

103^D CONGRESS
2^D SESSION

H. R. 4842

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, SEPTEMBER 12), 1994

Received

AN ACT

To specify the terms of contracts entered into by the United States and Indian tribal organizations under the Indian Self-Determination and Education Assistance Act, and to provide for tribal Self-Governance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Self-Determina-
5 tion Act Amendments of 1994”.

6 **TITLE I—INDIAN SELF-DETER-**
7 **MINATION ACT CONTRACTS**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Indian Self-Deter-
10 mination Contract Reform Act of 1994”.

1 **SEC. 102. GENERAL AMENDMENTS.**

2 The Indian Self-Determination and Education Assist-
3 ance Act (25 U.S.C. 450 et seq.) is amended—

4 (1) in section 4—

5 (A) in subsection (g), by striking “indirect
6 costs rate” and inserting “indirect cost rate”;

7 (B) by striking “and” at the end of sub-
8 section (k);

9 (C) by striking the period at the end of
10 subsection (l) and inserting “; and”; and

11 (D) by adding at the end the following new
12 subsection:

13 “(m) ‘construction contract’ means a fixed-price or
14 cost-reimbursement self-determination contract for a con-
15 struction project, except that such term does not include
16 any contract—

17 “(1) that is limited to providing planning serv-
18 ices and construction management services (or a
19 combination of such services);

20 “(2) for the Housing Improvement Program or
21 roads maintenance program of the Bureau of Indian
22 Affairs administered by the Secretary of the Inte-
23 rior; or

24 “(3) for the health facility maintenance and im-
25 provement program administered by the Secretary of
26 Health and Human Services.”;

1 (2) by striking subsection (f) of section 5 and
2 inserting the following new subsection:

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

10 “(2) In addition to submitting a single-agency audit
11 report pursuant to paragraph (1), a tribal organization re-
12 ferred to in such paragraph shall submit such additional
13 information concerning the conduct of the program, func-
14 tion, service, or activity carried out pursuant to the con-
15 tract or grant that is the subject of the report as the tribal
16 organization may negotiate with the Secretary.

17 “(3) Any disagreement over reporting requirements
18 shall be subject to the declination criteria and procedures
19 set forth in section 102.”;

20 (3) in section 7(a), by striking “of subcontrac-
21 tors” and inserting in lieu thereof “or subcontrac-
22 tors (excluding tribes and tribal organizations)”;

23 (4) at the end of section 7, add the following
24 new subsection:

1 “(c) Notwithstanding subsections (a) and (b), with
2 respect to any self-determination contract, or portion of
3 a self-determination contract, that is intended to benefit
4 one tribe, the tribal employment or contract preference
5 laws adopted by such tribe shall govern with respect to
6 the administration of the contract or portion of the con-
7 tract.”;

8 (5) at the end of section 102(a)(1), add the fol-
9 lowing new flush sentence:

10 “The programs, functions, services, or activities that are
11 contracted under this paragraph shall include administra-
12 tive functions of the Department of the Interior and the
13 Department of Health and Human Services (whichever is
14 applicable) that support the delivery of services to Indians,
15 including those administrative activities supportive of, but
16 not included as part of, the service delivery programs de-
17 scribed in this paragraph that are otherwise contractable.
18 The administrative functions referred to in the preceding
19 sentence shall be contractable without regard to the orga-
20 nizational level within the department that carries out
21 such functions.”;

22 (6) in section 102(a)—

23 (A) in paragraph (2)—

24 (i) in the first sentence, by inserting

25 “, or a proposal to amend or renew a self-

1 determination contract,” before “to the
2 Secretary for review”;

3 (ii) in the second sentence—

4 (I) by striking “The” and insert-
5 ing “Subject to the provisions of para-
6 graph (4), the”;

7 (II) by inserting “and award the
8 contract” after “approve the pro-
9 posal”;

10 (III) by striking “, within sixty
11 days of receipt of the proposal,”; and

12 (IV) by striking “a specific find-
13 ing is made that” and inserting “the
14 Secretary provides written notification
15 to the applicant that contains a spe-
16 cific finding that clearly demonstrates
17 that, or that is supported by a con-
18 trolling legal authority that”;

19 (iii) in subparagraph (B), by striking
20 “or” after the semicolon;

21 (iv) in subparagraph (C), by striking
22 the period at the end and inserting a semi-
23 colon;

24 (v) by adding at the end the following
25 new subparagraphs:

1 “(D) the amount of funds proposed under
2 the contract is in excess of the applicable fund-
3 ing level for the contract, as determined under
4 section 106(a); or

5 “(E) the program, function, service, or ac-
6 tivity (or portion thereof) that is the subject of
7 the proposal is beyond the scope of programs,
8 functions, services, or activities covered under
9 paragraph (1) because the proposal includes ac-
10 tivities that cannot lawfully be carried out by
11 the contractor.”; and

12 (vi) by adding at the end of the para-
13 graph the following new flush material:

14 “Notwithstanding any other provision of law, the Sec-
15 retary may extend or otherwise alter the 90-day period
16 specified in the second sentence of this subsection, if be-
17 fore the expiration of such period, the Secretary obtains
18 the voluntary and express written consent of the tribe or
19 tribal organization to extend or otherwise alter such pe-
20 riod. The contractor shall include in the proposal of the
21 contractor the standards under which the tribal organiza-
22 tion will operate the contracted program, service, function,
23 or activity, including in the area of construction, provi-
24 sions regarding the use of licensed and qualified archi-
25 tects, applicable health and safety standards, adherence

1 to applicable Federal, State, local, or tribal building codes
2 and engineering standards. The standards referred to in
3 the preceding sentence shall ensure structural integrity,
4 accountability of funds, adequate competition for sub-
5 contracting under tribal or other applicable law, the com-
6 mencement, performance, and completion of the contract,
7 adherence to project plans and specifications (including
8 any applicable Federal construction guidelines and manu-
9 als), the use of proper materials and workmanship, nec-
10 essary inspection and testing, and changes, modifications,
11 stop work, and termination of the work when warranted.”;
12 and

13 (B) by adding at the end the following new
14 paragraph:

15 “(4) The Secretary shall approve any severable por-
16 tion of a contract proposal that does not support a declina-
17 tion finding described in paragraph (2). If the Secretary
18 determines under such paragraph that a contract pro-
19 posal—

20 “(A) proposes in part to plan, conduct, or ad-
21 minister a program, function, service, or activity
22 that is beyond the scope of programs covered under
23 paragraph (1), or

