

**BUREAU OF INDIAN AFFAIRS  
TRIBAL SERVICES  
DIVISION OF SELF-DETERMINATION SERVICES**

**PUBLIC LAW 93-638**

**THE INDIAN SELF-DETERMINATION  
AND  
EDUCATION ASSISTANCE ACT  
OF  
1975  
AS AMENDED**

**Consists of:**

**Sections 2 – 9**

**Title I  
Title II  
Title III  
Title IV  
Title V  
Title VI**

**Related Provisions**

**Selected Inter-Governmental Provisions**

**Endnotes**

**Revised: July 18, 2008**

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***NOTE: This document is a compilation of laws that constitute, amend, or modify the Indian Self-Determination and Education Assistance Act.***

**PUBLIC LAW 93-638  
93rd CONGRESS, S. 1017  
JANUARY 4, 1975,  
AS AMENDED**

**AN ACT**

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".*

**CONGRESSIONAL STATEMENT OF FINDINGS**

[25 USC 450]

Sec. 2 (a) Findings respecting historical and special legal relationship; and resultant responsibilities: The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that -

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) Further findings: The Congress further finds that -

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

{As amended by: Pub. L. 93-638, § 2, January 4, 1975, 88 Stat. 2203}

Sec. 3 (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(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.<sup>1i</sup> 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.

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<sup>1</sup> Executive Order No. 13175 (November 6, 2000, 65 F.R. 67249). This Executive Order revoked Executive Order No. 13084 (May 14, 1998, 63 F.R. 27655) relating to consultation and coordination with Indian tribal governments. See endnote i.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

{As amended by: Pub. L. 93-638, § 3, January 4, 1975, 88 Stat. 2203; Pub. L. 100-472, Title I, § 102 , October 5, 1988, 102 Stat. 2285}

## **TRIBAL AND FEDERAL ADVISORY COMMITTEES<sup>2</sup>** [25 USC 450a-1]

Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C.A. § 450 et seq.]

{As amended by: Pub. L. 101-644, Title II, § 204, as added Pub. L. 103-435, § 22(b), November 2, 1994, 108 Stat. 4575}

## **DEFINITIONS** [25 USC 450b]

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;

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<sup>2</sup> This section was enacted as part of the Indian Self-Determination and Education Assistance Act Amendments of 1990 (Pub. L. 101-644, Title II, § 204, November 29, 1990, 104 Stat. 4665) and not as part of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). Public Law 103-435, codified at 25 U.S.C. § 450a-1, permanently amended the Act to provide for the use of tribal and Federal advisory committees.



(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 cost 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 a 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 the tribal organization's Indian tribe for purposes of section 102(a) [25 USC 450f(a)] of this Act, a contract of the tribal organization 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 (or grant or cooperative agreement utilized under section 9 [25 USC 450e-1] of this Act) entered into under title I of this Act between a tribal organization and the appropriate Secretary for 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

~~except as provided [in] the last proviso in section 105(a) of this Act,~~<sup>3</sup> no contract (or grant or cooperative agreement utilized under section 9 [25 USC 450e-1] of this Act) entered into under title I of 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;

(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 of such contract or grant; and

(m) ‘construction contract’ means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract -

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

{As amended by: Pub. L. 93-638, § 4, January 4, 1975, 88 Stat. 2204; Pub. Law 100-472, Title I, § 103, October 5, 1988, 102 Stat. 2286; Pub. L. 100-581, Title II, § 208, November. 1, 1988, 102 Stat. 2940; Pub. Law 101-301, § 2(a)(1) – (3), May 24, 1990, 104 Stat. 206; Pub. Law 101-644, Title II, § 202(1), (2), November. 29,

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<sup>3</sup> Strikeout is not part of the law as amended. This definition was added through the 1988 amendment (Pub. Law 100-472). The 1994 amendment (Pub. Law 103-413) completely rewrote section 105(a). This rewrite removed the referenced last proviso, at that time this language should have been struck from this definition. It was not officially struck. It has been struck here to avoid confusion and misunderstanding.

**REPORTING AND AUDIT REQUIREMENTS FOR RECIPIENTS OF  
FEDERAL FINANCIAL ASSISTANCE**

[25 USC 450c]

Sec. 5 (a) Maintenance of records:

(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-audit required by chapter 75 of title 31, United States Code<sup>4</sup>, and a brief annual program report.

(b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.: The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such

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<sup>4</sup> Under P.L. 98-502, the Single Audit Act of 1984, which was implemented through OMB Circular A-128, the mandatory audit threshold was \$100,000.00 received. This was changed to \$300,000.00 spent by P.L. 104-156, the Single Audit Act Amendments of 1996, which was implemented through OMB Circular A-133. On 06/27/2003 through amendment to OMB Circular A-133 the mandatory audit threshold was changed to \$500,000.00 spent.

recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Availability by recipient of required reports and information to Indian people served or represented: Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Repayment to Treasury by recipient of unexpended or unused funds: Except as provided in section 13a or 25 USC 450j-1 of this title<sup>5</sup>, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

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

(f) Single-agency audit report; additional information; declination criteria and procedures:

(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this Act, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by Chapter 75 of title 31, United States Code.

(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 102.

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<sup>5</sup> The reference to "this title" means Title 25 of the United States Code.

{As amended by: Pub. L. 93-638, § 5, January 4, 1975, 88 Stat. 2204, 2212, formerly § 5 and Title I, § 108, renumbered and amended Pub. L. 100-472, Title I, § 104, Title II, § 208, October 5, 1988, 102 Stat. 2287, 2296; Pub. L. 100-581, Title II, § 209, November 1, 1988, 102 Stat. 2940; Pub. L. 101-301, § 2(a)(4), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, Title II, § 202(3), November 29, 1990, 104 Stat. 4665; Pub. L. 103-413, Title I, § 102(2), October 25, 1994, 108 Stat. 4250}

**CRIMINAL ACTIVITIES INVOLVING GRANTS, CONTRACTS, ETC.;**  
**PENALTIES**  
[25 USC 450d]

Sec. 6       Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. §§ 452 et seq.], embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such grant, subgrant, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

{Pub. L. 93-638, § 6, January 4, 1975, 88 Stat. 2205}

**WAGE AND LABOR STANDARDS**  
[25 USC 450e]

Sec. 7       (a)       Similar construction in locality: All laborers and mechanics employed by contractors or subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing 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), as amended [40 U.S.C. §§ 276a et seq.]. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) [5 U.S.C. § 90 note] and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c).

(b) Preference requirements for wages and grants: Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. §§ 452 et seq.], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible -

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 U.S.C. § 1452].

(c) Self-Determination contract: Notwithstanding subsections (a) and (b), with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.

{As amended by: Pub. L. 93-638, § 7, January 4, 1975, 88 Stat. 2205; Pub. L. 103-413, Title I, § 102(3), (4), October 29, 1994, 108 Stat. 4251}

### **CARRYOVER OF FUNDS** [25 USC 13a]

Sec. 8 Notwithstanding any other provision of law, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. § 13], 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 expenditure during such succeeding fiscal year. In the case of 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.

{As amended by: § 105 of Pub. Law 100-472 (102 Stat. 2287) Oct. 5, 1988}

**CONTINUED AVAILABILITY TO TRIBES AND TRIBAL  
ORGANIZATIONS OF FUNDS AUTHORIZED BY INDIAN SELF-  
DETERMINATION AND EDUCATION ASSISTANCE ACT OF 1975 OR  
GRANTS AUTHORIZED BY INDIAN EDUCATION AMENDMENTS OF  
1988**

[H]ereafter funds made available to tribes and tribal organizations through contracts, compact agreements, or grants, as authorized by the Indian Self-Determination Act of 1975 [Pub. L. 93-638, Title I, January 4, 1975, 88 Stat. 2206; 25 U.S.C.A. § 450f et seq.] or grants authorized by the Indian Education Amendments of 1988 (25 U.S.C. 2001 and 2008A) shall remain available until expended by the contractor or grantee.<sup>6</sup>

{Pub. L. 105-277, Div. A, § 101(e) [Title I], October 21, 1998, 112 Stat. 2681-246}

**GRANT AND COOPERATIVE AGREEMENTS**  
[25 USC 450e-1]

Sec. 9 The provisions of this Act shall not be subject to the requirements of chapter 63 of title 31, United States Code: *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections 102 and 103 of this Act [25 U.S.C. 450f, 450g] when mutually agreed to by the appropriate Secretary and the tribal organization involved.

{As amended by: Pub. L. 93-638, § 9, as added Pub. L. 98-250, § 1, April 3, 1984, 98 Stat. 118, and amended Pub. L. 101-301, § 2(a)(5), May 24, 1990, 104 Stat. 206}

**USE OF FUNDS<sup>7</sup>**  
[25 USC 450e-2]

Beginning in fiscal year 1998 and thereafter, where actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Law 93-638, 103-413, or 100-297, are less

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<sup>6</sup> This language was included at the end of 25 U.S.C.A. 450j (Pub. L. 93-638, as amended, section 105). It is shown here because it affects section 8, and fund availability.

<sup>7</sup> This section (25 USC 450e-2) was enacted as part of the Department of the Interior and related Agencies Appropriations Act, 1998 (Pub. L. 105-83, Title III, § 310), and not as part of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). It is included here because its enactment does impact the Indian Self-Determination and Education Assistance Act. It provides limitations on the use of excess construction project costs.

than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes.

{As amended by: Pub. Law 105-83, Title III, Sec. 310, November 14, 1997,  
111 Stat. 1590}

**INVESTMENT OF ADVANCE PAYMENTS; RESTRICTIONS<sup>8</sup>**  
[25 USC 450e-3]

Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may on and after December 8, 2004, be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

{As amended by: Pub. Law 108-447, div. E, title I, Sec. 111, Dec. 8, 2004, 118 Stat. 3064.}

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<sup>8</sup> This section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, FY-2005, and also as part of the Consolidated Appropriations Act, FY-2005, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108-108, title I, Sec. 111, Nov. 10, 2003, 117 Stat. 1266.  
Pub. L. 108-7, div. F, title I, Sec. 111, Feb. 20, 2003, 117 Stat. 239.  
Pub. L. 107-63, title I, Sec. 111, Nov. 5, 2001, 115 Stat. 438.  
Pub. L. 106-291, title I, Sec. 111, Oct. 11, 2000, 114 Stat. 942.  
Pub. L. 106-113, div. B, Sec. 1000(a)(3), [title I, Sec. 111], Nov. 29, 1999, 113 Stat. 1535, 1501A-156.  
Pub. L. 105-277, div. A, Sec. 101(e), [title I, Sec. 111], Oct. 21, 1998, 112 Stat. 2681-231, 2681-254.  
Pub. L. 105-83, title I, Sec. 112, Nov. 14, 1997, 111 Stat. 1562.



## **TITLE I - INDIAN SELF-DETERMINATION ACT**

Sec. 101 This title may be cited as the "Indian Self-Determination Act".

### **CONTRACTS BY THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF HEALTH AND HUMAN SERVICES [25 USC 450f]**

Sec. 102 (a) Request by tribe; authorized programs:

(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<sup>9ii</sup> -

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C.A. § 452 et seq.];

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C.A. § 13], and any Act subsequent thereto;  
N

(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C.A. § 2001 et seq.];

(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.

