

TRIBAL CONTRACT SUPPORT COST TECHNICAL  
AMENDMENTS OF 2000

SEPTEMBER 12, 2000.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

R E P O R T

[To accompany H.R. 4148]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4148) to make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Tribal Contract Support Cost Technical Amendments of 2000”.

**SEC. 2. AMENDMENT DETAILING CALCULATION AND PAYMENT OF CONTRACT SUPPORT COSTS.**

The Indian Self-Determination and Education Assistance Act is amended by adding after section 106 the following new section:

**“SEC. 106A. CONTRACT SUPPORT COSTS.**

“(a) OTHER FEDERAL AGENCIES.—Except as otherwise provided by statute, an Indian tribe or tribal organization administering a contract or compact under this Act shall be entitled to recover its full indirect costs associated with any other Federal funding received by such tribe or tribal organization (other than funds paid under this Act), consistent with the tribe’s or tribal organization’s indirect cost rate agreement with its cognizant Federal agency. This subsection shall not independently entitle such tribe or tribal organization to be paid additional amounts associated with such other Federal funding.

“(b) ALLOWABLE USES OF FUNDS.—Notwithstanding any other provision of law (including regulation or circular), an Indian tribe or tribal organization (1) administering a contract or compact under this Act and (2) employing an indirect cost pool that includes both funds paid under this Act and other Federal funds, shall be enti-

tled to use or expend all Federal funds in such tribe's or tribal organization's indirect cost pool in the same manner as permitted in section 106(j) (relating to allowable uses of funds without approval of the Secretary), and for such purposes only the term 'Secretary' means the Secretary of any Federal agency providing funds to such tribe or tribal organization.

“(c) CONSOLIDATED CONTRACT AMOUNT.—

“(1) CONDITIONS FOR CONSOLIDATION.—Commencing in fiscal year 2003, the Secretary shall consolidate all funds paid to a tribe or tribal organization pursuant to paragraphs (1) and (2) of section 106(a) into a single consolidated contract or compact amount if the following conditions have been met:

“(A) The tribe or tribal organization qualifies to carry out a mature contract under this title or is operating a self-governance agreement under any other title of this Act.

“(B) The tribe's or tribal organization's indirect cost rate has not varied more than 10 percent over the prior year's rate for the preceding 3 years (for tribes or tribal organizations that have no indirect rate, this criterion shall be satisfied if the ratio of the tribe's or tribal organization's contract support requirement to its direct cost base has not varied more than 10 percent over the ratio for the preceding 3 years).

“(C) At the time of the consolidation the tribe or tribal organization is receiving its full contract support cost requirement as determined under section 106(a)(2).

“(2) MEDICAL INFLATION RATE ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of Health and Human Services shall increase the amount of contract support costs paid as part of the consolidated amount by an amount equal to—

“(A) the adjustment in the medical care component of the national consumer price index over the preceding year, multiplied by

“(B) the contract support cost amount paid in the preceding year as part of the consolidated amount.

“(3) CONSUMER PRICE INDEX ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of the Interior shall increase the amount of contract support costs paid as part of the consolidated amount by an amount equal to—

“(A) the adjustment in the national consumer price index over the preceding year, multiplied by

“(B) the contract support cost amount paid in the preceding year as part of the consolidated amount.

“(4) EMPLOYMENT ADJUSTMENTS.—A tribe or tribal organization shall be entitled to receive additional contract support costs associated with the transfer of employees from Federal employment to tribal employment. Such additional contract support costs shall be added to the consolidated amount determined and adjusted under paragraphs (1), (2), and (3), and shall thereafter become a part of the consolidated amount.

“(5) ADDITIONAL CONTRACT SUPPORT COSTS.—Notwithstanding any other provision of this Act, and except as provided in paragraphs (4) and (8), the tribe or tribal organization shall not be entitled to receive any contract support costs additional to those contained within the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

“(6) REBUDGETING AUTHORITY UNAFFECTED.—The tribe or tribal organization may rebudget all contract or compact funds as specified in section 106(n).

