

Public Law 100-472
100th Congress

An Act

Entitled the "Indian Self-Determination Amendments of 1987".

Oct. 5, 1988
[H.R. 1223]

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

Indian Self-Determination and Education Assistance Act Amendments of 1988.
Contracts.
25 USC 450 note.

TITLE I—ADMINISTRATIVE PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Indian Self-Determination and Education Assistance Act Amendments of 1988".

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SEC. 102. DECLARATION OF POLICY.

Section 3 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203, 25 U.S.C. 450 et seq.) is amended by striking subsection (b) and inserting the following new subsection in lieu thereof:

25 USC 450a.

"(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of

administering quality programs and developing the economies of their respective communities.”.

SEC. 103. DEFINITIONS.

25 USC 450b.

Section 4 of the Indian Self-Determination and Education Assistance Act is amended to read as follows—

“Sec. 4. For purposes of this Act, the term—

“(a) ‘construction programs’ means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

“(b) ‘contract funding base’ means the base level from which contract funding needs are determined, including all contract costs;

“(c) ‘direct program costs’ means costs that can be identified specifically with a particular contract objective;

“(d) ‘Indian’ means a person who is a member of an Indian tribe;

“(e) ‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

“(f) ‘indirect costs’ means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved;

“(g) ‘indirect costs rate’ means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency;

“(h) ‘mature contract’ means a self-determination contract that has been continuously operated by tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: *Provided*, That upon the request of a tribal organization or tribal governing body, a contract of the tribal organization in existence on the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 which meets this definition shall be considered to be a mature contract;

“(i) ‘Secretary’, unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;

“(j) ‘self-determination contract’ means a contract entered into pursuant to this Act between a tribal organization and the appropriate Secretary the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided*, That no contract entered into pursuant to this Act shall be construed to be a procurement contract;

“(k) ‘State education agency’ means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law; and

“(l) ‘tribal organization’ means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.”

SEC. 104. REPORTING AND AUDIT REQUIREMENTS.

(a) Subsection (a) of section 5 of the Indian Self-Determination and Education Assistance Act is amended to read as follows:

“(a)(1) Each recipient of Federal financial assistance under this Act shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, United States Code, including records which fully disclose—

“(A) the amount and disposition by such recipient of the proceeds of such assistance,

“(B) the cost of the project or undertaking in connection with which such assistance is given or used,

“(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

“(D) such other information as will facilitate an effective audit.

“(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.), and a brief annual program report.”

(b) Section 5 of the Indian Self-Determination and Education Assistance Act is further amended by adding the following new subsection:

“(e) The Secretary shall report annually in writing to tribes regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.”

SEC. 105. CARRYOVER FUNDING.

Section 8 of the Indian Self-Determination and Education Assistance Act is amended to read as follows:

“CARRYOVER FUNDING

“Sec. 8. Notwithstanding any other provision of law, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated or expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation or expenditures during such succeeding fiscal year. In the case of

25 USC 450c.
Records.
Regulations.
Public
information.

25 USC 13a.

amounts made available to a tribal organization under a self-determination contract, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are authorized to be used pursuant to the provisions of section 106(a)(3), no additional justification or documentation of such purposes need be provided by the tribal organization to the Secretary as a condition of receiving or expending such funds.”

TITLE II—INDIAN SELF-DETERMINATION ACT AMENDMENTS

SEC. 201. SELF-DETERMINATION CONTRACTS.

25 USC 450f.

(a) Section 102 of the Indian Self-Determination Act is amended to read as follows:

“SEC. 102. (a)(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs—

“(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended;

“(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto;

“(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended;

“(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

“(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

“(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract to the Secretary for review. The Secretary shall, within ninety days after receipt of the proposal, approve the proposal unless, within sixty days of receipt of the proposal, a specific finding is made that—

“(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

“(B) adequate protection of trust resources is not assured; or

“(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract.

“(3) Upon the request of a tribal organization that operates two or more mature self-determination contracts, those contracts may be consolidated into one single contract.

“(b) Whenever the Secretary declines to enter into a self-determination contract or contracts pursuant to subsection (a) of this section, the Secretary shall—

“(1) state any objections in writing to the tribal organization,

“(2) provide assistance to the tribal organization to overcome the stated objections, and

“(3) provide the tribal organization with a hearing on the record and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.

Records.