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<sup>9</sup> With regard to health programs in Alaska, Pub. L. 105-83, § 325, Pub. L. 105-277, § 351, and Pub. L. 106-260, § 12 have substantively modified tribal rights to enter into Indian Self-Determination and Education Assistance Act (ISDEAA) agreements. See endnote ii.

For tribes in Alaska's Ketchikan Gateway Borough, the ability to enter into health care agreements under the ISDEAA is further modified by Pub. L. 105-143, Title II, as amended.

The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractible. The administrative functions referred to in the preceding sentence shall be contractible without regard to the organizational level within the Department that carries out such functions.<sup>10iii</sup>

(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, or a proposal to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of paragraph (4), the Secretary shall, within ninety days after receipt of the proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority 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;

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

(D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a); or

(E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor.

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<sup>10</sup> Pub. L. 106-291 prohibits the Bureau of Indian Affairs from distributing FY-2001 central office funds or pooled overhead funds in ISDEAA agreements. See endnote iii.

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in the second sentence of this subsection, if before expiration of such period, the Secretary obtains the voluntary and express written consent of the tribe or tribal organization to extend or otherwise alter such period. The contractor shall include in the proposal of the contractor the standards under which the tribal organization will operate the contracted program, service, function, or activity, including in the area of construction, provisions regarding the use of licensed and qualified architects, applicable health and safety standards, adherence to applicable Federal, State, local, or tribal building codes and engineering standards. The standards referred to in the preceding sentence shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals), the use of proper materials and workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted.

(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.

(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal -

(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under paragraph (1), or

(B) proposes a level of funding that is in excess of the applicable level determined under section 106(a), subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 106(a). If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

(b) Procedures upon refusal of request to contract:  
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 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, under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 110(a).

(c) Liability insurance; waiver of defense: <sup>11iv</sup>

(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.

(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 3 of the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451 et seq.), 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

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<sup>11</sup> Federal Tort Claims Act and Risk Management. See endnote

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.

(d) Tribal organizations and Indian contractors deemed part of Public Health Service: For purposes of section 224 of the Public Health Service Act of July 1, 1944 (42 Stat. 233(a)), as amended by section 4 of the Act of December 31, 1970 (84 Stat. 1870), with respect to claims by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations for personal injury, including death, resulting from the performance prior to, including, or after December 22, 1987, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, or for purposes of section 2679, title 28, United States Code, with respect to claims by any such person, on or after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle, an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under sections 102 or 103 of this Act [this section or 25 U.S.C. § 450h] is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees (including those acting on behalf of the organization or contractor as provided in section 2671 of title 28, United States Code, and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided*, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

(e) Burden of proof at hearing or appeal declining contract; final agency action:

(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3) or any civil action conducted pursuant to section 110(a), the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof).

(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the 'Department') that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection (b)(3) shall be made either -

(A) 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 (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative judge.

{As amended by: Pub. L. 93-638, Title I, § 102, January 4, 1975, 88 Stat. 2206; Pub. L. 100-202, § 101(g) [Title II], December 22, 1987, 101 Stat. 1329-246; Pub. L. 100-472, Title II, § 201(a), (b)(1), October 5, 1988, 102 Stat. 2288, 2289; Pub. L. 100-581, Title II, § 210, November 1, 1988, 102 Stat. 2941; Pub. L. 101-644, Title II, § 203(b), November 29, 1990, 104 Stat. 4666; Pub. L. 103-413, Title I, § 102(5) to (9), October 25, 1994, 108 Stat. 4251 to 4253; Pub. L. 106-260, § 6, August 18, 2000, 114 Stat. 732}

## **25 USC 450g<sup>12</sup>**

Repealed and transferred.

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<sup>12</sup> Subsection (a) of this provision which related to a request by a tribe for a contract by the Secretary of Health and Human Services to implement hospital and health facility functions, authorities, and responsibilities; subsection (b) which related to the procedure upon refusal of a request to contract; and subsection (c) which related to procurement of liability insurance by a tribe as a prerequisite to exercise of contracting authority by Secretary of Health and Human Services and required policy provisions; Pub. L. 93-638, Title I, § 103, January 4, 1975, 88 Stat. 2206; Pub. L. 96-88, Title V, § 509(b), October 17, 1979, 93 Stat. 695, as amended Pub. L. 100-202, § 101(g), [Title II], December 22, 1987, 101 Stat. 1329-246, Pub. L. 100-446, Title II, September 27, 1988, 102 Stat. 1817 and repealed by Pub. L. 100-472, § 201(b)(1), October 5, 1988, 102 Stat. 2289. That part of subsection (c) which deemed a tribal organization or an Indian contractor to be part of Public Health Service for purposes of section 233 of Title 42, was redesignated (d) and transferred to section 102 [25 USC 450f] by Pub. L. 100-472, § 201(b)(1), October 5, 1988, 102 Stat. 2289.

**GRANTS TO TRIBAL ORGANIZATIONS AND TRIBES<sup>13</sup>**  
[25 USC 450h]

Sec. 103 Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities:

(a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. § 13], and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for -

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts; or

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within Indian country (as defined in chapter 53 of title 18, United States Code) or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe.

(b) Grants by the Secretary of Health and Human Services for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions: The Secretary of Health and Human Services may, in accordance with regulations adopted pursuant to section 107 of this Act [25 U.S.C. 450k], make grants to any Indian tribe or tribal organization for -

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<sup>13</sup> Section 103 (25 USC 450g) subsections (a) and (b) and the first sentence of subsection (c) of Pub. L. 93-638 were repealed and the remainder of subsection (c) was redesignated as subsection 102(d) of Pub. L. 93-638 (25 USC 450f(d)) by Pub. L. 100-472, Title II, § 201(b)(1), October 5, 1988, 102 Stat. 2289. Section 104 of Pub. L. 93-638 was renumbered as section 103 of Pub. L. 93-638 by section 202(a) of Pub. L. 100-472 and is now 25 USC 450h.

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) Use as matching share for other similar Federal grant programs: The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

(d) Technical assistance: 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) Grants for technical assistance and for planning, etc., Federal programs for tribe: 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.

{As amended by: Pub. L. 93-638, Title I, § 103, formerly § 104, January 4, 1975, 88 Stat. 2207; Pub. L. 96-88, Title V, § 509(b), October 17, 1979, 93 Stat. 695; renumbered Title I, § 103 and amended Pub. L. 100-472, Title II, § 202, October 5, 1988, 102 Stat. 2289; Pub. L. 101-644, Title II, § 203(g)(1), November 29, 1990, 104 Stat. 4666}

**RETENTION OF FEDERAL EMPLOYEE COVERAGE, RIGHTS AND BENEFITS BY EMPLOYEES OF TRIBAL ORGANIZATIONS<sup>14</sup>**  
[25 USC 450i]

Sec. 104 (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended -

(1) by deleting the word “and” immediately after the semicolon in clause (A);

(2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word “and”; and

(3) by adding at the end thereof the following new clause:

“(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in 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 and includes any tribal organization as defined in section 4(m) of the Indian Self-Determination and Education Assistance Act.”

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

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<sup>14</sup> Subsections (a) through (d) of section 104 of Pub. L. 93-638 (25 USC 450i) are classified to section 3371 of Title 5, United States Code, Government Organization and Employees, section 2004b of Title 42, United States Code, The Public Health and Welfare, section 456 of Title 50, United States Code, Appendix, War and National Defense, and section 4762 of Title 42, United States Code, respectively. Subsections (k) and (l) of section 104 of Pub. L. 93-638 are classified to section 3372 of Title 5, United States Code.

“Sec. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to sections 102 and 103 of the Indian Self-Determination and Education Assistance Act.”

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words “Environmental Science Services Administration” the words “or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended”.

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended -

(1) by deleting the word “and” after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word “and”; and

(3) by adding at the end thereof the following new paragraph:

“(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a ‘local government’ and a ‘general local government’ also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments.”

(e) Eligible employees; Federal employee programs subject to retention: Notwithstanding the provisions of sections 8347(o),

8713, and 8914 of title 5, United States Code, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 (“Compensation for Work Injuries”) of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 (“Retirement”) or chapter 84 (“Federal Employees Retirement System”) of title 5, United States Code [5 U.S.C. 8301 et seq., 8401 et seq.], if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

(3) To retain coverage, rights, and benefits under chapter 89 (“Health Insurance”) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for

the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

(4) To retain coverage, rights, and benefits under chapter 87 (“Life Insurance”) of title 5, United States Code [5 U.S.C. 8701 et seq.], if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5, United States Code [5 U.S.C. 8714 et seq.]); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code [5 U.S.C. 8701 et seq.].

(f) Deposit by tribal organization of employee deductions and agency contributions in appropriate funds: During the period an employee is entitled to coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) Election for retention by employee and tribal organization before date of employment by tribal organization; transfer of employee to another tribal organization: An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

(h) ‘Employee’ defined: For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5, United States Code.

(i) Promulgation of implementation regulations by President: The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave,

reemployment rights, and such other similar civil service employment rights as he finds appropriate.<sup>15v</sup>

(j) Additional employee employment rights: Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such Indian tribes in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

(k) Section 3372(a) of title 5, United States Code, is further amended to add the following to the end thereof: ‘If the 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) Conversion to career employment: The status of an Indian (as defined in section 19 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 479) appointed (except temporary appointments) to the Federal service under an excepted appointment under the

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<sup>15</sup> See Executive Order No. 11899, January 26, 1976, 41 F.R. 3459, as amended by Executive Order No. 12107, December 28, 1978, 44 F.R. 1055; Executive Order No. 12608, September 9, 1987, 52 F.R. 34617. See endnote v.

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.

{As amended by: Pub. L. 93-638, Title I, § 104(e)-(j), (m) [formerly 105(e)-(j)], January 4, 1975, 88 Stat. 2209; Pub. L. 89-702, Title II, § 210(a) Nov. 2, 1966, as added Pub. L. 98-129, § 2, October 14, 1983, 97 Stat. 843, and amended Pub. L. 99-221, § 3(a), December 26, 1985, 99 Stat. 1735; renumbered § 104 and amended Pub. L. 100-472, Title II, § 203(a), (d)-(f), October 5, 1988, 102 Stat. 2290; Pub. L. 101-301, § 2(a)(6), May 24, 1990, 104 Stat. 206}

**CONTRACT OR GRANT PROVISIONS AND ADMINISTRATION**  
[25 USC 450j]

Sec. 105 (a) Applicability of Federal contracting laws and regulations; waiver of requirements:

(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 102 shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a nonconstruction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3) (A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions promulgated under such Act shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is -

(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) directly related to the construction activity; and

(iii) not inconsistent with this Act.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C) (i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (Including Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this Act, unless expressly provided in such law.

(ii) The laws listed in this paragraph are as follows:

(I) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(II) Section 3709 of the Revised Statutes.

(III) Section 9(c) of the Act of August 2, 1946 (60 Stat. 809, chapter 744).

(IV) Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288).

(V) Section 13 of the Act of October 3, 1944 (58 Stat. 770; chapter 479).

(VI) Chapters 21, 25, 27, 29, and 31 of title 44, United States Code.

