Public Law 106–260
106th Congress

An Act

To amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

Aug. 18, 2000
[H.R. 1167]

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

SECTION 1. SHORT TITLE.

Tribal Self-Governance Amendments of 2000.
25 USC 450 note.

This Act may be cited as the "Tribal Self-Governance Amendments of 2000".

SEC. 2. FINDINGS.

25 USC 458aaa note.

Congress finds that—

(1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;

(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian 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 under title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) 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;

(5) although the Federal Government has made considerable strides in improving Indian health care, it has failed to fully meet its trust responsibilities and to satisfy its obligations to the Indian tribes under treaties and other laws; and

(6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof)—

(A) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with Indian tribes; and

(B) strengthens the Federal policy of Indian self-determination.

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25 USC 458aaa note.

SEC. 3. DECLARATION OF POLICY.

It is the policy of Congress—

(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance—

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

(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Federal services to Indian tribes;

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

(D) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portion thereof) are assumed by Indian tribes;

(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

(I) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.

SEC. 4. TRIBAL SELF-GOVERNANCE.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following:

"TITLE V—TRIBAL SELF-GOVERNANCE

"SEC. 501. DEFINITIONS. 25 USC 458aaa.

"(a) IN GENERAL.—In this title:

"(1) CONSTRUCTION PROJECT.—The term 'construction project'—

"(A) means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement; and

"(B) does not include construction program administration and activities described in paragraphs (1) through (3) of section 4(m), that may otherwise be included in a funding agreement under this title.

"(2) CONSTRUCTION PROJECT AGREEMENT.—The term 'construction project agreement' means a negotiated agreement between the Secretary and an Indian tribe, that at a minimum—

"(A) establishes project phase start and completion dates;

"(B) defines a specific scope of work and standards by which it will be accomplished;

"(C) identifies the responsibilities of the Indian tribe and the Secretary;

"(D) addresses environmental considerations;

"(E) identifies the owner and operations and maintenance entity of the proposed work;

"(F) provides a budget;

"(G) provides a payment process; and

"(H) establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.

"(3) GROSS MISMANAGEMENT.—The term 'gross mismanagement' means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory, or statutory requirements applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds available for the programs, services, functions, or activities (or portions thereof) assumed by an Indian tribe.

"(4) INHERENT FEDERAL FUNCTIONS.—The term 'inherent Federal functions' means those Federal functions which cannot legally be delegated to Indian tribes.

"(5) INTER-TRIBAL CONSORTIUM.—The term 'inter-tribal consortium' means a coalition of two more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.

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

"(7) SELF-GOVERNANCE.—The term 'self-governance' means the program of self-governance established under section 502.

"(8) TRIBAL SHARE.—The term 'tribal share' means an Indian tribe's portion of all funds and resources that support

secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions.

"(b) INDIAN TRIBE.—In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) 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 or in this title). In such event, the term 'Indian tribe' as used in this title shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

25 USC 458aaa–1.

"SEC. 502. ESTABLISHMENT.

"The Secretary shall establish and carry out a program within the Indian Health Service of the Department of Health and Human Services to be known as the 'Tribal Self-Governance Program' in accordance with this title.

25 USC 458aaa–2.

"SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES.

"(a) CONTINUING PARTICIPATION.—Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III on the date of the enactment of this title may elect to participate in self-governance under this title under existing authority as reflected in tribal resolution.

"(b) ADDITIONAL PARTICIPANTS.—

"(1) IN GENERAL.—In addition to those Indian tribes participating in self-governance under subsection (a), each year an additional 50 Indian tribes that meet the eligibility criteria specified in subsection (c) shall be entitled to participate in self-governance.

"(2) TREATMENT OF CERTAIN INDIAN TRIBES.—

"(A) IN GENERAL.—An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance provided the Indian tribe meets the eligibility criteria specified in subsection (c).

"(B) EFFECT OF WITHDRAWAL.—If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, that Indian tribe shall be entitled to its tribal share of funds supporting those programs, services, functions, and activities (or portions thereof) that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

"(C) PARTICIPATION IN SELF-GOVERNANCE.—In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance.