1 “(B) proposes a level of funding that is in ex-
2 cess of the applicable level determined under section
3 106(a),
4 subject to any alteration in the scope of the proposal that
5 the Secretary and the tribal organization agree to, the
6 Secretary shall, as appropriate, approve such portion of
7 the program, function, service, or activity as is authorized
8 under paragraph (1) or approve a level of funding author-
9 ized under section 106(a). If a tribal organization elects
10 to carry out a severable portion of a contract proposal pur-
11 suant to this paragraph, subsection (b) shall only apply
12 to the portion of the contract that is declined by the Sec-
13 retary pursuant to this subsection.”;

14 (7) in section 102(b)(3)—

15 (A) by inserting after “record” the follow-
16 ing: “with the right to engage in full discovery
17 relevant to any issue raised in the matter”; and

18 (B) by inserting before the period the fol-
19 lowing: “, except that the tribe or tribal organi-
20 zation may, in lieu of filing such appeal, exer-
21 cise the option to initiate an action in a Federal
22 district court and proceed directly to such court
23 pursuant to section 110(a)”;

24 (8) in section 102(d), by striking “as provided
25 in section 2671 of title 28)” and inserting “as pro-

1 vided in section 2671 of title 28, United States
2 Code, and including an individual who provides
3 health care services pursuant to a personal services
4 contract with a tribal organization for the provision
5 of services in any facility owned, operated, or con-
6 structed under the jurisdiction of the Indian Health
7 Service)”;

8 (9) by adding at the end of section 102 the fol-
9 lowing new subsection:

10 “(e)(1) With respect to any hearing or appeal con-
11 ducted pursuant to subsection (b)(3), the Secretary shall
12 have the burden of proof to establish by clearly dem-
13 onstrating the validity of the grounds for declining the
14 contract proposal (or portion thereof).

15 “(2) Notwithstanding any other provision of law, a
16 decision by an official of the Department of the Interior
17 or the Department of Health and Human Services, as ap-
18 propriate (referred to in this paragraph as the ‘Depart-
19 ment’) that constitutes final agency action and that relates
20 to an appeal within the Department that is conducted
21 under subsection (b)(3) shall be made either—

22 “(A) by an official of the Department who holds
23 a position at a higher organizational level within the
24 Department than the level of the departmental agen-
25 cy (such as the Indian Health Service or the Bureau

1 of Indian Affairs) in which the decision that is the
2 subject of the appeal was made; or

3 “(B) by an administrative judge.”;

4 (10) by striking subsection (a) of section 105
5 and inserting the following new subsection:

6 “(a)(1) Notwithstanding any other provision of law,
7 subject to paragraph (3), the contracts and cooperative
8 agreements entered into with tribal organizations pursu-
9 ant to section 102 shall not be subject to Federal contract-
10 ing or cooperative agreement laws (including any regula-
11 tions), except to the extent that such laws expressly apply
12 to Indian tribes.

13 “(2) Program standards applicable to a nonconstruc-
14 tion self-determination contract shall be set forth in the
15 contract proposal and the final contract of the tribe or
16 tribal organization.

17 “(3)(A) With respect to a construction contract (or
18 a subcontract of such a construction contract), the provi-
19 sions of the Office of Federal Procurement Policy Act (41
20 U.S.C. 401 et seq.) and the regulations relating to acquisi-
21 tions promulgated under such Act shall apply only to the
22 extent that the application of such provision to the con-
23 struction contract (or subcontract) is—

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

1 “(ii) directly related to the construction activity;

2 and

3 “(iii) not inconsistent with this Act.

4 “(B) A list of the Federal requirements that meet
5 the requirements of clauses (i) through (iii) of subpara-
6 graph (A) shall be included in an attachment to the con-
7 tract pursuant to negotiations between the Secretary and
8 the tribal organization.

9 “(C)(i) Except as provided in subparagraph (B), no
10 Federal law listed in clause (ii) or any other provision of
11 Federal law (including an Executive order) relating to ac-
12 quisition by the Federal Government shall apply to a con-
13 struction contract that a tribe or tribal organization enters
14 into under this Act, unless expressly provided in such law.

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

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

18 “(II) Section 3709 of the Revised Statutes.

19 “(III) Section 9(c) of the Act of Aug. 2, 1946
20 (60 Stat. 809, chapter 744).

21 “(IV) Title III of the Federal Property and Ad-
22 ministrative Services Act of 1949 (63 Stat. 393 et
23 seq., chapter 288).

24 “(V) Section 13 of the Act of Oct. 3, 1944 (58
25 Stat. 770; chapter 479).

1 “(VI) Chapters 21, 25, 27, 29, and 31 of title
2 44, United States Code.

3 “(VII) Section 2 of the Act of June 13, 1934
4 (48 Stat 948, chapter 483).

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

7 “(IX) The Service Control Act of 1965 (41
8 U.S.C. 351 et seq.).

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

11 “(XI) Executive Order Nos. 12138, 11246,
12 11701 and 11758.”;

13 (11) by striking subsection (e) and inserting the
14 following new subsection:

15 “(e) If an Indian tribe, or a tribal organization au-
16 thorized by a tribe, requests retrocession of the appro-
17 priate Secretary for any contract or portion of a contract
18 entered into pursuant to this Act, unless the tribe or tribal
19 organization rescinds the request for retrocession, such
20 retrocession shall become effective on—

21 “(1) the earlier of—

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

1 “(B) the date on which the contract ex-
2 pires; or

3 “(2) such date as may be mutually agreed by
4 the Secretary and the Indian tribe.”;

5 (12) by striking paragraph (2) of section 105(f)
6 and inserting the following new paragraph:

7 “(2) donate to an Indian tribe or tribal organi-
8 zation title to any personal or real property found to
9 be excess to the needs of the Bureau of Indian Af-
10 fairs, the Indian Health Service, or the General
11 Services Administration, except that—

12 “(A) subject to the provisions of subpara-
13 graph (B), title to property and equipment fur-
14 nished by the Federal Government for use in
15 the performance of the contract or purchased
16 with funds under any self-determination con-
17 tract or grant agreement shall, unless otherwise
18 requested by the tribe or tribal organization,
19 vest in the appropriate tribe or tribal organiza-
20 tion;

21 “(B) if property described in subparagraph
22 (A) has a value in excess of \$5,000 at the time
23 of the retrocession, rescission, or termination of
24 the self-determination contract or grant agree-
25 ment, at the option of the Secretary, upon the

1 retrocession, rescission, or termination, title to
2 such property and equipment shall revert to the
3 Department of the Interior or the Department
4 of Health and Human Services, as appropriate;
5 and

6 “(C) all property referred to in subpara-
7 graph (A) shall remain eligible for replacement
8 on the same basis as if title to such property
9 were vested in the United States; and”;

10 (13) by adding at the end of section 105 the
11 following new subsections:

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

22 “(2) Nothing in this title shall be construed to limit
23 or reduce in any way the funding for any program, project,
24 or activity serving a tribe under this or other applicable
25 Federal law. Any tribe or tribal organization that alleges

1 that a self-determination contract is in violation of this
2 section may apply the provisions of section 110.