“(7) DECONSOLIDATION.—Except as provided in paragraph (8), in the event—

“(A) the amount of program funds paid under section 106(a)(1) as part of the consolidated amount, when combined with other program funds paid to the tribe or tribal organization from other funding sources, increases or decreases by more than—

“(i) 20 percent over the amount paid in the preceding year; or

“(ii) 40 percent over the amount paid in the preceding three years;

or

“(B) the Secretary for good cause shown agrees, the amounts paid by the Secretary under this section shall be deconsolidated, and such amounts shall be recalculated and paid as specified elsewhere in this Act. Upon such recalculation, the recalculated amounts shall be reconsolidated into a single amount as otherwise described in this subsection.

“(8) CONTRACTING ADDITIONAL PROGRAMS.—Nothing in this subsection shall affect the right of a tribe or tribal organization to contract or compact for the operation of new or expanded programs, services, functions, or activities not included in the consolidated amount paid under paragraph (1), or to be paid the full amount of contract support costs associated with such additional contracted

or compacted programs, as provided in section 106(a)(1) and other provisions of this Act. Any such additional programs and associated contract support costs shall be added to the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

“(9) SEPARATE CONTRACTS AND COMPACTS.—Nothing in this subsection shall require a tribe or tribal organization to consolidate separate contracts or compacts administered under this Act into a single contract or compact.

“(d) NEGOTIATION OF CONTRACT SUPPORT COST AMOUNTS.—Within the Indian Health Service of the Department of Health and Human Services, the negotiation, review, and approval of tribal contract support cost entitlements shall be the responsibility of the Office of Tribal Programs, subject to the tribe’s or tribal organization’s indirect cost rate agreement with the tribe’s or tribal organization’s cognizant Federal agency.

“(e) DIRECT CONTRACT SUPPORT COSTS AND FEDERAL EMPLOYEES.—The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include direct contract support costs associated with all Federal employees employed in connection with the program, service, function, or activity that is the subject of the contract, including all Federal employees paid with funds generated from third-party collections.

“(f) REGULATIONS.—The Secretary of the Interior and the Secretary of Health and Human Services are authorized to promulgate joint regulations relating to the allowability of costs expended under this Act, including all pooled indirect costs and direct contract support costs. In promulgating such regulations the Secretaries shall follow the procedures set forth in sections 107(a)(2)(A), 107(d)(1), 107(d)(2)(A), 107(d)(2)(B), 107(d)(2)(D), and 107(d)(2)(E), and shall publish proposed regulations in the Federal Register to carry out this subsection not later than 180 days after the date of enactment of the Tribal Contract Support Cost Technical Amendments of 2000. The authority to promulgate regulations under this subsection shall expire if final regulations are not promulgated within 18 months after the date of enactment of the Tribal Contract Support Cost Technical Amendments of 2000. In the event of a conflict between such regulations and any Office of Management and Budget circular, the provision of such regulations shall control. The Secretary may, with respect to a contract or compact entered into under this Act, make exceptions in the regulations promulgated to carry out this subsection, or waive such regulations, if the Secretary finds that such exception or waiver is consistent with the policies of this Act, and is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, and appeal procedures set forth in section 102.”

#### SEC. 3. AMENDMENTS CLARIFYING CONTRACT SUPPORT COST ENTITLEMENT.

The Indian Self-Determination and Education Assistance Act is amended—

(1) in section 105(c)(1), by striking the last flush sentence;

(2) in section 106(b)—

(A) by striking “the provision of funds under this Act is subject to the availability of appropriations and”; and

(B) by adding at the end thereof the following flush sentence:

“Necessary amounts are appropriated to pay contract support costs when not otherwise provided for.”;

(3) in section 1(b)(4) of the model contract set forth in section 108(c), by striking “Subject to the availability of appropriations, the” and inserting “The”; and

(4) in section 106(a)(5) by adding at the end thereof the following flush sentence:

“Notwithstanding any other provision of law, the Secretary shall fully pay preaward and startup costs without regard to the year in which such costs were incurred or will be incurred, including such costs payable to tribes and tribal organizations identified by the Indian Health Service as ‘ISD Queue Tribes’ in its September 17, 1999, report entitled ‘FY 1999 IHS CSC Shortfall Data’.”.

#### SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL REVIEW PERIOD.

Section 102(a)(2) of the Indian Self-Determination and Education Assistance Act is amended—

(1) by striking “ninety” in the second sentence and inserting “180”; and

(2) by striking “90-day” in the third sentence and inserting “180-day”.

#### SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.

Section 110 of the Indian Self-Determination and Education Assistance Act is amended—

(1) in subsection (c), by inserting after “administrative appeals” the following: “, and section 2412(d)(2)(A) of title 28, United States Code, shall apply to appeals filed with administrative appeals boards, in appeals”; and

(2) by adding at the end the following new subsections:

“(f) REIMBURSEMENT OF PAYMENTS.—None of the funds appropriated to the Secretary to carry out programs, functions, services, or activities that are contractible under this Act shall be available to reimburse payments made in satisfaction of judgments awarded under subsections (a) and (d).”.

#### PURPOSE OF THE BILL

The purpose of H.R. 4148 is to make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

Under section 106(a)(2) of Public Law 93–638, the Indian Self-Determination and Education Assistance Act, American Indian and Alaska Native tribes are authorized to enter into contracts or compacts with the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) to directly administer health care and BIA programs previously administered by the two agencies. Congress strongly advocated this change to allow tribes to provide direct and improved services to their members.

Contract support costs are directly associated with administering these programs and are based on three cost categories: start up costs, indirect costs and direct costs. Start-up costs are one-time costs incurred in planning and assuming management of the programs. Examples include buying computers and training staff. Indirect costs are on-going overhead expenses, which are often divided into three groups—management and administration, facilities and equipment, and general services and expenses. Management and administration includes financial and personnel management, procurement, property and records management, data processing, and office services. Facility and equipment includes buildings, utilities, housekeeping, repair and maintenance, and equipment. General services include insurance and legal services, audit, general expenses, interest and depreciation. Direct costs include unemployment taxes and workers compensation insurance for direct program salaries.

However, the consistent failure of the IHS and BIA to fully fund contract support costs has resulted in financial management problems for tribes as they struggle to pay for federally-mandated annual single-agency audits, liability insurance, financial management systems, personnel salaries, property management and other administrative costs. Congress must remember that tribes are operating federal programs and are carrying out federal responsibilities when they operate self-determination contracts. Tribes, in some instances, have had to resort to using their own financial resources to subsidize contract support costs. The Committee believes that tribes should not be forced to use their own financial resources to subsidize federal contract support costs.

The Committee on Resources held two hearings in 1999 (February 24 and August 3) to accept testimony from the Administration and tribes to provide a proposed resolution to the problems associated with contract support costs.

The General Accounting Office (GAO) was asked to submit a report to Congress on the shortfalls of contract support costs. In its

June 1999 report entitled *Indian Self-Determination Act: Shortfalls in Indian Contract Support Costs Need to be Addressed*, the GAO recommended that the Secretaries of the Interior and Health and Human Services work together to develop a standard policy on funding contract support costs, and ensure that the BIA and IHS correctly adjust funding when tribes use provisional-final rates. GAO provided four alternatives for Congress to consider: (1) fully fund contract support costs each year; (2) amend the Indian Self-Determination and Education Assistance Act to eliminate the provision requiring that contract support costs be fully funded at 100 percent of the allowable costs identified by BIA and IHS; (3) amend the Act to limit indirect costs by imposing either a flat rate or capped rate; and (4) amend the Act to eliminate the provision for funding contract support costs over and above the program base and provide for consolidated support costs.