"(c) APPLICANT POOL.—

"(1) IN GENERAL.—The qualified applicant pool for self-governance shall consist of each Indian tribe that—

"(A) successfully completes the planning phase described in subsection (d);

"(B) has requested participation in self-governance by resolution or other official action by the governing body of each Indian tribe to be served; and

"(C) has demonstrated, for 3 fiscal years, financial stability and financial management capability.

"(2) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For purposes of this subsection, evidence that, during the 3-year period referred to in paragraph (1)(C), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

"(d) PLANNING PHASE.—Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the satisfaction of the Indian tribe and shall include—

"(1) legal and budgetary research; and

"(2) internal tribal government planning and organizational preparation relating to the administration of health care programs.

"(e) GRANTS.—Subject to the availability of appropriations, any Indian tribe meeting the requirements of paragraph (1)(B) and (C) of subsection (c) shall be eligible for grants—

"(1) to plan for participation in self-governance; and

"(2) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

"(f) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under subsection (e) shall not be a requirement of participation in self-governance.

"SEC. 504. COMPACTS.

25 USC 458aaa–3.

"(a) COMPACT REQUIRED.—The Secretary shall negotiate and enter into a written compact with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

"(b) CONTENTS.—Each compact required under subsection (a) shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties.

"(c) EXISTING COMPACTS.—An Indian tribe participating in the Tribal Self-Governance Demonstration Project under title III on the date of the enactment of this title shall have the option at any time after the date of the enactment of this title to—

"(1) retain the Tribal Self-Governance Demonstration Project compact of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

"(2) instead of retaining a compact or portion thereof under paragraph (1), negotiate a new compact in a manner consistent with the requirements of this title.

"(d) TERM AND EFFECTIVE DATE.—The effective date of a compact shall be the date of the approval and execution by the Indian tribe or another date agreed upon by the parties, and shall remain

in effect for so long as permitted by Federal law or until terminated by mutual written agreement, retrocession, or reassumption.

25 USC 458aaa–4.

"SEC. 505. FUNDING AGREEMENTS.

"(a) FUNDING AGREEMENT REQUIRED.—The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

"(b) CONTENTS.—

"(1) IN GENERAL.—Each funding agreement required under subsection (a) shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding, including tribal shares of discretionary Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), for all programs, services, functions, and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed.

"(2) INCLUSION OF CERTAIN PROGRAMS, SERVICES, FUNCTIONS, AND ACTIVITIES.—Such programs, services, functions, or activities (or portions thereof) include all programs, services, functions, activities (or portions thereof), including grants (which may be added to a funding agreement after an award of such grants), with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by the Department of Health and Human Services through the Indian Health Service and all local, field, service unit, area, regional, and central headquarters or national office functions so administered under the authority of—

"(A) the Act of November 2, 1921 (42 Stat. 208; chapter 115; 25 U.S.C. 13);

"(B) the Act of April 16, 1934 (48 Stat. 596; chapter 147; 25 U.S.C. 452 et seq.);

"(C) the Act of August 5, 1954 (68 Stat. 674; chapter 658);

"(D) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);

"(E) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.);

"(F) any other Act of Congress authorizing any agency of the Department of Health and Human Services to administer, carry out, or provide financial assistance to such a program, service, function or activity (or portions thereof) described in this section that is carried out for the benefit of Indians because of their status as Indians; or

"(G) any other Act of Congress authorizing such a program, service, function, or activity (or portions thereof) carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the Department of Health and Human Services, in any case in which the Secretary administers

that program, service, function, or activity (or portion thereof).

"(c) INCLUSION IN COMPACT OR FUNDING AGREEMENT.—It shall not be a requirement that an Indian tribe or Indians be identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or funding agreement under this title.

"(d) FUNDING AGREEMENT TERMS.—Each funding agreement under this title shall set forth—

"(1) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered; and

"(2) for the items identified in paragraph (1)—

"(A) the general budget category assigned;

"(B) the funds to be provided, including those funds to be provided on a recurring basis;

"(C) the time and method of transfer of the funds;

"(D) the responsibilities of the Secretary; and

"(E) any other provision with respect to which the Indian tribe and the Secretary agree.

"(e) SUBSEQUENT FUNDING AGREEMENTS.—Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

"(f) EXISTING FUNDING AGREEMENTS.—Each Indian tribe participating in the Tribal Self-Governance Demonstration Project established under title III on the date of the enactment of this title shall have the option at any time thereafter to—

"(1) retain the Tribal Self-Governance Demonstration Project funding agreement of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

"(2) instead of retaining a funding agreement or portion thereof under paragraph (1), negotiate a new funding agreement in a manner consistent with the requirements of this title.