(VII) Section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 483).

(VIII) Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq., chapter 881).

(IX) The Service Control Act of 1965 (41 U.S.C. 351 et seq.).<sup>16</sup>

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<sup>16</sup> The reference to “The Service Control Act of 1965” is a typographical error. The title of the Act codified at 41 U.S.C. § 351 et seq. is “The Service Contract Act of 1965.”

(15 U.S.C. 631 et seq.) (X) The Small Business Act

(XI) Executive Orders  
Nos. 12138, 11246, 11701 and 11758.

(b) Payments; transfer of funds by Treasury for disbursement by tribal organization; accountability for interest accrued prior to disbursement: Payments of any grants or under any contracts pursuant to sections 102 (25 USC 450f) and 103 (25 USC 450h) of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.<sup>17</sup>

(c) Term of self-determination contracts; annual renegotiation:

(1) A self-determination contract shall be -

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<sup>17</sup> Section 111 of the Interior Department portion of Pub. Laws 106-291, 107-63, 108-7, 108-108, and 108-447 limits the ability of tribes, tribal organizations and consortia to invest funds provided through ISDEAA contracts.

Sec. 111. Advance payments made under this title to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are--(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or (2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

NOTE: This language does not appear in the BIA portion of the FY-2006 DOI Appropriation Act (Pub. L. 109-54).



(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 a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), 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) Calendar year basis for contracts:

(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this Act, unless the Secretary and Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

(e) Effective date for retrocession of contract: If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this Act, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on -

(1) the earlier of -

(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

(B) the date on which the contract expires; or

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

(f) Use of existing school buildings, hospitals, and other facilities and equipment therein; acquisition and donation of excess or surplus Government personal property: 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 title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or 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 contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

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

(3) acquire excess or surplus Government personal or real 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.

(g) Performance of personal services: The contracts authorized under section 102 of this Act and grants pursuant to section 103 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(h) Fair and uniform provision by tribal organization of services and assistance to covered Indians: Contracts and grants with tribal organizations pursuant to sections 102 and 103 of this Act and the and regulations adopted by the Secretaries of the Interior and Health and Human Services pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(i) Division of administration of program:

(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

(2) Nothing in this title shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 110.

(j) Proposal to redesign program, activity, function, or service: Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic,

demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 102.

(k) Access to Federal sources of supply: For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this Act shall be deemed an Executive agency and part of the Indian Health Service when carrying out such contract, grant, or cooperative agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access. 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.

(l) Lease of facility used for administration and delivery of services:

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this Act.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

(m) Statutory requirements; technical assistance; precontract negotiation phase; fixed price construction contract:

(1) Each construction contract requested, approved, or awarded under this Act shall be subject to -

(A) except as otherwise provided in this Act, the provisions of this Act, other than sections 102(a)(2), 106(l), 108 and 109; and

(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact statements, and archaeological reports.

(3) Prior to finalizing a construction contract proposal pursuant to section 102(a), and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

(A) The provision of technical assistance pursuant to section 103 and paragraph (2).

(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5, United States Code.

(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 102(a).

(4) (A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 106(a), the Secretary shall provide for the following:

(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

(C) The total amount awarded under construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs<sup>18</sup>:

(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this Act and any other applicable law.

(ii) The costs of preparing the contract proposal and supporting cost data.

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<sup>18</sup> For cost-reimbursement construction contracts for projects whose actual cost is less than the estimated cost, the Secretary shall determine how to use the excess funds after consulting with the tribes. See 25 USC 450e-2.

(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

(iv) In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks and local market conditions.

(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the Secretary declines the proposal pursuant to sections 102(a)(2) and 102(b) of section 102 (including providing opportunity for an appeal pursuant to section 102(b)).

(n) Rental rates for housing for Government employees in Alaska: Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of -

(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5, United States Code) to such employee, and

(2) the circumstances under which such quarters and facilities are provided to such employee, as based on the cost of comparable private rental housing in the nearest established community with year-round population of 1,500 or more individuals.

(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.

{As amended by: Pub. L. 93-638, Title I, § 105, January 4, 1975, 88 Stat.2210; Pub. L. 96-88, Title V, § 509(b), October 17, 1979, 93 Stat. 695; renumbered § 105 and amended Pub. L. 100-472, Title II, § 204, October 5, 1988, 102 Stat. 2291; Pub. L. 101-301, § 2(a)(7), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, Title II, § 203(c)-(e), November 29, 1990, 104 Stat. 4666; Pub. L. 103-413, Title I, §§ 102(10)-(13), 106, October 25, 1994, 108 Stat. 4253 to 4255, 4270; Pub. L. 104-109, § 7, February 12, 1996, 110 Stat. 764; Pub. L. 106-260, §§ 7, 8, August 18, 2000, 114 Stat. 732, 733}

## **CONTRACT FUNDING AND INDIRECT COSTS**

[25 USC 450j-1]

Sec. 106 (a) Amount of funds provided:

(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, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated.<sup>19vi</sup>

(2) There shall be added to the amount required by paragraph (1) contract support costs<sup>20vii</sup> which shall consist

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<sup>19</sup> Pub. Laws 106-291, 107-63, 108-7, 108-108, and 109-54 gives the Secretary of the Interior the authority to redistribute Tribal Priority Allocations. Pub. L. 106-291, 107-63, 108-7, 108-108, and 109-54 gives tribes the right to return funds to the Bureau of Indian Affairs for distribution to other tribes with no diminishment of federal trust responsibility or limitation on right to appropriations. Pub. L. 106-291 also limits Tribal Priority Allocations in Alaska. See endnote iv.

<sup>20</sup> Section 312 of Pub. L. 106-291 states that the amount of contract support costs “available” for ISDEAA agreements for fiscal years 1994 through 2000 (under Public Laws 103-138, 103-332, 104-134, 104-208, 105-83, 105-277, and 106-113) are only those “amounts appropriated to or earmarked in committee reports” in the appropriation acts for those years. Pub. L. 106-291 places a cap on payment of contract support costs during FY-2001. 25 USC § 450e-2 also permanently amended or clarified the Act by requiring the Indian Health Service (IHS) to expend contract support funds only for costs attributable to agreements with the IHS. Pub. L. 106-113 permanently amends or clarifies the Act by requiring the Bureau of Indian Affairs (BIA) to expend contract support funds only for costs attributable to ISDEAA agreements with agencies within the Department of the Interior.

Sec. 310 of Pub. L. 107-63 states the same as above but adds 2001.

Sec. 308 of Pub. L. 108-7, 108-108, and 108-447 states the same as above but adds 2002 - 2004.

Sec. 409 of Pub. L. 109-54 states the same as above but adds 2005. See endnote v.



of an amount for 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) (A) The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of -

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under section 106(a)(1).

(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract)<sup>21</sup> shall-

(A) be used to provide additional services or benefits under the contract; or

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<sup>21</sup> For construction projects accomplished through cost-reimbursement construction contracts whose actual cost is less than the estimated cost, the Secretary shall determine how to use the excess funds after consulting with the tribes. See 25 USC § 450e-2.

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 8 (25 U.S.C.A. 13a).

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary -

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

(b) Reductions and increases in amount of fund provided: 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 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) [25 U.S.C. § 450j(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.<sup>22</sup>

(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 –

(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;

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<sup>22</sup> Pub. Laws 106-291, 107-63, 108-7, 108-108, 108-447, and 109-54 give the Secretary of the Interior the authority to redistribute Tribal Priority Allocations. Pub. Laws 106-291, 107-63, 108-7, 108-108, 108-447, and 109-54 also give tribes the right to return funds to the Bureau of Indian Affairs for distribution to other tribes with no diminishment of federal trust responsibility or limitation on right to appropriations.

(5) indirect cost pool amounts and 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 the 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) [25 U.S.C.A. 450j(d)].

(d) Treatment of shortfalls in indirect cost recoveries:

(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.<sup>23</sup>

(e) Liability for indebtedness incurred before fiscal year 1992: 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 1992.

(f) Limitation on remedies relating to cost disallowances: 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

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<sup>23</sup> Public Law 109-54, Administrative Provision, provides as follows: Notwithstanding any other provision of law, including section 113 of title I of appendix C of Public Law 106-113, if a tribe or tribal organization in fiscal year 2003 or 2004 received indirect and administrative costs pursuant to a distribution formula based on section 5(f) of Public Law 101-301, the Secretary shall continue to distribute indirect and administrative cost funds to such tribe or tribal organization using the section 5(f) distribution formula.

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 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 [25 U.S.C. § 450m-1]. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31, United States Code, or noncompliance with any other applicable law. 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) Addition to contract of full amount contractor entitled; adjustment: Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

(h) Indirect costs for construction programs: 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) Indian Health Service and Bureau of Indian Affairs budget consultations: On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(j) Use of funds for matching or cost participation requirements: Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Allowable uses of funds without approval of Secretary: Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

- (1) Depreciation and use allowances not otherwise specifically prohibited by law, including depreciation of facilities owned by the tribe or tribal organization.
- (2) Publication and printing costs.
- (3) Building, realty, and facilities costs, including rental costs or mortgage expenses.
- (4) Automated data processing and similar equipment or services.
- (5) Costs for capital assets and repairs.
- (6) Management studies.
- (7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.
- (8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.
- (9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.
- (10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessary due to delays by the Secretary in providing funds under a contract.
- (11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this Act.

(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

(l) Suspension, withholding, or delay in payment of funds:

(1) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

(m) Use of program income earned: The program income earned by a tribal organization in the course of carrying out a self-determination contract -

(1) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

(n) Reduction of administrative and other responsibilities of Secretary; use of savings: To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this Act reduce 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 contract funds determined under subsection (a), the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(o) Rebudgeting by tribal organization:  
Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

**PERMISSIBLE USE IHS CONTRACT SUPPORT**  
[25 USC 450 § 450j-2]

That, heretofore and hereafter and notwithstanding any other provision of law, funds available to the Indian Health Service in this Act or any other Act for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination and Education Assistance Act and no funds appropriated by this or any other Act shall be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact, or funding agreement entered into between an Indian tribe or tribal organization and any entity other than the Indian Health Service.<sup>24</sup>

{Pub. L. 105-277, Div. A, § 101(e) [Title II], October 21, 1998, 112 Stat. 2681 – 280}

**INDIAN SELF-DETERMINATION OR SELF-GOVERNANCE CONTRACT  
OR GRANT SUPPORT COST FUNDS; PERMISSIBLE USES**  
[25 USC 450 § 450j-3]

Notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, hereafter funds available to the Department of the Interior for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination Act of 1975 and hereafter funds appropriated in this title shall not be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact or funding agreement entered into between an Indian tribe or tribal organization and any entity other than the Department of the Interior.<sup>25</sup>

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<sup>24</sup> A parallel provision to this on use of Department of the Interior contract support was included as § 113 in Pub. L. 106-113.



