

108TH CONGRESS  
1ST SESSION

# S. 288

To encourage contracting by Indians and Indian tribes for the management of Federal land, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To encourage contracting by Indians and Indian tribes for the management of Federal land, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION. 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Contracting  
5 and Federal Land Management Demonstration Project  
6 Act”.

7       **SEC. 2. PURPOSES.**

8       The purposes of this Act are—

9               (1) to expand the provisions of the Indian Self-  
10       Determination and Education Assistance Act (25

1 U.S.C. 450 et seq.) to increase Indian employment  
 2 and income through greater contracting opportuni-  
 3 ties with the Federal Government;

4 (2) to encourage contracting by Indians and In-  
 5 dian tribes with respect to management of Federal  
 6 land—

7 (A) to realize the benefit of Indian knowl-  
 8 edge and expertise with respect to the land; and

9 (B) to promote innovative management  
 10 strategies on Federal land that will result in  
 11 greater sensitivity toward, and respect for, reli-  
 12 gious beliefs and sacred sites of Indians and In-  
 13 dian tribes;

14 (3) to better accommodate access to and cere-  
 15 monial use of Indian sacred land by Indian religious  
 16 practitioners; and

17 (4) to prevent significant damage to Indian sa-  
 18 cred land.

19 **SEC. 3. TRIBAL PROCUREMENT CONTRACTING AND RES-**  
 20 **ERVATION DEVELOPMENT.**

21 Section 7 of the Indian Self-Determination and Edu-  
 22 cation Assistance Act (25 U.S.C. 450e) is amended by  
 23 adding at the end the following:

24 “(d) TRIBAL PROCUREMENT CONTRACTING AND  
 25 RESERVATION DEVELOPMENT.—

1           “(1) IN GENERAL.—Subject to paragraph (2),  
2           on request by and application of an Indian tribe to  
3           provide certain services or deliverables that the Sec-  
4           retary of the Interior would otherwise procure from  
5           a private-sector entity (referred to in this subsection  
6           as an ‘applicant tribe’), and absent a request made  
7           by 1 or more Indian tribes that would receive a di-  
8           rect benefit from those services or deliverables to  
9           enter into contracts for those services or deliverables  
10          in accordance with section 102 (referred to in this  
11          subsection as a ‘beneficiary tribe’), the Secretary of  
12          the Interior shall enter into contracts for those serv-  
13          ices or deliverables with the applicant tribe in ac-  
14          cordance with section 102.

15           “(2) ASSURANCES.—An applicant tribe shall  
16          provide the Secretary of the Interior with assurances  
17          that the principal beneficiary tribes that receive the  
18          services and deliverables for which the applicant  
19          tribe has entered into a contract with the Secretary  
20          of the Interior remain the Indian tribes originally in-  
21          tended to benefit from the services or deliverables.

22           “(3) RIGHTS AND PRIVILEGES.—For the pur-  
23          pose of this subsection, an applicant tribe shall  
24          enjoy, at a minimum, the same rights and privileges  
25          under this Act as would a beneficiary tribe if the

1 beneficiary tribe exercised rights to enter into a con-  
 2 tract relating to services or deliverables in accord-  
 3 ance with section 102.

4 “(4) NOTICE OF DESIRE TO CONTRACT.—If a  
 5 beneficiary tribe seeks to enter into a contract with  
 6 the Secretary of the Interior for services or  
 7 deliverables being provided by an applicant tribe—

8 “(A) the beneficiary tribe shall imme-  
 9 diately provide notice of the desire to enter into  
 10 a contract for those services and deliverables to  
 11 the applicant tribe and the Secretary; and

12 “(B) not later than the date that is 180  
 13 days after the date on which the applicant tribe  
 14 and the Secretary of the Interior receive the no-  
 15 tice, the contract between the applicant tribe  
 16 and the Secretary of the Interior for the serv-  
 17 ices or deliverables shall terminate.”.

18 **SEC. 4. INDIAN AND FEDERAL LAND MANAGEMENT DEM-**  
 19 **ONSTRATION PROJECT.**

20 Section 403 of the Indian Self-Determination and  
 21 Education Assistance Act (25 U.S.C. 458cc) is amended  
 22 by adding at the end the following:

23 “(m) INDIAN AND FEDERAL LAND MANAGEMENT  
 24 DEMONSTRATION PROJECT.—

25 “(1) DEFINITIONS.—In this subsection:

1                   “(A) FEDERAL LAND.—

2                   “(i) IN GENERAL.—The term ‘Federal  
3 land’ means any land or interest in or to  
4 land owned by the United States.

5                   “(ii) INCLUSION.—The term ‘Federal  
6 land’ includes a leasehold interest held by  
7 the United States.

8                   “(iii) EXCLUSION.—The term ‘Fed-  
9 eral land’ does not include land held in  
10 trust by the United States for the benefit  
11 of an Indian tribe.