“(c)(1) Beginning in 1990, the Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage, on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and cooperative agreements pursuant to this Act. In obtaining or providing such coverage, the Secretary shall take into consideration the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act.

Insurance.
Grants.

“(2) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give a preference to coverage underwritten by Indian-owned economic enterprises as defined in section 1425, title 25, United States Code, except that, for the purposes of this subsection, such enterprises may include non-profit corporations.

“(3)(A) Any policy of insurance obtained or provided by the Secretary pursuant to this subsection shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the sovereign immunity of an Indian tribe from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage or limits of the policy of insurance.

“(B) No waiver of the sovereign immunity of an Indian tribe pursuant to this paragraph shall include a waiver to the extent of any potential liability for interest prior to judgment or for punitive damages or for any other limitation on liability imposed by the law of the State in which the alleged injury occurs.”

(b)(1) Subsections (a) and (b) and the first sentence of subsection (c) of section 103 of the Indian Self-Determination Act are hereby repealed. Subsection (c) of section 103 of the Indian Self-Determination Act is redesignated as subsection (d) of section 102 of that Act and is amended by striking out “103 and 104(b)” and inserting, in lieu thereof, “102 or 103”.

25 USC 450f,
450g.25 USC 450f
note.

(2) Any reference to section 103(c) contained in an Act making appropriations for the Department of the Interior and Related Agencies for fiscal year 1989 shall be deemed to apply to section 102(d) of such Act as amended by this Act.

25 USC 450f
note.

SEC. 202. TECHNICAL ASSISTANCE AND GRANTS TO TRIBAL ORGANIZATIONS.

Section 104 of the Indian Self-Determination Act is amended—

25 USC 450h.

(a) by redesignating such section as section 103;

(b) by inserting the word “or” at the end of paragraph (2) of subsection (a) of such section, striking the semicolon and the word “or” at the end of paragraph (3) of such subsection and inserting, in lieu thereof, a period, and by striking all of paragraph (4);

(c) by striking the phrase “Health, Education, and Welfare” in subsection (b) of such section and inserting, in lieu thereof, the phrase “Health and Human Services”; and

(d) by adding the following new subsections (d) and (e) at the end thereof:

“(d) The Secretary is directed, upon the request of any tribal organization and subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to such tribal organization—

“(1) to develop any new self-determination contract authorized pursuant to this Act;

“(2) to provide for the assumption by such tribal organization of any program, or portion thereof, provided for in section 102(a)(1) of this Act; or

“(3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 102 of the Act.

“(e) The Secretary is authorized, upon the request of an Indian tribe, to make a grant to any tribal organization for—

“(1) obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and

“(2) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe, including Federal administrative functions.”.

Government
organization
and employees.
25 USC 450i.

SEC. 203. PERSONNEL.

Section 105 of the Indian Self-Determination Act is amended by—

(a) redesignating such section as section 104;

(b) striking the phrase “section 4(c)” in subsection (a) of such section, amending section 3371(2) of title 5, United States Code, and inserting, in lieu thereof, the phrase “section 4(m)”;

42 USC 2004b.

(c) striking the phrase “sections 102, 103, and 104” in subsection (b) of such section, amending section 8 of the Act of August 5, 1954 (68 Stat. 674), and inserting, in lieu thereof, the phrase “sections 102 and 103”;

25 USC 450i.

(d) deleting the words “on or before December 31, 1988” in subsection (e) of such section;

(e) in paragraph (2) of subsection (e) of such section—

(1) inserting “or chapter 84 (‘Federal Employees Retirement System’)” after “chapter 83 (‘Retirement’)” and before “of title 5”; and

(2) striking out “Notwithstanding any other law,” and inserting in lieu thereof “Notwithstanding the provisions of sections 8347(o), 8713, and 8914 of title 5, United States Code.”; and

(f) by adding the following new subsections (k), (l), and (m).

“(k) Section 3372(a) of title 5, United States Code, is further amended to add the following to the end thereof: ‘If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.’.

“(l) Section 3372 of title 5, United States Code, is further amended by adding a new subsection (d) as follows:

“(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54 of this title, on the same basis as other Federal employees.”

“(m) The status of an Indian appointed to the Federal service under an excepted appointment under the authority of section 12 of the Act of June 18, 1934 (25 U.S.C. 472), or any other provision of law granting a preference to Indians in personnel actions, shall be converted to a career appointment in the competitive service after three years of continuous service and satisfactory performance. The conversion shall not alter the Indian’s eligibility for preference in personnel actions.”

