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# AMENDING THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO PROVIDE FURTHER SELF-GOVERNANCE BY INDIAN TRIBES

NOVEMBER 16, 2004.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indians Affairs, submitted the following

## REPORT

[To accompany S. 1696]

The Committee on Indian Affairs, to which was referred the bill (S. 1696) to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

## PURPOSE

The purpose of S. 1696, the "Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003" is to amend the Act to provide further self-governance for Indian tribes by authorizing a 5-year demonstration project for various programs within the Department of Health and Human Services (DHHS), and for other purposes.

## BACKGROUND

### *A. Evolution of Tribal Self-Governance*

In 1970, President Nixon delivered his now-famous "Special Message to Congress on Indian Affairs" which laid the foundation for a change in Federal Indian policy from termination and assimilation to Indian self-determination. The Act, originally enacted in 1975, is an outgrowth of this policy and continues to be one of the pillars of Federal Indian policy.

39–010

Prior to that time, the Federal government administered various programs for the benefit of Indian people, with the design and administration of these programs set by the Federal agencies, not the tribal governments. The Act authorized a shift from such Federal domination to tribal control of these programs.

In the Act Congress authorized Indian tribes to assume, through contractual arrangements, operation of Indian programs and services operated by the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS). However, in the 10 years following enactment, Indian tribes indicated that they faced significant resistance particularly from the IHS in seeking "new health services, providing services differently than previously provided by the IHS, or shifting funds within a contract." GAO Report No. GAO/HRD–86–99, "Indian Health Service Contracting for Health Services Under the Indian Self-Determination Act", September, 1986, at 4.

Likewise, Congress "observed in 1988 [that its] goal of shifting resources to tribal operation ha[d] been frustrated by the enormous growth in the governments contract monitoring and contract administration bureaucracy." S. Rpt. 102–444, at 16.

Frustrated with agency reticence and the slow progress in fully achieving the goals of the original Act, Congress made historic advancements in tribal governance by amending the Act to address the agency inflexibility and provide additional authority to Indian tribes. See Pub. L. 100–472 and Pub. L. 102–184.

These amendments were first directed at the BIA programs. Public Law 100–472 established tribal self-governance demonstration projects whereby participating Indian tribes could administer a wider swath of BIA programs through compacts, a mechanism more reflective of the government-to-government relationship.

Through these compacts, Indian tribes could redesign programs and reallocate funds among the different programs they operated to meet their local needs. In addition, Indian tribes were authorized to transfer their tribal shares of the BIA budget to their tribal programs.

That is, "funding for the annual agreements [were] allocated out of agency, area and central office accounts of the BIA to a tribe on the basis of what that tribe would have received in funds and services in the absence of the agreement." S. Rpt. 103–205, at 3.

In 1994, Congress amended the Act to make the self-governance demonstration project permanent within the Department of Interior. See Pub. L. 103–413.

Pub. L. 102–184 authorized a study to determine the feasibility of extending the BIA demonstration project to the IHS programs, functions and services. This demonstration project was ultimately made permanent by Pub. L. 106–260.

Throughout this series of amendments, Congress has reaffirmed the viability of self-governance and expanded tribal authority over Indian programs throughout the primary agencies responsible for Indian affairs—the BIA and IHS. Translating these successes to other programs beyond the BIA and IHS became the next evolution in tribal self-governance.

In 1994, Congress authorized compacting of Department of Interior programs beyond those administered by the BIA. See Pub. L. 103–413. In 2000, Congress directed the Secretary of DHHS to conduct a feasibility study of a tribal demonstration project for DHHS

programs beyond those administered by the IHS. See Pub. L. 106–260.

On March 12, 2003, the Secretary of DHHS delivered the final report on the feasibility study to the Committee.[1] In developing this study, the DHHS consulted with several stakeholders—such as state and local government organizations and other health and human service professional associations—in addition to Indian tribes. The study made several recommendations which have been largely incorporated into S. 1696.

*B. Essential Components of Tribal Self-Governance*

As evidenced by the series of amendments to the Act, the Federal self-governance policy continues to evolve and expand. The Act and amendments made to it have included several consistent components such as: (1) streamlining bureaucracy; (2) increasing program flexibility; and (3) maximizing Indian tribal involvement in decision-making.

The amendments to the Act made clear that *streamlining the bureaucracy* is an integral part of Indian self-determination policy. The savings incurred from reducing administrative costs is critical to increasing aggregate funding for tribal health programs—particularly in times of underfunding.

According to a 1998 National Indian Health Board Report[2] (the "NIHB Report"), Indian tribes experience substantial savings from compacting. For example, one tribal health program operating under a self-governance compact reduced its cost of nursing supplies from $200,000 to $60,000 per year by effectively negotiating discount contracts and instituting case management.[3]

In testimony before the Committee on S. 1696, Indian tribes indicated that additional savings could be achieved through expanding self-governance to other DHHS programs, and documentation identifying such savings is attached to this report.

The tribal documentation demonstrates cost savings achieved from reducing administrative burdens. For example, the Jamestown S'Klallam Tribe administers 3 of the grant programs identified in S. 1696 with a total funding stream of $247,500. The projected savings achieved by incorporating those programs into a self-governance compact were $7,250 and 132 hours of staff time per year. Likewise, the Choctaw Nation projected $43,560 in cost savings with reductions of nearly 2,000 hours of staff time spent on administrative duties.

The amendments to the Act also reflected substantial *flexibility* for Indian tribes to operate programs through the redesign and reallocation functions. This flexibility has been of significant benefit to Indian tribes in meeting local health needs. No longer would Indian tribes have to return time and again to the Secretary for approval when developing programs within their compacts that are responsive to community needs.

The NIHB Report noted that population growth, inflation, health care financing, and IHS reorganization were factors which "may stimulate more tribes to choose the increased flexibility of com-

[1] Available at *http://aspe.hhs.gov/SelfGovernance/Evaluation.*

[2] Tribal Perspectives on Indian Self-Determination and Self-Governance in Health Care Management, National Indian Health Board, Vol. II (1998).

[3] Id. at 32.

pacting. The flexibility and control over local health resources may be necessary for tribes to respond to the accelerating pace of change in the Indian Health Service and the general health care environment." NIHB Report, Vol. II at 73.

