

TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT ACT

NOVEMBER 18, 1991.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of California, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 3394]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 3394) to amend the Indian Self-Determination and Education Assistance Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 6. EXTENSION OF PROJECT; FEASIBILITY STUDIES.

(a) **PROJECT NOT LIMITED TO CERTAIN PROGRAMS.**—Section 303(a)(1) of the Act is amended by striking “authorized under” and inserting in lieu thereof the following: “of the Department of the Interior that are otherwise available to Indian tribes or Indians, including but not limited to.”

(b) **AUTHORIZED AGREEMENTS.**—Section 303(d) of the Act is amended by inserting immediately before the period at the end thereof a semicolon and the following: “except that for the term of the authorized agreements under this title, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other professional contracts by participating Indian tribal governments operating under the provisions of this title”.

(c) **INTERPRETATION.**—Section 303 of the Act is amended by adding at the end thereof the following:

“(f) To the extent feasible, the Secretary shall interpret Federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by this title.”

(d) **STUDIES.**—Title III of the Act is amended by adding after section 307 (as added by section 5 of this Act) the following new sections:

“SEC. 308. (a) The Secretary of Health and Human Services, in consultation with the Secretary of the Interior and Indian tribal governments participating in the demonstration project under this title, shall conduct a study for the purpose of de-

termining the feasibility of extending the demonstration project under this title to the activities, programs, functions, and services of the Indian Health Service. The Secretary shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act.

"(b) The Secretary of Health and Human Services may establish within the Indian Health Service an office of self-governance to be responsible for coordinating the activities necessary to carry out the study required under subsection (a).

"SEC. 309. The Secretary of the Interior shall conduct a study for the purpose of determining the feasibility of including in the demonstration project under this title those programs and activities excluded under section 303(a)(3). The Secretary of the Interior shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act."

PURPOSE OF THE BILL

The purpose of H.R. 3394 ¹ is to amend the Indian Self-Determination and Education Assistance Act to extend the tribal self-governance project for an additional three years and to expand the number of Indian tribes eligible to participate in the project to thirty.

BACKGROUND

In 1987, the Congress considered, as part of the amendments to P.L. 93-638, the Indian Self-Determination Act, the Self-Governance Demonstration Project. The Tribal Self-Governance Project was authorized by the Congress under Title III of P.L. 100-472. The Self-Governance Project allows participating Indian tribes to enter into an annual funding agreement with the Secretary of the Interior. These agreements allow the Indian tribes to plan, consolidate, and administer programs, services, and functions administered by the Bureau of Indian Affairs and to redesign programs, functions and services. The Self-Governance Project allows Indian tribes the flexibility to develop programs and establish funding priorities to meet their specific needs.

Indian tribes in the Self-Governance project are allocated funds pursuant to the annual agreements on the basis of what the Indian tribe would have received from the Bureau of Indian Affairs in funds and services. These funds are allocated out of agency, area, and central office accounts of the Bureau of Indian Affairs. In negotiating self-governance compacts, Indian tribes would be eligible to receive funds for programs, services, functions and other activities as well as any direct program costs or indirect program costs incurred by the Secretary in delivering services to the tribe and its members. Specifically exempted from the Self-Governance Project are funds from the Tribally Controlled Community College Assistance Act, the Indian School Equalization formula and the Flathead Irrigation Project.

On June 30, 1990, seven Indian tribes negotiated and signed Self-Governance Compacts for fiscal year 1991. The Office of Self-Governance indicated to the Committee that at least six other Indian tribes will negotiate self-governance compacts this year. Since the

¹ Introduced by Representative George Miller on September 24, 1991.

beginning of the project, twenty-eight Indian tribes have received Self-Governance planning assistance grants.

H.R. 3394 will extend the demonstration project for an additional three years. Although the project was authorized in 1988, the first annual funding agreements with Indian tribes for the self-governance project were not signed until fiscal year 1991. This extension will allow a more reasonable period of time to examine the success of the demonstration project.

