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116TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT 116–422

PRACTICAL REFORMS AND OTHER GOALS TO REINFORCE THE EFFECTIVENESS OF SELF-GOVERNANCE AND SELF-DETERMINATION FOR INDIAN TRIBES ACT OF 2019

MAY 22, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany S. 209]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 209) to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian Tribes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 209 is to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian Tribes, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION [1]

The PROGRESS for Indian Tribes Act,[2] S. 209, enhances tribal self-governance over programs funded through the Department of the Interior (DOI). Title IV of the Indian Self-Determination and Education Assistance Act [3] (ISDEAA) provides the legal framework under which tribes can assume control of certain DOI programs, and associated funding, and tailor those programs to the needs of their particular communities. S. 209 would streamline and enhance

[1] Also see generally S. REP. NO. 116–34, at 112 (2019), https://www.congress.gov/116/crpt/srpt34/CRPT-116srpt34.pdf—of which the above text is largely excerpts—providing a detailed accounting of the bill's history along with explanations of its provisions.

[2] The longer version of the bill's short title is the "Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019".

[3] Pub. L. No. 93–638, 88 Stat. 2203 (1975), https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg2203.pdf (codified as amended at 25 U.S.C. 5301 *et seq.*).

the Title IV self-governance process at DOI by aligning it with Title V, the Health and Human Services self-governance statute.

With the enactment of the ISDEAA, the management and administration of federal Indian programs was put into the hands of tribal governments. The ISDEAA originally authorized tribes to enter into contracts with the Bureau of Indian Affairs (BIA) within DOI and the Indian Health Service (IHS) within the Department of Health and Human Services (HHS), to receive federal funds and manage programs that would otherwise be managed by the federal agencies.

Indian tribes can administer these programs through compacts after demonstrating a high level of accountability and fiscal responsibility, including three years of administering contracts without material audit problems. Each contract or self-governance compact identifies functions and activities to be carried out by the tribe, as well as any administrative, reporting, or other requirements that must be followed. However, these self-governance agreements allow tribal management of programs pursuant to one compact instead of requiring different contracts for each individual program.

In 1988, Congress amended the ISDEAA by adding Title III, which authorized the self-governance demonstration project.[4] In 1992, the ISDEAA was amended to establish a self-governance demonstration program within the IHS as well.[5] In 1994, Congress again amended the ISDEAA by adding Title IV, making the BIA self-governance program within the Department of the Interior a permanent option for tribes.[6] Title IV authorized American Indian and Alaska Native tribes to negotiate compact agreements with the BIA under which tribes operate programs, services, functions, and activities that previously were administered and managed by the Department. The 1994 amendments also made certain non-BIA programs within DOI eligible for contracting or compacting.

In 2000, Congress amended the ISDEAA to include Titles V and VI, making self-governance a permanent option for tribes to negotiate compacts with IHS.[7] Title V made several detailed improvements, such as adding specific definitions and identifying mandatory and prohibited terms and conditions of compacts, funding agreements, and construction projects.

By contrast, Title IV of the ISDEAA contains serious gaps and flaws that hinder the full exercise of tribal self-governance with regard to the Department of the Interior. Tribes would like to incorporate the Title V improvements into the Department of the Interior Title IV self-governance program, in part to gain consistency in the administration of their self-governance programs.

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[4] Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. No. 100–472, 102 Stat. 2296 (1988), https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2285.pdf (codified throughout 25 U.S.C., including at 5321).

[5] Indian Health Amendments of 1992, Pub. L. No. 102–573, § 814, 106 Stat. 4526, 4590 (1992), https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg4526.pdf (codified at 25 U.S.C. 450f); *see also* Tribal Self-Governance Demonstration Project Act, Pub. L. No. 102–184, 105 Stat. 1278 (1991), https://www.govinfo.gov/content/pkg/STATUTE-105/pdf/STATUTE-105-Pg1278.pdf (requiring a study to determine the feasibility of extending the demonstration program to IHS).

[6] Indian Self-Determination Act Amendments of 1994, Pub. L. No. 103–413, 108 Stat. 4250 (1994), https://www.govinfo.gov/content/pkg/STATUTE-108/pdf/STATUTE-108-Pg4250.pdf (codified throughout 25 U.S.C., https://uscode.house.gov/table3/103_413.htm).

[7] Tribal Self-Governance Amendments of 2000, Pub. L. No. 106–260, 114 Stat. 711 (2000), https://www.congress.gov/106/plaws/publ260/PLAW-106publ260.pdf (codified throughout 25 U.S.C., https://uscode.house.gov/table3/106_260.htm).

To that end, S. 209:

- conforms Title IV to Title V in order to create consistency and administrative efficiencies for tribes now operating under two compacting regimes;
- establishes clear "final offer" processes and timelines for situations when DOI and a tribe are unable to agree on particular terms of a compact or funding agreement, or when DOI delays approval unreasonably;
- clarifies and limits the reasons for which the agency may decline to enter a proposed agreement;
- provides a clear avenue of appeal and burden-of-proof framework for tribes to challenge adverse agency decisions;
- clarifies tribal and federal oversight roles in construction to ensure fiscal prudence and public safety;
- leaves unchanged the Department's discretionary authority to compact non-BIA programs within DOI; and
- makes important amendments to Title I, the self-determination contracting law, such as clarifying reporting requirements, rules of interpretation, and applicability of certain Title I provisions to Title IV agreements.

Most self-governance tribes manage programs within both HHS IHS and DOI BIA and have achieved great success. However, significant differences between the Title IV and Title V amendments to the ISDEAA have forced such tribes to operate under two separate sets of legislative and administrative requirements. It has long been a top legislative priority of tribal leaders to make conforming amendments to Title IV. Over the past sixteen years, several bills have been introduced and hearings held on both the House and Senate sides.[8] While broadly supported in Indian country and, in recent years, by the administration, none of these bills were enacted.

COMMITTEE ACTION

S. 209 was introduced on January 24, 2019, by Senator John Hoeven (R–ND). The bill was referred solely to the Senate Committee on Indian Affairs. On January 29, 2019, the Senate Committee met to consider the bill and ordered it, without amendments, to be reported favorably to the Senate by voice vote. The Indian Affairs Committee reported the bill to the Senate on April 29, 2019. The Senate passed the bill, without amendment, by voice vote on June 27, 2019.

The bill was received in the House on June 28, 2019, and was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On July 16, 2019, the Subcommittee held a hearing

[8] *E.g.,* S. 1715, 108th Cong. (2003); *Legislative Hearing on H.R. 3994, To Amend the Indian Self-Determination and Education Assistance Act to Provide Further Self-Governance by Indian Tribes, and for Other Purposes. "Department of the Interior Tribal Self-Governance Act of 2007" Before the H. Comm. on Nat. Res.*, 110th Cong. (2007), https://www.govinfo.gov/content/pkg/CHRG-110hhrg38969/pdf/CHRG-110hhrg38969.pdf; *Hearing on H.R. 4347, To Amend the Indian Self-Determination and Education Assistance Act to Provide Further Self-Governance by Indian Tribes, and for Other Purposes, Before the S. Comm. on Indian Affairs*, 111th Cong. (2010), https://www.govinfo.gov/content/pkg/CHRG-111shrg65293/pdf/CHRG-111shrg65293.pdf; *Hearing on H.R. 4546, et al., Before the H. Subcomm. on Indian & Alaska Native Affairs*, 113th Cong. (July 15, 2014) (not printed); S. 286, 114th Cong. (2015). *See generally* S. REP. NO. 116–34, at 3–4 (2019), https://www.congress.gov/116/crpt/srpt34/CRPT-116srpt34.pdf (detailing the bill's legislative history across Congresses).

on the House version of the bill, H.R. 2031, introduced by Representative Deb Haaland (D–NM).

On December 5, 2019, the Natural Resources Committee met to consider S. 209. The Subcommittee was discharged by unanimous consent. Representative Tom McClintock (R–CA) offered an amendment designated McClintock #1. The amendment was not agreed to by a roll call vote of 13 yeas and 19 nays, as follows:

Date: December 5, 2019

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: S. 209

Amendment: Rep. McClintock #1 amendment

Disposition: Not agreed to by a roll call vote of 13 yeas and 19 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA			
3	Mr. Case, HI		X	
4	Mr. Clay, MO		X	
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Grijalva, AZ (*Chair*)		X	
12	Ms. Haaland, NM		X	
13	Mr. Horsford, NV			
14	Mr. Huffman, CA		X	
15	Mr. Levin, CA		X	
16	Mr. Lowenthal, CA		X	
17	Mr. McEachin, VA			
18	Ms. Napolitano, CA		X	
19	Mr. Neguse, CO		X	
20	Mr. Sablan, CNMI		X	
21	Mr. San Nicolas, GU			
22	Mr. Soto, FL		X	
23	Mr. Tonko, NY			
24	Mr. Van Drew, NJ		X	
25	Ms. Velázquez, NY			
	REP. MEMBERS (19)	**Y**	**N**	**P**
1	*Mr. Bishop, UT (Ranking)*			
2	*Ms. Cheney, WY*	X		
3	*Mr. Cook, CA*	X		
4	*Mr. Curtis, UT*			
5	*Mr. Fulcher, ID*	X		
6	*Mr. Gohmert, TX*	X		
7	*Ms. González-Colón, PR*	X		
8	*Mr. Gosar, AZ*			
9	*Mr. Graves, LA*	X		
10	*Mr. Hern, OK*			
11	*Mr. Hice, GA*	X		
12	*Mr. Johnson, LA*			
13	*Mr. Lamborn, CO*	X		
14	*Mr. McClintock, CA*	X		
15	*Mrs. Radewagen, AS*	X		
16	*Mr. Webster, FL*	X		
17	*Mr. Westerman, AR*	X		
18	*Mr. Wittman, VA*	X		
19	*Mr. Young, AK*			
	TOTALS	13	19	
	Total: 44 / Quorum: 15 / Report: 23	**YEAS**	**NAYS**	**PRESENT**

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No additional amendments were offered. The bill was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 10 nays, as follows:

Date: December 5, 2019

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: S. 209

Amendment:

Disposition: Final Passage: S. 209 was ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 10 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA			
3	Mr. Case, HI	X		
4	Mr. Clay, MO	X		
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO	X		
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Grijalva, AZ (*Chair*)	X		
12	Ms. Haaland, NM	X		
13	Mr. Horsford, NV			
14	Mr. Huffman, CA	X		
15	Mr. Levin, CA	X		
16	Mr. Lowenthal, CA	X		
17	Mr. McEachin, VA			
18	Ms. Napolitano, CA	X		
19	Mr. Neguse, CO	X		
20	Mr. Sablan, CNMI	X		
21	Mr. San Nicolas, GU			
22	Mr. Soto, FL	X		
23	Mr. Tonko, NY			
24	Mr. Van Drew, NJ	X		
25	Ms. Velázquez, NY			
	REP. MEMBERS (19)	**Y**	**N**	**P**
1	*Mr. Bishop, UT (Ranking)*			
2	*Ms. Cheney, WY*		X	
3	*Mr. Cook, CA*	X		
4	*Mr. Curtis, UT*			
5	*Mr. Fulcher, ID*		X	
6	*Mr. Gohmert, TX*		X	
7	*Ms. González-Colón, PR*	X		
8	*Mr. Gosar, AZ*			
9	*Mr. Graves, LA*		X	
10	*Mr. Hern, OK*			
11	*Mr. Hice, GA*		X	
12	*Mr. Johnson, LA*			
13	*Mr. Lamborn, CO*		X	
14	*Mr. McClintock, CA*		X	
15	*Mrs. Radewagen, AS*	X		
16	*Mr. Webster, FL*		X	
17	*Mr. Westerman, AR*		X	
18	*Mr. Wittman, VA*		X	
19	*Mr. Young, AK*			
	TOTALS	22	10	
	Total: 44 / Quorum: 15 / Report: 23	**YEAS**	**NAYS**	**PRESENT**

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HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider S. 209: legislative hearing by the Subcommittee for Indigenous Peoples of the United States held on July 16, 2019.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act*. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 21, 2019.

Hon. RAÚL M. GRIJALVA,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 209, the PROGRESS for Indian Tribes Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 209, PROGRESS for Indian Tribes Act

As ordered reported by the House Committee on Natural Resources on December 5, 2019

By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	2	not estimated

		Mandate Effects	
Statutory pay-as-you-go procedures apply?	No		
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

*= between zero and $500,000.

S. 209 would modify eligibility requirements for tribes participating in the Tribal Self-Governance program, which authorizes Indian tribes to assume responsibility for certain programs, functions, and services or activities that would otherwise be carried out by the federal government for the benefit of tribal governments. The bill also would amend the process for negotiating agreements between the tribes and the Bureau of Indian Affairs (BIA) and would establish new guidelines for administering the program. In particular, the bill would allow tribes to correct significant errors (known as material exceptions) in annual financial audits when they apply to participate in the program. Under current law, a tribe must achieve three consecutive years of audits with no material exceptions in order to be eligible to enter into a self-governance contract with the federal government.

CBO assumes the bill will be enacted in fiscal year 2020. Under the bill, CBO expects 25 new tribes would enter into self-governance agreements with the federal government each year, beginning in 2021. (Currently, 285 tribes participate.) Using information from BIA, CBO estimates that the Office of Self Governance (OSG) would require additional employees over the 2020–2025 period to work on audits, contracts, and negotiations with tribes. At the same time, CBO expects that the staffing of BIA's Self-Determination program would decrease by a comparable number of employees because tribes would exit those agreements and enter into self-governance agreements.[1]

In addition, CBO estimates that OSG would need $500,000 over two years to upgrade computers and software for the increased administrative activities required under the bill. CBO also estimates that the required rulemaking would cost $1 million over two years, primarily to cover the costs of staff time, facilitators, and travel needs for tribes involved in the rulemaking.

[1] Under the Indian Self-Determination and Education Assistance Act, tribal governments may enter into either self-determination contracts or self-governance contracts with the Bureau of Indian Affairs to implement federal programs that provide services to tribal communities. Under self-governance contracts, tribes receive annual funding in the form of block grants that allow tribes greater autonomy in making decisions concerning the use of funds. Self-determination contracts govern individual programs and entail greater federal oversight.

On March 25, 2019, CBO transmitted a cost estimate for S. 209, the PROGRESS for Indian Tribes Act, as ordered reported by the Senate Committee on Indian Affairs on January 29, 2019. The two versions of the legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian Tribes.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

* * * * * * *

SEC. 4. For purposes of this Act, the term—

(a) "construction programs" means programs for the planning, design, construction, repair, improvement, and expansion

of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

(b) "contract funding base" means the base level from which contract funding needs are determined, including all contract costs;

(c) "direct program costs" means costs that can be identified specifically with a particular contract objective;

(d) "Indian" means a person who is a member of an Indian tribe;

(e) [**"Indian tribe" means**] *"Indian tribe"or "Indian Tribe" means* any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(f) "indirect costs" means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved;

(g) "indirect cost rate" means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency;

(h) "mature contract" means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: *Provided,* That upon the request of a tribal organization or the tribal organization's Indian tribe for purposes of section 102(a) of this Act, a contract of the tribal organization which meets this definition shall be considered to be a mature contract;

(i) "Secretary", unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;

[**(j) "self-determination contract" means a contract (or grant or cooperative agreement utilized under section 9 of this Act) entered into under title I of this Act between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided,* That except as provided the last proviso in section 105(a) of this Act, no contract (or grant or cooperative agreement utilized under section 9 of this Act) entered into under title I of this Act shall be construed to be a procurement contract;**]

(j) "self-determination contract" means a contract entered into under title I (or a grant or cooperative agreement used under section 9) between a Tribal organization and the appropriate Secretary for the planning, conduct, and administration of programs or services

that are otherwise provided to Indian Tribes and members of Indian Tribes pursuant to Federal law, subject to the condition that, except as provided in section 105(a)(3), no contract entered into under title I (or grant or cooperative agreement used under section 9) shall be—

(1) considered to be a procurement contract; or

(2) except as provided in section 107(a)(1), subject to any Federal procurement law (including regulations);

(k) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law;

(l) [**"tribal organization" means**] *"Tribal Organization"or "tribal organization"means* the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided,* That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant; and

(m) "construction contract" means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract—

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

REPORTING AND AUDIT REQUIREMENTS

SEC. 5. (a)(1) Each recipient of Federal financial assistance under this Act shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, United States Code, including records which fully disclose—

(A) the amount and disposition by such recipient of the proceeds of such assistance,

(B) the cost of the project or undertaking in connection with which such assistance is given or used;

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit.

(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency

audit required by chapter 75 of title 31, United States Code and a brief annual program report.

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years [after completion of the project or undertaking referred to in the preceding subsection of this section] *after the retention period for the report that is submitted to the Secretary under subsection (a)*, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection. *The retention period shall be defined in regulations promulgated by the Secretary pursuant to section 413.*

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Except as provided in section 8 or 106(a)(3) of this Act, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

(e) The Secretary shall report annually in writing to each tribe regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

(f)(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this Act, *if the Indian Tribal organization expends $500,000 or more in Federal awards during such fiscal year* the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31, United States Code.

(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 102.

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TITLE I—INDIAN SELF-DETERMINATION ACT

* * * * * * *

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. (a)(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, con-

duct, and administer programs or portions thereof, including construction programs—

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended;

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended;

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the preceding sentence shall be contractable without regard to the organizational level within the Department that carries out such functions.

(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of paragraph (4), the Secretary shall, within ninety days after receipt of the proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that—

(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(B) adequate protection of trust resources is not assured;

(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a); or

(E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor.

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in the second sentence of this subsection, if before the expiration of such period, the Secretary obtains the voluntary and express written consent of

the tribe or tribal organization to extend or otherwise alter such period. The contractor shall include in the proposal of the contractor the standards under which the tribal organization will operate the contracted program, service, function, or activity, including in the area of construction, provisions regarding the use of licensed and qualified architects, applicable health and safety standards, adherence to applicable Federal, State, local, or tribal building codes and engineering standards. The standards referred to in the preceding sentence shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals), the use of proper materials and workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted.

(3) Upon the request of a tribal organization that operates two or more mature self-determination contracts, those contracts may be consolidated into one single contract.

(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal—

(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under paragraph (1), or

(B) proposes a level of funding that is in excess of the applicable level determined under section 106(a),

subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 106(a). If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts pursuant to subsection (a) of this section, the Secretary shall—

(1) state any objections in writing to the tribal organization,

(2) provide assistance to the tribal organization to overcome the stated objections, and

(3) provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 110(a).

(c)(1) Beginning in 1990, the Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage, on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and

cooperative agreements pursuant to this Act. In obtaining or providing such coverage, the Secretary shall take into consideration the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act.

(2) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give a preference to coverage underwritten by Indian-owned [economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451 et seq.), except that] *economic enterprises (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)), except that*, for the purposes of this subsection, such enterprises may include non-profit corporations.

(3)(A) Any policy of insurance obtained or provided by the Secretary pursuant to this subsection shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the sovereign immunity of an Indian tribe from suit, but tha such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage or limits of the policy of insurance.

(B) No waiver of the sovereign immunity of an Indian tribe pursuant to this paragraph shall include a waiver to the extent of any potential liability for interest prior to judgment or for punitive damages or for any other limitation on liability imposed by the law of the State in which the alleged injury occurs.

(d) For purposes of section 224 of the Public Health Service Act of July 1, 1944 (42 U.S.C. 233(a)), as amended by section 4 of the Act of December 31, 1970 (84 Stat. 1870), with respect to claims by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations for personal injury, including death, resulting from the performance prior to, including, or after December 22, 1987, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, or for purposes of section 2679, title 28, United States Code, with respect to claims by any such person, on or after the date of the enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle, an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under sections 102 or 103 of this Act is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees (including those acting on behalf of the organization or contractor as provided in section 2671 of title 28, United States Code, and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided,* That such employees shall be deemed to be acting within the scope of their em-

ployment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

(e)(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3) or any civil action conducted pursuant to section 110(a), the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof).