These predictions have been proven accurate. Tribal self-governance within the IHS began with approximately six tribes by the end of FY 1993.[4] As of 2004, according to the IHS, "62 compacts and 82 funding agreements have been negotiated * * * with 287 tribes." Department of Health and Human Services, Fiscal Year 2005, Indian Health Service, Justification of Estimates for Appropriations Committees ("Justification"), at Supp–79.

More *tribal involvement* in the Indian health care system has also contributed to greater improvements in services to and health care levels of Indian people. NIHB Report, Vol. I at 13. During this evolution, Congress introduced a major tool into Indian health care for increasing tribal involvement in the decision-making process: negotiated rule-making.[5]

The negotiated rule-making required by the 1994 amendments "gave tribes a significant role in the development of federal regulations to implement contract reforms." NIHB Report, Vol. II at 4. The final regulations developed by this process were issued on June 24, 1996 and revealed that "significantly more of Headquarters and Area Office functions [were] clearly contractible than were thought to be contractible in 1989." Id. at 28.

This involvement was inherent in the development of the feasibility required by Pub.L. 106–260. The tribal steering group provided technical oversight in developing the study and recommendations. The Committee is pleased with the process implemented and level of tribal involvement in completing the study. The Committee believes that the resulting study and recommendations are much stronger and, accordingly, has largely adopted those recommendations in S. 1696.

## SUMMARY OF MAJOR PROVISIONS

### *A. Policy and Scope*

S. 1696 continues the steady march of meaningful tribal control of programs affecting their communities by extending the Act's compacting provisions to DHHS programs beyond those administered by the IHS. In § 601, several of the definitions in the new Title VI have been carried forward from the current Title V of the Act. The term "Indian tribe" has been clarified to include the entities authorized to administer the included programs on behalf of an Indian tribe.

Section 602 establishes a 5-year demonstration project for up to 50 Indian tribes meeting certain eligibility criteria with an option—at the discretion of the Secretary—to include additional tribes who must all meet the eligibility criteria as required in § 603.

[4] The NIHB Report notes the IHS was authorized to initiate planning activities with 17 tribes that had compacts with the BIA in 1992 and by the last quarter of FY 1993, six tribes had entered compacts. See NIHB Report, Vol. II at 4, 49.

[5] See 5 U.S.C. § 561 et seq.

*B. Implementation*

Indian tribes have previously raised concerns regarding administrative delays by the Department in implementing statutory changes. The demonstration project proposed in S. 1696 is intended to be implemented immediately upon enactment regardless of whether regulations have been promulgated to govern the project. The limited time frame for the demonstration project necessitates immediate action by the Department.

Several factors exist to expedite implementation. For instance, the universe of potential applicants is already known: only Indian tribes that have compacts as of the date of enactment may be considered for participation.

In addition, a vehicle for implementing the project already exists. Under § 604, these Indian tribes may use their pre-existing compacts for the demonstration project. The use of a pre-existing compact, however, is not grounds for renegotiating that compact. In addition, participation in the demonstration project is not conditioned upon renegotiating compact provisions the Department finds unsatisfactory. Likewise, the pre-existing compact terms governing amendments or renegotiations are not superceded by Title VI.

*C. Compact Terms*

Sections 604 and 605 outline compact negotiation procedures and other provisions that may be included in these compacts. The duration of the demonstration project compact provisions may not exceed the statutory 5-year duration of the project. However, if an Indian tribe uses its pre-existing compact for the demonstration project, the term of the demonstration project is not to affect the remaining provisions of the compact that are not governed by the demonstration project, unless otherwise agreed to by the parties.

*D. Programs*

The programs that may be included in the demonstration project are set forth in § 604. The DHHS Final Report on the feasibility study recommended inclusion of eleven programs. However, under S. 1696 the Secretary is given the discretion to identify and include not more than six additional programs each year of the project.

Thus, the particular provisions governing compact negotiations, waivers and other matters are not triggered until the Secretary identifies additional programs suitable for inclusion.

The Committee believes this discretion is particularly important as each year the Secretary will evaluate the costs and benefits of the project. If the Secretary finds costs savings, program improvements or other benefits from the project, the Committee does not wish to preclude additional benefits that could be gained from the inclusion of these other programs.

*E. Funding*

The Committee believes that Indian tribes should be provided adequate funding to allow them to effectively carry out programs under the demonstration project. The Committee recognizes that several programs identified in this bill have statutorily-defined funding formulas. As set forth in § 605, if an Indian tribe includes a program governed by a specific statutory funding formula, that Indian tribe's program funds will be established by that formula.

Where there is no statutory funding formula or if the statutory funding formula results in underfunding and additional funds are available, § 605 authorizes the Secretary to negotiate with participating Indian tribes for the overall direct program funding amount.

The Committee recognizes that Indian tribes may experience difficulties in meeting the matching fund requirements in various programs. For example, many Indian tribes do not have the requisite economies to support a tax or fee-generating base that states have to enable them to meet the match requirements. Thus under § 605, in reviewing waiver requests for the matching requirements, the Secretary is encouraged to exercise flexibility in interpreting the applicable statutes or regulations.

The Committee also believes that Indian tribes should be authorized to receive contract support costs associated with operating programs included in this project in a manner consistent with principles of tribal self-governance. Payment of these administrative costs is critical to the success of tribal self-governance because these funds assure that an Indian tribe is not obliged to use direct program funds to cover administrative costs, thereby reducing services.

Finally in § 605, the Secretary is authorized to negotiate with Indian tribes for the inclusion of tribal funding shares associated with administrative activities related to an included program. These administrative fund shares are not intended to duplicate contract support costs. The Committee recognizes that the Department conducts a variety of administrative activities, such as training and technical assistance, that may not be reimbursable as contract support or direct program costs. The Committee believes Indian tribes should not be required to divert direct program funding to cover such administrative expenses.

*F. Program Requirements*

Section 606 authorizes the redesign, consolidation or reallocation of programs or funds to increase flexibility for tribes to meet the needs of their communities while maintaining compliance with applicable statutory and regulatory program and cost standards, such as the Single Audit Act.[6]

In § 606, the Secretary is authorized to waive final regulations according to the standards set forth in § 512(b) of the Act. If the regulations are not waived, then an Indian tribe shall comply with them for the demonstration project.