"(g) STABLE BASE FUNDING.—At the option of an Indian tribe, a funding agreement may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under section 106(a)) to be transferred to such Indian tribe, for such period as may be specified in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations by sub-sub activity excluding earmarks.

"SEC. 506. GENERAL PROVISIONS.

25 USC 458aaa–5.

"(a) APPLICABILITY.—The provisions of this section shall apply to compacts and funding agreements negotiated under this title and an Indian tribe may, at its option, include provisions that reflect such requirements in a compact or funding agreement.

"(b) CONFLICTS OF INTEREST.—Indian tribes participating in self-governance under this title shall ensure that internal measures

are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

"(c) AUDITS.—

Applicability.

"(1) SINGLE AGENCY AUDIT ACT.—The provisions of chapter 75 of title 31, United States Code, requiring a single agency audit report shall apply to funding agreements under this title.

"(2) COST PRINCIPLES.—An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 106 other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to the provisions of section 106(f).

"(d) RECORDS.—

"(1) IN GENERAL.—Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of the Indian tribe shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

Notice.

"(2) RECORDKEEPING SYSTEM.—The Indian tribe shall maintain a recordkeeping system, and, after 30 days advance notice, provide the Secretary with reasonable access to such records to enable the Department of Health and Human Services to meet its minimum legal recordkeeping system requirements under sections 3101 through 3106 of title 44, United States Code.

"(e) REDESIGN AND CONSOLIDATION.—An Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement under section 505 and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner which the Indian tribe deems to be in the best interest of the health and welfare of the Indian community being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law.

"(f) RETROCESSION.—An Indian tribe may retrocede, fully or partially, to the Secretary programs, services, functions, or activities (or portions thereof) included in the compact or funding agreement. Unless the Indian tribe rescinds the request for retrocession, such retrocession will become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, such retrocession shall become effective on—

"(1) the earlier of—

"(A) 1 year after the date of submission of such request; or

"(B) the date on which the funding agreement expires; or

"(2) such date as may be mutually agreed upon by the Secretary and the Indian tribe.

"(g) WITHDRAWAL.—

"(1) PROCESS.—

"(A) IN GENERAL.—An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement.

"(B) EFFECTIVE DATE.—The withdrawal referred to in subparagraph (A) shall become effective within the timeframe specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium. In the absence of a specific timeframe set forth in the resolution, such withdrawal shall become effective on—

"(i) the earlier of—

"(I) 1 year after the date of submission of such request; or

"(II) the date on which the funding agreement expires; or

"(ii) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the participating tribal organization or inter-tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

"(2) DISTRIBUTION OF FUNDS.—When an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I or a compact or funding agreement under this title fully or partially withdraws from a participating inter-tribal consortium or tribal organization—

"(A) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization); and

"(B) the funds referred to in subparagraph (A) shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, on the condition that the provisions of sections 102 and 105(i), as appropriate, shall apply to that withdrawing Indian tribe.

"(3) REGAINING MATURE CONTRACT STATUS.—If an Indian tribe elects to operate all or some programs, services, functions, or activities (or portions thereof) carried out under a compact or funding agreement under this title through a self-determination contract under title I, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

"(h) NONDUPLICATION.—For the period for which, and to the extent to which, funding is provided under this title or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 102, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

"SEC. 507. PROVISIONS RELATING TO THE SECRETARY.

25 USC 458aaa–6.

"(a) MANDATORY PROVISIONS.—

"(1) HEALTH STATUS REPORTS.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Indian tribe to report on health status and service delivery—

"(A) to the extent such data is not otherwise available to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement; and

"(B) if such reporting shall impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 517.

"(2) REASSUMPTION.—

"(A) IN GENERAL.—Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision authorizing the Secretary to reassume operation of a program, service, function, or activity (or portions thereof) and associated funding if there is a specific finding relative to that program, service, function, or activity (or portion thereof) of—

"(i) imminent endangerment of the public health caused by an act or omission of the Indian tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

"(ii) gross mismanagement with respect to funds transferred to a tribe by a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

"(B) PROHIBITION.—The Secretary shall not reassume operation of a program, service, function, or activity (or portions thereof) unless—

"(i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe; and

"(ii) the Indian tribe has not taken corrective action to remedy the imminent endangerment to public health or gross mismanagement.