SEC. 204. ADMINISTRATIVE PROVISIONS.

Section 106 of the Indian Self-Determination Act is amended—

25 USC 450j.

(a) by redesignating such section as section 105;

(b) by striking the phrase “sections 102 and 103” in subsection (a) of such section and inserting, in lieu thereof, the phrase “section 102”;

(c) by changing the period at the end of subsection (a) of such section to a colon and adding the following new proviso at the end thereof: “*Provided further*, That, except for construction contracts (or sub-contracts in such cases where the tribal contractor has sub-contracted the activity), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts.”;

(d) by striking the phrase “sections 102, 103, and 104” in subsection (b) of such section and inserting, in lieu thereof, the phrase “sections 102 and 103”;

(e) by striking subsections (c), (d), and (e) of such section and inserting, in lieu thereof, the following:

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

“(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

“(B) for an indefinite term in the case of a mature contract.

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

“(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

“(d)(1) No later than fiscal year 1990, the Secretary shall begin using the calendar year as the basis for contracts and agreements under this Act except for instances where the Secretary and the Indian tribe or tribal organization agree on a different period.

“(2) The Secretary shall submit a report to the Congress within ninety days of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 on the amounts of any additional obligational authority needed to implement this subsection in fiscal year 1989.

Reports.

“(e) Whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act,

Effective date.

such retrocession shall become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe.

Grants.
Gifts and
property.

Public buildings
and grounds.

“(f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—

“(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize 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 for their use and maintenance;

“(2) donate to an Indian tribe or tribal organization the title to any personal property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, including property and equipment purchased with funds under any self-determination contract or grant agreement; and

“(3) acquire excess or surplus Government personal property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this Act.”;

(f) by redesignating subsection (f) of such section as subsection (g) and by striking the phrase “sections 102 and 103 of this Act and grants pursuant to section 104 of this Act” in such subsection and by inserting, in lieu thereof, the phrase “section 102 of this Act and grants pursuant to section 103 of this Act”;

(g) by redesignating subsection (g) of such section as subsection (h); by striking the phrase “sections 102, 103, and 104” in such subsection and inserting, in lieu thereof, the phrase “sections 102 and 103”; and by striking the phrase “Health, Education, and Welfare” and inserting, in lieu thereof, the phrase “Health and Human Services”; and

(h) by striking all of the existing subsection (h) of such section.

25 USC 450j-1.

SEC. 205. CONTRACT FUNDING AND INDIRECT COSTS.

Title I of the Indian Self-Determination and Education Assistance Act is further amended by adding the following new section 106:

“Sec. 106. (a)(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract.

“(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

“(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

“(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

“(3) Any savings in operation under a self-determination contract shall be utilized to provide additional services or benefits under the contract or be expended in the succeeding fiscal year as provided in section 8 of this Act.

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

“(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

“(2) shall not be reduced by the Secretary in subsequent years except pursuant to—

“(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

“(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

“(C) a tribal authorization;

“(D) a change in the amount of pass-through funds needed under a contract; or

“(E) completion of a contracted project, activity, or program;

“(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;

“(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

“(5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c).

Notwithstanding any other provision in this Act, the provision of funds under this Act is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this Act.

“(c) The Secretary shall provide an annual report in writing on or before March 15 of each year to the Congress on the implementation of this Act. Such report shall include—

Reports.

“(1) an accounting of the total amounts of funds provided for each program and budget activity for direct program costs and indirect costs of tribal organizations under self-determination contracts during the previous fiscal year;

“(2) an accounting of any deficiency of funds needed to provide required indirect costs to all contractors for the current fiscal year;

“(3) the indirect costs rate and type of rate for each tribal organization 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; and

“(5) the indirect cost pool amounts and the types of costs included in the indirect cost pools.

“(d)(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future

years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

"(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract.

"(e) Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1988.

"(f) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to enactment of the Single Agency Audit Act of 1984 (chapter 75 of title 31, United States Code), any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 110. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476).

"(g) Upon the approval of a self-determination contract and at the request of an Indian tribe or tribal organization, the Secretary shall add the indirect cost funding amount awarded for a self-determination contract to the amount awarded for direct program funding for the first year and, subject to adjustments in the amount of direct program costs for the contract, for each subsequent year that the program remains continuously under contract.