Section 606 also provides that other rules, policies, guidance and circulars shall not govern the administration of the demonstration project unless agreed to by the Indian tribe in the compact. This manner of administration has proven to be beneficial to Indian tribes already operating compacts by increasing the flexibility in program operations. This provision, however, does not supercede the requirements for the Single Agency Audit Act or other cost principles found in § 506 of the Act.

*G. Reports.*

Finally in § 607, to ensure that directed progress and improvements are made, the Secretary is to report on an annual basis to

[6] See 31 U.S.C. § 7501 et seq.

Congress on the costs and benefits of the demonstration project. The baseline measurements are to be developed by the Secretary and the participating Indian tribes. Since the reports are due annually, the Committee encourages the Department and the participating Indian tribes to expedite baseline development.

The Committee recognizes that evaluating the results of the demonstration project may give rise to additional costs and has therefore authorized the Secretary to provide additional funding to the Indian tribes. This funding is in addition to the compact costs and may not be used to diminish the compact funding.

## LEGISLATIVE HISTORY

S. 1696 was introduced on October 1, 2003, by Senator Campbell, for himself and Senator Inouye and was referred to the Senate Committee on Indian Affairs.

A hearing on S. 1696 was held on May 19, 2004. Testimony was provided by several Indian tribes. All witnesses expressed support for the bill. The DHHS was invited, but failed to attend. Instead, the Final Report on the feasibility study was reviewed for findings and recommendations by the DHHS. The recommendations have been largely incorporated into the substitute amendment.

Hearing on S. 1696, Department of Health and Human Services Self-Governance Amendments of 2004, Title VI
Response to Request for Information by
Chairman Ben Nighthorse Campbell

During the Senate Committee on Indian Affairs (SCIA) hearing on May 19, 2004, on S. 1696, HHS Tribal Self-Governance Amendments of 2003 (Demonstration Project), Chairman Ben Nighthorse Campbell commented that there have been many references to savings that are attributed to the redesign of reporting requirements by Self-Governance Tribes. The reporting requirements included in S. 1696 are detailed in P.L. 106-260, Title V, Sec. 514, Reports; in S. 1696, Sec. 607.

In response to the Chairman's comments, the Jamestown S'Klallam Tribe and the Choctaw Nation of Oklahoma prepared the following analysis.

**JAMESTOWN S'KLALLAM TRIBE**

Currently, the Jamestown S'Klallam Tribe receives funds from three of the grant programs identified to be included in a "demonstration project" in S. 1696,Title VI:

**Administration on Aging – Title VI, Grant for Native Americans**
$88,000 per year
Requirements:
Application Process:
- Develop and submit a plan every fifth year
  a. HHS Director coordinates w/HHS staff – average 20 hrs/year total staff time
- Twice per year program report – Elder Program Coordinator – 18 hrs per year
- Twice per year Financial Status Report - CFO – 4 hrs
- Quarterly cash transaction & reconciliation – online process – CFO – 3 hours per year.
- Drawdown funds as needed (monthly) – CFO – 3 hrs per year

**Low Income Home Energy Assistance Program**
$9,500 per year
Requirements:
Application Process:
- Develop and submit a plan every year
  a. HHS Director coordinates w/HHS staff – 18 hrs total staff time.
- Annual program report – HHS Admin Asst – 8 hrs per year
- Annual Financial Status Report - CFO – 1 hr
- Cash transaction & reconciliation – online process – CFO – 2 hours per year.
- Drawdown funds – once per year – CFO – ½ hr per year

**Child Care & Development Fund**

$150,000 per year

Requirements:

Application Process:

- Develop and submit a plan every year
  a. HHS Director coordinates w/HHS staff – 32 hrs total staff time.
- Annual program report – HHS Community Services Administrator & Children Program Coordinator – 24 hrs per year
- Annual per year Financial Status Report - CFO – 2hrs
- Cash transaction & reconciliation – online process – CFO – 2 hours per year.
- Drawdown funds as needed (monthly) – CFO – 3 hrs per year

**Savings and Benefits of Consolidation to the Tribe**

**Fiscal Office**

If funding is available immediately and can be drawn down in a lump sum under Self-Governance, the Fiscal Office time is reduced to annual reconciliation and reporting.

**HHS Administration & Staff**

Application and Annual Plan Submissions

If consolidation results in a process similar to the IHS and BIA, program planning would be entirely an internal function and eliminate submitting separate plans for each funding source. The internal program planning that we do now would continue but the translation of internal planning to the required federal plan formats would be eliminated. This would save at least 65 hours of staff time per year.

**Reporting**

Each of the above programs report internally through the existing quarterly report process that is sent to the Tribal Council. Consolidation would eliminate the semi-annual and annual reporting to the 3 funding sources saving about 50 hours of staff time each year.

**Time And Cost Savings**

| Department | Hours Saved per Year | $ Savings |
|---|---|---|
| Fiscal | 30 | $1,500 |
| HHS Admin | 65 | $3,250 |
| HHS Program Staff | 50 | $1,500 |
| Reduced federal oversight | 10 | $1,000 |
| **TOTAL** | **132** | **$7,250** |

**OTHER POSSIBLE BENEFITS OF CONSOLIDATION**

In the past two years, the Tribe has looked at applying for the Child Welfare and Promoting Safe and Stable Families funding under Title IV of the Social Security Act. A formula is used to allocate these funds to Tribes. However the amount available to Jamestown and other small tribes is minimal, our allocation would be less than **$8,000**. The application process, the development of annual plans, and the scope of services required by acceptance of funds are far beyond what can be accomplished with $8,000. If consolidation eliminated the current application and planning process and allowed the Tribe to decide how to use the $8,000 to support child welfare services, then we would take the funding.

Similarly, we could look at SAMHSA and Mental Health block grant funding if there is an allocation of funds available and if we do not have the administrative burdens of the current application processes. There are opportunities for smaller Tribes to have access to program funds that we can't access now because we do not have the administrative staff time to manage these grants.

**CHOCTAW NATION OF OKLAHOMA**

The Choctaw Nation of Oklahoma manages 6 DHHS programs that are designated for inclusion in a "demonstration program" in S.1696. The hours listed with each program are those hours spent by staff directly associated with reporting and performing coordination with DHHS.