3 “(j) Upon providing notice to the Secretary, a tribal
4 organization that carries out a nonconstruction self-deter-
5 mination contract may propose a redesign of a program,
6 activity, function, or service carried out by the tribal orga-
7 nization under the contract, including any nonstatutory
8 program standard, in such manner as to best meet the
9 local geographic, demographic, economic, cultural, health,
10 and institutional needs of the Indian people and tribes
11 served under the contract. The Secretary shall evaluate
12 any proposal to redesign any program, activity, function,
13 or service provided under the contract. With respect to de-
14 clining to approve a redesigned program, activity, func-
15 tion, or service under this subsection, the Secretary shall
16 apply the criteria and procedures set forth in section 102.

17 “(k) For purposes of section 201(a) of the Federal
18 Property and Administrative Services Act of 1949 (40
19 U.S.C. 481(a)) (relating to Federal sources of supply, in-
20 cluding lodging providers, airlines and other transpor-
21 tation providers), a tribal organization carrying out a con-
22 tract, grant, or cooperative agreement under this Act shall
23 be deemed an executive agency when carrying out such
24 contract, grant, or agreement and the employees of the
25 tribal organization shall be eligible to have access to such

1 sources of supply on the same basis as employees of an
2 executive agency have such access.

3 “(l)(1) Upon the request of an Indian tribe or tribal
4 organization, the Secretary shall enter into a lease with
5 the Indian tribe or tribal organization that holds title to,
6 a leasehold interest in, or a trust interest in, a facility
7 used by the Indian tribe or tribal organization for the ad-
8 ministration and delivery of services under this Act.

9 “(2) The Secretary shall compensate each Indian
10 tribe or tribal organization that enters into a lease under
11 paragraph (1) for the use of the facility leased for the pur-
12 poses specified in such paragraph. Such compensation
13 may include rent, depreciation based on the useful life of
14 the facility, principal and interest paid or accrued, oper-
15 ation and maintenance expenses, and such other reason-
16 able expenses that the Secretary determines, by regula-
17 tion, to be allowable.

18 “(m)(1) Each construction contract requested, ap-
19 proved, or awarded under this Act shall be subject to—

20 “(A) except as otherwise provided in this Act,
21 the provisions of this Act, other than sections
22 102(a)(2), 106(l), 108 and 109; and

23 “(B) section 314 of the Department of the In-
24 terior and Related Agencies Appropriations Act,
25 1991 (104 Stat. 1959).

1 “(2) In providing technical assistance to tribes and
2 tribal organizations in the development of construction
3 contract proposals, the Secretary shall provide, not later
4 than 30 days after receiving a request from a tribe or trib-
5 al organization, all information available to the Secretary
6 regarding the construction project, including construction
7 drawings, maps, engineering reports, design reports, plans
8 of requirements, cost estimates, environmental assess-
9 ments or environmental impact reports, and archaeological
10 reports.

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

17 “(A) The provision of technical assistance pur-
18 suant to section 103 and paragraph (2).

19 “(B) A joint scoping session between the Sec-
20 retary and the tribe or tribal organization to review
21 all plans, specifications, engineering reports, cost es-
22 timates, and other information available to the par-
23 ties, for the purpose of identifying all areas of agree-
24 ment and disagreement.

1 “(C) An opportunity for the Secretary to revise
2 the plans, designs, or cost estimates of the Secretary
3 in response to concerns raised, or information pro-
4 vided by, the tribe or tribal organization.

5 “(D) A negotiation session during which the
6 Secretary and the tribe or tribal organization shall
7 seek to develop a mutually agreeable contract pro-
8 posal.

9 “(E) Upon the request of the tribe or tribal or-
10 ganization, the use of an alternative dispute resolu-
11 tion mechanism to seek resolution of all remaining
12 areas of disagreement pursuant to the dispute reso-
13 lution provisions under subchapter IV of chapter 5
14 of title 5, United States Code.

15 “(F) The submission to the Secretary by the
16 tribe or tribal organization of a final contract pro-
17 posal pursuant to section 102(a).

18 “(4)(A) Subject to subparagraph (B), in funding a
19 fixed-price construction contract pursuant to section
20 106(a), the Secretary shall provide for the following:

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

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

6 “(B) In establishing a contract budget for a construc-
7 tion project, the Secretary shall not be required to sepa-
8 rately identify the components described in clauses (i) and
9 (ii) of subparagraph (A).

10 “(C) The total amount awarded under a construction
11 contract shall reflect an overall fair and reasonable price
12 to the parties, including the following costs:

13 “(i) The reasonable costs to the tribal organiza-
14 tion of performing the contract, taking into consider-
15 ation the terms of the contract and the requirements
16 of this Act and any other applicable law.

17 “(ii) The costs of preparing the contract pro-
18 posal and supporting cost data.

19 “(iii) The costs associated with auditing the
20 general and administrative costs of the tribal organi-
21 zation associated with the management of the con-
22 struction contract.

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

1 “(v) If the Secretary and the tribe or tribal or-
2 ganization are unable to develop a mutually agree-
3 able construction contract proposal pursuant to the
4 procedures set forth in this subsection, the tribe or
5 tribal organization may submit a final contract pro-
6 posal to the Secretary. Not later than 30 days after
7 receiving such final contract proposal, the Secretary
8 shall approve the contract proposal and award the
9 contract, unless, during such period the Secretary
10 declines the proposal pursuant to sections 102(a)(2)
11 and 102(b) of section 102 (including providing op-
12 portunity for an appeal pursuant to section 102(b)).