"(C) EXCEPTION.—

"(i) IN GENERAL.—Notwithstanding subparagraph (B), the Secretary may, upon written notification to the Indian tribe, immediately reassume operation of a program, service, function, or activity (or portion thereof) if—

"(I) the Secretary makes a finding of imminent substantial and irreparable endangerment of the public health caused by an act or omission of the Indian tribe; and

"(II) the endangerment arises out of a failure to carry out the compact or funding agreement.

Deadline.

"(ii) REASSUMPTION.—If the Secretary reassumes operation of a program, service, function, or activity (or portion thereof) under this subparagraph, the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after such reassumption.

"(D) HEARINGS.—In any hearing or appeal involving a decision to reassume operation of a program, service, function, or activity (or portion thereof), the Secretary shall have the burden of proof of demonstrating by clear and

convincing evidence the validity of the grounds for the reassumption.

"(b) FINAL OFFER.—In the event the Secretary and a participating 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. Not more than 45 days after such submission, or within a longer time agreed upon by the Indian tribe, the Secretary shall review and make a determination with respect to such offer. In the absence of a timely rejection of the offer, in whole or in part, made in compliance with subsection (c), the offer shall be deemed agreed to by the Secretary.

Deadline.

"(c) REJECTION OF FINAL OFFERS.—

"(1) IN GENERAL.—If the Secretary rejects an offer made under subsection (b) (or one or more provisions or funding levels in such offer), the Secretary shall provide—

"(A) a timely written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

"(i) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this title;

"(ii) the program, function, service, or activity (or portion thereof) that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to an Indian tribe;

"(iii) the Indian tribe cannot carry out the program, function, service, or activity (or portion thereof) in a manner that would not result in significant danger or risk to the public health; or

"(iv) the Indian tribe is not eligible to participate in self-governance under section 503;

"(B) technical assistance to overcome the objections stated in the notification required by subparagraph (A);

"(C) the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, except that the Indian tribe may, in lieu of filing such appeal, directly proceed to initiate an action in a Federal district court pursuant to section 110(a); and

"(D) the Indian tribe with the option of entering into the severable portions of a final proposed compact or funding agreement, or provision thereof, (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

"(2) EFFECT OF EXERCISING CERTAIN OPTION.—If an Indian tribe exercises the option specified in paragraph (1)(D), that Indian tribe shall retain the right to appeal the Secretary's rejection under this section, and subparagraphs (A), (B), and (C) of that paragraph shall only apply to that portion of the proposed final compact, funding agreement, or provision thereof that was rejected by the Secretary.

"(d) BURDEN OF PROOF.—With respect to any hearing or appeal or civil action conducted pursuant to this section, the Secretary

shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the offer (or a provision thereof) made under subsection (b).

"(e) GOOD FAITH.—In the negotiation of compacts and funding agreements the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy. The Secretary shall carry out this title in a manner that maximizes the policy of tribal self-governance, in a manner consistent with the purposes specified in section 3 of the Tribal Self-Governance Amendments of 2000.

"(f) SAVINGS.—To the extent that programs, functions, services, or activities (or portions thereof) carried out by Indian tribes under this title reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under section 508(c), the Secretary shall make such savings available to the Indian tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

"(g) TRUST RESPONSIBILITY.—The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

"(h) DECISIONMAKER.—A decision that constitutes final agency action and relates to an appeal within the Department of Health and Human Services conducted under subsection (c) shall be made either—

"(1) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

"(2) by an administrative judge.

25 USC 458aaa–7.

"SEC. 508. TRANSFER OF FUNDS.

"(a) IN GENERAL.—Pursuant to the terms of 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, pursuant to subsection (c), and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolutions. In any instance where a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

"(b) MULTIYEAR FUNDING.—The Secretary is authorized to employ, upon tribal request, multiyear funding agreements. References in this title to funding agreements shall include such multiyear funding agreements.