**Head Start: Head Start program consists of 14 sites with 310 participants.**
$2,044,112 per year *(Choctaw program and fiscal costs since 1978 dedicated to HHS related activities approximately $180,000*)*
Requirements

Program:
Develop and Maintain Plan
Provide Program Reports
Face-to-Face contact, phone and fax communications with DHHS

| | |
|---|---|
| Director | 120 hours |
| 3 Program Coordinators | 120 hours total |

Fiscal:
Annual Financial Status Reports
Cash Transactions and Reconciliations
Draw Down Funds

| | |
|---|---|
| Finance Staff | 220 hours |

**Low Income Home Energy Assistance Program: This program assisted 1,402 families in FY2003.**
$336,775 per year *(Choctaw program and fiscal costs since 1981 dedicated to HHS related activities approximately $80,000*)*

Requirements:
Program:
Develop and Maintain Plan each year
Annual Program Reports
Face-to-Face contact, phone and fax communications with DHHS
Director 80 hours
Fiscal:
Annual Financial Reports
Cash Transactions and Reconciliations
Annual Draw Down of funds
Finance Staff 60 hours

**Administration On Aging-Nutrition Service: This program assists with elderly nutrition.**
$187,530 per year *(Choctaw program and fiscal costs since 1980 dedicated to HHS related activities approximately $110,400*)*
Requirements:
Program:
Develop and Maintain Plan—submission every 3 years
Bi-annual Reports
Face-to-Face contact, telephone and fax communications with DHHS
Director 80 hours
Fiscal:
Bi-annual Financial Reports
Quarterly Cash Transactions and Reconciliations
Draw Down funds as needed (monthly)
Finance staff 120 hours

**Community Services Block Grant: This program is small, but did provide assistance for 63 families in FY2003.**
$20,964
Requirements:
Program:
Develop Grant and Process
Face-to-Face contact, telephone and fax communications with DHHS
Director 40 hours
Fiscal:
Annual Report
Annual Receipt of Funds
Cash Transactions and Reconciliations
Finance staff 80 hours

**Child Care And Development Fund: This program assisted with child care for 1,550 children in FY2003.**
$3,642,939 *(Choctaw program and fiscal costs since 1991 dedicated to HHS related activities approximately $140,000*)*

Requirements:

Program:
Develop and Maintain Plan
Prepare Reports
Face-to-Face contact, telephone and fax communications with DHHS

| | |
|---|---|
| Director | 120 hours |
| Coordinators | 120 hours |

Fiscal:
Annual Fiscal Status Report
Cash Transactions and Reconciliations
Draw Down funds and needed

| | |
|---|---|
| Finance Staff | 220 hours |

**Child Welfare Services Programs: This program provided services opened 529 cases and worked with 122 families in FY2003.**

$847,000

Requirements:

Program:
Develop and Maintain Plan
Prepare Reports
Face-to-Face contact, phone and fax communications with DHHS

| | |
|---|---|
| Director | 160 hours |
| Coordinator | 160 hours |

Fiscal:
Annual Report
36 Financial Reports Annually
Cash Transactions and Reconciliations
Draw Down funds as needed

| | |
|---|---|
| Finance staff | 220 hours |

Using the above information, we are able to estimate the following savings:

| | |
|---|---|
| Program Total Hours dedicated to DHHS related activities: 1000 | |
| Director/Coordinators Salary 1000 hours x $30/hour | $30,000 |
| Estimated similar activity in "demonstration project" @ 10 % | (3,000) |
| **Program Savings** | **$27,000** |

| | |
|---|---|
| Fiscal Total Hours dedicated to DHHS related activities: 920 | |
| Finance staff calculated on average 920 hours x $20/hour | $18,400 |
| Estimated similar activity in "demonstration project" @ 10% | (1,840) |
| **Fiscal Savings** | **$16,560** |

**TOTAL SAVINGS PER YEAR: $43,560**

The program and fiscal savings listed above are minor in comparison to program redesign and expansion that would be permitted under this demonstration program.

The Choctaw Nation of Oklahoma, as well as many of the Tribes across the Nation that have compacted under Self-Governance, especially in the Indian Health Service, have structured their programs to meet the needs of their patients.

Reporting is an essential part of being accountable for a program. Tribes in Self-Governance have shown a willingness to participate in the Government Performance and Results Act (GPRA) and have recently been provided an overview and possible program benefits of the OMB sponsored Program Assessment Rating Tool (PART). However, providing reports for the sake of reporting to a Regional Program Director, who does nothing with the reports, is a disincentive. Self-Governance allows programs to report useful information that affects program outcomes.

The Choctaw Nation is proud of the DHHS programs we manage, but we could have the benefit of so many more choices and opportunities. Self-Governance Tribes will be able to access these choices and opportunities with S. 1696.

*

* *The Choctaw costs for program and fiscal services, functions and activities should be compared to the Federal costs for these programs prior to being operated by the Tribe.*

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on June 16, 2004, the Committee considered a substitute amendment proposed by Senator Campbell. By a unanimous vote, the Committee ordered the substitute amendment favorably reported to the full Senate with the recommendation that the bill, as amended, do pass.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

The Act may be cited as the "Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003".

*Section 2. Amendment*

Section 2 amends Title VI of the Indian Self-Determination and Education Assistance Act by striking the Title VI and replacing it with the following:

### SEC. 601. DEFINITIONS

Definitions of Title V of the Indian Self-Determination and Education Assistance Act are made to apply to Title VI.

### SEC. 602. ESTABLISHMENT OF PROJECT

Section 602 establishes a 5-year Demonstration Project to demonstrate the effectiveness of tribal administration of non-IHS programs within the DHHS, and would place the management of the Project within the Office of the Secretary.

### SEC. 603. SELECTION OF PARTICIPATING INDIAN TRIBES

Section 603 authorizes up to 50 existing self-governance tribes to participate in the Project, and to apply for planning and negotiation grants.

### SEC. 604. COMPACTS AND FUNDING AGREEMENTS

Section 604 would require tribes and the Secretary to negotiate special Title VI compacts and Funding Agreements (FA), unless a tribe elects to use its existing Title V compact for this purpose. This section also prescribes guidelines for the contents of a compact and Funding Agreement, identifies thirteen specific DHHS programs eligible for inclusion in a Title VI agreement, and authorizes the Secretary to identify up to six additional programs eligible for the Demonstration Project.

### SEC. 605. TRANSFER OF FUNDS

Section 605 requires lump-sum advance funding as is already the case under Title V. The statutory funding formulas would be used to identify tribal funds and, if appropriations are available, an additional amount, as negotiated by the Secretary and tribe, may be provided. Contract support costs would be added under the same rules applicable under Titles I and V, and tribes would be authorized to negotiate for "tribal shares of administrative funds."