(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the "Department") that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection (b)(3) shall be made either—

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative judge.

(f) GOOD FAITH REQUIREMENT.—In the negotiation of contracts and funding agreements, the Secretary shall—

(1) at all times negotiate in good faith to maximize implementation of the self-determination policy; and

(2) carry out this Act in a manner that maximizes the policy of Tribal self-determination, in a manner consistent with—

(A) the purposes specified in section 3; and

(B) the PROGRESS for Indian Tribes Act.

(g) RULE OF CONSTRUCTION.—Subject to section 101(a) of the PROGRESS for Indian Tribes Act, each provision of this Act and each provision of a contract or funding agreement shall be liberally construed for the benefit of the Indian Tribe participating in self-determination, and any ambiguity shall be resolved in favor of the Indian Tribe.

* * * * * * *

ADMINISTRATIVE PROVISIONS

SEC. 105. (a)(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 102 shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a nonconstruction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions promulgated under such Act shall

apply only to the extent that the application of such provision to the construction contract (or subcontract) is—

(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) directly related to the construction activity; and

(iii) not inconsistent with this Act.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this Act, unless expressly provided in such law.

(ii) The laws listed in this paragraph are as follows:

(I) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(II) Section 3709 of the Revised Statutes.

(III) Section 9(c) of the Act of Aug. 2, 1946 (60 Stat. 809, chapter 744).

(IV) Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288).

(V) Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479).

(VI) Chapters 21, 25, 27, 29, and 31 of title 44, United States Code.

(VII) Section 2 of the Act of June 13, 1934 (48 Stat 948, chapter 483).

(VIII) Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881).

(IX) The Service Control Act of 1965 (41 U.S.C. 351 et seq.).

(X) The Small Business Act (15 U.S.C. 631 et seq.).

(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.

(b) Payments of any grants or under any contracts [pursuant to Sections 102 and 103 of this Act] *pursuant to sections 102 and 103* may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

(c)(1) A self-determination contract shall be—

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution,

by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

(d)(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this Act, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

(e) If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this Act, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on—

(1) the earlier of—

(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

(B) the date on which the contract expires; or

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

(f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—

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

(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Depart-

ment of the Interior or the Department of Health and Human Services, as appropriate; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and

(3) acquire excess or surplus Government personal or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this Act.

(g) The contracts authorized under section 102 of this Act and grants pursuant to section 103 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided,* That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(h) Contracts and grants with tribal organizations pursuant to sections 102 and 103 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(i)(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

(2) Nothing in this title shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 110.

(j) Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 102.

(k) For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this Act shall be deemed an executive agency and part of the Indian Health Service when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access. For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, 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 under 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.

(l)(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this Act.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

(m)(1) Each construction contract requested, approved, or awarded under this Act shall be subject to—

(A) except as otherwise provided in this Act, the provisions of this Act, other than sections 102(a)(2), 106(l), 108 and 109; and

(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

(3) Prior to finalizing a construction contract proposal pursuant to section 102(a), and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

(A) The provision of technical assistance pursuant to section 103 and paragraph (2).

(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5, United States Code.

(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 102(a).

(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 106(a), the Secretary shall provide for the following:

(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this Act and any other applicable law.

(ii) The costs of preparing the contract proposal and supporting cost data.

(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

(iv) In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks and local market conditions.

(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless,

during such period the Secretary declines the proposal pursuant to sections 102(a)(2) and 102(b) of section 102 (including providing opportunity for an appeal pursuant to section 102(b)).

(n) Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of—

(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5, United States Code) to such employee, and

(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

(o) PATIENT RECORDS.—

(1) IN GENERAL.—At the option of an Indian tribe or tribal organization, patient records may be deemed to be Federal records under those provisions of title 44, United States Code, that are commonly referred to as the "Federal Records Act of 1950" for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

(2) TREATMENT OF RECORDS.—Patient records that are deemed to be Federal records under those provisions of title 44, United States Code, that are commonly referred to as the "Federal Records Act of 1950" pursuant to this subsection shall not be considered Federal records for the purposes of chapter 5 of title 5, United States Code.

(p) INTERPRETATION BY SECRETARY.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws (including regulations) and Executive orders in a manner that facilitates, to the maximum extent practicable—

(1) the inclusion in self-determination contracts and funding agreements of—

(A) applicable programs, services, functions, and activities (or portions thereof); and

(B) funds associated with those programs, services, functions, and activities;

(2) the implementation of self-determination contracts and funding agreements; and

(3) the achievement of Tribal health objectives.

(q)(1) TECHNICAL ASSISTANCE FOR INTERNAL CONTROLS.—In considering proposals for, amendments to, or in the course of, a contract under this title and compacts under titles IV and V of this Act, if the Secretary determines that the Indian Tribe lacks adequate internal controls necessary to manage the contracted program or programs, the Secretary shall, as soon as practicable, provide the necessary technical assistance to assist the Indian Tribe in developing adequate internal controls. As part of that technical assistance, the Secretary and the Tribe shall develop a plan for assessing the subsequent effectiveness of such technical assistance. The inability of the Secretary to provide technical assistance or lack of a plan under

this subsection shall not result in the reassumption of an existing agreement, contract, or compact, or declination or rejection of a new agreement, contract, or compact.

(2) The Secretary shall prepare a report to be included in the information required for the reports under sections 412(b)(2)(A) and 514(b)(2)(A). The Secretary shall include in this report, in the aggregate, a description of the internal controls that were inadequate, the technical assistance provided, and a description of Secretarial actions taken to address any remaining inadequate internal controls after the provision of technical assistance and implementation of the plan required by paragraph (1).

SEC. 106. (a)(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

(i) direct program expenses for the operation of the Federal program that is the subject of the contract**[**, and**]***; and*

(ii) any additional administrative or other **[**expense related to the overhead incurred**]** *expense incurred by the governing body of the Indian Tribe or Tribal organization and any overhead expense incurred* by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under section 106(a)(1).

(B) In calculating the reimbursement rate for expenses described in subparagraph (A)(ii), not less than 50 percent of the expenses described in subparagraph (A)(ii) that are incurred by the governing body of an Indian Tribe or Tribal organization relating to a Federal program, function, service, or activity carried out pursuant to the contract shall be considered to be reasonable and allowable.

[(B)**]** *(C)* On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the

tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

(A) be used to provide additional services or benefits under the contract; or

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 8.

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary—

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

(b) The amount of funds required by subsection (a)—

(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to—

(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

(C) a tribal authorization;

(D) a change in the amount of pass-through funds needed under a contract; or

(E) completion of a contracted project, activity, or program;

(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;

(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

(5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c).

Notwithstanding any other provision in this Act, the provision of funds under this Act is subject to the availability of appropriations

and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this Act.

(c) ANNUAL REPORTS.—Not later than May 15 of each year, the Secretary shall prepare and submit to Congress an annual report on the implementation of this Act. Such report shall include—

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

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

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

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

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

(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services to any Indian tribes affected by contracting activities under this Act, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 105(d).

(d)(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract.

(e) Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A–87, incurred for fiscal years prior to fiscal year 1992.

(f) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to enactment of chapter 75 of title 31, United States Code, any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 110. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of

actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31, United States Code, or noncompliance with any other applicable law. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476).

(g) Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

(h) In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

(i) On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(j) Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

(1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.

(2) Publication and printing costs.

(3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

(4) Automated data processing and similar equipment or services.

(5) Costs for capital assets and repairs.

(6) Management studies.

(7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.

(8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.

(9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

(10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

(11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this Act.

(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

(l)(1) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

(m) The program income earned by a tribal organization in the course of carrying out a self-determination contract—

(1) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

(n) To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a), the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(o) Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

* * * * * * *

SEC. 108. CONTRACT OR GRANT SPECIFICATIONS.

(a) Each self-determination contract entered into under this Act shall—

(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) (with modifications where indicated and the blanks appropriately filled in), and

(2) *subject to subsections (a) and (b) of section 102,* contain such other provisions as are agreed to by the parties.

(b) Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As provided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

(c) The model agreement referred to in subsection (a)(1) reads as follows:

"SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE —— TRIBAL GOVERNMENT.

"(a) AUTHORITY AND PURPOSE.—

"(1) AUTHORITY.—This agreement, denoted a Self-Determination Contract (referred to in this agreement as the 'Contract'), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the 'Secretary'), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the —— tribal government or tribal organization (referred to in this agreement as the 'Contractor'). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

"(2) PURPOSE.—Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

"(b) TERMS, PROVISIONS, AND CONDITIONS.—

"(1) TERM.—Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)), the term of this contract shall be —— years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

"(2) EFFECTIVE DATE.—This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

"(3) PROGRAM STANDARD.—The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards: (list standards).

"(4) FUNDING AMOUNT.—Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1).

"(5) LIMITATION OF COSTS.—The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

"(6) PAYMENT.—

"(A) IN GENERAL.—Payments to the Contractor under this Contract shall—

"(i) be made as expeditiously as practicable; and

"(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

"(B) QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT.—

"(i) IN GENERAL.—Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semiannual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.

"(ii) METHOD OF QUARTERLY PAYMENT.—If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which

the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.

"(iii) APPLICABILITY.—Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

"(7) RECORDS AND MONITORING.—

"(A) IN GENERAL.—Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior or the Department of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

"(B) RECORDKEEPING SYSTEM.—The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

"(C) RESPONSIBILITIES OF CONTRACTOR.—The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than [one performance monitoring visit] *two performance monitoring visits* for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless—

"(i) the Contractor agrees to one or more additional visits; or

"(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

"(8) PROPERTY.—

"(A) IN GENERAL.—As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)), at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually

agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor.

"(B) RECORDS.—The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.

"(C) JOINT USE AGREEMENTS.—Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

"(D) ACQUISITION OF PROPERTY.—The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

"(E) CONFISCATED OR EXCESS PROPERTY.—The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

"(F) SCREENER IDENTIFICATION CARD.—A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

"(G) CAPITAL EQUIPMENT.—The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

"(9) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, any funds provided under this Contract—

"(A) shall remain available until expended; and

"(B) with respect to such funds, no further—

"(i) approval by the Secretary, or

"(ii) justifying documentation from the Contractor,

shall be required prior to the expenditure of such funds.