{Pub. L. 106-113, Div. B, § 1000(a)(3) [Title I, § 113], November 29, 1999, 113 Stat. 1535, 1510A – 157}

{As amended by: Pub. L. 93-638, Title I, § 106, as added Pub. L. 100-472, Title II, § 205, October 5, 1988, 102 Stat. 2292; and amended Pub. L. 101-301, § 2(a)(8), (9), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, Title II, § 203(a), November 29, 1990, 104 Stat. 4666; Pub. L. 103-413, § 102 (14)-(19), October 25, 1994, 108 Stat. 4257 – 4259; Pub. L. 105-362, Title VIII, § 801g, November 10, 1998, 112 Stat. 3288; Pub. L. 106-260, § 9, August 18, 2000, 114 Stat. 733}

## **PROMULGATION OF RULES AND REGULATIONS** **[25 USC 450k]**

Sec. 107 (a) Authority of Secretaries of the Interior and of Health and Human Services to promulgate rules and regulations; time restriction:

(1) Except as may be specifically authorized in this subsection, or in any other provision of this Act, the Secretary of the Interior and the Secretary of Health and Human Services may not promulgate any regulation, nor impose any nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts, except that the Secretary of the Interior and the Secretary of Health and Human Services may promulgate regulations under this Act relating to chapter 171 of title 28, United States Code, commonly known as the ‘Federal Tort Claims Act’, the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), declination and waiver procedures, appeal procedures, reassumption procedures, discretionary grant procedures for grants awarded under section 103, property donation procedures arising under section 105(f), internal agency procedures relating to the implementation of this Act, retrocession and tribal organization relinquishment procedures, contract proposal contents, conflicts of interest, construction, programmatic reports and data requirements, procurement standards, property management standards, and financial management standards.

(2) (A) The regulations promulgated under this Act, including the regulations referred to in this subsection, shall be promulgated -

(i) in conformance with sections 552 and 553 of title 5, United States Code and subsections (c), (d), and (e) of this section; and

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<sup>25</sup> This is the Department of the Interior provision on the use of contract support.

(ii) as a single set of regulations in title 25 of the Code of Federal Regulations.

(B) The authority to promulgate regulations set forth in this Act shall expire if final regulations are not promulgated within 20 months after the date of enactment of the Indian Self-Determination Contract Reform Act of 1994.

(b) Conflicting laws and regulations: The provisions of this Act shall supersede any conflicting provisions of law (including conflicting regulations) in effect on the day before enactment of the Indian Self-Determination Contract Reform Act of 1994, and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this Act.

{Repealed by § 10(c) of Pub. Law 103-437, Nov. 2, 1994; § 6(e) of Pub. Law 104-287, October 11, 1996, repealed § 10(c)(2)(A) of Pub. Law 103-437 and reinstated this § 107(b)}

(c) Revisions and amendments; procedures applicable: The Secretary of the Interior and the Secretary of Health, Education, and Welfare (Health and Human Services) are authorized, with the participation of Indian tribes and tribal organizations, to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the *Federal Register* not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

(d) Consultation in drafting and promulgating; negotiation process; interagency committees; extension of deadlines:

(1) In drafting and promulgating regulations as provided in subsection (a) (including drafting and promulgating any revised regulations), the Secretary of the Interior and the Secretary of Health and Human Services shall confer with, and allow for active

participation by, representatives of Indian tribes, tribal organizations, and individual tribal members.<sup>26</sup>

(2) (A) In carrying out rulemaking processes under this Act, the Secretary of the Interior and the Secretary of Health and Human Services shall follow the guidance of -

(i) subchapter III of chapter 5, United States Code, commonly known as the ‘Negotiated Rulemaking Act of 1990’; and

(ii) the recommendations of the Administrative Conference of the United States numbered 82-4 and 82-5 entitled ‘Procedures for Negotiating Proposed Regulations’ under sections 305.82-4 and 305.82-5 of title 1, Code of Federal Regulations, and any successor recommendation or law (including any successor regulation).

(iii) The tribal participants in the negotiation process referred to in subparagraph (A) shall be nominated by and shall represent the groups described in this paragraph and shall include tribal representatives from all geographic regions.

(B) The negotiations referred to in subparagraph (B) shall be conducted in a timely manner. Proposed regulations to implement the amendments made by the Indian Self-Determination Contract Reform Act of 1994 shall be published in the *Federal Register* by the Secretary of the Interior and the Secretary of Health and Human Services not later than 180 days after the date of enactment of such Act.

(C) Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this Act.

(D) If the Secretary determines that an extension of the deadlines under subsection (a)(2)(B) and subparagraph (C) of this paragraph is appropriate, the Secretary may

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<sup>26</sup> 25 USC § 450a-1 authorizes the Secretary of the Interior and the Secretary of Health and Human Services to jointly establish and fund advisory committees and advisory bodies composed of tribal members or tribal members and federal representatives to ensure tribal participation in implementation of the Act.

submit proposed legislation to Congress for the extension of such deadlines.

(e) Exceptions in or waiver of regulations: The Secretary may, with respect to a contract entered into under this Act, make exceptions in the regulations promulgated to carry out this Act, or waive such regulations, if the Secretary finds that such exception or waiver is in the best interest of the Indians served by the contract or is inconsistent with the policies of this Act, and is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, and appeal procedures set forth in section 102.

{As amended by: Pub. L. 93-638, Title I, § 107, January 4, 1975, 88 Stat. 2212; Pub. L. 96-88, Title V, § 509(b), October 17, 1979, 93 Stat. 695; Pub. L. 100-472, Title II, § 207, October 5, 1988, 102 Stat. 2295; Pub. L. 101-644, Title II, § 203(f), November 29, 1990, 104 Stat. 4666; Pub. L. 103-413, Title I, § 105, October 25, 1994, 108 Stat. 4269; Pub. L. 103-435, § 22(a)(1), November 2, 1994, 108 Stat. 4575; Pub. L. 103-437, § 10(c)(2), November 2, 1994, 108 Stat. 4589; Pub. L. 104-133, § 1, April 25, 1996, 110 Stat. 1320; Pub. L. 104-287, § 6(e), October 11, 1996, 110 Stat. 3399}

## **CONTRACT OR GRANT SPECIFICATIONS** [25 USC 450]

Sec. 108 (a) Terms: Each self-determination contract entered into under this Act shall -

(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) (with modifications where indicated and the blanks appropriately filled in), and

(2) contain such other provisions as are agreed to by the parties.

(b) Payments; Federal records: Notwithstanding any other provisions of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As provided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

(c) Model agreement: The model agreement referred to in subsection (a)(1) reads as follows:

SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE \_\_\_\_ TRIBAL GOVERNMENT.

(a) AUTHORITY AND PURPOSE.

(1) AUTHORITY. This agreement, denoted a Self-Determination Contract (referred to in this agreement as the “Contract”), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the “Secretary”), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the \_\_\_\_\_ tribal government or tribal organization (referred to in this agreement as the “Contractor”). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

(2) PURPOSE. Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

(b) TERMS, PROVISIONS, AND CONDITIONS.

(1) TERM. Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)), the term of this Contract shall be \_ years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election of the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

(2) EFFECTIVE DATE. This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the

Secretary agree on an effective date other than the date specified in this paragraph.

(3) PROGRAM STANDARD. The Contractor agrees to administer the program, services, functions, and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards: (List standards).

(4) FUNDING AMOUNT. Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1).

(5) LIMITATION OF COSTS. The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

(6) PAYMENT.

(A) IN GENERAL. Payments to the Contractor under this Contract shall -

(i) be made as expeditiously as practicable; and

(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

(B) QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT.

(i) IN GENERAL. Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semiannual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.<sup>27</sup>

(ii) METHOD OF QUARTERLY PAYMENT. If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.<sup>28</sup>

(iii) APPLICABILITY. Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

(7) RECORDS AND MONITORING.

(A) IN GENERAL. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior or the Department of

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<sup>27</sup> Limits the ability of tribes, tribal organizations and consortia to invest funds provided through ISDEAA contracts (see footnote 13). Also, Section 311 of Pub. L. 105-83 involves the allowable payment dates for quarterly ISDEAA payments.

<sup>28</sup> Section 311 of Pub. L. 105-83, Title III, November 14, 1997, 111 Stat. 1590, involves the allowable payment dates for quarterly ISDEAA payments.

Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

(B) RECORDKEEPING SYSTEM. The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

(C) RESPONSIBILITIES OF CONTRACTOR. The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than one performance monitoring visit for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representatives of such head unless -

(i) the Contractor agrees to one or more additional visits; or

(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

(8) PROPERTY.

(A) IN GENERAL. As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)), at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor,



and periodically revised by the Secretary, with the concurrence of the Contractor.

(B) RECORDS. The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.

(C) JOINT USE AGREEMENTS. Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

(D) ACQUISITION OF PROPERTY. The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

(E) CONFISCATED OR EXCESS PROPERTY. The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

(F) SCREENER IDENTIFICATION CARD. A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

(G) CAPITAL EQUIPMENT. The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

(9) AVAILABILITY OF FUNDS. Notwithstanding any other provision of law, any funds provided under this Contract-

(A) shall remain available until expended; and

(B) with respect to such funds, no further -

(i) approval by the Secretary, or

(ii) justifying documentation from the Contractor, shall be required prior to expenditure of such funds.

(10) TRANSPORTATION. Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

(11) FEDERAL PROGRAM GUIDELINES, MANUALS, OR POLICY DIRECTIVES. Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

(12) DISPUTES.

(A) THIRD-PARTY MEDIATION DEFINED. For the purposes of this Contract, the term "third-party mediation" means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

(B) ALTERNATIVE PROCEDURES. In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m-1), the parties to this Contract may jointly -

(i) submit disputes under this Contract to third-party mediation;

(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

(iii) submit the dispute to mediation processes provided under the laws, policies, or procedures of the Contractor; or

(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

(C) EFFECT OF DECISIONS. The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

(13) ADMINISTRATIVE PROCEDURES OF THE CONTRACTOR. Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

(14) SUCCESSOR ANNUAL FUNDING AGREEMENT.

(A) IN GENERAL. Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. Except as provided in section 105(c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(2)) the funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. 450j-1(b)).

(B) INFORMATION. The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

(15) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.

(A) IN GENERAL. Except as provided in subparagraph (B), for the term of the Contract, 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 any contract entered into in connection with this Contract.

(B) REQUIREMENTS. Each Contract entered into by the Contractor with a third party in connection with performing obligations of the Contractor under this Contract shall

- (i) be in writing;
- (ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;
- (iii) state the work to be performed under the Contract; and
- (iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

(c) OBLIGATION OF THE CONTRACTOR.

(1) CONTRACT PERFORMANCE. Except as provided in subsection (d)(2), the Contractor shall perform programs, services, functions, and activities as provided in the annual funding agreement under section (f)(2) of this Contract.

(2) AMOUNT OF FUNDS. The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

(3) CONTRACTED PROGRAMS. Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f)(2).

(4) TRUST SERVICES FOR INDIVIDUAL INDIANS.

(A) IN GENERAL. To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the

Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

(B) TRUST SERVICES TO INDIVIDUAL INDIANS. For the purposes of this paragraph only, the term “trust services for individual Indians” means only those services that pertain to land or financial management connected to individually held allotments.

(5) FAIR AND UNIFORM SERVICES. The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

(d) OBLIGATION OF THE UNITED STATES.

(1) TRUST RESPONSIBILITY.

(A) IN GENERAL. The United States reaffirms the trust responsibility of the United States to the \_\_\_\_ Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

(B) CONSTRUCTION OF CONTRACT. Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

(2) GOOD FAITH. To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(3) PROGRAMS RETAINED. As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).