13 “(n) Notwithstanding any other provision of law, the
14 rental rates for housing provided to an employee by the
15 Federal Government in Alaska pursuant to a self-deter-
16 mination contract shall be determined on the basis of—

17 “(1) the reasonable value of the quarters and
18 facilities (as such terms are defined under section
19 5911 of title 5, United States Code) to such em-
20 ployee, and

21 “(2) the circumstances under which such quar-
22 ters and facilities are provided to such employee,
23 as based on the cost of comparable private rental housing
24 in the nearest established community with a year-round
25 population of 1,500 or more individuals.”;

1 (14) in section 106(a)—

2 (A) in paragraph (1), by inserting before
3 the period at the end the following: “, without
4 regard to any organizational level within the
5 Department of the Interior or the Department
6 of Health and Human Services, as appropriate,
7 at which the program, function, service, or ac-
8 tivity or portion thereof, including supportive
9 administrative functions that are otherwise con-
10 tractable, is operated”;

11 (B) in paragraph (2), by inserting after
12 “consist of” the following: “an amount for”;
13 and

14 (C) by striking paragraph (3) and insert-
15 ing the following new paragraphs:

16 “(3)(A) The contract support costs that are eligible
17 costs for the purposes of receiving funding under this Act
18 shall include the costs of reimbursing each tribal contrac-
19 tor for reasonable and allowable costs of—

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

23 “(ii) any additional administrative or other ex-
24 pense related to the overhead incurred by the tribal
25 contractor in connection with the operation of the

1 Federal program, function, service, or activity pursu-
2 ant to the contract,
3 except that such funding shall not duplicate any funding
4 provided under section 106(a)(1).

5 “(B) On an annual basis, during such period as a
6 tribe or tribal organization operates a Federal program,
7 function, service, or activity pursuant to a contract en-
8 tered into under this Act, the tribe or tribal organization
9 shall have the option to negotiate with the Secretary the
10 amount of funds that the tribe or tribal organization is
11 entitled to receive under such contract pursuant to this
12 paragraph.

13 “(4) For each fiscal year during which a self-deter-
14 mination contract is in effect, any savings attributable to
15 the operation of a Federal program, function, service, or
16 activity under a self-determination contract by a tribe or
17 tribal organization (including a cost reimbursement con-
18 struction contract) shall—

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

21 “(B) be expended by the tribe or tribal organi-
22 zation in the succeeding fiscal year, as provided in
23 section 8.

24 “(5) Subject to paragraph (6), during the initial year
25 that a self-determination contract is in effect, the amount

1 required to be paid under paragraph (2) shall include
2 startup costs consisting of the reasonable costs that have
3 been incurred or will be incurred on a one-time basis pur-
4 suant to the contract necessary—

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

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

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

16 (15) in section 106(c)—

17 (A) by striking “March 15” and inserting
18 “May 15”;

19 (B) in paragraphs (1) and (2), by striking
20 “indirect costs” each place it appears and in-
21 serting “contract support costs”;

22 (C) in paragraph (4), by striking “and” at
23 the end;

24 (D) in paragraph (5), by striking the pe-
25 riod at the end and inserting “; and”; and

1 (E) by adding at the end the following new
2 paragraph:

3 “(6) an accounting of any deficiency of funds
4 needed to maintain the preexisting level of services
5 to any tribes affected by contracting activities under
6 this Act, and a statement of the amount of funds
7 needed for transitional purposes to enable contrac-
8 tors to convert from a Federal fiscal year accounting
9 cycle to a different accounting cycle, as authorized
10 by section 105(d).”;

11 (16) in section 106(f), by inserting immediately
12 after the second sentence the following new sentence:

13 “For the purpose of determining the 365-day period
14 specified in this paragraph, an audit report shall be
15 deemed to have been received on the date of actual
16 receipt by the Secretary, if, within 60 days after re-
17 ceiving the report, the Secretary does not give notice
18 of a determination by the Secretary to reject the sin-
19 gle-agency report as insufficient due to noncompli-
20 ance with chapter 75 of title 31, United States
21 Code, or noncompliance with any other applicable
22 law.”;

23 (17) by striking subsection (g) of section 106
24 and inserting the following new subsection:

1 “(g) Upon the approval of a self-determination con-
2 tract, the Secretary shall add to the contract the full
3 amount of funds to which the contractor is entitled under
4 section 106(a), subject to adjustments for each subsequent
5 year that such tribe or tribal organization administers a
6 Federal program, function, service, or activity under such
7 contract.”;

8 (18) by striking subsection (i) of section 106
9 and inserting the following new subsection:

10 “(i) On an annual basis, the Secretary shall consult
11 with, and solicit the participation of, Indian tribes and
12 tribal organizations in the development of the budget for
13 the Indian Health Service and the Bureau of Indian Af-
14 fairs (including participation of Indian tribes and tribal
15 organizations in formulating annual budget requests that
16 the Secretary submits to the President for submission to
17 Congress pursuant to section 1105 of title 31, United
18 States Code).”; and

19 (19) by adding at the end of section 106 the
20 following new subsections:

21 “(j) Notwithstanding any other provision of law, a
22 tribal organization may use funds provided under a self-
23 determination contract to meet matching or cost participa-
24 tion requirements under other Federal and non-Federal
25 programs.

1 “(k) Without intending any limitation, a tribal orga-
2 nization may, without the approval of the Secretary, ex-
3 pend funds provided under a self-determination contract
4 for the following purposes, to the extent that the expendi-
5 ture of the funds is supportive of a contracted program:

6 “(1) Depreciation and use allowances not other-
7 wise specifically prohibited by law, including the de-
8 preciation of facilities owned by the tribe or tribal
9 organization.

10 “(2) Publication and printing costs.

11 “(3) Building, realty, and facilities costs, in-
12 cluding rental costs or mortgage expenses.

13 “(4) Automated data processing and similar
14 equipment or services.

15 “(5) Costs for capital assets and repairs.

16 “(6) Management studies.

17 “(7) Professional services, other than services
18 provided in connection with judicial proceedings by
19 or against the United States.

20 “(8) Insurance and indemnification, including
21 insurance covering the risk of loss of or damage to
22 property used in connection with the contract with-
23 out regard to the ownership of such property.

24 “(9) Costs incurred to raise funds or contribu-
25 tions from non-Federal sources for the purpose of

1 furthering the goals and objectives of the self-deter-
2 mination contract.

3 “(10) Interest expenses paid on capital expendi-
4 tures such as buildings, building renovation, or ac-
5 quisition or fabrication of capital equipment, and in-
6 terest expenses on loans necessitated due to delays
7 by the Secretary in providing funds under a con-
8 tract.