SEC. 606. GENERAL PROVISIONS

Section 606 would address a number of general issues including authorization to tribes to redesign, consolidate or reallocate within existing statutory limitations, and to secure waivers of "final regulations * * * to facilitate [redesign or reallocation]." Section 606 would also incorporate the "Final Offer" process set forth in Title V, except that appeals would go to the Intra-Departmental Council on Native American Affairs. Section 606 would also incorporate a number of other Title V provisions, including those dealing with the annual audits, cost principles, prompt payment, interest and program income, and carryover of funds.

SEC. 607. REPORT

Section 607 would require an annual Secretarial Report to Congress on the costs and benefits of the Demonstration Project, using baseline measures that have been mutually developed by the Secretary and participating tribes.

SEC. 608. AUTHORIZATION OF APPROPRIATIONS

Section 608 authorizes appropriations to carry out the title.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1696, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 11, 2004.*

Hon. BEN NIGHTHORSE CAMPBELL,
*Chairman, Committee on Indian Affairs,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1696, the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2004.

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

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 1696—Department of Health and Human Services Tribal Self-Governance Amendments Act of 2004*

Summary: S. 1696 would require the Secretary of Health and Human Services (HHS) to conduct a demonstration project to promote tribal self-governance. The project would involve about 50 tribes and would last no more than five years. Participating tribes would manage a number of programs administered by HHS and would have flexibility to reshape those programs to better meet tribal needs. Participating tribes would also receive their funding for those programs in a lump sum. The bill would authorize the appropriation of such sums as necessary to carry out the project.

CBO estimates that implementing S. 1696 would cost $10 million in 2005 and $42 million over the 2005–2009 period, assuming appropriation of the necessary funds. Those costs would be borne by the Office of the Secretary in HHS, which would oversee the implementation of the demonstration project. We also estimate that providing funding to participating tribes in a lump sum would accelerate outlays for many of the programs included in the demonstration project. As a result, the bill would increase direct spending by a total of $7 million and spending subject to appropriation by $34 million over the 2005–2009 period. Over the longer 2005–2014 period, the use of lump-sum funding would have no net effect on direct spending and would increase spending subject to appropriation by $2 million.

S. 1696 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). At their option, tribal governments could participate in a demonstration project that would grant them greater authority for governing and administering a variety of programs.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1696 is shown in Table 1. The costs of this legislation fall within budget functions 500 (education, employment, training, and social services), 550 (health), and 600 (income security). For this estimate, CBO assumes that S. 1696 will be enacted by the end of 2004.

Table 1.—ESTIMATED BUDGETARY EFFECTS OF S. 1696

| | By fiscal year, in millions of dollars— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | |
| Budget Authority ..... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays ..... | 3 | 3 | 1 | * | 0 | −5 | −1 | * | 0 | 0 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | | | | | |
| Estimated Authorization Level ..... | 10 | 8 | 8 | 8 | 8 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays ..... | 23 | 24 | 11 | 9 | 9 | −28 | −4 | −1 | * | 0 |

Note.—* = Costs or savings of less than $500,000.

Basis of estimate: The Indian Self-Determination and Education Assistance Act (ISDEAA) allows Indian tribes to directly manage programs that had previously been administered on their behalf by the Indian Health Service (IHS). Tribes that do so have considerable flexibility to reshape those programs to better meet tribal needs.

S. 1696 would amend ISDEAA to authorize a demonstration project that would give participating tribes the same flexibility in managing certain other HHS programs. The bill specifies 13 programs that would be included in the project and allows the Secretary to add up to six programs annually in later years. Each participating tribe would decide which of those programs to include in the project. Under current law, tribes can administer most of those programs themselves, but must follow existing program rules.

The bill would target participation in the demonstration project to 50 tribes, although the Secretary could allow a higher number to take part if tribal interest were high. Only tribes that already manage IHS-funded programs would be eligible. As with IHS pro-

grams, participating tribes would have the option of receiving their annual funding for the project in a lump sum. The demonstration project would last for no more than five years after the enactment of the bill.

For this estimate, CBO assumed that about 50 tribes would participate in the demonstration project, and that each tribe would manage about half of the eligible programs. We assumed that the Secretary would not make any additional programs eligible for the project. CBO estimated funding amounts for participating tribes based on historical averages, and assumed that tribes would opt to receive their funding in a lump sum.

*Direct Spending*

Tribes currently receive funding for most of the programs in the demonstration project on an as-needed basis rather than in a lump sum. As a result, the shift to lump-sum funding under the bill would accelerate outlays for those programs. CBO estimates that the bill would increase spending for the four mandatory programs in the demonstration project—Child Care and Development Fund, Native Employment Works, Promoting Safe and Stable Families, and Temporary Assistance for Needy Families—by a total of $7 million over the 2005–2009 period. Those increases would be offset by lower spending in later years, and the bill would have no net effect on direct spending over the 2005–2014 period.

*Spending Subject to Appropriation*

The estimated effects of S. 1696 on spending subject to appropriation are shown in Table 2.

Effect of Lump-Sum Funding. CBO estimates that the use of lump-sum funding under the bill would increase outlays for the programs in the demonstration project that are funded through annual appropriations—Child Care and Development Fund, Child Welfare Services, Family Violence Prevention Grants, Grants to Native Americans, Head Start, Promoting Safe and Stable Families, and Targeted Capacity Expansion—by a total of $34 million over the 2005–2009 period. Those increases would be largely offset by lower spending in later years, with the bill increasing costs by $2 million over the 2005–2014 period.

Startup Costs. Indian tribes that wish to participate in the demonstration project would incur one-time costs for planning and preparation activities. Both IHS and the Bureau of Indian Affairs—where tribal management of programs is also common—have given tribes grants to offset these costs. Based on the experience of IHS, CBO assumes that HHS would issue grants averaging $70,000 to each participating tribe, for a total cost of $3.5 million in 2005.