Additionally, the National Congress of American Indians Policy Work Group on Contract Support Costs also directed the tribal leadership to work with the Administration to submit recommendations to resolve the shortfalls in contract support costs.

H.R. 4148 is the result of the National Congress of American Indians National Policy Work Group and the Administration's efforts to resolve contract support costs problems. H.R. 4148 also incorporates GAO recommendations.

#### COMMITTEE ACTION

H.R. 4148 was introduced March 30, 2000, by Congressman Don Young (R-AK). The bill was referred to the Committee on Resources. On May 16, 2000, the Committee held a hearing on the bill. On June 28, 2000, the Committee met to consider the bill. Congressman Young offered an amendment in the nature of a substitute which was adopted by voice vote. The bill, as amended, as then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section provides the bill's short title, the "Tribal Contract Support Cost Technical Amendments of 2000."

##### *Section 2. Amendment detailing calculation and payment of contract support costs*

This section adds a new section 106A to the Indian Self-Determination and Education Assistance Act (referred to in this section as "the Act"). This section is devoted exclusively to contract support cost matters.

Subsection 106A(a) requires that all federal agencies abide by the government-wide negotiated indirect cost agreement established by each tribal contractor's cognizant federal agency under Office of Management and Budget Circular A-87 (typically, the Department of the Interior's Office of Inspector General). This subsection clarifies that the cost recovery accounting provisions do not in and of themselves entitle tribes to additional funds from other federal agencies. It also limits the subsection to situations where Congress has not directly spoken to the issue in other legislation.

Subsection 106A(b) addresses the fact that the indirect costs paid to a tribe under the Indian Self-Determination and Education Assistance Act are pooled with other federal funds administered by a tribal contractor, and thus are spent together out of a single account. Subsection (b) clarifies that the self-determination rules regarding expenditure of funds set forth in subsections 106(i) and (j) of the Indian Self-Determination and Education Assistance Act apply to the tribal expenditure of all other federal funds received by a tribe under any other federal statute. This subsection clarifies that this section only applies to pooled "indirect cost" funds.

Subsection 106A(c) of the bill establishes a new initiative under which the relevant Secretary is directed to consolidate all program funds and contract support cost funds into a single amount, as suggested by the General Accounting Office in its report referenced above. Under subparagraph (1), the relevant Secretary will be required to pay tribes and tribal organizations a consolidated amount if: (A) the tribe or tribal organization operates a mature contract under Title I of the Act (regardless of whether the tribe or tribal organization has requested such designation), or is operating a self-governance agreement under Titles III or IV of the Act; (B) the tribe or tribal organization's indirect cost rate has remained stable for a period of three years; and (C) at the time of the consolidation the tribe or tribal organization is receiving its full contract support cost entitlement as determined pursuant to Section 106(a)(2) of the Act. Subparagraphs (2) and (3) would require annual adjustments in the contract support cost component of the consolidated amount, based upon the medical inflation rate (for IHS-paid contract support costs) or the consumer price index (for BIA-paid contract support costs). Subparagraph (4) would require additional contract support cost adjustments from time to time as positions under federal employment at the initial time of consolidation thereafter transfer to tribal employment. Once added, such additional amounts become a part of the recurring consolidated contract amount. Under subparagraph (5), tribes and tribal organizations would not be entitled to any additional sums for contract support costs under other provisions of the Act, regardless of changes in a tribe's or tribal organization's base or its indirect cost rate (except for the inflationary and direct contract support cost adjustments noted in subsections (2) through (4)). Subparagraph (6) reiterates that the existing tribal rebudgeting authority, including the authority to spend "contract support funds" for "program" purposes and vice versa, remains unaffected during the period of consolidation. Subparagraph (7) provides that in the event a tribe or tribal organization's total indirect cost base increases or decreases by more than 20 percent over the amount paid to the tribe or tribal organization during the preceding year, the relevant Secretary is required to deconsolidate the funds. In such event, the parties must renegotiate the tribe's or tribal organization's contract support cost requirements based upon the changed circumstances. This subsection also adds a provision triggering deconsolidation in the event a tribe's direct cost base cumulatively increases or decreases more than 40 percent over three years. It also adds a provision authorizing the relevant Secretary, for "good cause" shown, to deconsolidate funds for any other reason such as a fire or other catastrophe. Subparagraph (8) makes clear that the consolidation of