"(h) In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

"(i) Within one month after enactment of this section, the Secretary is mandated to establish a team in each area of the Bureau of Indian Affairs which consists of agency personnel and tribal representatives for the purpose of analyzing the 'Indian Priority System' and other aspects of the budgeting and funding allocation process of the Bureau of Indian Affairs for the purpose of making a report to Congress with appropriate recommendations for changes and legislative actions to achieve greater tribal decision-making authority over the use of funds appropriated for the benefit of the tribes and their members. The report along with the analysis, findings and recommendations of the area teams shall be submitted to Congress within six months of enactment of this provision. The Secretary may submit to Congress separate comments on the information and recommendations on the report."

SEC. 206. CONTRACT APPEALS.

Title I of the Indian Self-Determination and Education Assistance Act is further amended—

(a) by adding the following new section 110:

Government organization and employees. Reports.

“Sec. 110. (a) The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this Act and, subject to the provisions of subsection (d) of this section and concurrent with the United States Court of Claims, over civil action or claim against the Secretary for money damages arising under contracts authorized by this Act. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to this Act or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this Act or regulations promulgated hereunder.

Courts, U.S.
Claims.
25 USC 450m-1.

“(b) Unless otherwise agreed to by the resolution of an Indian tribe, the Secretary shall not revise or amend a self-determination contract with such tribe.

“(c) The Equal Access to Justice Act (Public Law 96-481, Act of October 1, 1980; 94 Stat. 2325, as amended) shall apply to administrative appeals by tribal organizations regarding self-determination contracts.

“(d) The Contract Disputes Act (Public Law 95-563, Act of November 1, 1978; 92 Stat. 2383, as amended) shall apply to self-determination contracts.

“(e) Subsection (d) of this section shall apply to any case pending or commenced on or after March 17, 1986, before the Boards of Contract Appeals of the Department of the Interior or the Department of Health and Human Services except that in any such cases finally disposed of before the date of enactment of these amendments, the thirty-day period referred to in section 504(a)(2) of title 5, United States Code, shall be deemed to commence on the date of enactment of this subsection.”; and

Effective date.

(b) by redesignating existing section 110 as section 111.

25 USC 450n.

SEC. 297. PROMULGATION OF RULES AND REGULATIONS.

(a) Section 107(a) of the Indian Self-Determination Act is amended by—

25 USC 450k.

(1) striking the phrase “Health, Education, and Welfare” and inserting, in lieu thereof, the phrase “Health and Human Services”; and

(2) striking the period at the end thereof and inserting, in lieu thereof, a colon and the following: “*Provided, however,* That all Federal requirements for self-determination contracts and grants under this Act shall be promulgated as regulations in conformity with sections 552 and 553 of title 5, United States Code.”.

Grants.

(b) Section 107(b) of the Indian Self-Determination Act is amended to read as follows:

“(b)(1) Within three months from the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, the Secretary shall consider and formulate appropriate regulations to implement the provisions of this Act, with the participation of Indian tribes. Such proposed regulations shall contain all Federal requirements applicable to self-determination contracts and grants under this Act.

Grants.

“(2) Within six months from the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, the Secretary shall present the proposed regulations to the

Select Committee on Indian Affairs of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

Federal
Register,
publication.

“(3) Within seven months from the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, the Secretary shall publish proposed regulations in the Federal Register for the purpose of receiving comments from tribes and other interested parties.

“(4) Within ten months from the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, the Secretary shall promulgate regulations to implement the provisions of such Act.”

SEC. 208. REPORTS.

25 USC 450c,
450f.

Section 108 of the Indian Self-Determination Act is redesignated as subsection 5(f) of the Indian Self-Determination and Education Assistance Act and is amended by deleting the period at the end and inserting, in lieu thereof, the following: “through regulations promulgated under sections 552 and 553 of title 5, United States Code.”

Research and
development.

SEC. 209. TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT.

The Indian Self-Determination and Education Assistance Act is further amended by adding a new title III, as follows:

**“TITLE III—TRIBAL SELF-GOVERNANCE DEMONSTRATION
PROJECT**

25 USC 450f
note.

“**SEC. 301.** The Secretary of the Interior shall, for a period not to exceed five 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 tribes to participate in the demonstration project, as follows:

“(1) a tribe that successfully completes a Self-Governance Planning Grant, authorized by Conference Report 100-498 to accompany H.J. Res. 395, One Hundredth Congress, first session shall be selected to participate in the demonstration project; and

“(2) the Secretary shall select, in such a manner as to achieve geographic representation, the remaining tribal participants from the pool of qualified applicants. In order to be in the pool of qualified applicants—

“(A) the governing body of the tribe shall request participation in the demonstration project;

“(B) such tribe shall have operated two or more mature contracts; and

“(C) such tribe shall have demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by such tribe having no significant and material audit exceptions in the required annual audit of such tribe's self-determination contracts.