"(10) TRANSPORTATION.—Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

"(11) FEDERAL PROGRAM GUIDELINES, MANUALS, OR POLICY DIRECTIVES.—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

"(12) DISPUTES.—

"(A) THIRD-PARTY MEDIATION DEFINED.—For the purposes of this Contract, the term 'third-party mediation' means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

"(B) ALTERNATIVE PROCEDURES.—In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m–1), the parties to this Contract may jointly—

"(i) submit disputes under this Contract to third-party mediation;

"(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

"(iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or

"(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

"(C) EFFECT OF DECISIONS.—The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

"(13) ADMINISTRATIVE PROCEDURES OF CONTRACTOR.—Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

"(14) SUCCESSOR ANNUAL FUNDING AGREEMENT.—

"(A) IN GENERAL.—Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. Except as provided in section 105(c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(2)) the funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. 450j–1(b)).

"(B) INFORMATION.—The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

"(15) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. 81), section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. 476), and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to any contract entered into in connection with this Contract.

"(B) REQUIREMENTS.—Each Contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall—

"(i) be in writing;

"(ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;

"(iii) state the work to be performed under the Contract; and

"(iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

"(c) OBLIGATION OF THE CONTRACTOR.—

"(1) CONTRACT PERFORMANCE.—Except as provided in subsection (d)(2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f)(2) of this Contract.

"(2) AMOUNT OF FUNDS.—The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

"(3) CONTRACTED PROGRAMS.—Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f)(2).

"(4) TRUST SERVICES FOR INDIVIDUAL INDIANS.—

"(A) IN GENERAL.—To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

"(B) TRUST SERVICES TO INDIVIDUAL INDIANS.—For the purposes of this paragraph only, the term 'trust services for individual Indians' means only those services that pertain to land or financial management connected to individually held allotments.

"(5) FAIR AND UNIFORM SERVICES.—The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

"(d) OBLIGATION OF THE UNITED STATES.—

"(1) TRUST RESPONSIBILITY.—

"(A) IN GENERAL.—The United States reaffirms the trust responsibility of the United States to the —— Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

"(B) CONSTRUCTION OF CONTRACT.—Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

"(2) GOOD FAITH.—To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

"(3) PROGRAMS RETAINED.—As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).

"(e) OTHER PROVISIONS.—

"(1) DESIGNATED OFFICIALS.—Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

"(2) CONTRACT MODIFICATIONS OR AMENDMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

"(B) EXCEPTION.—The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).

"(3) OFFICIALS NOT TO BENEFIT.—No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

"(4) COVENANT AGAINST CONTINGENT FEES.—The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

"(f) ATTACHMENTS.—

"(1) APPROVAL OF CONTRACT.—Unless previously furnished to the Secretary, the resolution of the —— Indian tribe(s) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as attachment 1.

"(2) ANNUAL FUNDING AGREEMENT.—

"(A) IN GENERAL.—The annual funding agreement under this Contract shall only contain—

"(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

"(ii) *subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321),* such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

"(B) INCORPORATION BY REFERENCE.—The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2."

* * * * * * *

TITLE IV—TRIBAL SELF-GOVERNANCE

[SEC. 401. ESTABLISHMENT.

[The Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall establish and carry out a program within the Department of the Interior to be known as Tribal Self-Governance (hereinafter in this title referred to as "Self-Governance") in accordance with this title.

[SEC. 402. SELECTION OF PARTICIPATING INDIAN TRIBES.

[(a) CONTINUING PARTICIPATION.—Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project at the Department of the Interior under title III on the date of enactment of this title shall thereafter participate in Self-Governance under this title and cease participation in the Tribal Self-Governance Demonstration Project under title III with respect to the Department of the Interior.

[(b) ADDITIONAL PARTICIPANTS.—(1) In addition to those Indian tribes participating in self-governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 50 new tribes per year from the applicant pool described in subsection (c) of this section to participate in self-governance.

[(2) If each tribe requests, two or more otherwise eligible Indian tribes may be treated as a single Indian tribe for the purpose of participating in Self-Governance as a consortium.

[(c) APPLICANT POOL.—The qualified applicant pool for Self-Governance shall consist of each tribe that—

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

[(2) has requested participation in Self-Governance by resolution or other official action by the tribal governing body; and

[(3) has demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

[(d) PLANNING PHASE.—Each Indian tribe seeking to begin participation in Self-Governance shall complete a planning phase in accordance with this subsection. The tribe shall be eligible for a grant to plan and negotiate participation in Self-Governance. The planning phase shall include—

[(1) legal and budgetary research; and

[(2) internal tribal government planning and organizational preparation.]

SEC. 401. DEFINITIONS.

In this title:

(1) COMPACT.—The term "compact" means a self-governance compact entered into under section 404.

(2) CONSTRUCTION PROGRAM; CONSTRUCTION PROJECT.—The term "construction program" or "construction project" means a Tribal undertaking relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community, health, irrigation, agriculture, conservation, flood control, transportation, or port facilities, or for other Tribal purposes.

(3) DEPARTMENT.—The term "Department" means the Department of the Interior.

(4) FUNDING AGREEMENT.—The term "funding agreement" means a funding agreement entered into under section 403.

(5) GROSS MISMANAGEMENT.—The term "gross mismanagement" means a significant violation, shown by a preponderance of the evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds for a program administered by an Indian Tribe under a compact or funding agreement.

(6) INHERENT FEDERAL FUNCTION.—The term "inherent Federal function" means a Federal function that may not legally be delegated to an Indian Tribe.

(7) NON-BIA PROGRAM.—The term "non-BIA program" means all or a portion of a program, function, service, or activity that is administered by any bureau, service, office, or agency of the Department of the Interior other than—

(A) the Bureau of Indian Affairs;

(B) the Office of the Assistant Secretary for Indian Affairs; or

(C) the Office of the Special Trustee for American Indians.

(8) PROGRAM.—The term "program" means any program, function, service, or activity (or portion thereof) within the Department that is included in a funding agreement.

(9) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(10) SELF-DETERMINATION CONTRACT.—The term "self-determination contract" means a self-determination contract entered into under section 102.

(11) SELF-GOVERNANCE.—The term "self-governance" means the Tribal Self-Governance Program established under section 402.

(12) TRIBAL SHARE.—The term "Tribal share" means the portion of all funds and resources of an Indian Tribe that—

(A) support any program within the Bureau of Indian Affairs, the Office of the Special Trustee for American Indians, or the Office of the Assistant Secretary for Indian Affairs; and

(B) are not required by the Secretary for the performance of an inherent Federal function.

(13) TRIBAL WATER RIGHTS SETTLEMENT.—The term "Tribal water rights settlement" means any settlement, compact, or other agreement expressly ratified or approved by an Act of Congress that—

(A) includes an Indian Tribe and the United States as parties; and

(B) quantifies or otherwise defines any water right of the Indian Tribe.

SEC. 402. TRIBAL SELF-GOVERNANCE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish and carry out a program within the Department to be known as the "Tribal Self-Governance Program".

(b) SELECTION OF PARTICIPATING INDIAN TRIBES.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—The Secretary, acting through the Director of the Office of Self-Governance, may select not more than 50 new Indian Tribes per year from those tribes eligible under subsection (c) to participate in self-governance.

(B) JOINT PARTICIPATION.—On the request of each participating Indian Tribe, 2 or more otherwise eligible Indian Tribes may be treated as a single Indian Tribe for the purpose of participating in self-governance.

(2) OTHER AUTHORIZED INDIAN TRIBE OR TRIBAL ORGANIZATION.—If an Indian Tribe authorizes another Indian Tribe or a Tribal organization to plan for or carry out a program on its behalf under this title, the authorized Indian Tribe or Tribal organization shall have the rights and responsibilities of the authorizing Indian Tribe (except as otherwise provided in the authorizing resolution).

(3) JOINT PARTICIPATION AS ORGANIZATION.—Two or more Indian Tribes that are not otherwise eligible under subsection (c) may be treated as a single Indian Tribe for the purpose of participating in self-governance as a Tribal organization if—

(A) each Indian Tribe so requests; and

(B) the Tribal organization itself, or at least one of the Indian Tribes participating in the Tribal organization, is eligible under subsection (c).

(4) TRIBAL WITHDRAWAL FROM A TRIBAL ORGANIZATION.—

(A) IN GENERAL.—An Indian Tribe that withdraws from participation in a Tribal organization, in whole or in part, shall be entitled to participate in self-governance if the Indian Tribe is eligible under subsection (c).

(B) EFFECT OF WITHDRAWAL.—If an Indian Tribe withdraws from participation in a Tribal organization, the Indian Tribe shall be entitled to its Tribal share of funds and resources supporting the programs that the Indian Tribe is entitled to carry out under the compact and funding agreement of the Indian Tribe.

(C) PARTICIPATION IN SELF-GOVERNANCE.—The withdrawal of an Indian Tribe from a Tribal organization shall not affect the eligibility of the Tribal organization to participate in self-governance on behalf of one or more other Indian Tribes, if the Tribal organization still qualifies under subsection (c).

(D) WITHDRAWAL PROCESS.—

(i) IN GENERAL.—An Indian Tribe may, by Tribal resolution, fully or partially withdraw its Tribal share of any program in a funding agreement from a participating Tribal organization.

(ii) NOTIFICATION.—The Indian Tribe shall provide a copy of the Tribal resolution described in clause (i) to the Secretary.

(iii) EFFECTIVE DATE.—

(I) IN GENERAL.—A withdrawal under clause (i) shall become effective on the date that is specified in the Tribal resolution and mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the Tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian Tribe or Tribal organization.

(II) NO SPECIFIED DATE.—In the absence of a date specified in the resolution, the withdrawal shall become effective on—

(aa) the earlier of—

(AA) 1 year after the date of submission of the request; and

(BB) the date on which the funding agreement expires; or

(bb) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the Tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian Tribe or Tribal organization.