In hearings before the Committee on Interior and Insular Affairs, Indian tribes participating in the project testified that during the first two years of the project the Bureau of Indian Affairs provided little or no support to tribes seeking to negotiate self-governance compacts. The Bureau of Indian Affairs failed to provide any research or financial data to the tribes to assist them in determining their appropriate share of federal funds. This lack of BIA cooperation caused significant delays in the implementation of the project. Indian tribes testified that because the BIA's failure to provide timely and complete financial data, they were not able to complete negotiations on self-governance compacts until June of 1990. Tribal witnesses also testified that since the creation of the Office of Self-Governance in January 1991 the Department of the Interior has greatly improved its performance and efficiency in implementing the project. The Office of Self-Governance negotiates and coordinates the activities of the Department of the Interior with regard to the Indian tribes participating in the Self-Governance project.

The Committee is encouraged by the progress in the Department to implement the project since the establishment of the Office and strongly supports the continued operations and independence of the Office of Self-Governance. The Committee believes the Office should remain in the Office of the Secretary and independent from the Bureau of Indian Affairs for the duration of the project. The Committee is very concerned regarding the failure of the Bureau of Indian Affairs to provide timely and current financial information to assist the Indian tribes in the planning and negotiation of self-governance compacts. The Committee fully expects the Office to insure that Indian tribes receive this information in a timely and expeditious manner. The Committee is very encouraged by President Bush's June 14, 1991 Indian Policy Statement which states his support for the Indian Tribal Self-Governance Project.

H.R. 3394 will increase the number of Indian tribes able to participate in the project from twenty to thirty. The increased participation will provide a more representative cross-section of Indian tribes participating in the program. It will also allow the project to achieve a better geographic diversity among Indian tribes participating in the project. The Committee believes the Office of Self-Governance should include at least one Indian tribe from each BIA area in the project. By increasing the numbers of Indian tribes participating in the project incrementally, it will allow the project to develop in an orderly fashion and allow a greater exploration of the strengths and weaknesses of the project by the Congress, the Department and the tribes. This incremental approach will still provide the opportunity for a very diverse group of Indian tribes to explore self-governance. In this way the Congress will be able to

properly assess the overall strengths and weaknesses of the self-governance demonstration programs.

The Committee supports and encourages the continued efforts of the original tribal participants to promote Self-Governance workshops and develop Self-Governance materials for other interested Indian tribes and for the BIA personnel. This approach has improved the cooperative efforts of BIA personnel in the field and improved the agency's overall understanding of the objectives of the project. The Committee strongly supports the continuation of the self-governance workshops and the technical assistance provided by the original tribal participants.

H.R. 3394 would also require every participating Indian tribe to go through the planning process. Each Indian tribe would receive a planning assistance grant to conduct budgetary and legal research, internal governmental planning, and to develop a negotiating process. The bill authorizes \$700,000 for planning and negotiation grants for the ten additional tribes included in the program. It is estimated that each of the tribes would receive approximately \$50,000 for planning and \$20,000 for negotiation of self-governance compacts. The Committee intends this section to require every Indian tribe, participating in the project for the first time, to have completed a planning grant prior to the negotiation of an annual funding agreement. The Committee believes that the completion of a planning grant will help ensure that the groundwork necessary for an Indian tribe to negotiate self-governance agreement is in place.

The Committee does not intend the estimated amounts for planning and negotiation grants to be an absolute limit on the amount an Indian tribe may receive for planning and negotiation. Indian tribes participating in the project should receive a grant in the amount necessary to effectively prepare the budgetary and legal research, governmental planning and organization, and to develop strategies for negotiation. The Committee expects the Office of Self-Governance to expeditiously process these grants so as not to adversely impact or delay the negotiation of self-governance compacts with interested Indian tribes.

COMMITTEE AMENDMENT

The Committee amendment would authorize Indian tribes participating in the project to administer all of the programs, services and functions of the Department of Interior that are otherwise available to Indian tribes. The Committee amendment also provides that if there is a question as to whether a particular activity, programs, service or function is eligible for inclusion in the project it shall be resolved in favor of inclusion. It is the Committee's intention to expand the project to include all activities, programs, services, and functions of the Department of the Interior that are otherwise available to Indians or Indian tribes. The Committee does not intend this project to be limited to examining only the functions performed by the BIA. The Committee intends this section to be interpreted by the Department in a manner that facilitates the inclusion of a program or activity in the project. The Committee intends the Self-Governance Demonstration project to

provide the opportunity to participating Indian tribes to assume all of the programs and functions of the Department available to tribes so that the Congress can fully evaluate the success of the project.

