

plete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Public Law 103-413, referred to in text, is Pub. L. 103-413, Oct. 25, 1994, 108 Stat. 4250, known as the Indian Self-Determination Act Amendments of 1994, which is classified principally to subchapter IV (§5361 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 5301 of this title and Tables.

Public Law 100-297, referred to in text, is Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130, known as the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6301 of Title 20, Education, and Tables.

#### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1998, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450e-2 of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 104-208, div. A, title I, §101(d) [title III, §310], Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, §101(c) [title III, §310], Apr. 26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

### § 5310. Investment of advance payments; restrictions

Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may on and after December 8, 2004, be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

(Pub. L. 108-447, div. E, title I, §111, Dec. 8, 2004, 118 Stat. 3064.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in text, is

<sup>1</sup> See References in Text note below.

Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in text, is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 2005, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450e-3 of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108-108, title I, §111, Nov. 10, 2003, 117 Stat. 1266.

Pub. L. 108-7, div. F, title I, §111, Feb. 20, 2003, 117 Stat. 239.

Pub. L. 107-63, title I, §111, Nov. 5, 2001, 115 Stat. 438.

Pub. L. 106-291, title I, §111, Oct. 11, 2000, 114 Stat. 942.

Pub. L. 106-113, div. B, §1000(a)(3), [title I, §111], Nov. 29, 1999, 113 Stat. 1535, 1501A-156.

Pub. L. 105-277, div. A, §101(e), [title I, §111], Oct. 21, 1998, 112 Stat. 2681-231, 2681-254.

Pub. L. 105-83, title I, §112, Nov. 14, 1997, 111 Stat. 1562.

#### SUBCHAPTER I—INDIAN SELF-DETERMINATION

### § 5321. Self-determination contracts

#### (a) Request by tribe; authorized programs

(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, conduct, and administer programs or portions thereof, including construction programs—

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.];

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. 13], 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 [42 U.S.C. 2001 et seq.];

(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 5325(a) of this title; 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,<sup>1</sup> 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 5325(a) of this title,

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 5325(a) of this title. If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) of this section shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

**(b) Procedure upon refusal of request to contract**

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 5331(a) of this title.

**(c) Liability insurance; waiver of defense**

(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 chapter. 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 prac-

<sup>1</sup> So in original. Probably should be "paragraph."

licable, give a preference to coverage underwritten by Indian-owned economic enterprises (as defined in section 1452 of this title), 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 that 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) Tribal organizations and Indian contractors deemed part of Public Health Service**

For purposes of section 233 of title 42, 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, with respect to claims by any such person, on or after November 29, 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<sup>2</sup> 5321 or 5322 of this title 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 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 employment 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 perform-

ance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

**(e) Burden of proof at hearing or appeal declining contract; final agency action**

(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3) of this section or any civil action conducted pursuant to section 5331(a) of this title, 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) of this section 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 chapter in a manner that maximizes the policy of Tribal self-determination, in a manner consistent with—

(A) the purposes specified in section 5302 of this title; 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 chapter 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.

(Pub. L. 93-638, title I, §102, formerly §§102 and 103(c), Jan. 4, 1975, 88 Stat. 2206; Pub. L. 100-202, §101(g) [title II, §201], Dec. 22, 1987, 101 Stat. 1329-213, 1329-246; Pub. L. 100-446, title II, §201, Sept. 27, 1988, 102 Stat. 1817; renumbered §102 and amended Pub. L. 100-472, title II, §201(a), (b)(1), Oct. 5, 1988, 102 Stat. 2288, 2289; Pub. L. 100-581, title II, §210, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-644, title II, §203(b), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, §102(5)-(9), Oct. 25, 1994, 108 Stat. 4251-4253; Pub. L. 106-260, §6, Aug. 18, 2000, 114 Stat. 732; Pub. L. 116-180, title II, §202, Oct. 21, 2020, 134 Stat. 879.)

**Editorial Notes**

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (a)(1)(A), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known

<sup>2</sup>So in original. Probably should be "section".

as the Johnson-O'Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (a)(1)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, which is classified generally to subchapter I (§2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

This chapter, referred to in subsecs. (c)(1), (f)(2), and (g), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (c)(1), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931-934, 941-946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The PROGRESS for Indian Tribes Act, referred to in subsec. (f)(2)(B), is Pub. L. 116-180, Oct. 21, 2020, 134 Stat. 857, also known as the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 5301 of this title and Tables.

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (g), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

#### CODIFICATION

Except as provided below, section was formerly classified to section 450f of this title prior to editorial reclassification and renumbering as this section.

Subsec. (d) of this section was formerly classified to the last sentence of subsec. (c) of former section 450g of this title prior to redesignation as subsec. (d) of former section 450f of this title by Pub. L. 100-472, §201(b)(1), and editorial reclassification and renumbering of former section 450f of this title as this section. See 1988 Amendment note below.