(E) DISTRIBUTION OF FUNDS.—If an Indian Tribe or Tribal organization eligible to enter into a self-determination contract or a compact or funding agreement fully or partially withdraws from a participating Tribal organization, the withdrawing Indian Tribe—

(i) may elect to enter into a self-determination contract or compact, in which case—

(I) the withdrawing Indian Tribe or Tribal organization shall be entitled to its Tribal share of unexpended funds and resources supporting the programs that the Indian Tribe 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 to the funding agreement of the Tribal organization); and

(II) the funds referred to in subclause (I) shall be withdrawn by the Secretary from the funding agreement of the Tribal organization and transferred to the withdrawing Indian Tribe, on the condition that sections 102 and 105(i), as appropriate, shall apply to the withdrawing Indian Tribe; or

(ii) may elect not to enter into a self-determination contract or compact, in which case all unexpended funds and resources associated with the withdrawing Indian Tribe's returned programs (calculated on the same basis as the funds were initially allocated to the funding agreement of the Tribal organization) shall be returned by the Tribal organization to the Secretary for operation of the programs included in the withdrawal.

(F) RETURN TO MATURE CONTRACT STATUS.—If an Indian Tribe elects to operate all or some programs carried out under a compact or funding agreement under this title through a self-determination contract under title I, at the option of the Indian Tribe, the resulting self-determination contract shall be a mature self-determination contract as long as the Indian Tribe meets the requirements set forth in section 4(h).

(c) ELIGIBILITY.—To be eligible to participate in self-governance, an Indian Tribe shall—

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

(2) request participation in self-governance by resolution or other official action by the Tribal governing body; and

(3) demonstrate, for the 3 fiscal years preceding the date on which the Indian Tribe requests participation, financial stability and financial management capability as evidenced by the Indian Tribe having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

(d) PLANNING PHASE.—

(1) IN GENERAL.—An Indian Tribe seeking to begin participation in self-governance shall complete a planning phase as provided in this subsection.

(2) ACTIVITIES.—The planning phase shall—

(A) be conducted to the satisfaction of the Indian Tribe; and

(B) include—

(i) legal and budgetary research; and

(ii) internal Tribal government planning, training, and organizational preparation.

(e) GRANTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, an Indian Tribe or Tribal organization that meets the requirements of paragraphs (2) and (3) of subsection (c) shall be eligible for grants—

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

(B) 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.

(2) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under paragraph (1) shall not be a requirement of participation in self-governance.

SEC. 403. FUNDING AGREEMENTS.

[(a) AUTHORIZATION.—The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government in a manner consistent with the Federal Government's laws and trust relationship to and responsibility for the Indian people.**]**

(a) AUTHORIZATION.—The Secretary shall, on the request of any Indian Tribe or Tribal organization, negotiate and enter into a written funding agreement with the governing body of the Indian Tribe or the Tribal organization in a manner consistent with—

(1) the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States; and

(2) subsection (b).

(b) CONTENTS.—Each funding agreement shall—

(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior through the Bureau of Indian Affairs, **[**without regard to the agency or office of the Bureau of Indian Affairs**]** *the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee for American Indians, without regard to the agency or office of that Bureau or those Offices* within which the program, service, function, and activity, or portion thereof, is performed, including funding for agency, area, and central office functions in accordance with subsection (g)(3), and **[**including any program**]** *including—*

(A) any program, service, function, and activity, or portion thereof, administered under the authority of—

[(A)**]** *(i)* the Act of April 16, 1934 (25 U.S.C. 452 et seq.)**[**;**]***; and*

[(B)**]** *(ii)* the Act of November 2, 1921 (25 U.S.C. 13); **[**and**]**

[(C)**]** *(B)* programs, services, functions, and activities or portions thereof administered by the Secretary of the Interior that are otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior**[**;**]***; and*

(C) any other program, service, function, or activity (or portion thereof) that is provided through the Bureau of In-

dian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians with respect to which Indian Tribes or Indians are primary or significant beneficiaries;

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in **[**section 405(c)**]** *section 412(c)*, except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law; *and*

(3) subject to the terms of the agreement, authorize the tribe to redesign or consolidate programs, services, functions, and activities, or portions thereof, and reallocate funds for such programs, services, functions, and activities, or portions thereof, except that, with respect to the reallocation, consolidation, and redesign of programs described in paragraph (2), a joint agreement between the Secretary and the tribe shall be required**[**;**]**.

[(4) prohibit the inclusion of funds provided—

[(A) pursuant to the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

[(B) for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008); and

[(C) the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 102;

[(5) specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to the agreement;

[(6) authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used;

[(7) allow for retrocession of programs or portions of programs pursuant to section 105(e);

[(8) provide that, for the year for which, and to the extent to which, funding is provided to a tribe under this section, the tribe—

[(A) shall not be entitled to contract with the Secretary for such funds under section 102, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

[(B) shall be responsible for the administration of programs, services, functions, and activities pursuant to agreements entered into under this section; and

[(9) prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United

States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, and other laws.]

(c) ADDITIONAL ACTIVITIES.—Each funding agreement negotiated pursuant to subsections (a) and (b) may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.

(d) PROVISIONS RELATING TO THE SECRETARY.—Funding agreements negotiated between the Secretary and an Indian tribe shall include provisions—

(1) to monitor the performance of trust functions by the tribe through the annual trust evaluation, and

(2) for the Secretary to reassume a program, service, function, or activity, or portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety.

(e) CONSTRUCTION PROJECTS.—(1) Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of the Office of Federal Procurement and Policy Act and Federal acquisition regulations in any funding agreement entered into under this Act. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(2) In all construction projects performed pursuant to this title, the Secretary shall ensure that proper health and safety standards are provided for in the funding agreements.

(f) SUBMISSION [FOR REVIEW].—Not later than 90 days before the proposed effective date of an agreement entered into under this section, the Secretary shall submit a copy of [such agreement to—]

[(1) each Indian tribe] *such agreement to each Indian Tribe* that is served by the Agency that is serving the tribe that is a party to the funding [agreement;] *agreement.*

[(2) the Committee on Indian Affairs of the Senate; and

[(3) the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.]

(g) PAYMENT.—(1) At the request of the governing body of the tribe and under the terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

(2) The funding agreements authorized by this title and title III of this Act shall provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribes.

(3) Subject to paragraph (4) of this subsection and paragraphs (1) through (3) of subsection (b), the Secretary shall provide funds to the tribe under an agreement under this title for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act, including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision

by the Secretary of services and benefits to the tribe or its members, without regard to the organization level within the Department where such functions are carried out.

(4) Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

(h) CIVIL ACTIONS.—(1) Except as provided in paragraph (2), for the purposes of section 110, the term "contract" shall include agreements entered into under this title.

(2) For the period that an agreement entered into under this title is in effect, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), section 16 of the Act of June 18, 1934 (25 U.S.C. 476), and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to attorney and other professional contracts by Indian tribal governments participating in Self-Governance under this title.

(i) FACILITATION.—(1) Except as otherwise provided by law, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate—

(A) the inclusion of programs, services, functions, and activities in the agreements entered into under this section; and

(B) the implementation of agreements entered into under this section.

(2)(A) A tribe may submit a written request for a waiver to the Secretary identifying the regulation sought to be waived and the basis for the request.

(B) Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the requested waiver in writing to the tribe. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. The Secretary's decision shall be final for the Department.

(j) FUNDS.—All funds provided under funding agreements entered into pursuant to this Act, and all funds provided under contracts or grants made pursuant to this Act, shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

(k) DISCLAIMER.—Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided,* however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under section 403(b)(2).

(l) INCORPORATE SELF-DETERMINATION PROVISIONS.—At the option of a participating tribe or tribes, any or all provisions of title I of this Act shall be made part of an agreement entered into under title III of this Act or this title. The Secretary is obligated to include such provisions at the option of the participating tribe or

tribes. If such provision is incorporated it shall have the same force and effect as if set out in full in title III or this title.

(m) OTHER PROVISIONS.—

(1) EXCLUDED FUNDING.—A funding agreement shall not authorize an Indian Tribe to plan, conduct, administer, or receive Tribal share funding under any program that—

(A) is provided under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.); or

(B) is provided for elementary and secondary schools under the formula developed under section 1127 of the Education Amendments of 1978 (25 U.S.C. 2007).

(2) SERVICES, FUNCTIONS, AND RESPONSIBILITIES.—A funding agreement shall specify—

(A) the services to be provided under the funding agreement;

(B) the functions to be performed under the funding agreement; and

(C) the responsibilities of the Indian Tribe and the Secretary under the funding agreement.

(3) BASE BUDGET.—

(A) IN GENERAL.—A funding agreement shall, at the option of the Indian Tribe, provide for a stable base budget specifying the recurring funds (which may include funds available under section 106(a)) to be transferred to the Indian Tribe, for such period as the Indian Tribe specifies in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations.

(B) LIMITATIONS.—Notwithstanding subparagraph (A), a funding agreement shall not specify funding associated with a program described in subsection (b)(2) or (c) unless the Secretary agrees.

(4) NO WAIVER OF TRUST RESPONSIBILITY.—A funding agreement shall prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian Tribes and individual Indians that exists under treaties, Executive orders, court decisions, and other laws.

(n) AMENDMENT.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian Tribe, unless such terms are required by Federal law.

(o) EFFECTIVE DATE.—A funding agreement shall become effective on the date specified in the funding agreement.

(p) EXISTING AND SUBSEQUENT FUNDING AGREEMENTS.—

(1) SUBSEQUENT FUNDING AGREEMENTS.—Absent notification from an Indian Tribe that the Indian Tribe is withdrawing or retroceding the operation of one or more programs identified in a funding agreement, or unless otherwise agreed to by the parties to the funding agreement or by the nature of any noncontinuing program, service, function, or activity contained in a funding agreement—

(A) a funding agreement shall remain in full force and effect until a subsequent funding agreement is executed,

with funding paid annually for each fiscal year the agreement is in effect; and

(B) the term of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement for the purposes of calculating the amount of funding to which the Indian Tribe is entitled.