"(c) AMOUNT OF FUNDING.—The Secretary shall provide funds under a funding agreement under this title in an amount equal to the amount that the Indian tribe would have been entitled

to receive under self-determination contracts under this Act, including amounts for direct program costs specified under section 106(a)(1) and amounts for contract support costs specified under section 106(a) (2), (3), (5), and (6), including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members, all without regard to the organizational level within the Department where such functions are carried out.

"(d) PROHIBITIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary is expressly prohibited from—

"(A) failing or refusing to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this Act, except as required by Federal law;

"(B) withholding portions of such funds for transfer over a period of years; and

"(C) reducing the amount of funds required under this Act—

"(i) to make funding available for self-governance monitoring or administration by the Secretary;

"(ii) in subsequent years, except pursuant to—

"(I) a reduction in appropriations from the previous fiscal year for the program or function to be included in a compact or funding agreement;

"(II) a congressional directive in legislation or accompanying report;

"(III) a tribal authorization;

"(IV) a change in the amount of pass-through funds subject to the terms of the funding agreement; or

"(V) completion of a project, activity, or program for which such funds were provided;

"(iii) to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under this Act; or

"(iv) to pay for costs of Federal personnel displaced by self-determination contracts under this Act or self-governance;

"(2) EXCEPTION.—The funds described in paragraph (1)(C) may be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c)(2).

"(e) OTHER RESOURCES.—In the event an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Indian tribe.

"(f) REIMBURSEMENT TO INDIAN HEALTH SERVICE.—With respect to functions transferred by the Indian Health Service to an Indian tribe, the Indian Health Service shall provide goods

and services to the Indian tribe, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Indian tribe pursuant to this title, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

Applicability.

"(g) PROMPT PAYMENT ACT.—Chapter 39 of title 31, United States Code, shall apply to the transfer of funds due under a compact or funding agreement authorized under this title.

"(h) INTEREST OR OTHER INCOME ON TRANSFERS.—An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or health purposes and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent fiscal year. Funds transferred under this title shall be managed using the prudent investment standard.

"(i) CARRYOVER OF FUNDS.—All funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from 1 year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

"(j) PROGRAM INCOME.—All Medicare, Medicaid, or other program income earned by an Indian tribe shall be treated as supplemental funding to that negotiated in the funding agreement. The Indian tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) provides otherwise for Medicare and Medicaid receipts. Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

"(k) LIMITATION OF COSTS.—An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

25 USC 458aaa–8.

"SEC. 509. CONSTRUCTION PROJECTS.

"(a) IN GENERAL.—Indian tribes participating in tribal self-governance may carry out construction projects under this title if they elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

"(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under such laws; and

"(2) accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.

"(b) NEGOTIATIONS.—Construction project proposals shall be negotiated pursuant to the statutory process in section 105(m) and resulting construction project agreements shall be incorporated into funding agreements as addenda.

"(c) CODES AND STANDARDS.—The Indian tribe and the Secretary shall agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

"(d) RESPONSIBILITY FOR COMPLETION.—The Indian tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.

"(e) FUNDING.—Funding for construction projects carried out under this title shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance and semiannual payment amounts shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished and funds expended in previous payment periods, and the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

"(f) APPROVAL.—The Secretary shall have at least one opportunity to approve project planning and design documents prepared by the Indian tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually. The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

"(g) WAGES.—All laborers and mechanics employed by contractors and subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of a building or other facilities in connection with construction projects funded by the United States under this Act shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494). With respect to construction alteration, or repair work to which the Act of March 3, 1931, is applicable under this section, the Secretary of Labor shall have the authority and functions set forth in the Reorganization Plan numbered 14, of 1950, and section 2 of the Act of June 13, 1934 (48 Stat. 948).

"(h) APPLICATION OF OTHER LAWS.—Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal

procurement (including Executive orders) shall apply to any construction project conducted under this title.

25 USC 458aaa–9.

"SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULATIONS.

"Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of the Office of Federal Procurement and Policy Act (41 U.S.C. 401 et seq.) and Federal acquisition regulations in any funding agreement entered into under this part. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

25 USC 458aaa–10.

"SEC. 511. CIVIL ACTIONS.

"(a) CONTRACT DEFINED.—For the purposes of section 110, the term 'contract' shall include compacts and funding agreements entered into under this title.