9 “(11) Expenses of a governing body of a tribal
10 organization that are attributable to the manage-
11 ment or operation of programs under this Act.

12 “(12) Costs associated with the management of
13 pension funds, self-insurance funds, and other funds
14 of the tribal organization that provide for participa-
15 tion by the Federal Government.

16 “(l) The Secretary may only suspend, withhold, or
17 delay the payment of funds for a period of 30 days begin-
18 ning on the date the Secretary makes a determination
19 under this paragraph to a tribal organization under a self-
20 determination contract, if the Secretary determines that
21 the tribal organization has failed to substantially carry out
22 the contract without good cause. In any such case, the
23 Secretary shall provide the tribal organization with rea-
24 sonable advance written notice, technical assistance (sub-
25 ject to available resources) to assist the tribal organiza-

1 tion, a hearing on the record not later than 10 days after
2 the date of such determination or such later date as the
3 tribal organization shall approve, and promptly release
4 any funds withheld upon subsequent compliance.

5 “(2) With respect to any hearing or appeal conducted
6 pursuant to this subsection, the Secretary shall have the
7 burden of proof to establish by clearly demonstrating the
8 validity of the grounds for suspending, withholding, or de-
9 laying payment of funds.

10 “(m) The program income earned by a tribal organi-
11 zation in the course of carrying out a self-determination
12 contract—

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

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

17 “(n) To the extent that programs, functions, services,
18 or activities carried out by tribal organizations pursuant
19 to contracts entered into under this Act reduce the admin-
20 istrative or other responsibilities of the Secretary with re-
21 spect to the operation of Indian programs and result in
22 savings that have not otherwise been included in the
23 amount of contract funds determined under subsection
24 (a), the Secretary shall make such savings available for
25 the provision of additional services to program bene-

1 ficiaries, either directly or through contractors, in a man-
2 ner equitable to both direct and contracted programs.

3 “(o) Notwithstanding any other provision of law (in-
4 cluding any regulation), a tribal organization that carries
5 out a self-determination contract may, with respect to allo-
6 cations within the approved budget of the contract,
7 rebudget to meet contract requirements, if such
8 rebudgeting would not have an adverse effect on the per-
9 formance of the contract.”.

10 **SEC. 103. CONTRACT SPECIFICATIONS.**

11 The Indian Self-Determination Education Assistance
12 Act (25 U.S.C. 450 et seq.) is amended by inserting after
13 section 107 the following new section:

14 **“SEC. 108. CONTRACT OR GRANT SPECIFICATIONS.**

15 “(a) Each self-determination contract entered into
16 under this Act shall—

17 “(1) contain, or incorporate by reference, the
18 provisions of the model agreement described in sub-
19 section (c) (with modifications where indicated and
20 the blanks appropriately filled in), and

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

23 “(b) Notwithstanding any other provision of law, the
24 Secretary may make payments pursuant to section 1(b)(6)
25 of such model agreement. As provided in section 1(b)(7)

1 of the model agreement, the records of the tribal govern-
2 ment or tribal organization specified in such section shall
3 not be considered Federal records for purposes of chapter
4 5 of title 5, United States Code.

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

7 **“SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND**
8 **THE ____ TRIBAL GOVERNMENT.**

9 ““(a) AUTHORITY AND PURPOSE.—

10 ““(1) AUTHORITY.—This agreement, denoted a
11 Self-Determination Contract (referred to in this
12 agreement as the “Contract”), is entered into by the
13 Secretary of the Interior or the Secretary of Health
14 and Human Services (referred to in this agreement
15 as the “Secretary”), for and on behalf of the United
16 States pursuant to title I of the Indian Self-Deter-
17 mination and Education Assistance Act (25 U.S.C.
18 450 et seq.) and by the authority of the ____ tribal
19 government or tribal organization (referred to in this
20 agreement as the “Contractor”). The provisions of
21 title I of the Indian Self-Determination and Edu-
22 cation Assistance Act (25 U.S.C. 450 et seq.) are in-
23 corporated in this agreement.

24 ““(2) PURPOSE.—Each provision of the Indian
25 Self-Determination and Education Assistance Act

1 (25 U.S.C. 450 et seq.) and each provision of this
2 Contract shall be liberally construed for the benefit
3 of the Contractor to transfer the funding and the
4 following related functions, services, activities, and
5 programs (or portions thereof), that are otherwise
6 contractable under section 102(a) of such Act, in-
7 cluding all related administrative functions, from the
8 Federal Government to the Contractor: (List func-
9 tions, services, activities, and programs).

10 ““(b) TERMS, PROVISIONS, AND CONDITIONS.—

11 ““(1) TERM.—Pursuant to section 105(c)(1) of
12 the Indian Self-Determination and Education Assist-
13 ance Act (25 U.S.C. 450j(c)(1)), the term of this
14 contract shall be ____ years. Pursuant to section
15 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the
16 election by the Contractor, the period of this Con-
17 tract shall be determined on the basis of a calendar
18 year, unless the Secretary and the Contractor agree
19 on a different period in the annual funding agree-
20 ment incorporated by reference in subsection (f)(2).

21 ““(2) EFFECTIVE DATE.—This Contract shall
22 become effective upon the date of the approval and
23 execution by the Contractor and the Secretary, un-
24 less the Contractor and the Secretary agree on an

1 effective date other than the date specified in this
2 paragraph.

3 ““(3) PROGRAM STANDARD.—The Contractor
4 agrees to administer the program, services, functions
5 and activities (or portions thereof) listed in sub-
6 section (a)(2) of the Contract in conformity with the
7 following standards: (list standards).

8 ““(4) FUNDING AMOUNT.—Subject to the avail-
9 ability of appropriations, the Secretary shall make
10 available to the Contractor the total amount speci-
11 fied in the annual funding agreement incorporated
12 by reference in subsection (f)(2). Such amount shall
13 not be less than the applicable amount determined
14 pursuant to section 106(a) of the Indian Self-Deter-
15 mination and Education Assistance Act (25 U.S.C.
16 450j-1).

17 ““(5) LIMITATION OF COSTS.—The Contractor
18 shall not be obligated to continue performance that
19 requires an expenditure of funds in excess of the
20 amount of funds awarded under this Contract. If, at
21 any time, the Contractor has reason to believe that
22 the total amount required for performance of this
23 Contract or a specific activity conducted under this
24 Contract would be greater than the amount of funds
25 awarded under this Contract, the Contractor shall

1 provide reasonable notice to the appropriate Sec-
2 retary. If the appropriate Secretary does not take
3 such action as may be necessary to increase the
4 amount of funds awarded under this Contract, the
5 Contractor may suspend performance of the Con-
6 tract until such time as additional funds are
7 awarded.