(2) DISPUTES.—Disputes over the implementation of paragraph (1)(A) shall be subject to section 406(c).

(3) EXISTING FUNDING AGREEMENTS.—An Indian Tribe that was participating in self-governance under this title on the date of enactment of the PROGRESS for Indian Tribes Act shall have the option at any time after that date—

(A) to retain its existing funding agreement (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

(B) to negotiate a new funding agreement in a manner consistent with this title.

(4) MULTIYEAR FUNDING AGREEMENTS.—An Indian Tribe may, at the discretion of the Indian Tribe, negotiate with the Secretary for a funding agreement with a term that exceeds 1 year.

[SEC. 404. BUDGET REQUEST.

[The Secretary shall identify, in the annual budget request of the President to the Congress under section 1105 of title 31, United States Code, any funds proposed to be included in agreements authorized under this title.

[SEC. 405. REPORTS.

[(a) REQUIREMENT.—The Secretary shall submit to Congress a written report on January 1 of each year following the date of enactment of this title regarding the administration of this title.

[(b) CONTENTS.—The report shall—

[(1) identify the relative costs and benefits of Self-Governance;

[(2) identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance tribes and their members;

[(3) identify the funds transferred to each Self-Governance tribe and the corresponding reduction in the Federal bureaucracy;

[(4) include the separate views of the tribes; and

[(5) include the funding formula for individual tribal shares of Central Office funds, together with the comments of affected Indian tribes, developed under subsection (d).

[(c) REPORT ON NON-BIA PROGRAMS.—(1) In order to optimize opportunities for including non-Bureau of Indian Affairs programs, services, functions, and activities, or portions thereof, in agreements with tribes participating in Self-Governance under this title, the Secretary shall—

[(A) review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned; and

[(B) not later than 90 days after the date of enactment of this title, provide to the appropriate committees of Congress a listing of all such programs, services, functions, and activities, or portions thereof, that the Secretary determines, with the concurrence of tribes participating in Self-Governance under this title, are eligible for inclusion in such agreements at the request of a participating Indian tribe.

[(2) The Secretary shall establish programmatic targets, after consultation with tribes participating in Self-Governance under this title, to encourage bureaus of the Department to assure that a significant portion of such programs, services, functions, and activities are actually included in the agreements negotiated under section 403.

[(3) The listing and targets under paragraphs (1) and (2) shall be published in the Federal Register and be made available to any Indian tribe participating in Self-Governance under this title. The list shall be published before January 1, 1995, and annually thereafter by January 1 preceding the fiscal year in which the targets are to be met.

[(4) Thereafter, the Secretary shall annually review and publish in the Federal Register, after consultation with tribes participating in Self-Governance under this title, a revised listing and programmatic targets.

[(d) REPORT ON CENTRAL OFFICE FUNDS.—Within 90 days after the date of the enactment of this title, the Secretary shall, in consultation with Indian tribes, develop a funding formula to determine the individual tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs for inclusion in the Self-Governance compacts. The Secretary shall include such formula in the annual report submitted to the Congress under subsection (b), together with the views of the affected Indian tribes.

[SEC. 406. DISCLAIMERS.

[(a) OTHER SERVICES, CONTRACTS, AND FUNDS.—Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

[(b) FEDERAL TRUST RESPONSIBILITIES.—Nothing in this Act shall be construed to diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

[(c) APPLICATION OF OTHER SECTIONS OF ACT.—All provisions of sections 6, 102(c), 104, 105(f), 110, and 111 of this Act shall apply to agreements provided under this title.

[SEC. 407. REGULATIONS.

[(a) IN GENERAL.—Not later than 90 days after the date of enactment of this title, at the request of a majority of the Indian tribes with agreements under this title, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out this title.

[(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 representatives of Indian tribes with agreements under this title.

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

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

[SEC. 408. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 404. COMPACTS

(a) IN GENERAL The Secretary shall negotiate and enter into a written compact with each Indian Tribe participating in self-governance in a manner consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States.

(b) CONTENTS A compact under subsection (a) shall—

(1) specify and affirm the general terms of the government-to-government relationship between the Indian Tribe and the Secretary; and

(2) include such terms as the parties intend shall control during the term of the compact.

(c) AMENDMENT A compact under subsection (a) may be amended only by agreement of the parties.

(d) EFFECTIVE DATE The effective date of a compact under subsection (a) shall be—

(1) the date of the execution of the compact by the parties; or

(2) such date as is mutually agreed upon by the parties.

(e) DURATION A compact under subsection (a) shall remain in effect—

(1) for so long as permitted by Federal law; or

(2) until termination by written agreement, retrocession, or reassumption.

(f) EXISTING COMPACTS An Indian Tribe participating in self-governance under this title, as in effect on the date of enactment of the PROGRESS for Indian Tribes Act, shall have the option at any time after that date—

(1) to retain its negotiated compact (in whole or in part) to the extent that the provisions of the compact are not directly contrary to any express provision of this title; or

(2) to negotiate a new compact in a manner consistent with this title.

SEC. 405. GENERAL PROVISIONS

(a) APPLICABILITY An Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this title.

(b) CONFLICTS OF INTEREST An Indian Tribe participating in self-governance shall ensure that internal measures are in place to address, pursuant to Tribal law and procedures, conflicts of interest in the administration of programs.

(c) AUDITS

(1) SINGLE AGENCY AUDIT ACT Chapter 75 of title 31, United States Code, shall apply to a funding agreement under this title.

(2) COST PRINCIPLES An Indian Tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

(A) any provision of law, including section 106; or

(B) any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget.

(3) FEDERAL CLAIMS Any claim by the Federal Government against an Indian Tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to section 106(f).

(d) REDESIGN AND CONSOLIDATION Except as provided in section 407, an Indian Tribe may redesign or consolidate programs, or reallocate funds for programs, in a compact or funding agreement in any manner that the Indian Tribe determines to be in the best interest of the Indian community being served—

(1) so long as the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law; and

(2) except that, with respect to the reallocation, consolidation, and redesign of programs described in subsection (b)(2) or (c) of section 403, a joint agreement between the Secretary and the Indian Tribe shall be required.

(e) RETROCESSION

(1) IN GENERAL An Indian Tribe may fully or partially retrocede to the Secretary any program under a compact or funding agreement.

(2) EFFECTIVE DATE

(A) AGREEMENT Unless an Indian Tribe rescinds a request for retrocession under paragraph (1), the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

(B) NO AGREEMENT In the absence of a specification of an effective date in the compact or funding agreement, the retrocession shall become effective on—

(i) the earlier of—

(I) 1 year after the date on which the request is submitted; and

(II) the date on which the funding agreement expires; or

(ii) such date as may be mutually agreed upon by the Secretary and the Indian Tribe.

(f) NONDUPLICATION A funding agreement shall provide that, for the period for which, and to the extent to which, funding is provided to an Indian Tribe under this title, the Indian Tribe—

(1) shall not be entitled to contract with the Secretary for funds under section 102, except that the Indian Tribe shall be eligible for new programs on the same basis as other Indian Tribes; and

(2) shall be responsible for the administration of programs in accordance with the compact or funding agreement.

(g) RECORDS

(1) IN GENERAL Unless an Indian Tribe specifies otherwise in the compact or funding agreement, records of an Indian Tribe shall not be considered to be Federal records for purposes of chapter 5 of title 5, United States Code.

(2) RECORDKEEPING SYSTEM An Indian Tribe shall—

(A) maintain a recordkeeping system; and

(B) on a notice period of not less than 30 days, provide the Secretary with reasonable access to the records to enable the Department to meet the requirements of sections 3101 through 3106 of title 44, United States Code.

SEC. 406. PROVISIONS RELATING TO THE SECRETARY

(a) TRUST EVALUATIONS A funding agreement shall include a provision to monitor the performance of trust functions by the Indian Tribe through the annual trust evaluation.

(b) REASSUMPTION

(1) IN GENERAL A compact or funding agreement shall include provisions for the Secretary to reassume a program and associated funding if there is a specific finding relating to that program of—

(A) imminent jeopardy to a trust asset, a natural resource, or public health and safety that—

(i) is caused by an act or omission of the Indian Tribe; and

(ii) arises out of a failure to carry out the compact or funding agreement; or

(B) gross mismanagement with respect to funds transferred to an Indian Tribe under a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

(2) PROHIBITION The Secretary shall not reassume operation of a program, in whole or part, unless—

(A) the Secretary first provides written notice and a hearing on the record to the Indian Tribe; and

(B) the Indian Tribe does not take corrective action to remedy the mismanagement of the funds or programs, or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

(3) EXCEPTION

(A) IN GENERAL Notwithstanding paragraph (2), the Secretary may, on written notice to the Indian Tribe, immediately reassume operation of a program if—

(i) the Secretary makes a finding of imminent and substantial jeopardy and irreparable harm to a trust asset, a natural resource, or the public health and safety caused by an act or omission of the Indian Tribe; and

(ii) the imminent and substantial jeopardy and irreparable harm to the trust asset, natural resource, or public health and safety arises out of a failure by the Indian Tribe to carry out the terms of an applicable compact or funding agreement.

(B) REASSUMPTION If the Secretary reassumes operation of a program under subparagraph (A), the Secretary shall provide the Indian Tribe with a hearing on the record not later than 10 days after the date of reassumption.

(c) INABILITY TO AGREE ON COMPACT OR FUNDING AGREEMENT

(1) FINAL OFFER If the Secretary and a participating Indian Tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian Tribe may submit a final offer to the Secretary.

(2) DETERMINATION Not more than 60 days after the date of receipt of a final offer by one or more of the officials designated pursuant to paragraph (4), the Secretary shall review and make a determination with respect to the final offer, except that the 60-day period may be extended for up to 30 days for circumstances beyond the control of the Secretary, upon written request by the Secretary to the Indian tribe.

(3) EXTENSIONS The deadline described in paragraph (2) may be extended for any length of time, as agreed upon by both the Indian Tribe and the Secretary.

(4) DESIGNATED OFFICIALS

(A) IN GENERAL The Secretary shall designate one or more appropriate officials in the Department to receive a copy of the final offer described in paragraph (1).