contract funds does not affect the continuing right of a tribe or tribal organization to contract or compact for the operation of new or expanded agency programs and to be paid full contract support costs associated with such programs. Subparagraph (8) provides that the program and contract support amounts associated with the expanded operations are to be added to the consolidated amount. Subparagraph (9) clarifies that although contract amounts will be consolidated, a tribe may still retain separate contracts for different programs, if that is its choice.

Subsection 106A(d) requires IHS to transfer the responsibility for the negotiation, review and approval of tribal contract support costs from the Division of Financial Management to the Office of Tribal Programs (OTP). This subsection clarifies that OTP is not authorized to depart from a tribe's or tribal organization's indirect cost agreement with its cognizant federal agency.

Subsection 106A(e) clarifies that direct contract support cost entitlements are to be calculated on all federal positions transferred to tribal operation at the time a contract, compact, or funding agreement is executed, including federal employees funded through third-party revenues such as Medicare payments, Medicaid payments and payments from third-party insurers.

New section 106A(f) authorizes the issuance of a joint BIA and IHS regulation, through negotiated rulemaking, to address the allowability of costs expended under the Act, including expenditures from a tribe's indirect cost pool and expenditures for direct contract support cost purposes. This section includes a regulation waiver provision modeled on section 107 of Title I of the Act.

### *Section 3. Amendments clarifying contract support cost entitlement*

Subsections (1) through (3) clarify that contract support costs are an entitlement, and specifically removes three provisions from the Act relied on by the agencies to argue otherwise. This section also provides that necessary amounts are appropriated to pay contract support costs. Subsection (4) clarifies that under section 106(a)(5) of the Act, "start-up" contract support costs that are or have been incurred in a year prior to the contract year shall be paid on the same basis as other contract support costs, including costs paid by a tribe or tribal organization prior to enactment of the bill. This section also clarifies that the intent of the final clause is to require IHS to pay all start-up costs identified on the last IHS "Queue" that were either never paid at all or were only partially paid during the transition in IHS policy from fiscal year 1998 to fiscal year 1999.

### *Section 4. Amendment enlarging contract proposal review period*

Section 4 of the bill enlarges from 90 days to 180 days the period during which the relevant Secretary may review and either approve or decline a contracting proposal.

### *Section 5. Amendments regarding judicial remedies*

This section amends section 110 of the Act to create a new subsection (f) clarifying that IHS and BIA funds providing services to Indian and Alaska Native tribes are not to be considered "available" to repay any court judgments the agencies may suffer in litigation. This section also adds an amendment to section 110(c) of

the Act to clarify that administrative law judges may set Equal Access to Justice Act rates within the same parameters as district courts.

#### 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 Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article 1, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill would increase direct spending.

3. **Government Reform Oversight Findings.** Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 7, 2000.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4148, the Tribal Contract Support Cost Technical Amendments of 2000.

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

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 4148—Tribal Contract Support Cost Technical Amendments of 2000*

Summary: H.R. 4148 would change the way contracts and contract support costs are funded under the Indian Self Determination Act. Because such contract costs and contract support costs would no longer be subject to appropriation, CBO estimates that enacting the bill would increase direct spending by \$11 billion over the 2001–2005 period. This change could reduce the need for appropriated funds for contracts and support costs under the Indian Self Determination Act. Because the bill would affect direct spending, pay-as-you-go procedures would apply. H.R. 4148 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4148 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development) and 550 (health).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority .....	2,126	2,252	2,366	2,480	2,602
Estimated Outlays .....	1,594	2,139	2,307	2,445	2,566