TABLE 2.—ESTIMATED EFFECTS OF S. 1696 ON DISCRETIONARY SPENDING

| | By fiscal year, in millions of dollars— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| Effect of Lump-Sum Funding: | | | | | | | | | | |
| Estimated Authorization Level | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 13 | 16 | 3 | 1 | 1 | −28 | −4 | −1 | * | 0 |

TABLE 2.—ESTIMATED EFFECTS OF S. 1696 ON DISCRETIONARY SPENDING—Continued

| | By fiscal year, in millions of dollars— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| Startup Costs: | | | | | | | | | | |
| Estimated Authorization Level | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Project Management: | | | | | | | | | | |
| Estimated Authorization Level | 4 | 4 | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 4 | 4 | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 |
| Contract Support Costs: | | | | | | | | | | |
| Estimated Authorization Level | 2 | 4 | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 2 | 4 | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 |
| Total Changes in Spending Subject to Appropriation: | | | | | | | | | | |
| Estimated Authorization Level | 10 | 8 | 8 | 8 | 8 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 23 | 24 | 11 | 9 | 9 | −28 | −4 | −1 | * | 0 |

Note.— * = Costs or savings of less than $500,000.

Project Management. According to HHS, the costs of administering the demonstration project would include a project office to oversee the demonstration, annual negotiations with participating tribes, a legal staff to review tribal agreements, and regular reports on the status of the project. Based on the experience of IHS, CBO estimates that those costs would total about $4 million annually.

Contract Support Costs. The bill would allow tribes that participate in the demonstration project to receive funding for the administrative costs that they would incur. These costs, commonly known as contract support costs, include facilities, equipment, legal services, and salaries. Although all of the programs in the demonstration project include some funding for administrative costs, IHS experience with tribal management suggests that those amounts would not be sufficient for many tribes. Based on information from HHS, CBO estimates that the cost of the additional administrative costs for participating tribes would total $2 million in 2005 and $18 million over the 2005–2009 period. Costs in 2005 would be lower because tribes would not operate the demonstration project for the entire year.

Intergovernmental and private-sector impact: S. 1696 contains no intergovernmental or private-sector mandates as defined in UMRA. At their option, tribal governments could participate in a demonstration project that would grant them greater authority for governing and administering a variety of programs.

Estimate prepared by: Federal Costs: Eric Rollins. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Crystal Taylor.

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

## REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying

out the bill. The Committee believes that S. 1696 will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has not received written views on S. 1696 from the U.S. Department of Health and Human Services.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill, S. 1696, as ordered 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):

Public Law 93–638

AN ACT To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the federal government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; and to establish an Indian youth intern program.

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

* * * * * * *

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

**SEC. 601. DEFINITIONS.**

[(a) IN GENERAL.—In this title, the Secretary may apply the definitions contained in title V.

[(b) OTHER DEFINITIONS.—In this title:

[(1) AGENCY.—The term "agency" means any agency or other organizational unit of the Department of Health and Human Services, other than the Indian Health Service.

[(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.]

*In this title:*

*(1) COMPACT.—The term "compact" means a compact under section 604.*

*(2) CONSTRUCTION PROJECT.—The term "construction project" has the meaning given the term in section 501.*

*(3) DEMONSTRATION PROJECT.—The term "demonstration project" means the demonstration project under this title.*

*(4) FUNDING AGREEMENT.—The term "funding agreement" means a funding agreement under section 604.*

*(5) INCLUDED PROGRAM.—The term "included program" means a program that is eligible for inclusion under a funding agreement under section 604(c) (including any portion of such*

*a program and any function, service, or activity performed under such a program).*

*(6) INDIAN TRIBE.—The term "Indian tribe", in a case in which an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf in accordance with section 603(a)(3), includes the other authorized Indian tribe, inter-tribal consortium, or tribal organization.*

*(7) INTER-TRIBAL CONSORTIUM.—The term "inter-tribal consortium" has the meaning given the term in section 501.*

*(8) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.*

*(9) SELF-GOVERNANCE.—The term "self-governance" has the meaning given the term in section 501.*

*(10) TRIBAL SHARE.—The term "tribal share" has the meaning given the term in section 501.*

**[SEC. 602. DEMONSTRATION PROJECT FEASIBILITY.**

[(a) STUDY.—The Secretary shall conduct a study to determine the feasibility of a tribal self-governance demonstration project for appropriate programs, services, functions, and activities (or portions thereof) of the agency.

[(b) CONSIDERATIONS.—In conducting the study, the Secretary shall consider—

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

[(2) statutory, regulatory, or other impediments to implementation of such a demonstration project;

[(3) strategies for implementing such a demonstration project;

[(4) probable costs or savings associated with such a demonstration project;

[(5) methods to assure quality and accountability in such a demonstration project; and

[(6) such other issues that may be determined by the Secretary or developed through consultation pursuant to section 603.

[(c) REPORT.—Not later than 18 months after the date of the enactment of this title, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and Committee on Resources of the House of Representatives. The report shall contain—

[(1) the results of the study under this section;

[(2) a list of programs, services, functions, and activities (or portions thereof) within each agency with respect to which it would be feasible to include in a tribal self-governance demonstration project;

[(3) a list of programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) that could be included in a tribal self-governance demonstration project without amending statutes, or waiving regulations that the Secretary may not waive;

[(4) a list of legislative actions required in order to include those programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) but not included in the list provided pursuant to paragraph (3) in a tribal self-governance demonstration project; and

[(5) any separate views of tribes and other entities consulted pursuant to section 603 related to the information provided pursuant to paragraphs (1) through (4).]

***SEC. 602. ESTABLISHMENT OF DEMONSTRATION PROJECT.***

*(a) DEMONSTRATION.—For a period of not more than 5 years after the date of enactment of the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003, the Secretary shall carry out a project to demonstrate the effectiveness of tribal operation of the included programs under self-governance principles and authorities.*

*(b) ADMINISTRATION.—The management and administration of the demonstration project shall be in the Office of the Secretary.*

**[SEC. 603. CONSULTATION.**

[(a) STUDY PROTOCOL.—

[(1) CONSULTATION WITH INDIAN TRIBES.—The Secretary shall consult with Indian tribes to determine a protocol for consultation under subsection (b) prior to consultation under such subsection with the other entities described in such subsection.