"(b) APPLICABILITY OF CERTAIN LAWS.—Section 2103 of the Revised Statutes (25 U.S.C. 81) and section 16 of the Act of June 18, 1934 (48 Stat. 987; chapter 576; 25 U.S.C. 476), shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this title.

"(c) REFERENCES.—All references in this Act to section 1 of the Act of June 26, 1936 (49 Stat. 1967; chapter 831) are hereby deemed to include the first section of the Act of July 3, 1952 (66 Stat. 323; chapter 549; 25 U.S.C. 82a).

25 USC 458aaa–11.

"SEC. 512. FACILITATION.

"(a) SECRETARIAL INTERPRETATION.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

"(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in the agreements entered into under this section;

"(2) the implementation of compacts and funding agreements entered into under this title; and

"(3) the achievement of tribal health goals and objectives.

"(b) REGULATION WAIVER.—

"(1) IN GENERAL.—An Indian tribe may submit a written request to waive application of a regulation promulgated under section 517 or the authorities specified in section 505(b) for a compact or funding agreement entered into with the Indian Health Service under this title, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

Deadline.

"(2) APPROVAL.—Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation for a compact or funding agreement entered into under this title, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. A failure to approve or deny a waiver request not later than 90 days after receipt shall be deemed an approval of such request. The Secretary's decision shall be final for the Department.

Deadline.

"(c) ACCESS TO FEDERAL PROPERTY.—In connection with any compact or funding agreement executed pursuant to this title or

an agreement negotiated under the Tribal Self-Governance Demonstration Project established under title III, as in effect before the enactment of the Tribal Self-Governance Amendments of 2000, upon the request of an Indian tribe, the Secretary—

"(1) shall permit an Indian tribe to use existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the Indian tribe for their use and maintenance;

"(2) may donate to an Indian tribe title to any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

"(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the compact or funding agreement or purchased with funds under any compact or funding agreement shall, unless otherwise requested by the Indian tribe, vest in the appropriate Indian tribe;

"(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of retrocession, withdrawal, or reassumption, at the option of the Secretary upon the retrocession, withdrawal, or reassumption, title to such property and equipment shall revert to the Department of Health and Human Services; and

"(C) all property referred to in subparagraph (A) shall remain eligible for replacement, maintenance, and improvement on the same basis as if title to such property were vested in the United States; and

"(3) shall acquire excess or surplus Government personal or real property for donation to an Indian tribe if the Secretary determines the property is appropriate for use by the Indian tribe for any purpose for which a compact or funding agreement is authorized under this title.

"(d) MATCHING OR COST-PARTICIPATION REQUIREMENT.—All funds provided under compacts, funding agreements, or grants made pursuant to this Act, shall be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

"(e) STATE FACILITATION.—States are hereby authorized and encouraged to enact legislation, and to enter into agreements with Indian tribes to facilitate and supplement the initiatives, programs, and policies authorized by this title and other Federal laws benefiting Indians and Indian tribes.

"(f) RULES OF CONSTRUCTION.—Each provision of this title and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.

"SEC. 513. BUDGET REQUEST.

25 USC 458aaa–12.

"(a) REQUIREMENT OF ANNUAL BUDGET REQUEST.—

President.

"(1) IN GENERAL.—The President shall identify in the annual budget request submitted to Congress under section

1105 of title 31, United States Code, all funds necessary to fully fund all funding agreements authorized under this title, including funds specifically identified to fund tribal base budgets. All funds so appropriated shall be apportioned to the Indian Health Service. Such funds shall be provided to the Office of Tribal Self-Governance which shall be responsible for distribution of all funds provided under section 505.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Indian Health Service to reduce the amount of funds that a self-governance tribe is otherwise entitled to receive under its funding agreement or other applicable law, whether or not such funds are apportioned to the Office of Tribal Self-Governance under this section.

"(b) PRESENT FUNDING; SHORTFALLS.—In such budget request, the President shall identify the level of need presently funded and any shortfall in funding (including direct program and contract support costs) for each Indian tribe, either directly by the Secretary of Health and Human Services, under self-determination contracts, or under compacts and funding agreements authorized under this title.

25 USC 458aaa–13.

"SEC. 514. REPORTS.

Deadline.

"(a) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than January 1 of each year after the date of the enactment of the Tribal Self-Governance Amendments of 2000, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a written report regarding the administration of this title.