Basis of estimate: Under the Indian Self Determination Act, Indian tribes are authorized to enter into contracts with the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) to directly implement federal programs and services that would benefit Indians. In addition, the agencies provide the tribes with funding for contract support costs, including the costs of facilities, equipment, legal services, and salaries. All such funding is subject to the availability of appropriated funds. Based on information from BIA and IHS, we estimate these agencies will spend about \$2 billion in 2000 to fund contracts and contract support costs under the Indian Self Determination Act. H.R. 4148 would authorize IHS and BIA to provide funding to tribes for contracts and contract support under the Indian Self Determination Act without further appropriation action.

*Direct spending*

Because the costs for Indian Self Determination contracts would not be constrained by the availability of appropriated funds, CBO expects that tribes would have a greater incentive to contract with the agencies than they do under current law. Therefore, CBO expects that under the bill the number of tribes that contract with BIA and IHS for Indian services would increase and that tribes would be more likely to enter into multiple contracts with the agen-

cies. CBO estimates that enacting the bill would increase direct spending by about \$9 million over the five-year period for the cost of the contracts between the tribes and the agencies.

Historically, the Congress has appropriated about 85 percent of the amounts necessary to fully fund contract support costs. H.R. 4148 would require IHS and BIA to fund contract support costs at 100 percent of the rate negotiated by the tribes and the agencies. The bill also would require BIA to provide tribes with certain contract support that the agency does not currently provide. Based on information from IHS and BIA, CBO estimates that it would cost \$2 billion over the 2001–2005 period to provide the required level of contract support.

*Spending subject to appropriation*

Based on historical data from IHS and BIA, CBO estimates that contracts under the Indian Self Determination Act will cost nearly \$1.6 billion in fiscal year 2000 and that the agencies’ budget requests are likely to increase, under current law, by about 3 percent each year. In addition, we estimate that contract support costs are currently funded at about \$350 million a year, or about 22 percent of the total contract costs. Because H.R. 4148 would reduce or eliminate the need for appropriations to support these programs, CBO expects that enactment of the bill would lead to a significant reduction in appropriated funds to BIA and IHS. Any such savings, however, would be subject to future appropriation acts.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays .....	0	1,594	2,139	2,307	2,445	2,566	2,693	2,828	2,969	3,113	3,268
Changes in receipts .....	Not applicable										

Intergovernmental and private-sector impact: H.R. 4148 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Lanette J. Keith and Eric Rollins. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Sarah Sitarek.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

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, existing law in which no change is proposed is shown in roman):

**INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT**

\* \* \* \* \*

**TITLE I—INDIAN SELF-DETERMINATION ACT**

\* \* \* \* \*

**CONTRACTS BY THE SECRETARY OF THE INTERIOR**

**SEC. 102. (a)(1) \* \* \***

\* \* \* \* \*

(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]** 180 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) \* \* \*

\* \* \* \* \*

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the **[90-day]** 180-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.

\* \* \* \* \*

ADMINISTRATIVE PROVISIONS

SEC. 105. (a) \* \* \*

\* \* \* \* \*

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

(A) \* \* \*

\* \* \* \* \*

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

\* \* \* \* \*

SEC. 106. (a)(1) \* \* \*

\* \* \* \* \*

(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) \* \* \*

\* \* \* \* \*

*Notwithstanding any other provision of law, the Secretary shall fully pay preaward and startup costs without regard to the year in which such costs were incurred or will be incurred, including such costs payable to tribes and tribal organizations identified by the Indian Health Service as “ISD Queue Tribes” in its September 17, 1999, report entitled “FY 1999 IHS CSC Shortfall Data”.*

\* \* \* \* \*

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

(1) \* \* \*

\* \* \* \* \*

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.