[(2) REQUIREMENTS FOR PROTOCOL.—The protocol shall require, at a minimum, that—

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

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

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

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

***SEC. 603. SELECTION OF PARTICIPATING INDIAN TRIBES.***

*(a) IN GENERAL.—*

*(1) CONTINUING PARTICIPATION.—Not more than 50 Indian tribes that meet the eligibility criteria specified in subsection (b) shall be entitled to participate in the demonstration project.*

*(2) ADDITIONAL PARTICIPANTS.—If more than 50 eligible Indian tribes request participation, the Secretary may select additional Indian tribes to participate in the demonstration project.*

*(3) OTHER AUTHORIZED INDIAN TRIBE, INTER-TRIBAL CONSORTIUM, OR TRIBAL GOVERNMENT.—If an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf under this title, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution).*

*(b) ELIGIBILITY.—An Indian tribe shall be eligible to participate in the demonstration project if the Indian tribe, as of the date of enactment of the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003, is a party to a compact or funding agreement under this Act.*

*(c) SELECTION.—The Secretary shall select Indian tribes that request participation in the demonstration project by resolution or*

*other official action by the governing body of each Indian tribe to be served.*

*(d) PLANNING AND NEGOTIATION GRANTS.—*

*(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall establish a program to allow Indian tribes that meet the eligibility requirements of this title to be awarded a planning grant or negotiation grant, or both.*

*(2) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under paragraph (1) by an Indian tribe is not a requirement for the Indian tribe to participate in the demonstration project.*

**[SEC. 604. AUTHORIZATION OF APPROPRIATIONS.**

[There are authorized to be appropriated such sums as may be necessary to carry out this title. Such sums shall remain available until expended.]

***SEC. 604. COMPACTS AND FUNDING AGREEMENTS.***

*(a) IN GENERAL.—*

*(1) NEW COMPACT AND FUNDING AGREEMENT.—Not later than 60 days after the date of submission by an Indian tribe of a request to participate in the demonstration project, the Secretary shall negotiate and enter into a written compact and funding agreement with the Indian tribe in a manner that is consistent with the trust responsibility of the Federal Government, treaty and statutory obligations, and the government-to-government relationship between Indian tribes and the United States.*

*(2) EXISTING COMPACT.—Rather than enter into a new compact under paragraph (1), an Indian tribe may use an existing compact negotiated under title V for purposes of the demonstration project.*

*(b) COMPACTS.—*

*(1) CONTENTS.—A compact under subsection (a) shall designate—*

*(A) congressional policies regarding tribal self-governance;*

*(B) the intent of the demonstration project;*

*(C) such terms as shall control from year to year; and*

*(D) any provisions of this title that are requested by the Indian tribe.*

*(2) EFFECTIVE DATE.—The effective date of a compact shall be the date of execution by the Indian tribe and the Secretary or another date agreed on by the parties.*

*(3) DURATION.—A compact shall remain in effect so long as permitted by Federal law or until terminated by agreement of the parties.*

*(4) AMENDMENT.—A compact may be amended only by agreement of the parties.*

*(c) FUNDING AGREEMENTS.—*

*(1) SCOPE.—A funding agreement under subsection (a) shall, at the option of the Indian tribe, authorize the Indian tribe to plan, conduct, and administer included programs administered by the Secretary through an agency of the Department of Health and Human Services, set forth in paragraphs (2) through (4).*

*(2) INITIAL INCLUDED PROGRAMS.—The following programs are eligible for inclusion in a funding agreement under this title:*

*(A) ADMINISTRATION ON AGING.—Grants for Native Americans under title VI of the Older Americans Act of 1965 (42 U.S.C. 3057 et seq.).*

*(B) ADMINISTRATION FOR CHILDREN AND FAMILIES.—*

*(i) The tribal temporary assistance for needy families program under section 412(a)(1) of the Social Security Act (42 U.S.C. 612(a)(1) et seq.).*

*(ii) The Low-Income Home Energy Assistance Program under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).*

*(iii) The Community Services Block Grant Program under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.).*

*(iv) The Child Care and Development Fund under the Child Care and Development Block Grant Act (42 U.S.C. 9858 et seq.).*

*(v) The native employment works program under section 412(a)(2) of the Social Security Act (42 U.S.C. 612(a)(2)).*

*(vi) The Head Start Program under the Head Start Act (42 U.S.C. 9831 et seq.).*

*(vii) Child welfare services programs under part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.).*

*(viii) The promoting safe and stable families program under part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.).*

*(ix) Family violence prevention grants for battered women's shelters under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.).*

*(C) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Targeted capacity expansion program under title V of the Public Health Service Act (42 U.S.C. 290aa et seq.).*

*(D) BLOCK GRANTS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE.—Mental health and substance abuse block grant programs under title XIX of the Public Health Services Act (42 U.S.C. 300x et seq.).*

*(E) HEALTH RESOURCES AND SERVICES ADMINISTRATION.—Community health center grants under section 330 of the Public Health Service Act (42 U.S.C. 254b).*

*(3) ADDITIONAL INCLUDED PROGRAMS.—The Secretary may identify not more than 6 additional programs annually for inclusion in the demonstration project, including—*

*(A) all other programs in which Indian tribes are eligible to participate;*

*(B) all other programs for which Indians are eligible beneficiaries; and*

*(C) competitive grants for which an Indian tribe receives an individual or cooperative award, on the condition that the Indian tribe agree in the funding agreement to restrictions regarding program redesign and budget reallocation for any competitive awards.*

*(4) CONTENTS.—A funding agreement—*

*(A) shall specify—*

*(i) the services to be provided;*

*(ii) the functions to be performed; and (iii) the responsibilities of the Indian tribe and the Secretary;*

*(B) shall provide for payment by the Secretary to the Indian tribe of funds in accordance with section 605;*

*(C) shall not allow the Secretary to waive, modify, or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exist under treaties, Executive orders, and Acts of Congress; and*

*(D) shall allow for retrocession of included programs under section 105(e).*

***SEC. 605. TRANSFER OF FUNDS.***

*(a) TRANSFER.—*

*(1) IN GENERAL.—Under any compact or funding agreement entered into under this title, the Secretary shall transfer to the Indian tribe all funds provided for in the funding agreement.*

*(2) TIMING.—Unless the funding agreement provides otherwise, at the request of the Indian tribe—*

*(A) funding shall be paid in 1 annual lump sum payment; and*

*(B) the transfer shall be made not later than 10 days after the apportionment of funds by the Office of Management and Budget to the Department of Health and Human Services.*

*(b) AMOUNT OF FUNDING.—*

*(1) FUNDING FORMULAS.—*

*(A) IN GENERAL.—Any statutory funding formula for an included program—*

*(i) shall be waived for the demonstration project under this title; and*

*(ii) shall be used to determine the amount of funding provided to an Indian tribe.*