Several Indian tribes participating in the project testified before the Committee regarding their difficulty with the Bureau of Indian Affairs in obtaining program funds for several programs operated on the reservation. In addition, the BIA has been reluctant to include funds which are awarded on a competitive basis in the annual funding agreements for self-governance tribes. Several of the tribal participants testified that the BIA has not included road maintenance funds in the annual funding agreements for Indian tribes in spite of the fact that these funds can be contracted by Indian tribes under the authority of P.L. 93-638.

The Committee is very concerned that these funds have not be made available in the negotiation of self-governance compacts and directs the Office to include these funds in the development of the annual funding agreements. It is the Committee's intention that these funds be eligible for inclusion under the funding agreements. The Committee understands that funds for road construction are awarded on a competitive basis based on area wide priorities. The Committee directs the Secretary to include an analysis of the feasibility of including these funds in the negotiation of self-governance compacts and include his findings in the report to the Congress required under section 309 of this Act.

Finally, the Committee received testimony regarding the reluctance of the BIA to allow tribal participants to include funds from the Marijuana Eradication and Reconnaissance Team in the annual funding agreements. The Committee intends each tribal participant to be able to include funds for programs, services, and other functions performed by the BIA for the tribe in the annual funding agreement absent a statutory exclusion. This language could not be more clear. The Committee emphasizes that this is a demonstration project and it is very important that Indian tribes participating in this project be afforded a large degree of flexibility in developing the annual funding agreements to provide the full range of BIA functions and services. This approach will enable the Congress to effectively determine whether this project should be made available on a permanent basis.

The Committee amendment rescinds the statutory requirement that the Secretary approve contracts for attorneys and other professionals for Indian tribes participating in the project. The Committee received testified that these statutory requirements are outdated and create significant administrative delays and unnecessarily burden Indian tribes. This language will allow participating Indian tribes to demonstrate to the Congress their ability to operate without this particular review in a controlled manner. Nothing in this section affects the requirements that management contracts under the National Indian Gaming Act require approval.

The Committee amendment authorizes the Secretary of Health and Human Services to conduct a study of the feasibility of extending the demonstration project to include activities, programs, functions, and services of the Indian Health Service. The Secretary shall report his findings within 12 months from the date of enact-

ment. It also authorizes the Secretary to establish an Office of Self-Governance in the Indian Health Service for the purpose of coordinating activities required under the Act. The Committee received testimony from several tribal leaders urging the expansion of the self-governance project to include all of the programs, activities and services of the Indian Health Service. These tribal witnesses recommended that the Secretary conduct a study in order to determine the feasibility of expanding the project to the programs of the Indian Health Service.

The Committee directs the Secretary of Health and Human Services to begin the planning and research necessary to explore the feasibility of such an expansion. In addition, several tribal participants indicated that negotiations with the IHS for development of self-governance compacts have been initiated and are progressing. The Committee does not intend the requirement of a feasibility study to impede or impair the ongoing negotiations between the Indian tribes participating in the program and the IHS. The Committee strongly supports the establishment of an Office of Self-Governance in the IHS in order to facilitate the development of the research and data required under the feasibility study and to provide a focal point for the project in the IHS. The establishment of an Office of Self-Governance will allow the IHS to more effectively work directly with the tribal participants. The Committee believes that the experience of the Department of the Interior prior to the establishment of an Office of Self-Governance provide ample support for the creation of a comparable Office in the IHS. The Committee expects the same level of commitment and support from the Secretary of Health and Human Services and the Director of the IHS that has been demonstrated by Secretary of the Interior and the Assistant Secretary of Indian Affairs.

The Committee amendment authorizes the Secretary of the Interior to study the feasibility of including programs specifically excluded from the project which would include funds from the Tribally Controlled Community College Assistance Act, the Indian School Equalization formula and the Flathead Irrigation Project. The Secretary would report his findings to the Congress within 12 months from the date of enactment. It is the Committee's intention that this report include an examination of any the programs or functions the Secretary determines to be statutorily excluded from the project. This report should include an examination of the feasibility of including road construction funds in the annual funding agreements. The Committee expects the Office of Self-Governance and the participating Indian tribes to be fully involved in the development of the report.