*Necessary amounts are appropriated to pay contract support costs when not otherwise provided for.*

\* \* \* \* \*

**SEC. 106A. CONTRACT SUPPORT COSTS.**

*(a) OTHER FEDERAL AGENCIES.—Except as otherwise provided by statute, an Indian tribe or tribal organization administering a contract or compact under this Act shall be entitled to recover its full indirect costs associated with any other Federal funding received by such tribe or tribal organization (other than funds paid under this Act), consistent with the tribe’s or tribal organization’s indirect cost rate agreement with its cognizant Federal agency. This subsection shall not independently entitle such tribe or tribal organization to be paid additional amounts associated with such other Federal funding.*

*(b) ALLOWABLE USES OF FUNDS.—Notwithstanding any other provision of law (including regulation or circular), an Indian tribe or tribal organization (1) administering a contract or compact under*

this Act and (2) employing an indirect cost pool that includes both funds paid under this Act and other Federal funds, shall be entitled to use or expend all Federal funds in such tribe's or tribal organization's indirect cost pool in the same manner as permitted in section 106(j) (relating to allowable uses of funds without approval of the Secretary), and for such purposes only the term "Secretary" means the Secretary of any Federal agency providing funds to such tribe or tribal organization.

(c) CONSOLIDATED CONTRACT AMOUNT.—

(1) CONDITIONS FOR CONSOLIDATION.—Commencing in fiscal year 2003, the Secretary shall consolidate all funds paid to a tribe or tribal organization pursuant to paragraphs (1) and (2) of section 106(a) into a single consolidated contract or compact amount if the following conditions have been met:

(A) The tribe or tribal organization qualifies to carry out a mature contract under this title or is operating a self-governance agreement under any other title of this Act.

(B) The tribe's or tribal organization's indirect cost rate has not varied more than 10 percent over the prior year's rate for the preceding 3 years (for tribes or tribal organizations that have no indirect rate, this criterion shall be satisfied if the ratio of the tribe's or tribal organization's contract support requirement to its direct cost base has not varied more than 10 percent over the ratio for the preceding 3 years).

(C) At the time of the consolidation the tribe or tribal organization is receiving its full contract support cost requirement as determined under section 106(a)(2).

(2) MEDICAL INFLATION RATE ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of Health and Human Services shall increase the amount of contract support costs paid as part of the consolidated amount by an amount equal to—

(A) the adjustment in the medical care component of the national consumer price index over the preceding year, multiplied by

(B) the contract support cost amount paid in the preceding year as part of the consolidated amount.

(3) CONSUMER PRICE INDEX ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of the Interior shall increase the amount of contract support costs paid as part of the consolidated amount by an amount equal to—

(A) the adjustment in the national consumer price index over the preceding year, multiplied by

(B) the contract support cost amount paid in the preceding year as part of the consolidated amount.

(4) EMPLOYMENT ADJUSTMENTS.—A tribe or tribal organization shall be entitled to receive additional contract support costs associated with the transfer of employees from Federal employment to tribal employment. Such additional contract support costs shall be added to the consolidated amount determined and adjusted under paragraphs (1), (2), and (3), and shall thereafter become a part of the consolidated amount.

(5) *ADDITIONAL CONTRACT SUPPORT COSTS.*—Notwithstanding any other provision of this Act, and except as provided in paragraphs (4) and (8), the tribe or tribal organization shall not be entitled to receive any contract support costs additional to those contained within the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

(6) *REBUDGETING AUTHORITY UNAFFECTED.*—The tribe or tribal organization may rebudget all contract or compact funds as specified in section 106(n).

(7) *DECONSOLIDATION.*—Except as provided in paragraph (8), in the event—

(A) the amount of program funds paid under section 106(a)(1) as part of the consolidated amount, when combined with other program funds paid to the tribe or tribal organization from other funding sources, increases or decreases by more than—

(i) 20 percent over the amount paid in the preceding year; or

(ii) 40 percent over the amount paid in the preceding three years; or

(B) the Secretary for good cause shown agrees, the amounts paid by the Secretary under this section shall be deconsolidated, and such amounts shall be recalculated and paid as specified elsewhere in this Act. Upon such recalculation, the recalculated amounts shall be reconsolidated into a single amount as otherwise described in this subsection.