8 ““(6) PAYMENT.—

9 ““(A) IN GENERAL.—Payments to the
10 Contractor under this Contract shall—

11 ““(i) be made as expeditiously as
12 practicable; and

13 ““(ii) include financial arrangements
14 to cover funding during periods covered by
15 joint resolutions adopted by Congress mak-
16 ing continuing appropriations, to the ex-
17 tent permitted by such resolutions.

18 ““(B) QUARTERLY, SEMIANNUAL, LUMP-
19 SUM, AND OTHER METHODS OF PAYMENT.—

20 ““(i) IN GENERAL.—Pursuant to sec-
21 tion 108(b) of the Indian Self-Determina-
22 tion and Education Assistance Act, and
23 notwithstanding any other provision of law,
24 for each fiscal year covered by this Con-
25 tract, the Secretary shall make available to

1 the Contractor the funds specified for the
2 fiscal year under the annual funding agree-
3 ment incorporated by reference pursuant
4 to subsection (f)(2) by paying to the Con-
5 tractor, on a quarterly basis, one-quarter
6 of the total amount provided for in the an-
7 nual funding agreement for that fiscal
8 year, in a lump-sum payment or as semi-
9 annual payments, or any other method of
10 payment authorized by law, in accordance
11 with such method as may be requested by
12 the Contractor and specified in the annual
13 funding agreement.

14 “(ii) METHOD OF QUARTERLY PAY-
15 MENT.—If quarterly payments are speci-
16 fied in the annual funding agreement in-
17 corporated by reference pursuant to sub-
18 section (f)(2), each quarterly payment
19 made pursuant to clause (i) shall be made
20 on the first day of each quarter of the fis-
21 cal year, except that in any case in which
22 the contract year coincides with the Fed-
23 eral fiscal year, payment for the first quar-
24 ter shall be made not later than the date
25 that is 10 calendar days after the date on

1 which the Office of Management and
2 Budget apportions the appropriations for
3 the fiscal year for the programs, services,
4 functions, and activities subject to this
5 Contract.

6 “(iii) APPLICABILITY.—Chapter 39
7 of title 31, United States Code, shall apply
8 to the payment of funds due under this
9 Contract and the annual funding agree-
10 ment referred to in clause (i).

11 “(7) RECORDS AND MONITORING.—

12 “(A) IN GENERAL.—Except for previously
13 provided copies of tribal records that the Sec-
14 retary demonstrates are clearly required to be
15 maintained as part of the recordkeeping system
16 of the Department of the Interior or the De-
17 partment of Health and Human Services (or
18 both), records of the Contractor shall not be
19 considered Federal records for purposes of
20 chapter 5 of title 5, United States Code.

21 “(B) RECORDKEEPING SYSTEM.—The
22 Contractor shall maintain a recordkeeping sys-
23 tem and, upon reasonable advance request, pro-
24 vide reasonable access to such records to the
25 Secretary.

1 “(C) RESPONSIBILITIES OF CONTRAC-
2 TOR.—The Contractor shall be responsible for
3 managing the day-to-day operations conducted
4 under this Contract and for monitoring activi-
5 ties conducted under this Contract to ensure
6 compliance with the contract and applicable
7 Federal requirements. With respect to the mon-
8 itoring activities of the Secretary, the routine
9 monitoring visits shall be limited to not more
10 than one performance monitoring visit for this
11 Contract by the head of each operating division,
12 departmental bureau, or departmental agency,
13 or duly authorized representative of such head
14 unless—

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

17 “(ii) the appropriate official deter-
18 mines that there is reasonable cause to be-
19 lieve that grounds for reassumption of the
20 Contract, suspension of contract payments,
21 or other serious contract performance defi-
22 ciency may exist.

23 No additional visit referred to in clause (ii)
24 shall be made until such time as reasonable ad-
25 vance notice that includes a description of the

1 nature of the problem that requires the addi-
2 tional visit has been given to the Contractor.

3 ““(8) PROPERTY.—

4 ““(A) IN GENERAL.—As provided in sec-
5 tion 105(f) of the Indian Self-Determination
6 and Education Assistance Act (25 U.S.C.
7 450j(f)), at the request of the Contractor, the
8 Secretary may make available, or transfer to
9 the Contractor, all reasonably divisible real
10 property, facilities, equipment, and personal
11 property that the Secretary has used to provide
12 or administer the programs, services, functions,
13 and activities covered by this Contract. A mutu-
14 ally agreed upon list specifying the property, fa-
15 cilities, and equipment so furnished shall also
16 be prepared by the Secretary, with the concur-
17 rence of the Contractor, and periodically revised
18 by the Secretary, with the concurrence of the
19 Contractor.

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

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

7 “(D) ACQUISITION OF PROPERTY.—The
8 Contractor is granted the authority to acquire
9 such excess property as the Contractor may de-
10 termine to be appropriate in the judgment of
11 the Contractor to support the programs, serv-
12 ices, functions, and activities operated pursuant
13 to this Contract.

14 “(E) CONFISCATED OR EXCESS PROP-
15 erty.—The Secretary shall assist the Contrac-
16 tor in obtaining such confiscated or excess
17 property as may become available to tribes,
18 tribal organizations, or local governments.

19 “(F) SCREENER IDENTIFICATION
20 CARD.—A screener identification card (General
21 Services Administration form numbered 2946)
22 shall be issued to the Contractor not later than
23 the effective date of this Contract. The des-
24 igned official shall, upon request, assist the
25 Contractor in securing the use of the card.

1 “(G) CAPITAL EQUIPMENT.—The Con-
2 tractor shall determine the capital equipment,
3 leases, rentals, property, or services the Con-
4 tractor requires to perform the obligations of
5 the Contractor under this subsection, and shall
6 acquire and maintain records of such capital
7 equipment, property rentals, leases, property, or
8 services through applicable procurement proce-
9 dures of the Contractor.

10 “(9) AVAILABILITY OF FUNDS.—Notwith-
11 standing any other provision of law, any funds pro-
12 vided under this contract—

13 “(A) shall remain available until ex-
14 pended; and

15 “(B) with respect to such funds, no fur-
16 ther—

17 “(i) approval by the Secretary, or

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

21 “(10) TRANSPORTATION.—Beginning on the
22 effective date of this Contract, the Secretary shall
23 authorize the Contractor to obtain interagency
24 motor pool vehicles and related services for perform-

1 ance of any activities carried out under this
2 Contract.