"(2) ANALYSIS.—The report under paragraph (1) shall include a detailed analysis of the level of need being presently funded or unfunded for each Indian tribe, either directly by the Secretary, under self-determination contracts under title I, or under compacts and funding agreements authorized under this Act. In compiling reports pursuant to this section, the Secretary may not impose any reporting requirements on participating Indian tribes or tribal organizations, not otherwise provided in this Act.

"(b) CONTENTS.—The report under subsection (a) shall—

"(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds; and

"(2) identify—

"(A) the relative costs and benefits of self-governance;

"(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian tribes and their members;

"(C) the funds transferred to each self-governance Indian tribe and the corresponding reduction in the Federal bureaucracy;

"(D) the funding formula for individual tribal shares of all headquarters funds, together with the comments of affected Indian tribes or tribal organizations, developed under subsection (c); and

"(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

"(3) contain a description of the method or methods (or any revisions thereof) used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements;

"(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of no less than 30 days, beginning on the date of distribution); and

Deadline.

"(5) include the separate views and comments of the Indian tribes or tribal organizations.

"(c) REPORT ON FUND DISTRIBUTION METHOD.—Not later than 180 days after the date of the enactment of the Tribal Self-Governance Amendments of 2000, the Secretary shall, after consultation with Indian tribes, submit a written report to the Committee on Resources of the House of Representatives and the Committee on Indian Affairs of the Senate that describes the method or methods used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements.

Deadline.

"SEC. 515. DISCLAIMERS.

25 USC 458aaa–14.

"(a) NO FUNDING REDUCTION.—Nothing in this title shall be construed to limit or reduce in any way the funding for any program, project, or activity serving an Indian tribe under this or other applicable Federal law. Any Indian tribe that alleges that a compact or funding agreement is in violation of this section may apply the provisions of section 110.

"(b) FEDERAL TRUST AND TREATY RESPONSIBILITIES.—Nothing in this Act shall be construed to diminish in any way the trust responsibility of the United States to Indian tribes and individual Indians that exists under treaties, Executive orders, or other laws and court decisions.

"(c) OBLIGATIONS OF THE UNITED STATES.—The Indian Health Service under this Act shall neither bill nor charge those Indians who may have the economic means to pay for services, nor require any Indian tribe to do so.

"SEC. 516. APPLICATION OF OTHER SECTIONS OF THE ACT.

25 USC 458aaa–15.

"(a) MANDATORY APPLICATION.—All provisions of sections 5(b), 6, 7, 102(c) and (d), 104, 105(k) and (l), 106(a) through (k), and 111 of this Act and section 314 of Public Law 101–512 (coverage under chapter 171 of title 28, United States Code, commonly known as the 'Federal Tort Claims Act'), to the extent not in conflict with this title, shall apply to compacts and funding agreements authorized by this title.

"(b) DISCRETIONARY APPLICATION.—At the request of a participating Indian tribe, any other provision of title I, to the extent such provision is not in conflict with this title, shall be made a part of a funding agreement or compact entered into under this title. The Secretary is obligated to include such provision at the option of the participating Indian tribe or tribes. If such provision is incorporated it shall have the same force and effect as

if it were set out in full in this title. In the event an Indian tribe requests such incorporation at the negotiation stage of a compact or funding agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting compact and funding agreement.

25 USC 458aaa–16.

"SEC. 517. REGULATIONS.

"(a) IN GENERAL.—

Deadline.

"(1) PROMULGATION.—Not later than 90 days after the date of the enactment of the Tribal Self-Governance Amendments of 2000, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out this title.

Federal Register, publication.

"(2) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this title shall be published in the Federal Register by the Secretary no later than 1 year after the date of the enactment of the Tribal Self-Governance Amendments of 2000.

"(3) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under paragraph (1) shall expire 21 months after the date of the enactment of the Tribal Self-Governance Amendments of 2000.

"(b) COMMITTEE.—

"(1) IN GENERAL.—A negotiated rulemaking committee established pursuant to section 565 of title 5, United States Code, to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this Act.

"(2) REQUIREMENTS.—The committee shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

"(c) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

"(d) EFFECT.—The lack of promulgated regulations shall not limit the effect of this title.

"(e) EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCES, AND RULES.—Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of section 105(g) and regulations promulgated under section 517.