12                   “(B) PROJECT.—The term ‘project’ means  
13 the Indian and Federal Land Management  
14 Demonstration Project established under para-  
15 graph (2).

16                   “(C) SECRETARY.—The term ‘Secretary’  
17 means the Secretary of the Interior.

18                   “(2) ESTABLISHMENT.—The Secretary shall es-  
19 tablish a demonstration project, to be known as the  
20 ‘Indian and Federal Land Management Demonstra-  
21 tion Project’, to enter into contracts with Indian  
22 tribes or tribal organizations under which the Indian  
23 tribes or tribal organizations shall carry out activi-  
24 ties relating to Federal land management, includ-  
25 ing—

1           “(A) archaeological, anthropological, and  
2           cultural surveys and analyses; and

3           “(B) activities relating to the identifica-  
4           tion, maintenance, or protection of land consid-  
5           ered to have religious, ceremonial, or cultural  
6           significance to the Indian tribe or tribal organi-  
7           zation.

8           “(3) PARTICIPATION.—During each of the 2  
9           fiscal years after the date of enactment of this sub-  
10          section, the Secretary shall select not less than 12  
11          eligible Indian tribes or tribal organizations to par-  
12          ticipate in the project.

13          “(4) ELIGIBILITY.—To be eligible to participate  
14          in the project, an Indian tribe or tribal organization,  
15          shall—

16               “(A) request participation by resolution or  
17               other official action of the governing body of  
18               the Indian tribe or tribal organization;

19               “(B) with respect to the 3 fiscal years im-  
20               mediately preceding the fiscal year for which  
21               participation is requested, demonstrate financial  
22               stability and financial management capability  
23               by showing that there were no unresolved sig-  
24               nificant and material audit exceptions in the re-  
25               quired annual audit of the self-determination

1 contracts of the Indian tribe or tribal organiza-  
2 tion;

3 “(C) demonstrate significant use of or de-  
4 pendency on the relevant conservation system  
5 unit or other public land unit for which pro-  
6 grams, functions, services, and activities are re-  
7 quested to be placed under contract with re-  
8 spect to the project; and

9 “(D) before entering into any contract de-  
10 scribed in paragraph (6), complete a planning  
11 phase described in paragraph (5).

12 “(5) PLANNING PHASE.—Not later than 1 year  
13 after the date on which the Secretary selects an In-  
14 dian tribe or tribal organization to participate in the  
15 project, the Indian tribe or tribal organization shall  
16 complete, to the satisfaction of the Indian tribe or  
17 tribal organization, a planning phase that includes—

18 “(A) legal and budgetary research; and

19 “(B) internal tribal planning and organiza-  
20 tional preparation.

21 “(6) CONTRACTS.—

22 “(A) IN GENERAL.—On request by an In-  
23 dian tribe or tribal organization that meets the  
24 eligibility criteria specified in paragraph (4), the  
25 Secretary shall negotiate and enter into a con-

1           tract with the Indian tribe or tribal organiza-  
2           tion under which the Indian tribe or tribal orga-  
3           nization shall plan, conduct, and administer  
4           programs, services, functions, and activities (or  
5           portions of programs, services, functions, and  
6           activities) requested by the Indian tribe or trib-  
7           al organization that relate to—

8                   “(i) archaeological, anthropological,  
9                   and cultural surveys and analyses; and

10                   “(ii) the identification, maintenance,  
11                   or protection of land considered to have re-  
12                   ligious, ceremonial, or cultural significance  
13                   to the Indian tribe or tribal organization.

14                   “(B) TIME LIMITATION FOR NEGOTIATION  
15                   OF CONTRACTS.—Not later than 90 days after  
16                   a participating Indian tribe or tribal organiza-  
17                   tion notifies the Secretary of completion by the  
18                   Indian tribe or tribal organization of the plan-  
19                   ning phase described in paragraph (5), the Sec-  
20                   retary shall initiate and conclude negotiations  
21                   with respect to a contract described in subpara-  
22                   graph (A) (unless an alternative negotiation  
23                   and implementation schedule is agreed to by  
24                   the Secretary and the Indian tribe or tribal or-  
25                   ganization).

1           “(C) IMPLEMENTATION.—An Indian tribe  
2 or tribal organization that enters into a con-  
3 tract under this paragraph shall begin imple-  
4 mentation of the contract—

5           “(i) not later than October 1 of the  
6 fiscal year following the fiscal year in  
7 which the Indian tribe or tribal organiza-  
8 tion completes the planning phase under  
9 paragraph (5); or

10           “(ii) in accordance with an alternative  
11 implementation schedule agreed to under  
12 subparagraph (B).

13           “(D) TERM.—A contract entered into  
14 under this paragraph may have a term of not  
15 to exceed 5 fiscal years, beginning with the fis-  
16 cal year in which the contract is entered into.