3 “(11) FEDERAL PROGRAM GUIDELINES, MANU-
4 ALS, OR POLICY DIRECTIVES.—Except as specifically
5 provided in the Indian Self-Determination and Edu-
6 cation Assistance Act (25 U.S.C. 450 et seq.) the
7 Contractor is not required to abide by program
8 guidelines, manuals, or policy directives of the Sec-
9 retary, unless otherwise agreed to by the Contractor
10 and the Secretary, or otherwise required by law.

11 “(12) DISPUTES.—

12 “(A) THIRD-PARTY MEDIATION DE-
13 FINED.—For the purposes of this Contract, the
14 term “third-party mediation” means a form of
15 mediation whereby the Secretary and the Con-
16 tractor nominate a third party who is not em-
17 ployed by or significantly involved with the Sec-
18 retary of the Interior, the Secretary of Health
19 and Human Services, or the Contractor, to
20 serve as a third-party mediator to mediate dis-
21 putes under this Contract.

22 “(B) ALTERNATIVE PROCEDURES.—In
23 addition to, or as an alternative to, remedies
24 and procedures prescribed by section 110 of the
25 Indian Self-Determination and Education As-

1 assistance Act (25 U.S.C. 450m-1), the parties to
2 this Contract may jointly—

3 “(i) submit disputes under this Con-
4 tract to third-party mediation;

5 “(ii) submit the dispute to the adju-
6 dicatory body of the Contractor, including
7 the tribal court of the Contractor;

8 “(iii) submit the dispute to mediation
9 processes provided for under the laws, poli-
10 cies, or procedures of the Contractor; or

11 “(iv) use the administrative dispute
12 resolution processes authorized in sub-
13 chapter IV of chapter 5 of title 5, United
14 States Code.

15 “(C) EFFECT OF DECISIONS.—The Sec-
16 retary shall be bound by decisions made pursu-
17 ant to the processes set forth in subparagraph
18 (B), except that the Secretary shall not be
19 bound by any decision that significantly con-
20 flicts with the interests of Indians or the United
21 States.

22 “(13) ADMINISTRATIVE PROCEDURES OF CON-
23 TRACTOR.—Pursuant to the Indian Civil Rights Act
24 of 1968 (25 U.S.C. 1301 et seq.), the laws, policies,
25 and procedures of the Contractor shall provide for

1 administrative due process (or the equivalent of ad-
2 ministrative due process) with respect to programs,
3 services, functions, and activities that are provided
4 by the Contractor pursuant to this Contract.

5 ““(14) SUCCESSOR ANNUAL FUNDING AGREE-
6 MENT.—

7 ““(A) IN GENERAL.—Negotiations for a
8 successor annual funding agreement, provided
9 for in subsection (f)(2), shall begin not later
10 than 120 days prior to the conclusion of the
11 preceding annual funding agreement. Except as
12 provided in section 105(c)(2) of the Indian Self-
13 Determination and Education Assistance Act
14 (25 U.S.C. 450j(c)(2)) the funding for each
15 such successor annual funding agreement shall
16 only be reduced pursuant to section 106(b) of
17 such Act (25 U.S.C. 450j-1(b)).

18 ““(B) INFORMATION.—The Secretary shall
19 prepare and supply relevant information, and
20 promptly comply with any request by the Con-
21 tractor for information that the Contractor rea-
22 sonably needs to determine the amount of funds
23 that may be available for a successor annual
24 funding agreement, as provided for in sub-
25 section (f)(2) of this Contract.

1 “(15) CONTRACT REQUIREMENTS; APPROVAL
2 BY SECRETARY.—

3 “(A) IN GENERAL.—Except as provided
4 in subparagraph (B), for the term of the Con-
5 tract, section 2103 of the Revised Statutes (25
6 U.S.C. 81) and section 16 of the Act of June
7 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C.
8 476), shall not apply to any contract entered
9 into in connection with this Contract.

10 “(B) REQUIREMENTS.—Each Contract
11 entered into by the Contractor with a third
12 party in connection with performing the obliga-
13 tions of the Contractor under this Contract
14 shall—

15 “(i) be in writing;

16 “(ii) identify the interested parties,
17 the authorities of such parties, and pur-
18 poses of the Contract;

19 “(iii) state the work to be performed
20 under the Contract; and

21 “(iv) state the process for making
22 any claim, the payments to be made, and
23 the terms of the Contract, which shall be
24 fixed.

25 “(c) OBLIGATION OF THE CONTRACTOR.—

1 “(1) CONTRACT PERFORMANCE.—Except as
2 provided in subsection (d)(2), the Contractor shall
3 perform the programs, services, functions, and ac-
4 tivities as provided in the annual funding agreement
5 under subsection (f)(2) of this Contract.

6 “(2) AMOUNT OF FUNDS.—The total amount
7 of funds to be paid under this Contract pursuant to
8 section 106(a) shall be determined in an annual
9 funding agreement entered into between the Sec-
10 retary and the Contractor, which shall be incor-
11 porated into this Contract.

12 “(3) CONTRACTED PROGRAMS.—Subject to the
13 availability of appropriated funds, the Contractor
14 shall administer the programs, services, functions,
15 and activities identified in this Contract and funded
16 through the annual funding agreement under sub-
17 section (f)(2).

18 “(4) TRUST SERVICES FOR INDIVIDUAL INDI-
19 ANS.—

20 “(A) IN GENERAL.—To the extent that
21 the annual funding agreement provides funding
22 for the delivery of trust services to individual
23 Indians that have been provided by the Sec-
24 retary, the Contractor shall maintain at least
25 the same level of service as the Secretary pro-

1 vided for such individual Indians, subject to the
2 availability of appropriated funds for such
3 services.

4 “(B) TRUST SERVICES TO INDIVIDUAL IN-
5 DIANS.—For the purposes of this paragraph
6 only, the term “trust services for individual In-
7 dians” means only those services that pertain to
8 land or financial management connected to in-
9 dividually held allotments.

10 “(5) FAIR AND UNIFORM SERVICES.—The
11 Contractor shall provide services under this Contract
12 in a fair and uniform manner and shall provide ac-
13 cess to an administrative or judicial body empowered
14 to adjudicate or otherwise resolve complaints, claims,
15 and grievances brought by program beneficiaries
16 against the Contractor arising out of the perform-
17 ance of the Contract.