#### AMENDMENTS

2020—Subsec. (c)(2). Pub. L. 116-180, §202(1), substituted "economic enterprises (as defined in section 1452 of this title), except that" for "economic enterprises as defined in section 1452 of this title, except that".

Subsecs. (f), (g). Pub. L. 116-180, §202(2), added subsecs. (f) and (g).

2000—Subsec. (e)(1). Pub. L. 106-260 inserted "or any civil action conducted pursuant to section 5331(a) of this title" after "subsection (b)(3) of this section".

1994—Subsec. (a)(1). Pub. L. 103-413, §102(5), inserted concluding provisions.

Subsec. (a)(2). Pub. L. 103-413, §102(6)(A)(i), (ii), (vi), inserted "or a proposal to amend or renew a self-determination contract," before "to the Secretary for review" in first sentence and, in second sentence, substituted "Subject to the provisions of paragraph (4), the Secretary" for "The Secretary", inserted "and award the contract" after "approve the proposal", substituted "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" for "within sixty days of receipt of the proposal, a specific finding is made that", and inserted concluding provisions.

Subsec. (a)(2)(D), (E). Pub. L. 103-413, §102(6)(A)(iii)-(v), added subpars. (D) and (E).

Subsec. (a)(4). Pub. L. 103-413, §102(6)(B), added par. (4).

Subsec. (b)(3). Pub. L. 103-413, §102(7), inserted "with the right to engage in full discovery relevant to any issue raised in the matter" after "record" and "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 5331(a) of this title" before period at end.

Subsec. (d). Pub. L. 103-413, §102(8), substituted "as provided in section 2671 of title 28 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)" for "as provided in section 2671 of title 28)".

Subsec. (e). Pub. L. 103-413, §102(9), added subsec. (e). 1990—Subsec. (d). Pub. L. 101-644 inserted "or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle," after "investigations,".

1988—Pub. L. 100-472, §201(a), amended section generally, revising and restating provisions of subsecs. (a) to (c).

Subsec. (c)(2). Pub. L. 100-581 which directed amendment of par. (2) by substituting "section 1452 of this title" for "section 1425 of title 25, United States Code" was executed by making the substitution for "section 1425, title 25, United States Code" to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 100-472, §201(b)(1), redesignated the last sentence of subsec. (c) of former section 450g of this title as subsec. (d) of this section and substituted reference to sections 5321 or 5322 of this title for reference to former sections 450g and 450h(b) of this title. See Codification notes above and set out under section 5322 of this title.

Pub. L. 100-446 inserted into sentence beginning "For purposes of" the words "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" after "claims", "prior to, including, or after December 22, 1987," after "performance", "an Indian tribe," after "investigations," and "Provided, That such employees shall be deemed to be acting within the scope of their employment 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" after "the contract or agreement".

1987—Subsec. (d). Pub. L. 100-202 inserted sentence at end deeming a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement to be part of the Public Health Service while carrying out any such contract or agreement and its employees to be employees of the Service while acting within the scope of their employment in carrying out the contract or agreement.

#### Statutory Notes and Related Subsidiaries

##### SHORT TITLE

For short title of this subchapter as the "Indian Self-Determination Act", see section 101 of Pub. L. 93-638, set out as a note under section 5301 of this title.

## SAVINGS PROVISION

Pub. L. 106-260, §11, Aug. 18, 2000, 114 Stat. 734, provided that: "Funds appropriated for title III of the Indian Self-Determination and Education Assistance Act ([Pub. L. 93-638, former] 25 U.S.C. 450f note) shall be available for use under title V of such Act [25 U.S.C. 5381 et seq.]."

## INDIAN TRIBAL TORT CLAIMS AND RISK MANAGEMENT

Pub. L. 105-277, div. A, §101(e) [title VII], Oct. 21, 1998, 112 Stat. 2681-231, 2681-335, provided that:

## "SEC. 701. SHORT TITLE.

"This title may be cited as the 'Indian Tribal Tort Claims and Risk Management Act of 1998'."

## "SEC. 702. FINDINGS AND PURPOSE.

"(a) FINDINGS.—Congress finds that—

"(1) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

"(2) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

"(3) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) [now 25 U.S.C. 5301 et seq.]; and

"(4) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

"(b) PURPOSE.—The purpose of this title is to provide for a study to facilitate relief for a person who is injured as a result of an official action of a tribal government.

## "SEC. 703. DEFINITIONS.

"In this title:

"(1) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) [now 25 U.S.C. 5304(e)].

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

"(3) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) [now 25 U.S.C. 5304(l)].

## "SEC. 704. STUDY AND REPORT TO CONGRESS.

"(a) IN GENERAL.—

"(1) STUDY.—In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance to Indian tribes is cost-effective, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

"(2) CONTENTS OF STUDY.—The study conducted under this subsection shall include—

"(A) an analysis of loss data;

"(B) risk assessments;

"(C) projected exposure to liability, and related matters; and

"(D) the category of risk and coverage involved, which may include—

"(i) general liability;

"(ii) automobile liability;

"(iii) the liability of officials of the Indian tribe;

"(iv) law enforcement liability;

"(v) workers' compensation; and

"(vi) other types of liability contingencies.