(e) OTHER PROVISIONS.

(1) DESIGNATED OFFICIALS. Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

(2) CONTRACT MODIFICATIONS OR AMENDMENT.

(A) IN GENERAL. Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

(B) EXCEPTION. The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).

(3) OFFICIALS NOT TO BENEFIT. No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

(4) COVENANT AGAINST CONTINGENT FEES. The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

(f) ATTACHMENTS.

(1) APPROVAL OF CONTRACT. Unless previously furnished to the Secretary, the resolution of the \_\_\_\_\_ Indian tribe(s) authorizing the contracting of the programs, services,

functions, and activities identified in this Contract is attached to this Contract as attachment 1.

(2) ANNUAL FUNDING AGREEMENT.

(A) IN GENERAL. The annual funding agreement under this Contract shall only contain -

(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

(ii) such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

(B) INCORPORATION BY REFERENCE. The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2.

{As amended: Pub. L. 93-638, Title I, § 108, as added Pub. L. 103-413, Title I, § 103, October 25, 1994, 108 Stat. 4260, and amended Pub. L. 106-568, Title VIII, § 812(a), December 27, 2000, 114 Stat. 2917}

**RESCISSION OF CONTRACT OR GRANT AND ASSUMPTION OF CONTROL OF PROGRAM, ETC.; AUTHORITY; GROUNDS; PROCEDURE; CORRECTION OF VIOLATION AS PREREQUISITE TO NEW CONTRACT OR GRANT AGREEMENT; CONSTRUCTION WITH OCCUPATIONAL SAFETY AND HEALTH REQUIREMENTS**

[25 USC 450m]

Sec. 109 Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act [25 U.S.C. §§ 450f, 450g, and 450h] shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement, such secretary may, under regulations prescribed by him and after providing notice and

a hearing on the record to such tribal organization, rescind such contract or grant agreement, in whole or in part, and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent substantial and irreparable harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the Contractor to fulfill the requirements of the contract. In such cases, the Secretary shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C.A. 651 et seq.).

{As amended by: Pub. L. 93-638, Title I, § 109, January 4, 1975, 88 Stat. 2212; Pub. L. 100-581, Title II, § 211, November 1, 1988, 102 Stat. 2941; Pub. L. 101-301, § 2(a)(10), May 24, 1990, 104 Stat. 207; Pub. L 103-413, Title I, § 104(1), October 25, 1994, 108 Stat. 4268}

## **CONTRACT DISPUTES AND CLAIMS**

[25 USC 450m-1]

Sec. 110 (a) Civil actions; concurrent jurisdiction; relief: 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 any 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 (including immediate injunctive relief to reverse a declination finding under section 102(a)(2) [25 U.S.C.A. 450f(a)(2)] or to compel the Secretary to award and fund an approved self-determination contract).

(b) Revision of contracts: The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.

(c) Application of laws to administrative appeals: The Equal Access to Justice Act (Pub. Law 96-481, Act of October 1, 1980; 92 Stat. 2325, as amended), section 504 of title 5, United States Code, and section 2412 of title 28, United States Code shall apply to administrative appeals pending on or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by tribal organizations regarding self-determination contracts.

(d) Application of Contract Disputes Act: The Contract Disputes Act (Pub. Law 95-563, Act of November 1, 1978; 92 Stat. 2383, as amended) shall apply to self-determination contracts, except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607).

(e) Application of subsection (d): 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 [enacted Oct. 5, 1988], 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.

{As amended by: Pub. L. 93-638, Title I, § 110, as added Pub. L. 100-472, Title II, § 206(a), October 5, 1988, 102 Stat. 2295, and amended Pub. L. 100-581, Title II, § 212, November 1, 1988, 102 Stat. 2941; Pub. L. 101-301, §§ 1(a)(2), (2)(b), May 24, 1990, 104 Stat. 206, 207; Pub. L. 103-413, Title I, § 104(2), (3), October 25, 1994, 108 Stat. 4268}

**SOVEREIGN IMMUNITY AND TRUSTEESHIP RIGHTS UNAFFECTED**  
[25 USC 450n]

Sec. 111 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 the Indian people.<sup>29</sup>

{As amended by: Pub. L. 93-638, Title I, § 111, formerly § 110, January 4, 1975, 88 Stat. 2213; renumbered Pub. L. 100-472, Title II, § 206(b), October 5, 1988, 102 Stat. 2295}

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<sup>29</sup> See footnotes 15 and 18 regarding agency redistribution and tribal return of appropriations.

## **TITLE II - THE INDIAN EDUCATION ASSISTANCE ACT**

Sec. 201<sup>30</sup> This title may be cited as the “Indian Education Assistance Act”.

### **PART A - EDUCATION OF INDIANS IN PUBLIC SCHOOLS**

Sec. 202 The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections:

“Sec. 4 Contracts for education in public schools; submission of education plan by contractor as prerequisite; criteria for approval of plan by secretary of the Interior; participation by non-Indian students: The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students. [25 U.S.C. 455]

{April 16, 1934, c. 147, § 4, as added January 4, 1975, Pub. L. 93-638, Title II, § 202, 88 Stat. 2213}

“Sec. 5 Local committee of Indian parents in school districts having school boards composed of non-Indian majority:

(a) Election; function: Whenever a school district affected by a contract for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall

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<sup>30</sup> Section 201 of Pub. L. 93-638 provided that: This title [enacting sections 25 U.S.C.A. sections 455 to 458e and provisions set out as a note under 25 U.S.C.A. section 457] may be cited as the “Indian Education Assistance Act.”

elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, However, That*, whenever a local Indian committee or committees established pursuant to section 305(b)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

“(b) Revocation of contracts: The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a). [25 U.S.C. 456]

{April 16, 1934, c. 147, § 5, as added January 4, 1975, Title II, § 202, 88 Stat. 2213, and amended October 20, 1994, Pub. L. 103-382, Title III, § 393(d), 108 Stat. 4027}

“Sec. 6 Reimbursement to school districts for educating non-resident students: Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.” [25 U.S.C. 457]

{April 16, 1934, c. 147, § 6, as added January 4, 1975, Pub. L.93-638, Title II, § 202, 88 Stat. 2214}

Sec. 203<sup>31</sup> Indian Educational Report; Submission to Congressional Committees; Time of Submission; Scope and Content of Report: After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare (Health and Human Services), shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives no later than October 1, 1975, a report which shall include:

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<sup>31</sup> Section 203 was enacted as part of the Johnson O’Malley Act and not as part of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including -

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to -

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended, and

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

## **PART B - SCHOOL CONSTRUCTION**

Sec. 204 School construction, acquisition, or renovation contracts [25 U.S.C.A. 458]:

(a) Authorization; prerequisites: The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) Eligibility requirements for assistance in federally-affected areas; applicability to projects in determining maximum amount; allocation of funds, etc.: The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

(c) Eligibility of private schools to receive funds; maximum amount: The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Duties of State education agencies pursuant to contracts: Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to -

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building

standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) Advisory consultations by Secretary with affected entities and governing bodies prior to contracts; applicability: The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Evaluation and report to Congress of effectiveness of construction, etc., programs; scope and content of report: Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include -

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended [40 U.S.C.A. § 276a et seq.];

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare (Health and Human Services) including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare (Health and Human Services) to the Department of the Interior.

(g) Authorization of appropriations: For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of \$35,000,000 for the fiscal year ending June 30, 1974; \$35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

{Pub. L. 93-638, Title II, § 204, January 4, 1975, 88 Stat. 2214; Pub. L. 96-88, Title III, § 301, Title V, § 507, October 17, 1979, 93 Stat. 692}

### **PART C - GENERAL PROVISIONS**

Sec. 205 General education contract and grant provisions and requirements; school district quality and standards of excellence: No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district. [25 U.S.C. 458a]

{Pub. L. 93-638, Title II, § 205, January 4, 1975, 88 Stat. 2216}

Sec. 206 No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation. [25 U.S.C. 458b]

{Pub. L. 93-638, Title II, § 206, January 4, 1975, 88 Stat. 2216}



Sec. 207 Rules and Regulations:

(a) Prerequisites for promulgation:

(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) Revision and amendment: The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties. [25 U.S.C. 458c]

{Pub. L. 93-638, Title II, § 207, January 4, 1975, 88 Stat. 2216}

Sec. 208 Eligibility for funds of tribe or tribal organization controlling or managing private schools: The Secretary is authorized and directed to provide funds, pursuant to this Act: the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C.A. § 452 et seq.]; or any other authority granted him to any tribe or tribal organization which controls and manages any previously private school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section. [25 U.S.C.458d]

{Pub. L. 93-638, Title II, § 208, January 4, 1975, 88 Stat. 2216; Pub. L 97-375, Title I, § 108(d), December 21, 1982, 96 Stat. 1820}

Sec. 209 Supplemental assistance to funds provided to local educational agencies: The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235). [25 U.S.C. 458e]

{Pub. L. 93-638, Title II, § 209, January 4, 1975, 88 Stat. 2217; Pub. L. 103-382, Title III, § 393(c), October 20, 1994, 108 Stat. 4027}

**TITLE III - TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT**  
[25 USC 450f note]<sup>32</sup>

{Title III repealed and Titles V and VI enacted by Pub. L. 106-260, § 10, August 18,  
2000, 114 Stat. 734}

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<sup>32</sup> Section 11 of the Tribal Self-Governance Amendments of 2000 (Pub. L. 106-260; 25 USC § 450f) states that “funds appropriated for Title III of the Indian Self-Determination and Education Assistance Act (25 USC § 450f) shall be available for use under Title V of such Act.”

## **TITLE IV - TRIBAL SELF-GOVERNANCE**

Sec. 401 ESTABLISHMENT. The Secretary of the Interior (hereinafter in this title referred to as the ‘Secretary’) shall establish and carry out a program within the Department of the Interior to be known as Tribal Self-Governance (hereinafter in this title referred to as ‘Self-Governance’) in accordance with this title. [25 U.S.C.A. 458aa]

{Pub. L. 93-638, Title IV, § 401, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4272}

Sec. 402 SELECTION OF PARTICIPATING TRIBES. [25 U.S.C.A. 458bb]

(a) CONTINUING PARTICIPATION. Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project at the Department of the Interior under title III on the date of enactment of this title shall thereafter participate in Self-Governance under this title and cease participation in the Tribal Self-Governance Demonstration Project under title III with respect to the Department of the Interior.

(b) ADDITIONAL PARTICIPANTS.

(1) In addition to those Indian tribes participating in Self-Governance under subsection (a), the Secretary, acting through the Director of the Office of Self-Governance, may select up to 50 new tribes per year from the applicant pool described in subsection (c) to participate in Self-Governance.

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

(c) APPLICANT POOL. The qualified applicant pool for Self-Governance shall consist of each tribe that -

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

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

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

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

- (1) legal and budgetary research; and
- (2) internal tribal government planning and organizational preparation.