OTHER CONSIDERATIONS

The Committee agrees with the Department's policy that regional tribes such as the Central Council of Tlingit and Haida Indian Tribes of Alaska, and consortiums of tribes and villages are eligible in the self-governance demonstration project as agents for their member tribes and communities. This policy is consistent with the longstanding practice where such regional tribes and consortiums are authorized by communities, federally-recognized tribes, and vil-

lages to contract under P.L. 93-638 for BIA programs and services. The Committee believes that this determination should only be made where there is a clear statement of such an intent from the participating tribes, villages and communities. For purposes of the Demonstration Project, each such consortium and regional tribe should be counted as one tribe. This determination of eligibility shall only apply with respect to Alaska and will have no effect on the Alaska Native Claims Settlement Act.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 cites the short title of the Act as the "Tribal Self-Governance Demonstration Project Act."

SECTION 2

Section 2 amends section 301 of the Indian Self-Determination and Education Assistance Act to extend the time for the self-governance demonstration project from five to eight years.

SECTION 3

Section 3 amends section 302(a) of the Act to increase the numbers of tribes participating in the project from twenty to thirty.

SECTION 4

Section 4 establishes as a precondition to the negotiations of written annual funding agreements between the Secretary and the tribe that a tribe must successfully complete a Self-Governance Planning Grant.

SECTION 5

Section 5 authorizes \$700,000 to be appropriated to provide planning and negotiation grants to the ten tribes added in section 3 of this Act.

SECTION 6

Section 6 authorizes Indian tribes participating in the project to administer all of the programs, services and functions of the Department of the Interior that are otherwise available to Indian tribes.

Subsection (b) would rescind the statutory requirement that the Secretary approve attorney contracts for Indian tribes participating in the project.

Subsection (c) provides that if there is a question as to whether a particular activity, programs, service or function is eligible for inclusion in the project it shall be resolved in favor of inclusion.

Subsection (d) amends Title III of the Act by creating two new sections in the Act.

Section 308 authorizes the Secretary of Health and Human Services to conduct a study of the feasibility of extending the demonstration project to include activities, programs, functions, and services of the Indian Health Service. The Secretary shall report his findings within 12 months from the date of enactment. It also au-

thorizes the Secretary to establish an Office of Self-Governance in the Indian Health Service for the purpose of coordinating activities required under the Act.

Section 309 authorizes the Secretary of the Interior to study the feasibility of including programs specifically excluded from the project which would include funds from the Tribally Controlled Community College Assistance Act, the Indian School Equalization formula and the Flathead Irrigation Project. The Secretary would report his findings to the Congress within 12 months from the date of enactment.

LEGISLATIVE HISTORY

On September 24, 1991, Chairman Miller introduced H.R. 3394, which was cosponsored by Representative Rhodes. The Committee on Interior and Insular Affairs held a hearing on H.R. 3394 on October 3, 1991. On November 13, 1991, the Committee considered H.R. 3394 and ordered it to be reported to the House with an amendment.

COST AND BUDGET ACT COMPLIANCE

The cost and budgetary analysis of H.R. 3394, as evaluated by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 1991.

HON. GEORGE MILLER,
*Chairman, Committee on Interior and Insular Affairs, U.S. House
of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3394, the Tribal Self-Governance Demonstration Project Act. Enactment of H.R. 3394 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3394.
2. Bill title: Tribal Self-Governance Demonstration Project Act.
3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs on November 13, 1991.
4. Bill purpose: H.R. 3394 would amend the Indian Self-Determination and Education Assistance Act to extend the tribal self-governance demonstration project for three years beyond the current expiration date of October 5, 1993. In addition, the bill would increase the number of tribes eligible for the demonstration project, authorize funding for planning and negotiation grants for the additional tribes, and require tribes to enter into annual funding agree-

ments to complete the self-governance planning grant process before participating in the project. The bill also would require the Secretary of the Interior and the Secretary of Health and Human Services to conduct studies regarding the feasibility of expanding the demonstration project to include additional programs. The bill would allow the Secretary of Health and Human Services to establish an Office of Self-Governance to be responsible for carrying out the study required of the department.