"(3) ASSESSMENT OF COVERAGE BY CATEGORIES OF RISK.—For each Indian tribe, for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance coverage or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

"(b) REPORT.—Not later than June 1, 1999, and annually thereafter, the Secretary shall submit a report to Congress that contains legislative recommendations that the Secretary determines to—

"(1) be appropriate to improve the provision of insurance coverage to Indian tribes; or

"(2) otherwise achieve the purpose of providing relief to persons who are injured as a result of an official action of a tribal government.

## "SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

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

## CLAIMS RESULTING FROM PERFORMANCE OF CONTRACT, GRANT AGREEMENT, OR COOPERATIVE AGREEMENT; CIVIL ACTION AGAINST TRIBE, TRIBAL ORGANIZATION, ETC., DEEMED ACTION AGAINST UNITED STATES; REIMBURSEMENT OF TREASURY FOR PAYMENT OF CLAIMS

Pub. L. 101-512, title III, §314, Nov. 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, title III, §308, Nov. 11, 1993, 107 Stat. 1416, provided that: "With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter, or claims asserted after September 30, 1990, but resulting from the performance of functions prior to fiscal year 1991, under a contract, grant agreement, or any other agreement or compact authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq. [now 25 U.S.C. 5301 et seq.]) [Pub. L. 93-638, see Short Title note set out under section 5301 of this title and Tables] or by title V, part B, Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501 et seq.), an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior or the Indian Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Bureau or Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided*, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act [See Short Title note under section 2671 of Title 28, Judiciary and Judicial Procedure]: *Provided further*, That beginning with the fiscal year ending September 30, 1991, and thereafter, the appropriate Secretary shall request through annual appropriations funds sufficient to reimburse the Treasury for any claims paid in the prior fiscal year pursuant to the foregoing provisions: *Provided further*, That nothing in this section shall in any way affect the provisions of section 102(d) of the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq. [now 25 U.S.C. 5301 et seq.]) [25 U.S.C. 5321(d)]."

## REFERENCE TO FORMER SECTION 450g(c) IN PUBLIC LAW 100-446

Pub. L. 100-472, title II, §201(b)(2), Oct. 5, 1988, 102 Stat. 2289, provided that: "Any reference to section 103(c) [§103(c) of Pub. L. 93-638, former 25 U.S.C. 450g(c)]

contained in an Act making appropriations for the Department of the Interior and Related Agencies for fiscal year 1989 [Pub. L. 100-446, see Tables for classification] shall be deemed to apply to section 102(d) of such Act [§102(d) of Pub. L. 93-638, former 25 U.S.C. 450f(d), now 25 U.S.C. 5321(d)] as amended by this Act.”

See Codification notes above.

### § 5322. Grants to tribal organizations or tribes

#### (a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities

The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 5321 of this title and the additional costs associated with the initial years of operation under such a contract or contracts; or

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within Indian country (as defined in chapter 53 of title 18) or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of<sup>1</sup> Interior may (upon request of the tribe) acquire such land in trust for the tribe.

#### (b) Grants by Secretary of Health and Human Services for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions

The Secretary of Health and Human Services may, in accordance with regulations adopted pursuant to section 5328 of this title, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.<sup>2</sup>

#### (c) Use as matching shares for other similar Federal grant programs

The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

#### (d) Technical assistance

The Secretary is directed, upon the request of any tribal organization and subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to such tribal organization—

(1) to develop any new self-determination contract authorized pursuant to this chapter;

(2) to provide for the assumption by such tribal organization of any program, or portion thereof, provided for in section 5321(a)(1) of this title; or

(3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 5321 of this title.

#### (e) Grants for technical assistance and for planning, etc., Federal programs for tribe

The Secretary is authorized, upon the request of an Indian tribe, to make a grant to any tribal organization for—

(1) obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and

(2) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe, including Federal administrative functions.

(Pub. L. 93-638, title I, §103, formerly §104, Jan. 4, 1975, 88 Stat. 2207; renumbered §103 and amended Pub. L. 100-472, title II, §202, Oct. 5, 1988, 102 Stat. 2289; Pub. L. 101-644, title II, §203(g)(1), Nov. 29, 1990, 104 Stat. 4666.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 103 of this Act, referred to in subsec. (b)(2), probably means former section 103 of Pub. L. 93-638, which was classified to former section 450g of this title, prior to repeal in part and transfer in part to former section 450f(d) of this title by Pub. L. 100-472, title II, §201(b)(1), Oct. 5, 1988, 102 Stat. 2289, and editorial reclassification and renumbering of former section 450f(d) as section 5321(d) of this title. See Prior Provisions note below.

This chapter, referred to in subsec. (d)(1), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 450h of this title prior to editorial reclassification and renumbering as this section.

<sup>1</sup> So in original. Probably should be followed by “the”.

<sup>2</sup> See References in Text note below.