“**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—

“(1) shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions authorized under

the Act of April 16, 1934 (48 Stat. 596), as amended, and the Act of November 2, 1921 (42 Stat. 208);

“(2) subject to the terms of the written agreement authorized by this title, shall authorize the tribe to redesign programs, activities, functions or services and to reallocate funds for such programs, activities, functions or services;

“(3) shall not include funds provided pursuant to the Tribally Controlled Community College Assistance Act (Public Law 95-471), for elementary and secondary schools under the Indian School Equalization Formula pursuant to title XI of the Education Amendments of 1978 (Public Law 95-561, as amended), or for either the Flathead Agency Irrigation Division or the Flathead Agency Power Division: *Provided*, That nothing in this section shall affect the contractability of such divisions under section 102 of this Act;

“(4) shall specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to this agreement;

“(5) shall specify the authority of the tribe and the Secretary, and the procedures to be used, to reallocate funds or modify budget allocations within any project year;

“(6) shall, except as provided in paragraphs (1) and (2), provide for payment by the Secretary to the tribe of funds from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been eligible to receive under contracts and grants under this Act, including direct program costs and indirect costs, and for any funds which are specifically related to the provision by the Secretary of services and benefits to the tribe and its members: *Provided, however*, That funds for trust services to individual Indians are available under this written agreement only to the extent that the same services which would have been provided by the Secretary are provided to individual Indians by the tribe;

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

“(8) shall allow for retrocession of programs or portions thereof pursuant to section 105(e) of this Act; and

“(9) shall be submitted by the Secretary ninety days in advance of the proposed effective date of the agreement to each tribe which is served by the agency which is serving the tribe which is a party to the funding agreement and to the Congress for review by the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

“(b) For the year for which, and to the extent to which, funding is provided to a tribe pursuant to this title, such tribe—

“(1) shall not be entitled to contract with the Secretary for such funds under section 102, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

“(2) shall be responsible for the administration of programs, services and activities pursuant to agreements under this title.

“(c) At the request of the governing body of the tribe and under the terms of an agreement pursuant to subsection (a), the Secretary shall provide funding to such tribe to implement the agreement.

“(d) For the purpose of section 110 of this Act the term ‘contract’ shall also include agreements authorized by this title.

“(e) To the extent feasible, the Secretary shall interpret Federal laws and regulations in a manner that will facilitate the agreements authorized by this title.

“SEC. 304. The Secretary shall identify, in the President’s annual budget request to the Congress, any funds proposed to be included in the Tribal Self-Governance Project. The use of funds pursuant to this title shall be subject to specific directives or limitations as may be included in applicable appropriations Acts.

Reports.

“SEC. 305. The Secretary shall submit to the Congress a written report on July 1 and January 1 of each of the five years following the date of enactment of this title on the relative costs and benefits of the Tribal Self-Governance Project. Such report shall be based on mutually determined baseline measurements jointly developed by the Secretary and participating tribes, and shall separately include the views of the tribes.

“SEC. 306. Nothing in this title shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law and the provisions of section 110 of this Act shall be available to any tribe or Indian organization which alleges that a funding agreement is in violation of this section.”

25 USC 450 note.

SEC. 210. SAVINGS PROVISIONS.

Nothing in this Act shall be construed as—

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people.

25 USC 450 note.

SEC. 211. SEVERABILITY.

If any provision of this Act or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other Indian tribes, entities, persons, or circumstances, shall be affected thereby.

Approved October 5, 1988.

LEGISLATIVE HISTORY—H.R. 1223 (S. 1703):

HOUSE REPORTS: No. 100-393 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-274 accompanying S. 1703 (Select Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Oct. 27, considered and passed House.

Vol. 134 (1988): May 27, H.R. 1223 considered and passed Senate, amended.

Sept. 9, House concurred in Senate amendment with an amendment.

Sept. 15, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):

Oct. 5, Presidential statement.