5. Estimated cost to the Federal Government:

(By fiscal year, in millions of dollars)

	1992	1993	1994	1995	1996
Estimated authorization level	4.0	4.5	4.2	4.4	4.6
Less: Estimated current authorization or appropriation.....	3.7	3.8	0	0	0
Net additional authorization	0.4	0.7	4.2	4.4	4.6
Estimated additional outlays.....	0.4	0.7	3.1	4.3	4.5

The costs of this bill fall within budget functions 300 and 450.

Basis of Estimate: CBO assumes that the estimated authorization level would be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for this program.

CBO estimates that extending the demonstration project for three additional years would result in costs of about \$4 million annually for fiscal years 1994 through 1996. These costs would result from the continuation of funding for the Office of Self-Governance within the Office of the Secretary of the Interior (\$700,000-\$800,000 a year) and for support of self-governance tribal compacts (\$3.2 million to \$3.5 million a year).

The remaining costs of H.R. 3394 would be associated with expanding the number of tribes eligible for the project from 20 to 30, funding for planning and negotiation grants, and carrying out the required studies and reports.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of H.R. 3394 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On October 18, 1991, CBO prepared a cost estimate for S. 1287, as ordered reported by the Senate Select Committee on Indian Affairs on October 1, 1991. H.R. 3394 is similar to S. 1287, except that this bill would allow the Secretary of Health and Human Services to establish an Office of Self-Governance to carry out the study required of the Department of Health and Human Services. CBO believes this additional provision would not alter the costs of carrying out the study as estimated for S. 1287.

At the time CBO prepared the cost estimate for S. 1287, the bill providing appropriations for the Department of the Interior for fiscal year 1992 was in conference. As a result, CBO used an average of the House- and Senate-passed levels of funding for fiscal

year 1992 appropriations for the Office of Self-Governance as the estimated current authorization level. Since the estimate for S. 1287 was prepared, the Interior appropriations bill has been signed into law, and a specific funding level for the Office of Self-Governance has been provided for fiscal year 1992. Accordingly, the estimate for H.R. 3394 is based on the funding level provided in the fiscal year 1992 Interior appropriations bill. As a result, the calculations in this estimate are slightly different from those used for S. 1287.

10. Estimate prepared by: Patricia A. Conroy.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

* * * * *

TITLE III—TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

SEC. 301. The Secretary of the Interior shall, for a period not to exceed **[five]** *eight* years following enactment of this title, conduct a research and demonstration project to be known as the Tribal Self-Governance Project according to the provisions of this title.

SEC. 302. (a) The Secretary shall select **[twenty]** *thirty* tribes to participate in the demonstration project, as follows:

(1) * * *

* * * * *

Sec. 303. (a) The Secretary is directed to negotiate, and to enter into, an annual written funding agreement with the governing body of a participating tribal government **[which—]** *that successfully completes its Self-Governance Planning Grant. Such annual written funding agreement—*

(1) shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions **[authorized under]** *of the Department of the Interior that are otherwise available to Indian tribes or Indians, including but not limited to, the Act of April 16, 1934 (48 Stat. 596), as amended, and the Act of November 2, 1921 (42 Stat. 208);*

* * * * *

(d) For the purpose of section 110 of this Act the term "contract" shall also include agreements authorized by this title; *except that for the term of the authorized agreements under this title, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other professional contracts by par-*

icipating Indian tribal governments operating under the provisions of this title.

* * * * *

(f) To the extent feasible, the Secretary shall interpret Federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by this title.

* * * * *

SEC. 307. For the purpose of providing planning and negotiation grants to the ten tribes added by section 3 of the Tribal Self-Governance Demonstration Project Act of the number of tribes set forth by section 302 of this Act (as in effect before the date of enactment of this section), there is authorized to be appropriated \$700,000.

SEC. 308. (a) The Secretary of Health and Human Services, in consultation with the Secretary of the Interior and Indian tribal governments participating in the demonstration project under this title, shall conduct a study for the purpose of determining the feasibility of extending the demonstration project under this title to the activities, programs, functions, and services of the Indian Health Service. The Secretary shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act.

(b) The Secretary of Health and Human Services may establish within the Indian Health Service and office of self-governance to be responsible for coordinating the activities necessary to carry out the study required under subsection (a).

SEC. 309. The Secretary of the Interior shall conduct a study for the purpose of determining the feasibility of including in the demonstration project under this title those programs and activities excluded under section 303(a)(3). The Secretary of the Interior shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act.

○