25 USC 458aaa–17.

"SEC. 518. APPEALS.

"In any appeal (including civil actions) involving decisions made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

"(1) the validity of the grounds for the decision made; and

"(2) that the decision is fully consistent with provisions and policies of this title.

"SEC. 519. AUTHORIZATION OF APPROPRIATIONS.

25 USC 458aaa–18.

"(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this title.

"(b) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any other provision of this Act, the provision of funds under this Act shall be subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe in order to make funds available to another tribe or tribal organization under this Act.".

SEC. 5. TRIBAL SELF-GOVERNANCE DEPARTMENT.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following:

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

25 USC 450f note.

"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.

"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 the Committee on Resources of the House of Representatives. The report shall contain— Deadline.

"(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. 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 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. 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. 6. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS.

Section 102(e)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f(e)(1)) is amended by inserting after "subsection (b)(3)" the following: "or any civil action conducted pursuant to section 110(a)".

SEC. 7. SPEEDY ACQUISITION OF GOODS, SERVICES, OR SUPPLIES.

Section 105(k) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(k)) is amended—

(1) by striking "deemed an executive agency" and inserting "deemed an executive agency and part of the Indian Health Service"; and

(2) by adding at the end the following: "For purposes of carrying out such contract, grant, or agreement, the Secretary

shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.".

SEC. 8. PATIENT RECORDS.

Section 105 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j) is amended by adding at the end the following:

"(o) PATIENT RECORDS.—

"(1) IN GENERAL.—At the option of an Indian tribe or tribal organization, patient records may be deemed to be Federal records under those provisions of title 44, United States Code, that are commonly referred to as the 'Federal Records Act of 1950' for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

"(2) TREATMENT OF RECORDS.—Patient records that are deemed to be Federal records under those provisions of title 44, United States Code, that are commonly referred to as the 'Federal Records Act of 1950' pursuant to this subsection shall not be considered Federal records for the purposes of chapter 5 of title 5, United States Code.".

SEC. 9. ANNUAL REPORTS.

Section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1) is amended—

(1) by redesignating subsections (c) through (n) as subsections (d) through (o), respectively; and

(2) by inserting after subsection (b), the following:

"(c) ANNUAL REPORTS.—Not later than May 15 of each year, the Secretary shall prepare and submit to Congress an annual report on the implementation of this Act. Such report shall include— Deadline.

"(1) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;

"(2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted;

"(3) the indirect cost rate and type of rate for each tribal organization that has been negotiated with the appropriate Secretary;

"(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

"(5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and

"(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services to any Indian tribes affected by contracting activities under this Act, and a statement of the amount of funds needed for transitional purposes

to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 105(d).".

SEC. 10. REPEAL.

Title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) is repealed.

25 USC 450f note.

SEC. 11. SAVINGS PROVISION.

Funds appropriated for title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) shall be available for use under title V of such Act.

SEC. 12. APPLICATION TO ALASKA.

(a) Notwithstanding any other provision of law, nothing in this Act, the amendments made thereby, nor its implementation, shall affect—

(1) the right of the Consortium or Southcentral Foundation to carry out the programs, functions, services and activities as specified in section 325 of Public Law 105–83 (111 Stat. 55–56); or

(2) the prohibitions in section 351 of section 101(e) of division A, Public Law 105–277.

(b) Section 351 of section 101(e) of division A, Public Law 105–277 and section 326 of Public Law 105–83 (111 Stat. 57) are amended by inserting "as amended" after the phrase "Public Law 93–638 (25 U.S.C. 450 et seq.)" where such phrase appears in each section.

25 USC 458aaa note.

SEC. 13. EFFECTIVE DATE.

Except as otherwise provided, the provisions of this Act shall take effect on the date of the enactment of this Act.

Approved August 18, 2000.

LEGISLATIVE HISTORY—H.R. 1167 (S. 979):

HOUSE REPORTS: No. 106–477 (Comm. on Resources).
SENATE REPORTS: No. 106–221 accompanying S. 979 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD:
Vol. 145 (1999): Nov. 17, considered and passed House.
Vol. 146 (2000): Apr. 4, considered and passed Senate, amended, in lieu of S. 979.
July 24, House concurred in Senate amendment with amendments pursuant to H. Res. 562.
July 26, Senate concurred in House amendments.