barrier Resources System, Cape Hatteras Unit NC-03P” or “Dare County, North Carolina, Coastal Barrier Resources System, Cape Hatteras Unit NC-03P, Hatteras Island Unit L03” and dated October 12, 1999.

(b) DESCRIPTION OF MAPS. The maps described in this subsection are the 7 maps that—

November 17, 1999

CONGRESSIONAL RECORD—HOUSE

H12141