17           “(E) DECLINATION AND APPEALS PROVI-  
18 SIONS.—The provisions of this Act relating to  
19 declination and appeals of contracts, including  
20 section 110, shall apply to a contract negotiated  
21 under this paragraph.

22           “(7) ADMINISTRATION OF CONTRACTS.—

23           “(A) INCLUSION OF CERTAIN TERMS.—

24           “(i) IN GENERAL.—At the request of  
25 an Indian tribe or tribal organization, the

1 benefits, privileges, terms, and conditions  
2 of agreements entered into in accordance  
3 with this Act, and such other terms and  
4 conditions as are mutually agreed to and  
5 not otherwise contrary to law, may be in-  
6 cluded in a contract entered into under  
7 paragraph (6).

8 “(ii) FORCE AND EFFECT.—If any  
9 provision of this Act is incorporated in a  
10 contract under clause (i), the provision  
11 shall—

12 “(I) have the same force and ef-  
13 fect as under this Act; and

14 “(II) apply notwithstanding any  
15 other provision of law.

16 “(B) AUDIT.—A contract entered into  
17 under paragraph (6) shall provide for a single-  
18 agency audit report to be filed in accordance  
19 with chapter 75 of title 31, United States Code.

20 “(C) TRANSFER OF EMPLOYEES.—

21 “(i) IN GENERAL.—A Federal em-  
22 ployee employed at the time of transfer of  
23 administrative responsibility for a pro-  
24 gram, service, function, or activity to an  
25 Indian tribe or tribal organization under

1           this subsection shall not be separated from  
2           Federal service by reason of the transfer.

3           “(ii) INTERGOVERNMENTAL AC-  
4           TIONS.—An intergovernmental personnel  
5           action may be used to transfer supervision  
6           of a Federal employee described in clause  
7           (i) to an Indian tribe or tribal organiza-  
8           tion.

9           “(iii) TREATMENT OF TRANSFERRED  
10          EMPLOYEES.—Notwithstanding any pri-  
11          ority reemployment list, directive, rule, reg-  
12          ulation, or other order from the Depart-  
13          ment of the Interior, the Office of Manage-  
14          ment and Budget, or any other Federal  
15          agency, a Federal employee described in  
16          clause (i) shall be given priority placement  
17          for any available position within the re-  
18          spective agency of the employee.

19          “(8) FUNDING AND PAYMENTS.—A contract en-  
20          tered into under paragraph (6) shall provide that,  
21          with respect to the transfer of administrative respon-  
22          sibility for each program, service, function, and ac-  
23          tivity covered by the contract—

24                  “(A) for each fiscal year during which the  
25                  contract is in effect, the Secretary shall provide

1 to the Indian tribe or tribal organization that is  
2 a party to the contract funds in an amount that  
3 is at least equal to the amount that the Sec-  
4 retary would have otherwise expended in car-  
5 rying out the program, service, function, or ac-  
6 tivity for the fiscal year; and

7 “(B) funds provided to an Indian tribe or  
8 tribal organization under subparagraph (A)  
9 shall be paid by the Secretary by such date be-  
10 fore the beginning of the applicable fiscal year  
11 as the Secretary and the Indian tribe or tribal  
12 organization may jointly determine, in the form  
13 of annual or semiannual installments.

14 “(9) PLANNING GRANTS.—

15 “(A) IN GENERAL.—Subject to the avail-  
16 ability of appropriations, on application by an  
17 Indian tribe or tribal organization that is a par-  
18 ticipant in the project, the Secretary shall pro-  
19 vide to the Indian tribe or tribal organization a  
20 grant in the amount of \$100,000 to assist the  
21 Indian tribe or tribal organization in—

22 “(i) completing the planning phase de-  
23 scribed in paragraph (5); and

24 “(ii) planning for the contracting of  
25 programs, functions, services, and activi-

1           ties in accordance with a contract entered  
2           into under paragraph (6).

3           “(B) NO REQUIREMENT OF GRANT.—An  
4           Indian tribe or tribal organization may carry  
5           out responsibilities of the Indian tribe or tribal  
6           organization described in subparagraph (A)  
7           without applying for a grant under this para-  
8           graph.

9           “(C) LIMITATION ON GRANTS.—No Indian  
10          tribe or tribal organization may receive more  
11          than 1 grant under this paragraph.

12          “(D) AUTHORIZATION OF APPROPRIA-  
13          TIONS.—There are authorized to be appro-  
14          priated to carry out this paragraph such sums  
15          as are necessary for each of the 2 fiscal years  
16          following the fiscal year in which this subsection  
17          is enacted.

18          “(10) REPORT.—Not later than 90 days after  
19          each of December 31, 2003, and December 31,  
20          2006, the Secretary shall submit to Congress a de-  
21          tailed report on the project, including—

22                  “(A) a description of the project;

23                  “(B) findings with respect to the project;

24                  and

1                   “(C) an analysis of the costs and benefits  
2                   of the project.”.

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