{Pub. L. 93-638, Title IV, § 402, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4272, and amended Pub. L. 104-208, Div. A, Title I, § 101(d) [Title I, § 117], September 30, 1996, 110 Stat. 3009 – 201}

Sec. 403 FUNDING AGREEMENTS. [25 U.S.C.A. 458cc]

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

(b) CONTENTS. Each funding agreement shall -

(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior through the Bureau of Indian Affairs, without regard to the agency or office of the Bureau of Indian Affairs within which the program, service, function, and activity, or portion thereof, is performed, including funding for agency, area, and central office functions in accordance with subsection (g)(3), and including any program, service, function, and activity, or portion thereof, administered under the authority of -

(A) the Act of April 16, 1934  
(25 U.S.C. 452 et seq.);

(B) the Act of November 2, 1921  
(25 U.S.C. 13); and

(C) programs, services, functions, and activities or portions thereof administered by the Secretary of the Interior that are otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 25 USC 405(c), except that nothing in this subsection may be construed to provide any tribe with preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for in law;

(3) subject to the terms of the agreement, authorize the tribe to redesign or consolidate programs, services, functions, and activities, or portions thereof, and reallocate funds for such programs, services, functions, and activities, or portions thereof, except that, with respect to the reallocation, consolidation, and redesign of programs described in paragraph (2), a joint agreement between the Secretary and the tribe shall be required;

(4) prohibit the inclusion of funds provided -

(A) pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

(B) for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008); and

(C) the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 102;

(5) specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to the agreement;

(6) authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used;

(7) allow for retrocession of programs or portions of programs pursuant to section 105(e);

(8) provide that, for the year for which, and to the extent to which, funding is provided to a tribe under this section, the tribe -

(A) 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

(B) shall be responsible for the administration of programs, services, functions, and activities pursuant to agreements entered into under this section; and

(9) prohibit the Secretary 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, and other laws.

(c) **ADDITIONAL ACTIVITIES.** Each funding agreement negotiated pursuant to subsections (a) and (b) may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.

(d) **PROVISIONS RELATING TO THE SECRETARY.** Funding agreements negotiated between the Secretary and an Indian tribe shall include provisions -

(1) to monitor the performance of trust functions by the tribe through the annual trust evaluation, and

(2) for the Secretary to reassume a program, service, function, or activity, or portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety.

(e) CONSTRUCTION PROJECTS.

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

(2) In all construction projects performed pursuant to this title, the Secretary shall ensure that proper health and safety standards are provided for in the funding agreements.

(f) SUBMISSION FOR REVIEW. Not later than 90 days before the proposed effective date of an agreement entered into under this section, the Secretary shall submit a copy of such agreement to -

(1) each Indian tribe that is served by the Agency that is serving the tribe that is a party to the funding agreement;

(2) the Committee on Indian Affairs of the Senate; and

(3) the subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.

(g) PAYMENT.

(1) At the request of the governing body of the tribe and under terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

(2) The funding agreements authorized by this title and title III of this Act shall provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribes.

(3) Subject to paragraph (4) of this subsection and paragraph (1) through (3) of this subsection (b), the Secretary shall provide funds to the tribe under an agreement under this title for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act, including amounts for



direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the tribe or its members, without regard to the organizational level within the Department where such functions are carried out.

(4) Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

(h) CIVIL ACTIONS.

(1) Except as provided in paragraph (2), for the purposes of section 110, the term 'contract' shall include agreements entered into under this title.

(2) For the period that an agreement entered into under this title is in effect, 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 Indian tribal governments participating in Self-Governance under this title.

(i) FACILITATION.

(1) Except as otherwise provided by law, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate -

(A) the inclusion of programs, services, functions, and activities in agreements entered into under this section; and

(B) the implementation of agreements entered into under this section.

(2) (A) A tribe may submit a written request for a waiver to the Secretary identifying the regulation sought to be waived and the basis for the request.

(B) Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the requested waiver in writing to the tribe. A denial may be made only upon a specific finding that identified language in the regulation may not be waived because such

waiver is prohibited by Federal law. The Secretary's decision shall be final for the Department.

(j) FUNDS. All funds provided under funding agreements entered into pursuant to this Act, and all funds provided under contracts or grants made pursuant to this Act, shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

(k) DISCLAIMER. Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under section 403(b)(2).

(l) INCORPORATE SELF-DETERMINATION PROVISIONS. At the option of a participating tribe or tribes, any or all provisions of part A of this subchapter shall be made part of an agreement entered into under title III of this Act or this part. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated it shall have the same force and effect as if set out in full in title III or this part.

{Pub. L. 93-638, Title IV, § 403, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4272, and as amended Pub. L 104-109, § 19, February 12, 1996, 110 Stat. 766; Pub. L. 106-568, Title VIII, § 812(b), December 27, 2000, 114 Stat. 2917}

Sec. 404 BUDGET REQUEST. The Secretary shall identify, in the annual budget request of the President to the Congress under section 1105 of title 31, United States Code, any funds proposed to be included in agreements authorized under this title. [25 U.S.C.A. 458dd]

{Pub. L. 93-638, Title IV, § 404, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4275}

Sec. 405 REPORTS. [25 U.S.C.A. 458ee]

(a) REQUIREMENT. The Secretary shall submit to Congress a written report on January 1 of each year following the date of enactment of this title regarding the administration of this title.

(b) CONTENTS. The report shall -

(1) identify the relative costs and benefits of Self-Governance;

(2) identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance tribes and their members;

(3) identify the funds transferred to each Self-Governance tribe and the corresponding reduction in the Federal bureaucracy;

(4) include the separate views of the tribes;  
and

(5) include the funding formula for individual tribes shares of Central Office funds, together with the comments of affected Indian tribes, developed under subsection (d).

(c) REPORT ON NON-BIA PROGRAMS.

(1) In order to optimize opportunities for including non-Bureau of Indian Affairs programs, services, functions, and activities, or portions thereof, in agreements with tribes participating in Self-Governance under this title, the Secretary shall -

(A) review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned; and

(B) not later than 90 days after the date of enactment of this title, provide to the appropriate committees of Congress a listing of all such programs, services, functions, and activities, or portions thereof, that the Secretary determines, with the concurrence of tribes participating in Self-Governance under this title, are eligible for inclusion in such agreements at the request of a participating Indian tribe.

(2) The Secretary shall establish programmatic targets, after consultation with tribes participating in Self-Governance under this title, to encourage bureaus of the Department to assure that a significant portion of such programs,

services, functions, and activities are actually included in the agreements negotiated under section 403.

(3) The listing and targets under paragraphs (1) and (2) shall be published in the *Federal Register* and be made available to any Indian tribe participating in Self-Governance under this title. The list shall be published before January 1, 1995, and annually thereafter by January 1 preceding the fiscal year in which the targets are to be met.

(4) Thereafter, the Secretary shall annually review and publish in the *Federal Register*, after consultation with tribes participating in Self-Governance under this title, a revised listing and programmatic targets.

(d) REPORT ON CENTRAL OFFICE FUNDS. Within 90 days after the date of enactment of this title, the Secretary shall, in consultation with Indian tribes, develop a funding formula to determine the individual tribal shares of funds controlled by the Central Office of the Bureau of Indian Affairs for inclusion in the Self-Governance compacts. The Secretary shall include such formula in the annual report submitted to the Congress under subsection (b), together with the views of the affected Indian tribes.

{Pub. L. 93-638, Title IV, § 405, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4276}

Sec. 406 DISCLAIMERS. [25 U.S.C.A. 458ff]

(a) OTHER SERVICES, CONTRACTS, AND FUNDS. 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.

(b) FEDERAL TRUST RESPONSIBILITIES. Nothing in this Act shall be construed to diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

(c) APPLICATION OF OTHER SECTIONS OF THE ACT. All provisions of sections 6, 102(c), 104, 105(f), 110, and 111 of this Act shall apply to agreements provided under this title.

{Pub. L. 93-638, Title IV, § 406, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4277; Pub. L. 105-277, Div. A, § 101(e) [Title I, § 133], October 21, 1998, 112 Stat. 2681 – 264}

Sec. 407 REGULATIONS. [25 U.S.C.A. 458gg]

(a) IN GENERAL. Not later than 90 days after the date of enactment of this title, at the request of a majority of the Indian tribes with agreements under this title, 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.

(b) COMMITTEE. 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 representatives of Indian tribes with agreements under this title.

(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 the Indian tribes.

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

{Pub. L. 93-638, Title IV, § 407, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat. 4277}

Sec. 408 AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as may be necessary to carry out this title. [25 U.S.C.A. 458hh]

{Pub. L. 93-638, Title IV, § 408, as added Pub. L. 103-413, Title II, § 204, October 25, 1994, 108 Stat.4278}

## TITLE V - TRIBAL SELF-GOVERNANCE

### SEC. 501. DEFINITIONS. [25 U.S.C.A. 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.

{Pub. L. 93-638, Title V, § 501, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 713}

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 U.S.C.A. 458aaa-1]

{Pub. L. 93-638, Title V, § 502, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 714}

SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES. [25 U.S.C.A. 458aaa-2]

(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.

{Pub. L. 93-638, Title V, § 503, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 714}

#### SEC. 504. COMPACTS. [25 U.S.C.A. 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.

{Pub. L. 93-638, Title V, § 504, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 715}

SEC. 505. FUNDING AGREEMENTS. [25 U.S.C.A. 458aaa-4]

(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;

and (D) the responsibilities of the Secretary;

(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.

{Pub. L. 93-638, Title V, § 505, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 716}

#### SEC. 506. GENERAL PROVISIONS. [25 U.S.C.A. 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.

(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) [25 U.S.C.A. 450j-1].

(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.

(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 [25 U.S.C.A. 458aaa-4] 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 [25 U.S.C.A. 450f] and 105(i) [25 U.S.C.A. 450j(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 [25 U.S.C.A. 450f], except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

{Pub. L. 93-638, Title V, § 506, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 717}



SEC. 507. PROVISIONS RELATING TO THE SECRETARY. [25 U.S.C.A. 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 [25 U.S.C.A. 458aaa-16].

(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.

(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.

(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 [25 U.S.C.A. 458aaa-2];

(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) [25 U.S.C.A. 450m-1(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) [25 U.S.C.A. 458aaa-7(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.

{Pub. L. 93-638, Title V, § 507, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 719}

SEC. 508. TRANSFER OF FUNDS. [25 U.S.C.A. 458aaa-7]

(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) [25 U.S.C.A. 450j-1(a)(1)] and amounts for contract support costs specified under section 106(a) (2), (3), (5), and (6) [25 U.S.C.A. 450j-1(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) [25 U.S.C.A. 450j(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.

(g) Prompt Payment Act. Chapter 39 of title 31, United States Code [31 U.S.C.A. § 3901 et seq.], 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.

{Pub. L. 93-638, Title V, § 508, as added Pub. L. 106-260, § 4, August 18, 2000, 114 Stat. 722}

SEC. 509. CONSTRUCTION PROJECTS. [25 U.S.C.A. 458aaa-8]

(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) [25 U.S.C.A. 450j(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 276c of Title 40.

(h) Application of Other Laws. Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act<sup>33</sup>, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal

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<sup>33</sup> The Office of Federal Procurement Policy Act referred to in subsection (h) is Pub. L. 93-400, August 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 of Title 41 (41 U.S.C.A. §401 et seq.).

