

“(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

“(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

“(4) the Tribal Self-Governance Demonstration Project [established by title III of Pub. L. 93-638, formerly set out as a note under 25 U.S.C. 450f] was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management; and

“(5) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that—

“(A) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities, or portions thereof, is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and

“(B) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.”

CONGRESSIONAL DECLARATION OF POLICY

Section 203 of title II of Pub. L. 103-413 provided that: “It is the policy of this title [enacting this part] to permanently establish and implement tribal self-governance—

“(1) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

“(2) to permit each Indian tribe to choose the extent of the participation of such tribe in self-governance;

“(3) to coexist with the provisions of the Indian Self-Determination Act [title I of Pub. L. 93-638, see Short Title note set out under section 450 of this title] relating to the provision of Indian services by designated Federal agencies;

“(4) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(5) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and

“(6) to provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.”

§ 458bb. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project at the Department of the Interior under title III¹ on October 25, 1994, shall thereafter participate in Self-Governance under this part and cease participation in the Tribal Self-Governance Demonstration Project under title III¹ with respect to the Department of the Interior.

(b) Additional participants

(1) In addition to those Indian tribes participating in self-governance under subsection (a) of

this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 50 new tribes per year from the applicant pool described in subsection (c) of this section to participate in self-governance.

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

(c) Applicant pool

The qualified applicant pool for Self-Governance shall consist of each tribe that—

(1) successfully completes the planning phase described in subsection (d) of this section;

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

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

(d) Planning phase

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

(1) legal and budgetary research; and

(2) internal tribal government planning and organizational preparation.

(Pub. L. 93-638, title IV, §402, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4272; amended Pub. L. 104-208, div. A, title I, §101(d) [title I, §117], Sept. 30, 1996, 110 Stat. 3009-181, 3009-201.)

REFERENCES IN TEXT

Title III, referred to in subsec. (a), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, and amended, which was set out as a note under section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-208 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In addition to those Indian tribes participating in Self-Governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 20 new tribes per year from the applicant pool described in subsection (c) of this section to participate in Self-Governance.”

§ 458cc. Funding agreements

(a) Authorization

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

(b) Contents

Each funding agreement shall—

(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services,

¹ See References in Text note below.