*(B) ADEQUACY.—Subject to the availability of appropriations—*

*(i) the funding amount shall be adequate to permit the successful implementation of the demonstration project; and*

*(ii) the Secretary and the participating Indian tribe shall determine the funding amount through negotiation.*

*(2) MATCHING REQUIREMENT.—An Indian tribe may request a waiver of any matching requirement applicable to an included program, and the Secretary shall liberally grant such reasonable waiver requests.*

*(3) CONTRACT SUPPORT COSTS.—There shall be added to the amount required by paragraph (1) contract support costs as specified in paragraphs (2), (3), (5), and (6) of section 106(a).*

*(4) ADMINISTRATIVE FUND SHARES.—*

*(A) IN GENERAL.—An Indian tribe may negotiate for a tribal share of administrative funds without regard to the organizational level at which the included programs are carried out.*

*(B) INCLUSION.—A tribal share under subparagraph (A) shall include a share for training and technical assistance services performed by a contractor.*

***SEC. 606. GENERAL PROVISIONS.***

*(a) REDESIGN, CONSOLIDATION, AND REALLOCATION.—*

*(1) IN GENERAL.—To the extent allowed under the statutory provisions of the included programs included in the funding agreement, and subject to the terms of the funding agreement, an Indian tribe may—*

*(A) redesign or consolidate the included programs under the funding agreement if the Indian tribe agrees to abide by the statutory purposes of the program; and*

*(B) reallocate or redirect funds for the included programs, among the included programs under the funding agreement, so long as all demonstration project costs using those funds meet allowable cost standards as required by section 506(c).*

*(2) WAIVERS.—*

*(A) IN GENERAL.—At the request of an Indian tribe, if the Secretary determines that a waiver would further the purposes of this Act, the Secretary shall grant a waiver of program requirements for the duration of the demonstration project to facilitate the ability of an Indian tribe to redesign included programs or reallocate funds under paragraph (1).*

*(B) DOCUMENTATION.—The Secretary shall document all requests for a waiver under subparagraph (A), including a description of-*

*(i) the reasons for each request;*

*(ii) the effect of the waiver on the Indian tribe making the request; and*

*(iii) the views of the Indian tribe regarding the requested waiver.*

*(b) INABILITY TO AGREE ON COMPACT OR FUNDING AGREEMENT.—*

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

*(2) DETERMINATION.—Not later than 45 days after the date of submission of a final offer, or as otherwise agreed to by the Indian tribe, the Secretary shall review and make a determination with respect to the final offer.*

*(3) NO TIMELY DETERMINATION.—If the Secretary fails to make a determination with respect to a final offer within the time specified in paragraph (2), the Secretary shall be deemed to have agreed to the final offer.*

*(4) REJECTION OF FINAL OFFER.—*

*(A) IN GENERAL.—If the Secretary rejects a final offer, the Secretary shall-*

*(i) submit to the Indian tribe a written statement clearly setting forth the reasons for rejecting the final offer; and*

*(ii) provide the Indian tribe with a hearing on the record (except that the Indian tribe may, in lieu of such a hearing, file an appeal of the rejection to the Intra-*

*Departmental Council on Native American Affairs, the decision of which shall be final and not subject to judicial review).*

*(B) BURDEN OF PROOF.—In a hearing or appeal under subparagraph (A)(ii), the Secretary shall have the burden of proving by clear and convincing evidence the validity of the grounds for rejecting the final offer.*

*(c) OTHER FUNDING.—Participation by an Indian tribe in the demonstration project under this title shall not affect the amount of funding that the Indian tribe would receive under the laws (including regulations) governing the included programs if the Indian tribe did not participate.*

*(d) DUPLICATION OF ELIGIBILITY.—To the maximum extent practicable, an Indian tribe shall make efforts to coordinate with appropriate States to identify dually eligible individuals to address the potential for the provision of duplicate benefits.*

*(e) APPEALS.—Except as provided in subsection (b)(2), a compact or funding agreement under this title shall be considered to be a contract for the purposes of section 110.*

*(f) REGULATIONS; OTHER AGENCY STATEMENTS.—*

*(1) REGULATIONS.—An Indian tribe shall comply with final regulations for the included programs in connection with the demonstration project.*

*(2) OTHER AGENCY STATEMENTS.—Unless expressly agreed to by an Indian tribe in a compact or funding agreement, the Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule that is promulgated by regulation.*

*(g) APPLICABILITY OF OTHER PROVISIONS.—The following provisions of this Act shall apply to a compact or funding agreements entered into under this title:*

*(1) Section 102(d).*
*(2) Section 506(b) (conflicts of interest).*
*(3) Section 506(c)(1) (Single Agency Audit Act).*
*(4) Section 506(c)(2) (cost principles).*
*(5) Section 506(c) (records).*
*(6) Section 507(c)(1)(A) (grounds for rejecting a final offers).*
*(7) Section 508(g) (prompt payment).*
*(8) Section 506(h) (nonduplication).*
*(9) Section 508(h) (interest or other income on transfers).*
*(10) Section 508(i) (carryover of funds).*
*(11) Section 509 (construction projects).*
*(12) Section 510 (Federal procurement laws).*
*(13) Section 512(b) (regulation waivers).*

***SEC. 607. REPORT.***

*(a) IN GENERAL.—The Secretary shall annually submit to Congress a report on the relative costs and benefits of the demonstration project using evaluation and reporting data provided by participating Indian tribes.*

*(b) BASELINE MEASUREMENTS.—*

*(1) IN GENERAL.—A report under subsection (a) shall be based on baseline measurements developed jointly by the Secretary and participating Indian tribes.*

*(2) FINANCIAL ASSISTANCE. The Secretary shall provide financial assistance to Indian tribes to assist Indian tribes in evaluating and reporting on the demonstration project.*

*(c) CONTENTS.—A report under subsection (a) shall—*

*(1) verify that the participating Indian tribes met the statutory purposes of the included programs;*

*(2) confirm that key self-governance principles were carried out as Indian tribes operated the included programs; and*

*(3) separately include Federal and tribal viewpoints regarding-*

*(A) the merger of included programs operated under this title and self-governance principles; and*

*(B) the impact on program beneficiaries.*

***SEC. 608. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.*

○