(8) *CONTRACTING ADDITIONAL PROGRAMS.*—Nothing in this subsection shall affect the right of a tribe or tribal organization to contract or compact for the operation of new or expanded programs, services, functions, or activities not included in the consolidated amount paid under paragraph (1), or to be paid the full amount of contract support costs associated with such additional contracted or compacted programs, as provided in section 106(a)(1) and other provisions of this Act. Any such additional programs and associated contract support costs shall be added to the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

(9) *SEPARATE CONTRACTS AND COMPACTS.*—Nothing in this subsection shall require a tribe or tribal organization to consolidate separate contracts or compacts administered under this Act into a single contract or compact.

(d) *NEGOTIATION OF CONTRACT SUPPORT COST AMOUNTS.*—Within the Indian Health Service of the Department of Health and Human Services, the negotiation, review, and approval of tribal contract support cost entitlements shall be the responsibility of the Office of Tribal Programs, subject to the tribe's or tribal organization's indirect cost rate agreement with the tribe's or tribal organization's cognizant Federal agency.

(e) *DIRECT CONTRACT SUPPORT COSTS AND FEDERAL EMPLOYEES.*—The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include direct contract support costs associated with all Federal employees employed in connection with the program, service, function, or activity that is the subject of the contract, including all Federal employees paid with funds generated from third-party collections.

(f) REGULATIONS.—The Secretary of the Interior and the Secretary of Health and Human Services are authorized to promulgate joint regulations relating to the allowability of costs expended under this Act, including all pooled indirect costs and direct contract support costs. In promulgating such regulations the Secretaries shall follow the procedures set forth in sections 107(a)(2)(A), 107(d)(1), 107(d)(2)(A), 107(d)(2)(B), 107(d)(2)(D), and 107(d)(2)(E), and shall publish proposed regulations in the Federal Register to carry out this subsection not later than 180 days after the date of enactment of the Tribal Contract Support Cost Technical Amendments of 2000. The authority to promulgate regulations under this subsection shall expire if final regulations are not promulgated within 18 months after the date of enactment of the Tribal Contract Support Cost Technical Amendments of 2000. In the event of a conflict between such regulations and any Office of Management and Budget circular, the provision of such regulations shall control. The Secretary may, with respect to a contract or compact entered into under this Act, make exceptions in the regulations promulgated to carry out this subsection, or waive such regulations, if the Secretary finds that such exception or waiver is consistent with the policies of this Act, and is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, and appeal procedures set forth in section 102.

\* \* \* \* \*

**SEC. 108. CONTRACT OR GRANT SPECIFICATIONS.**

(a) \* \* \*

\* \* \* \* \*

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

**“SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE TRIBAL GOVERNMENT.**

“(a) \* \* \*

\* \* \* \* \*

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

“(1) \* \* \*

\* \* \* \* \*

“(4) FUNDING AMOUNT.—[Subject to the availability of appropriations, the] *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).

\* \* \* \* \*

**SEC. 110. (a) \* \* \***

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(c) The Equal Access to Justice Act (Public Law 96–481, Act of October 1, 1980; 92 Stat. 2325, as amended), section 504 of title 5, United States Code, and section 2412 of title 28, United States Code shall apply to administrative appeals, and section 2412(d)(2)(A) of title 28, United States Code, shall apply to appeals

*filed with administrative appeals boards, in appeals pending on or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by tribal organizations regarding self-determination contracts.*

\* \* \* \* \*

*(f) REIMBURSEMENT OF PAYMENTS.—None of the funds appropriated to the Secretary to carry out programs, functions, services, or activities that are contractible under this Act shall be available to reimburse payments made in satisfaction of judgments awarded under subsections (a) and (d).*

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