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

{Pub. L. 93-638, Title V, § 509, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 724}

**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.

{Pub. L. 93-638, Title V, § 510, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 726}

**SEC. 511. CIVIL ACTIONS. [25 U.S.C.A. 458aaa-10]**

(a) **Contract Defined.** For the purposes of section 110 [25 U.S.C.A. 450m-1], 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).

{Pub. L. 93-638, Title V, § 511, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 726}

**SEC. 512. FACILITATION. [25 U.S.C.A. 458aaa-11]**

(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 [25 U.S.C.A. 458aaa-16] or the authorities specified in section 505(b) [25 U.S.C.A. 458aaa-4(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.

(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.

(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.

{Pub. L. 93-638, Title V, § 512, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 726}

SEC. 513. BUDGET REQUEST. [25 U.S.C.A. 458aaa-12]

(a) Requirement of Annual Budget Request.

(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 [25 U.S.C.A. 458aaa-4].

(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.

{Pub. L. 93-638, Title V, § 513, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 727}

SEC. 514. REPORTS. [25 U.S.C.A. 458aaa-13]

(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

(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.

{Pub. L. 93-638, Title V, § 514, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 728}

#### SEC. 515. DISCLAIMERS. [25 U.S.C.A. 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 [25 U.S.C.A. 450m-1].

(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.

{Pub. L. 93-638, Title V, § 515, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 729}

SEC. 516. APPLICATION OF OTHER SECTIONS OF THE ACT.  
[25 U.S.C.A. 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 [25 U.S.C.A. 450c(b), 450d, 450e, 450f(c) and (d), 450i, 450j(k) and (l), 450j-1(a) through (k), and 450n] 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.

{Pub. L. 93-638, Title V, § 516, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 729}

SEC. 517. REGULATIONS. [25 U.S.C.A. 458aaa-16]

(a) In General.

(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 [5 U.S.C.A. §561 et seq.], to negotiate and promulgate such regulations as are necessary to carry out this title.

(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) [25 U.S.C.A. 450j(g)] and regulations promulgated under section 517 [25 U.S.C.A. 458aaa-16].

{Pub. L. 93-638, Title V, § 517, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 730}

SEC. 518. APPEALS. [25 U.S.C.A. 458aaa-17] 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.

{Pub. L. 93-638, Title V, § 518, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 730}

SEC. 519. AUTHORIZATION OF APPROPRIATIONS. [25 U.S.C.A. 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.

{Pub. L. 93-638, Title V, § 519, as added Pub. L. 106-260, § 4, August 18, 2000, 114 stat. 731}

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

SEC. 601. DEFINITIONS.

(a) In General. In this title, the Secretary may apply the definitions contained in title V.

(b) Other Definitions. In this title:

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

(2) Secretary. The term 'Secretary' means the Secretary of Health and Human Services.

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—

(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.

{Pub. L. 93-638, Title VI, as added Pub. L. 106-260, § 4, August 18, 2000,  
114 Stat. 731 and 732}

**RELATED PROVISIONS not a part of Pub. Law 93-638, as Amended**

Title II of Pub. Law 100-472, approved Oct. 5, 1988, also included these provisions:

**Sec. 210 SAVINGS PROVISIONS** - Nothing in this Act (Pub. Law 100-472) 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.

**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.

Title II of Pub. Law 103-413, approved Oct. 25, 1994, also included these provisions in Title II - Self-Governance:

**Sec. 201. SHORT TITLE.**

This title may be cited as the 'Tribal Self-Governance Act of 1994'.

**Sec. 202. FINDINGS.**

Congress finds that -

(1) the tribal right of self-governance 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 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 was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management; and

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

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

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

### **Sec. 203. DECLARATION OF POLICY.**

It is the policy of this title to permanently establish and implement tribal self-governance -

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

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

(3) to coexist with the provisions of the Indian Self-Determination Act relating to the provision of Indian services by designated Federal agencies;

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

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

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

**Sec. 204. TRIBAL SELF-GOVERNANCE.**

**[Added Title IV to Pub. Law 93-638]**

**Section 22(b) of Pub. Law 103-435, approved Nov. 2, 1994 provides as follows:**

(b) Advisory Committees. The Indian Self-Determination and Education Assistance Act Amendments of 1990 (title II of Pub. Law 101-644) is amended by adding at the end the following new section:

“SEC. 204. TRIBAL AND FEDERAL ADVISORY COMMITTEES.

“Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638).”



## SELECTED INTERGOVERNMENTAL PROVISIONS

Title 5, United States Code  
Part III - Employees  
Subpart B - Employment and Retention  
Chapter 33 - Examination, Selection, and Placement  
Subchapter VI - Assignments to and from States

### 5 U.S.C. 3371. Definitions

For purposes of this subchapter-

\*\*\*

(2) “local government” means -

(A) \*\*\*

(B) \*\*\*

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in 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 and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act.

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{Added by: § 402 (a) of Pub. Law 91-648 (84 Stat. 1920) Jan. 5, 1971;  
§ 105(a) of Pub. Law 93-638 (88 Stat. 2203) Jan. 4, 1975; § 603(a) of  
Pub. Law 95-454, Oct. 13, 1978; § 203(a), (b) of Pub. Law 100-472,  
Oct. 5, 1988; § 2(c) of Pub. Law 101-301, May 24, 1990}

5 U.S.C. 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of -

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter, (FOOTNOTE 1) the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. 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.

(b) \*\*\*

(c) (1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by

the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(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.

{Added by Title IV, § 402(a) of Pub. Law 91-648 (84 Stat. 1921) Jan. 5, 1971; Title I, § 104(k)(1) of Pub. Law 93-638; title II, § 203(f) of Pub. Law 100-472 (102 Stat. 2290) Oct. 5, 1988; title VI, § 603(b), (c) of Pub. Law 95-454, (92 Stat. 1190) Oct. 13, 1978; title II of Pub. Law 98-146 (97 Stat. 946) Nov. 4, 1983}

#### 5 U.S.C. 3373. Assignment of Employees to State and Local Governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either -

- (1) on detail to a regular work assignment in his agency;
- or
- (2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay -

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes -

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title. However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his

beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d) (1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not -

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.

{Added by title IV, § 402(a) of Pub. Law 91-648 (84 Stat. 1921) Jan. 5, 1971;  
and amended by title VI, § 603(b) and title IX, § 906(a)(2), of Pub. Law 93-454;  
(92 Stat. 1190, 1224) Oct. 13, 1978}

5 U.S.C. 3375. Travel Expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with -

(1) subchapter I of chapter 57 of this title, for the expenses of -

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)( 1 ) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is

shorter, unless .separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

{Added by title IV, § 402(a) of Pub. Law 91--648 (84 Stat. 1924), and amended by title VI, § 603(b), (c) of Pub. Law 95-454 (92 Stat. 1190, 1191) Oct. 13, 1 978}

## Endnotes

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These endnotes include amendments and clarifications to the Indian Self-Determination and Education Assistance Act (Act) [Pub. L. 93-638, as amended]. It is important to note that oftentimes modifications or amendments to the Act are accomplished through annual appropriation acts and are effective only for the duration of that particular appropriation cycle. Occasionally, however, appropriations provisions will have a permanent effect on the Act. Both types of provisions are included here or in footnotes throughout the Act.

### **i EXECUTIVE ORDER NO. 13084**

Ex. Ord. No. 13084, May 14, 1998, 63 F.R. 27655, which provided for agencies to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities, to reduce the imposition of unfunded mandates upon Indian tribal governments, and to streamline the application process for and increase the availability of waivers to Indian tribal governments, was revoked, effective 60 days after Nov. 6, 2000, by Ex. Ord. No. 13175, Sec. 9(c), Nov. 6, 2000, 65 F.R. 67251, set out below.

### **EX. ORD. NO. 13175. CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS**

Ex. Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.



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Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

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Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

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Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review) [5 U.S.C. 601 note], Executive Order 12988 (Civil Justice Reform) [28 U.S.C. 519 note], OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out below].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism) [5 U.S.C. 601 note].

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(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton.

**GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS**

Memorandum of President of the United States, Apr. 29, 1994, 59 F.R. 22951, provided:

Memorandum for the Heads of Executive Departments and Agencies. The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

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(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") [former 5 U.S.C. 601 note] and 12866 ("Regulatory Planning and Review") [5 U.S.C. 601 note] to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities. The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements. This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton.

ii **Limitations in Alaska**

*Public Law 105-83, § 325, Public Law 105-277, § 351, and Public Law 106-260, § 12, have substantively altered the rights of tribes in Alaska to enter agreements under the Indian Self-Determination and Education Assistance Act for the provision of health care programs.*

*Public Law 105-83, § 325, provides:*

**“Sec. 325 (a)** Notwithstanding any other provision of law, and except as provided in this section, the Aleutian/Pribilof Islands Association, Inc., Bristol Bay Area Health Corporation, Chugachmiat, Copper River Native Association, Kodiak Area Native Association, Maniilaq Association, Metlakatla Indian Community, Arctic Slope Native Association, Ltd., Norton Sound Health Corporation, Southcentral Foundation, Southeast Alaska Regional Health Consortium, Tanana Chiefs Conference, Inc., and Yukon-Kuskokwim Health Corporation (hereafter “regional health entities”), without further resolutions from the Regional Corporations, Village Corporations, Indian Reorganization Act Councils, tribes and/or villages which they represent are authorized to form a consortium (hereinafter “the Consortium”) to enter into contracts, compacts, or funding agreements under Public Law 93-638 (25 U.S.C.A. § 450 et seq.), as amended, to provide all statewide health services provided by the Indian Health Service of the Department of Health and Human Services through the Alaska Native Medical Center and the Alaska Area Office. Each specified “regional health entity” shall maintain that status for purposes of participating in the consortium only so long as it operates a regional health program for the Indian

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Health Service under Public Law 93-638 (25 U.S.C.A. § 450 et seq.), as amended.

**(b)** The Consortium shall be governed by a 15-member Board of Directors, which shall be composed of one representative of each regional health entity listed in subsection (a) above, and two in 25 U.S.C.A. § 450(e), and sub-regional tribal organizations which operate health programs not affiliated with the regional health entities listed in subsection (a) above and Indian tribes not receiving health services from any tribal, regional or sub-regional provider. Each member of the Board of Directors shall be entitled to cast one vote. Decisions of the Board of Directors shall be made by consensus whenever possible, and by majority vote in the event that no consensus can be reached. The Board of Directors shall establish at its first meeting its rules of procedure, which shall be published and made available to all members.

**(c)** The statewide health services (including any programs, functions, services and activities provided as part of such services) of the Alaska Native Medical Center and the Alaska Area Office may only be provided by the Consortium. Statewide health services for purposes of this section shall consist of all programs, functions, services, and activities provided by or through the Alaska Native medical center and the Alaska Area Office, not under contract or other funding agreement with any other tribe or tribal organization as of October 1, 1997, except as provided in subsection (d) below. All statewide health services provided by the Consortium under this section shall be provided pursuant to contracts or funding agreements entered into by the Consortium under Public Law 93-638 (25 U.S.C.A. 450 et seq.), as amended, and for such purposes as defined in section 4(h) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.A. § 450b(h)).