(B) NO DESIGNATION If no official is designated, the Director of the Office of the Executive Secretariat and Regulatory Affairs shall be the designated official.

(5) NO TIMELY DETERMINATION If the Secretary fails to make a determination with respect to a final offer within the period specified in paragraph (2), including any extension agreed to under paragraph (3), the Secretary shall be deemed to have agreed to the offer, except that with respect to any compact or funding agreement provision concerning a program described under section 403(c), the Secretary shall be deemed to have rejected the offer with respect to such provision and the terms of clauses (ii) through (iv) of paragraphs (6)(A) shall apply.

(6) REJECTION OF FINAL OFFER

(A) IN GENERAL If the Secretary rejects a final offer (or one or more provisions or funding levels in a final offer), the Secretary shall—

(i) provide timely written notification to the Indian Tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

(I) the amount of funds proposed in the final offer exceeds the applicable funding level as determined under section 106(a)(1);

(II) the program that is the subject of the final offer is an inherent Federal function or is subject to the discretion of the Secretary under section 403(c);

(III) the Indian Tribe cannot carry out the program in a manner that would not result in significant danger or risk to the public health or safety, to natural resources, or to trust resources;

(IV) the Indian Tribe is not eligible to participate in self-governance under section 402(c);

(V) the funding agreement would violate a Federal statute or regulation; or

(VI) with respect to a program or portion of a program included in a final offer pursuant to section 403(b)(2), the program or the portion of the program is not otherwise available to Indian Tribes or Indians under section 102(a)(1)(E);

(ii) provide technical assistance to overcome the objections stated in the notification required by clause (i);

(iii) provide the Indian Tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter, and the opportunity for appeal on the objections raised, except that the Indian Tribe may, in lieu of filing such appeal, directly proceed to initiate an action in a United States district court under section 110(a); and

(iv) provide the Indian Tribe the option of entering into the severable portions of a final proposed compact or funding agreement (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

(B) EFFECT OF EXERCISING CERTAIN OPTION If an Indian Tribe exercises the option specified in subparagraph (A)(iv)—

(i) the Indian Tribe shall retain the right to appeal the rejection by the Secretary under this section; and

(ii) clauses (i), (ii), and (iii) of subparagraph (A) shall apply only to the portion of the proposed final compact or funding agreement that was rejected by the Secretary.

(d) BURDEN OF PROOF In any administrative action, hearing, appeal, or civil action brought under this section, the Secretary shall have the burden of proof—

(1) of demonstrating, by a preponderance of the evidence, the validity of the grounds for a reassumption under subsection (b); and

(2) of clearly demonstrating the validity of the grounds for rejecting a final offer made under subsection (c).

(e) GOOD FAITH

(1) IN GENERAL In the negotiation of compacts and funding agreements, the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy.

(2) POLICY The Secretary shall carry out this title in a manner that maximizes the policy of Tribal self-governance.

(f) SAVINGS

(1) IN GENERAL To the extent that programs carried out for the benefit of Indian Tribes and Tribal organizations under this title reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of Tribal shares and other funds determined under section 408(c), except for funding agreements entered into for programs under section 403(c), the Secretary shall make such savings available to the Indian Tribes or Tribal organizations for the provision of additional services to program beneficiaries in

a manner equitable to directly served, contracted, and compacted programs.

(2) DISCRETIONARY PROGRAMS OF SPECIAL SIGNIFICANCE For any savings generated as a result of the assumption of a program by an Indian Tribe under section 403(c), such savings shall be made available to that Indian Tribe.

(g) TRUST RESPONSIBILITY The Secretary may not waive, modify, or diminish in any way the trust responsibility of the United States with respect to Indian Tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

(h) DECISION MAKER A decision that constitutes final agency action and relates to an appeal within the Department conducted under subsection (c)(6)(A)(iii) may be made by—

(1) an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

(2) an administrative law judge.

(i) RULES OF CONSTRUCTION Subject to section 101(a) of the PROGRESS for Indian Tribes Act, each provision of this title and each provision of a compact or funding agreement shall be liberally 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. 407. CONSTRUCTION PROGRAMS AND PROJECTS

(a) IN GENERAL Indian Tribes participating in Tribal self-governance may carry out any construction project included in a compact or funding agreement under this title.

(b) TRIBAL OPTION TO CARRY OUT CERTAIN FEDERAL ENVIRONMENTAL ACTIVITIES In carrying out a construction project under this title, an Indian Tribe may, subject to the agreement of the Secretary, elect to assume some Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, United States Code, and related provisions of other law and regulations that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

(1) designating a certifying Tribal officer to represent the Indian Tribe and to assume the status of a responsible Federal official under those Acts, laws, or regulations; and

(2) accepting the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying Tribal officer assuming the status of a responsible Federal official under those Acts, laws, or regulations.

(c) SAVINGS CLAUSE Notwithstanding subsection (b), nothing in this section authorizes the Secretary to include in any compact or funding agreement duties of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, United States Code, and other related provisions of law that are inherent Federal functions.

(d) CODES AND STANDARDS In carrying out a construction project under this title, an Indian Tribe shall—

(1) adhere to applicable Federal, State, local, and Tribal building codes, architectural and engineering standards, and applicable Federal guidelines regarding design, space, and

operational standards, appropriate for the particular project; and

(2) use only architects and engineers who—

(A) are licensed to practice in the State in which the facility will be built; and

(B) certify that—

(i) they are qualified to perform the work required by the specific construction involved; and

(ii) upon completion of design, the plans and specifications meet or exceed the applicable construction and safety codes.

(e) TRIBAL ACCOUNTABILITY

(1) IN GENERAL In carrying out a construction project under this title, an Indian Tribe shall assume responsibility for the successful completion of the construction project and of a facility that is usable for the purpose for which the Indian Tribe received funding.

(2) REQUIREMENTS For each construction project carried out by an Indian Tribe under this title, the Indian Tribe and the Secretary shall negotiate a provision to be included in the funding agreement that identifies—

(A) the approximate start and completion dates for the project, which may extend over a period of one or more years;

(B) a general description of the project, including the scope of work, references to design criteria, and other terms and conditions;

(C) the responsibilities of the Indian Tribe and the Secretary for the project;

(D) how project-related environmental considerations will be addressed;

(E) the amount of funds provided for the project;

(F) the obligations of the Indian Tribe to comply with the codes referenced in subsection (d)(1) and applicable Federal laws and regulations;

(G) the agreement of the parties over who will bear any additional costs necessary to meet changes in scope, or errors or omissions in design and construction; and

(H) the agreement of the Secretary to issue a certificate of occupancy, if requested by the Indian Tribe, based upon the review and verification by the Secretary, to the satisfaction of the Secretary, that the Indian Tribe has secured upon completion the review and approval of the plans and specifications, sufficiency of design, life safety, and code compliance by qualified, licensed, and independent architects and engineers.

(f) FUNDING

(1) IN GENERAL Funding appropriated for construction projects carried out under this title shall be included in funding agreements as annual or semiannual advance payments at the option of the Indian Tribe.

(2) ADVANCE PAYMENTS The Secretary shall include all associated project contingency funds with each advance payment, and the Indian Tribe shall be responsible for the management of such contingency funds.

(g) NEGOTIATIONS At the option of the Indian Tribe, construction project funding proposals shall be negotiated pursuant to the statutory process in section 105, and any resulting construction project agreement shall be incorporated into the funding agreement as addenda.

(h) FEDERAL REVIEW AND VERIFICATION

(1) IN GENERAL On a schedule negotiated by the Secretary and the Indian Tribe—

(A) the Secretary shall review and verify, to the satisfaction of the Secretary, that project planning and design documents prepared by the Indian Tribe in advance of initial construction are in conformity with the obligations of the Indian Tribe under subsection (d); and

(B) before the project planning and design documents are implemented, the Secretary shall review and verify to the satisfaction of the Secretary that subsequent document amendments which result in a significant change in construction are in conformity with the obligations of the Indian Tribe under subsection (d).

(2) REPORTS The Indian Tribe shall provide the Secretary with project progress and financial reports not less than semiannually.

(3) OVERSIGHT VISITS The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian Tribe.

(i) APPLICATION OF OTHER LAWS Unless otherwise agreed to by the Indian Tribe and except as otherwise provided in this Act, no provision of title 41, United States Code, the Federal Acquisition Regulation, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project carried out under this title.

(j) FUTURE FUNDING Upon completion of a facility constructed under this title, the Secretary shall include the facility among those eligible for annual operation and maintenance funding support comparable to that provided for similar facilities funded by the Department as annual appropriations are available and to the extent that the facility size and complexity and other factors do not exceed the funding formula criteria for comparable buildings.

SEC. 408. PAYMENT

(a) IN GENERAL At the request of the governing body of an Indian Tribe and under the terms of an applicable funding agreement, the Secretary shall provide funding to the Indian Tribe to carry out the funding agreement.

(b) ADVANCE ANNUAL PAYMENT At the option of the Indian Tribe, a funding agreement shall provide for an advance annual payment to an Indian Tribe.

(c) AMOUNT

(1) IN GENERAL Subject to subsection (e) and sections 403 and 405, the Secretary shall provide funds to the Indian Tribe under a funding agreement for programs in an amount that is equal to the amount that the Indian Tribe would have been entitled to receive under contracts and grants under this Act (including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits

to the Indian Tribe or its members) without regard to the organization level within the Department at which the programs are carried out.

(2) SAVINGS CLAUSE Nothing in this section reduces programs, services, or funds of, or provided to, another Indian Tribe.

(d) TIMING

(1) 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 such resolution.

(2) TRANSFERS Not later than 1 year after the date of enactment of the PROGRESS for Indian Tribes Act, in any instance in which a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

(e) AVAILABILITY Funds for trust services to individual Indians shall be available under a funding agreement only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the Indian Tribe.

(f) MULTIYEAR FUNDING A funding agreement may provide for multiyear funding.