**(d)** Cook Inlet Region, Inc., through Southcentral Foundation (or any successor health care entity designated by Cook Inlet Region, Inc.) pursuant to Public Law 93-638 (25 U.S.C.A. § 450 et seq.), as amended, is hereby authorized to enter into contracts or funding agreements under such Public law for all services provided at or through the Alaska Native Primary Care Center or other satellite clinics in Anchorage or the Matanuska- Susitna Valley without submission of any further authorizing resolutions from any other Alaska Native Region, village corporation, Indian Reorganization Act council, or tribe, no matter where located. Services provided under this paragraph shall, at a minimum, maintain the level of statewide and Anchorage Service Unit services provided at the Alaska Native Primary Care Center as of October 1, 1997, including necessary related services performed at the Alaska Native Medical Center. In addition, Cook Inlet Region, Inc., through Southcentral Foundation, or any lawfully designated health care entity of Cook Inlet Region, Inc., shall contract or enter into a funding agreement under Public Law 93-638 (25 U.S.C.A. § 450 et seq.), as amended, for all primary care services provided by the Alaska Native Medical Center, including, but not limited to, family medicine, primary care internal medicine, pediatrics, obstetrics and gynecology, physical therapy, psychiatry, emergency services, public health nursing, health education, optometry, dentistry, audiology, social services, pharmacy, radiology, laboratory and biomedical, and administrative support for these programs, functions, services and activities. Cook Inlet Region, Inc., through Southcentral Foundation, or any lawfully designated health care entity of Cook Inlet Region, Inc., may provide additional health care services at the Alaska Native Medical Center if such use and services are provided pursuant to an agreement with the

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consortium. All services covered by this subsection shall be provided on a nondiscriminatory basis without regard to residency within the Municipality of Anchorage.”

*Public Law 105-277, § 351, precludes expending funds for Indian Self-Determination and Education Assistance Act agreements with Alaska native villages or village corporations through FY-2001. The rights of villages or village corporations to renew agreements entered into prior to August 27, 1997 is not impaired. The provision reads:*

**“Sec. 351 (a)** Notwithstanding any other provision of law, prior to September 30, 2001 the Indian Health Service may not disburse funds for the provision of health care services pursuant to Public Law 93-638 (25 U.S.C.A. § 450 et seq.), as amended, with any Alaska native village or Alaska Native village corporation that is located within the area served by the Alaska Native regional health entity.

**(b)** Nothing in this section shall be construed to prohibit the disbursal of funds to any Alaska native village or Alaska Native village corporation under any contract or compact entered into prior to August 27, 1997, or to prohibit the renewal of any such agreement.”

*Public Law 105-143, Title II, as amended, provides:*

**“Title II – Limitation On Health Care Contracts And Compacts For The Ketchikan Gateway Borough**

**Sec. 201 Findings.** Congress finds that –

**(1)** the execution of more than one contract or compact between an Alaska Native village or regional or village corporation in the Ketchikan Gateway Borough and the Secretary to provide for health care services in an area with a small population leads to duplicative and wasteful administrative costs; and

**(2)** incurring the wasteful costs referred to in paragraph (1) leads to decrease in quality of health care that is provided to Alaska Natives in an affected area.

**Sec. 202 Definitions.** In this title:

**(1) Alaska Native -** The term “Alaska Native” has the meaning given the term “Native” in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1602(b)).

**(2) Alaska Native Village or Regional or Village Corporation -** The term “Alaska Native village or regional or village corporation” means an Alaska Native village or regional or village corporation defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601 et seq.).

**(3) Contract; Compact -** The terms “contract” and “compact” mean a self-determination contract and a self-governance compact as these terms are defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C.A. § 450 et seq.).

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**(4) Secretary** - The term "Secretary" means the Secretary of Health and Human Services.

**Sec. 203 Limitation.**

**(a) In General** - The Secretary shall take such action as may be necessary to ensure that, in considering a renewal of a contract or compact, or signing of a new contract or compact for the provision of health care services in the Ketchikan Gateway Borough other than community based alcohol services, there will be only one contract or compact in effect. Notwithstanding any other provision of law, such contract or compact shall provide services to all Indian and Alaska Native beneficiaries of the Indian Health Service in the Ketchikan Gateway Borough without need for resolutions of support from any Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C.A. § 450b(e)).

**(b) Consideration** - In any case in which the Secretary, acting through the Director of the Indian Health Service, is required to select from more than 1 application for a contract or compact described in subsection (a), in awarding the contract or compact, the Secretary shall take into consideration –

- (1)** the ability and experience of the applicant;
- (2)** the potential for the applicant to acquire and develop the necessary ability; and
- (3)** the potential for growth in the health care needs of the covered borough.”

*Public Law 106-260 § 12 provides:*

**(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.

<sup>iii</sup> **Public Law 106-291** prohibits the BIA from distributing central office funds or pooled overhead funds in FY-2001 Indian Self-Determination and Education Assistance Act agreements. (H.R. Report 106-914 at section 16 (September 29, 2000)) For FY-2001, this provision appears to repeal by implication the Indian Self-Determination and Education Assistance Act provision that tribes and tribal organizations have the right to



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enter agreements to assume central office funds and functions. The provision in Public Law 106-291, is as follows:

“Notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs for central office operations; pooled overhead general administration (*except facilities operations and maintenance*), ... shall be available for tribal contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103-413).”

Department of the Interior FY-2006 Appropriation Act (Pub.L. 109-54) Administrative Provision. Provides as follows:

“Notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs for central office operations or pooled overhead general administration (*except facilities operations and maintenance*) shall be available for tribal contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103-413).”

#### **iv Indian Tribal Tort Claims and Risk Management**

Pub. L. 105-277, div. A, Sec. 101(e) [title VII], Oct. 21, 1998, 112 Stat. 2681-231, 2681-335, provided that:

“SEC. 701. SHORT TITLE.

“This title may be cited as the ‘Indian Tribal Tort Claims and Risk Management Act of 1998.’”

“SEC. 702. FINDINGS AND PURPOSE.

“(a) Findings.--Congress finds that--

“(1) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

“(2) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

“(3) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

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“(4) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

“(b) Purpose.--The purpose of this title is to provide for a study to facilitate relief for a person who is injured as a result of an official action of a tribal government.

“SEC. 703. DEFINITIONS.

“In this title:

“(1) Indian tribe.--The term ‘Indian tribe’ has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

“(2) Secretary.--The term ‘Secretary’ means the Secretary of the Interior.

“(3) Tribal organization.--The term ‘tribal organization’ has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

“SEC. 704. STUDY AND REPORT TO CONGRESS.

“(a) In General.--

“(1) Study.--In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance to Indian tribes is cost-effective, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

“(2) Contents of study.--The study conducted under this subsection shall include--

“(A) an analysis of loss data;

“(B) risk assessments;

“(C) projected exposure to liability, and related matters;

and

“(D) the category of risk and coverage involved, which may include--

“(i) general liability;

“(ii) automobile liability;

“(iii) the liability of officials of the Indian tribe;

“(iv) law enforcement liability;

“(v) workers' compensation; and

“(vi) other types of liability contingencies.

“(3) Assessment of coverage by categories of risk.--For each Indian tribe, for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance coverage or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

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“(b) Report.--Not later than June 1, 1999, and annually thereafter, the Secretary shall submit a report to Congress that contains legislative recommendations that the Secretary determines to--

“(1) be appropriate to improve the provision of insurance coverage to Indian tribes; or

“(2) otherwise achieve the purpose of providing relief to persons who are injured as a result of an official action of a tribal government.

“SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out this title.”

**Claims Resulting From Performance of Contract, Grant Agreement, or Cooperative Agreement; Civil Action Against Tribe, Tribal Organization, Etc., Deemed Action Against United States; Reimbursement of Treasury for Payment of Claims**

Pub. L. 101-512, title III, Sec. 314, Nov. 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, title III, Sec. 308, Nov. 11, 1993, 107 Stat. 1416, provided that: “With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter, or claims asserted after September 30, 1990, but resulting from the performance of functions prior to fiscal year 1991, under a contract, grant agreement, or any other agreement or compact authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) [Pub. L. 93-638, see Short Title note set out under section 450 of this title and Tables] or by title V, part B, Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501 et seq.), an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior or the Indian Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Bureau or Service while acting within the scope of their employment in carrying out the contract or agreement: Provided, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act [28 U.S.C. 1346(b), 2671 et seq.]: Provided further, That beginning with the fiscal year ending September 30, 1991, and thereafter, the appropriate Secretary shall request through annual appropriations funds sufficient to reimburse the Treasury for any claims paid in the prior fiscal year pursuant to the foregoing provisions: Provided further, That nothing in this section shall in any way affect the provisions of section 102(d) of the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) [25 U.S.C. 450f(d)].”

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**v Ex. Ord. No. 11899. Providing for Protection of Certain Civil Service Employment Rights of Federal Personnel Who Leave Federal Employment To Be Employed by Tribal Organizations**

Ex. Ord. No. 11899, Jan. 26, 1976, 41 F.R. 3459, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 105(i) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2210, 25 U.S.C. 450i), section 3301 of title 5 of the United States Code, section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. The Office of Personnel Management is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, but after consultation with the Department of the Interior and the Department of Health and Human Services, the authority vested in the President by Section 105(i) of the Indian Self-Determination and Education Assistance Act [subsec. (i) of this section] (hereinafter referred to as the Act), to issue regulations necessary to carry out the provisions of subsections (e) (2), (e) (3), (e) (4), (f), (g) and (h) of section 105 of the act [subsecs. (e) (2), (3), (4), (f), (g), and (h) of this section], to carry out the provisions of subsection (e) (1) of section 105 of the act [subsec. (e) (1) of this section]

**vi Public law 109-54, General Provisions, Department of the Interior:**

SEC. 109. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to redistribute any Tribal Priority Allocation funds, including tribal base funds, to alleviate tribal funding inequities by transferring funds to address identified, unmet needs, dual enrollment, overlapping service areas or inaccurate distribution methodologies. No tribe shall receive a reduction in Tribal Priority Allocation funds of more than 10 percent in fiscal year 2006. Under circumstances of dual enrollment, overlapping service areas or inaccurate distribution methodologies, the 10 percent limitation does not apply.

Public Law 109-54, Administrative Provisions: In the event any tribe returns appropriations made available by this Act to the Bureau of Indian Affairs for distribution to other tribes, this action shall not diminish the Federal Government's trust responsibility to that tribe, or the government-to-government relationship between the United States and that tribe, or that tribe's ability to access future appropriations.

**vii Public Law 109-54 Title IV—General Provisions:**

SEC. 409. Notwithstanding any other provision of law, amounts appropriated to or earmarked in committee reports for the Bureau of Indian Affairs and the Indian Health Service by Public Laws 103-138, 103-332, 104-134, 104-208, 105-83, 105-277, 106-113, 106-291, 107-63, 108-7, 108-108, and 108-447 for payments to tribes and tribal organizations for contract support costs associated with self-determination or self-governance contracts, grants, compacts, or annual funding agreements with the Bureau of Indian Affairs or the Indian Health Service as funded by such Acts, are the total amounts available for fiscal years 1994 through 2005 for such purposes, except that,

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for the Bureau of Indian Affairs, tribes and tribal organizations may use their tribal priority allocations for unmet contract support costs of ongoing contracts, grants, self-governance compacts or annual funding agreements.