(g) LIMITATIONS ON AUTHORITY OF THE SECRETARY The Secretary shall not—

(1) fail to transfer to an Indian Tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this title for programs eligible under paragraph (1) or (2) of section 403(b), except as required by Federal law;

(2) withhold any portion of such funds for transfer over a period of years; or

(3) reduce the amount of funds required under this title—

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

(B) in subsequent years, except as necessary as a result of—

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

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

(iii) a Tribal authorization;

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

(v) completion of an activity under a program for which the funds were provided;

(C) to pay for Federal functions, including—

(i) Federal pay costs;
(ii) Federal employee retirement benefits;
(iii) automated data processing;
(iv) technical assistance; and
(v) monitoring of activities under this title; or

(D) to pay for costs of Federal personnel displaced by self-determination contracts under this Act or self-governance under this title.

(h) FEDERAL RESOURCES If 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, including the use of interagency motor pool vehicles), or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall, as soon as practicable, acquire and transfer such personnel, supplies, or resources to the Indian Tribe under this title.

(i) PROMPT PAYMENT ACT Chapter 39 of title 31, United States Code, shall apply to the transfer of funds due under a compact or funding agreement authorized under this title.

(j) INTEREST OR OTHER INCOME

(1) IN GENERAL An Indian Tribe may retain interest or income earned on any funds paid under a compact or funding agreement to carry out governmental purposes.

(2) NO EFFECT ON OTHER AMOUNTS The retention of interest or income under paragraph (1) shall not diminish the amount of funds an Indian Tribe is entitled to receive under a funding agreement in the year the interest or income is earned or in any subsequent fiscal year.

(3) INVESTMENT STANDARD Funds transferred under this title shall be managed by the Indian Tribe using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the Indian Tribe that are not otherwise guaranteed or insured by the Federal Government.

(k) CARRYOVER OF FUNDS

(1) IN GENERAL Notwithstanding any provision of an appropriations Act, all funds paid to an Indian Tribe in accordance with a compact or funding agreement shall remain available until expended.

(2) EFFECT OF CARRYOVER If an Indian Tribe elects to carry over funding from one year to the next, the carryover shall not diminish the amount of funds the Indian Tribe is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

(l) LIMITATION OF COSTS

(1) IN GENERAL An Indian Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement.

(2) NOTICE OF INSUFFICIENCY If at any time the Indian Tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insuffi-

cient, the Indian Tribe shall provide reasonable notice of such insufficiency to the Secretary.

(3) SUSPENSION OF PERFORMANCE If, after notice under paragraph (2), the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian Tribe may suspend performance of the activity until such time as additional funds are transferred.

(4) SAVINGS CLAUSE Nothing in this section reduces any programs, services, or funds of, or provided to, another Indian Tribe.

(m) DISTRIBUTION OF FUNDS The Office of Self-Governance shall be responsible for distribution of all Bureau of Indian Affairs funds provided under this title unless otherwise agreed by the parties to an applicable funding agreement.

(n) APPLICABILITY Notwithstanding any other provision of this section, section 101(a) of the PROGRESS for Indian Tribes Act applies to subsections (a) through (m).

SEC. 409. FACILITATION

(a) IN GENERAL Except as otherwise provided by law (including section 101(a) of the PROGRESS for Indian Tribes Act), the Secretary shall interpret each Federal law and regulation in a manner that facilitates—

(1) the inclusion of programs in funding agreements; and

(2) the implementation of funding agreements.

(b) REGULATION WAIVER

(1) REQUEST An Indian Tribe may submit to the Secretary a written request for a waiver of applicability of a Federal regulation, including—

(A) an identification of the specific text in the regulation sought to be waived; and

(B) the basis for the request.

(2) DETERMINATION BY THE SECRETARY Not later than 120 days after receipt by the Secretary and the designated officials under paragraph (4) of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing to the Indian Tribe.

(3) EXTENSIONS The deadline described in paragraph (2) may be extended for any length of time, as agreed upon by both the Indian Tribe and the Secretary.

(4) DESIGNATED OFFICIALS The Secretary shall designate one or more appropriate officials in the Department to receive a copy of the waiver request described in paragraph (1).

(5) GROUNDS FOR DENIAL The Secretary may deny a request under paragraph (1) upon a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

(6) FAILURE TO MAKE DETERMINATION If the Secretary fails to make a determination with respect to a waiver request within the period specified in paragraph (2) (including any extension agreed to under paragraph (3)), the Secretary shall be deemed to have agreed to the request, except that for a waiver request relating to programs eligible under section 403(b)(2) or section 403(c), the Secretary shall be deemed to have denied the request.

(7) FINALITY A decision of the Secretary under this section shall be final for the Department.

SEC. 410. DISCRETIONARY APPLICATION OF OTHER SECTIONS

(a) IN GENERAL Except as otherwise provided in section 201(d) of the PROGRESS for Indian Tribes Act, at the option of a participating Indian Tribe or Indian Tribes, any of the provisions of title I may be incorporated in any compact or funding agreement under this title. The inclusion of any such provision shall be subject to, and shall not conflict with, section 101(a) of such Act.

(b) EFFECT Each incorporated provision under subsection (a) shall—

(1) have the same force and effect as if set out in full in this title;

(2) supplement or replace any related provision in this title; and

(3) apply to any agency otherwise governed by this title.

(c) EFFECTIVE DATE If an Indian Tribe requests incorporation at the negotiation stage of a compact or funding agreement, the incorporation shall—

(1) be effective immediately; and

(2) control the negotiation and resulting compact and funding agreement.

SEC. 411. ANNUAL BUDGET LIST

The Secretary shall list, in the annual budget request submitted to Congress under section 1105 of title 31, United States Code, any funds proposed to be included in funding agreements authorized under this title.

SEC. 412. REPORTS

(a) IN GENERAL

(1) REQUIREMENT On January 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this title.

(2) ANALYSIS Any Indian Tribe may submit to the Office of Self-Governance and to the appropriate committees of Congress a detailed annual analysis of unmet Tribal needs for funding agreements under this title.

(b) CONTENTS The report under subsection (a)(1) shall—

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

(2) identify—

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

(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian Tribes and members of Indian Tribes;

(C) the funds transferred to each Indian Tribe and the corresponding reduction in the Federal employees and workload; and

(D) the funding formula for individual Tribal shares of all Central Office funds, together with the comments of affected Indian Tribes, developed under subsection (d);

(3) before being submitted to Congress, be distributed to the Indian Tribes for comment (with a comment period of not less than 30 days);

(4) include the separate views and comments of each Indian Tribe or Tribal organization; and

(5) include a list of—

(A) all such programs that the Secretary determines, in consultation with Indian Tribes participating in self-governance, are eligible for negotiation to be included in a funding agreement at the request of a participating Indian Tribe; and

(B) all such programs which Indian Tribes have formally requested to include in a funding agreement under section 403(c) due to the special geographic, historical, or cultural significance of the program to the Indian Tribe, indicating whether each request was granted or denied, and stating the grounds for any denial.

(c) REPORT ON NON-BIA PROGRAMS

(1) IN GENERAL In order to optimize opportunities for including non-BIA programs in agreements with Indian Tribes participating in self-governance under this title, the Secretary shall review all programs administered by the Department, other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians, without regard to the agency or office concerned.

(2) PROGRAMMATIC TARGETS The Secretary shall establish programmatic targets, after consultation with Indian Tribes participating in self-governance, to encourage bureaus of the Department to ensure that an appropriate portion of those programs are available to be included in funding agreements.

(3) PUBLICATION The lists under subsection (b)(5) and targets under paragraph (2) shall be published in the Federal Register and made available to any Indian Tribe participating in self-governance.

(4) ANNUAL REVIEW

(A) IN GENERAL The Secretary shall annually review and publish in the Federal Register, after consultation with Indian Tribes participating in self-governance, revised lists and programmatic targets.

(B) CONTENTS In preparing the revised lists and programmatic targets, the Secretary shall consider all programs that were eligible for contracting in the original list published in the Federal Register in 1995, except for programs specifically determined not to be con–tract–i–ble as a matter of law.

(d) REPORT ON CENTRAL OFFICE FUNDS Not later than January 1, 2020, the Secretary shall, in consultation with Indian Tribes, develop a funding formula to determine the individual Tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs and the Office of the Special Trustee for inclusion in the compacts.

SEC. 413. REGULATIONS

(a) IN GENERAL

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

(2) PUBLICATION OF PROPOSED REGULATIONS Proposed regulations to implement this title shall be published in the Federal Register not later than 21 months after the date of enactment of the PROGRESS for Indian Tribes Act.

(3) EXPIRATION OF AUTHORITY The authority to promulgate regulations under paragraph (1) shall expire on the date that is 30 months after the date of enactment of the PROGRESS for Indian Tribes Act.

(b) COMMITTEE

(1) MEMBERSHIP 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 representatives of the Federal Government and Tribal government.

(2) LEAD AGENCY Among the Federal representatives described in paragraph (1), the Office of Self-Governance shall be the lead agency for the Department.

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

(d) EFFECT

(1) REPEAL The Secretary may repeal any regulation that is inconsistent with this Act.

(2) CONFLICTING PROVISIONS Subject to section 101(a) of the PROGRESS for Indian Tribes Act and except with respect to programs described under section 403(c), this title shall supersede any conflicting provision of law (including any conflicting regulations).

(3) EFFECTIVENESS WITHOUT REGARD TO REGULATIONS The lack of promulgated regulations on an issue shall not limit the effect or implementation of this title.

SEC. 414. EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCE, AND RULES

Unless expressly agreed to by a participating Indian Tribe in a compact or funding agreement, the participating Indian Tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

(1) the eligibility provisions of section 105(g); and

(2) regulations promulgated pursuant to section 413.

SEC. 415. APPEALS

Except as provided in section 406(d), in any administrative action, appeal, or civil action for judicial review of any decision made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by a preponderance of the evidence—

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

(2) the consistency of the decision with the requirements and policies of this title.

SEC. 416. APPLICATION OF OTHER PROVISIONS

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101–512; 104 Stat. 1959), shall apply to compacts and funding agreements entered into under this title.

SEC. 417. AUTHORIZATION OF APPROPRIATIONS

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

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SUPPLEMENTAL MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

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