18 “(d) OBLIGATION OF THE UNITED STATES.—

19 “(1) TRUST RESPONSIBILITY.—

20 “(A) IN GENERAL.—The United States
21 reaffirms the trust responsibility of the United
22 States to the ____ Indian tribe(s) to protect
23 and conserve the trust resources of the Indian
24 tribe(s) and the trust resources of individual
25 Indians.

1 “(B) CONSTRUCTION OF CONTRACT.—
2 Nothing in this Contract may be construed to
3 terminate, waive, modify, or reduce the trust re-
4 sponsibility of the United States to the tribe(s)
5 or individual Indians. The Secretary shall act in
6 good faith in upholding such trust responsibil-
7 ity.

8 “(2) GOOD FAITH.—To the extent that health
9 programs are included in this Contract, and within
10 available funds, the Secretary shall act in good faith
11 in cooperating with the Contractor to achieve the
12 goals set forth in the Indian Health Care Improve-
13 ment Act (25 U.S.C. 1601 et seq.).

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

20 “(e) OTHER PROVISIONS.—

21 “(1) DESIGNATED OFFICIALS.—Not later than
22 the effective date of this Contract, the United States
23 shall provide to the Contractor, and the Contractor
24 shall provide to the United States, a written des-
25 ignation of a senior official to serve as a representa-

1 tive for notices, proposed amendments to the Con-
2 tract, and other purposes for this Contract.

3 “(2) CONTRACT MODIFICATIONS OR AMEND-
4 MENT.—

5 “(A) IN GENERAL.—Except as provided
6 in subparagraph (B), no modification to this
7 Contract shall take effect unless such modifica-
8 tion is made in the form of a written amend-
9 ment to the Contract, and the Contractor and
10 the Secretary provide written consent for the
11 modification.

12 “(B) EXCEPTION.—The addition of sup-
13 plemental funds for programs, functions, and
14 activities (or portions thereof) already included
15 in the annual funding agreement under sub-
16 section (f)(2), and the reduction of funds pur-
17 suant to section 106(b)(2), shall not be subject
18 to subparagraph (A).

19 “(3) OFFICIALS NOT TO BENEFIT.—No Mem-
20 ber of Congress, or resident commissioner, shall be
21 admitted to any share or part of any contract exe-
22 cuted pursuant to this Contract, or to any benefit
23 that may arise from such contract. This paragraph
24 may not be construed to apply to any contract with
25 a third party entered into under this Contract if

1 such contract is made with a corporation for the
2 general benefit of the corporation.

3 ““(4) COVENANT AGAINST CONTINGENT
4 FEES.—The parties warrant that no person or sell-
5 ing agency has been employed or retained to solicit
6 or secure any contract executed pursuant to this
7 Contract upon an agreement or understanding for a
8 commission, percentage, brokerage, or contingent
9 fee, excepting bona fide employees or bona fide es-
10 tablished commercial or selling agencies maintained
11 by the Contractor for the purpose of securing busi-
12 ness.

13 ““(f) ATTACHMENTS.—

14 ““(1) APPROVAL OF CONTRACT.—Unless pre-
15 viously furnished to the Secretary, the resolution of
16 the ____ Indian tribe(s) authorizing the contracting
17 of the programs, services, functions, and activities
18 identified in this Contract is attached to this Con-
19 tract as attachment 1.

20 ““(2) ANNUAL FUNDING AGREEMENT.—

21 ““(A) IN GENERAL.—The annual funding
22 agreement under this Contract shall only con-
23 tain—

24 ““(i) terms that identify the pro-
25 grams, services, functions, and activities to

1 be performed or administered, the general
2 budget category assigned, the funds to be
3 provided, and the time and method of pay-
4 ment; and

5 “(ii) such other provisions, including
6 a brief description of the programs, serv-
7 ices, functions, and activities to be per-
8 formed (including those supported by fi-
9 nancial resources other than those provided
10 by the Secretary), to which the parties
11 agree.

12 “(B) INCORPORATION BY REFERENCE.—
13 The annual funding agreement is hereby incor-
14 porated in its entirety in this Contract and at-
15 tached to this Contract as attachment 2.’”.

16 **SEC. 104. ADDITIONAL AMENDMENTS.**

17 The Indian Self-Determination and Education Assist-
18 ance Act (25 U.S.C. 450 et seq.), as amended by sections
19 102 and 103, is further amended—

20 (1) in section 109—

21 (A) by inserting after “pursuant to such
22 contract or grant agreement,” the following “or
23 in the management of trust fund, trust lands or
24 interests in such lands pursuant to such con-
25 tract or grant agreement,”;

1 (B) by striking “action as prescribed by
2 him” and all that follows through “in such
3 cases, he” and inserting the following: “action
4 as prescribed by the Secretary to remedy the
5 contract deficiency, except that the appropriate
6 Secretary may, upon written notice to a tribal
7 organization, and the tribe served by the tribal
8 organization, immediately rescind a contract or
9 grant, in whole or in part, and resume control
10 or operation of a program, activity, function, or
11 service, if the Secretary finds that (i) there is
12 an immediate threat of imminent harm to the
13 safety of any person, or imminent substantial
14 and irreparable harm to trust funds, trust
15 lands, or interests in such lands, and (ii) such
16 threat arises from the failure of the contractor
17 to fulfill the requirements of the contract. In
18 such cases, the Secretary”;

19 (C) by inserting after “rescind such con-
20 tract or grant agreement” the following: “, in
21 whole or in part,”;

22 (D) by striking the second period after
23 “the tribal organization may approve”; and

24 (E) by inserting before the last sentence,
25 the following new sentence: “In any hearing or

1 appeal provided for under this section, the Sec-
2 retary shall have the burden of proof to estab-
3 lish, by clearly demonstrating the validity of the
4 grounds for rescinding, assuming, or
5 reassuming the contract that is the subject of
6 the hearing.”;

7 (2) in section 110(a), by inserting immediately
8 before the period at the end the following: “(includ-
9 ing immediate injunctive relief to reverse a declina-
10 tion finding under section 102(a)(2) or to compel
11 the Secretary to award and fund an approved self-
12 determination contract)”;

13 (3) in section 110(d), by inserting immediately
14 before the period at the end the following: “, except
15 that all administrative appeals relating to such con-
16 tracts shall be heard by the Interior Board of Con-
17 tract Appeals established pursuant to section 8 of
18 such Act (41 U.S.C. 607)”.

19 **SEC. 105. REGULATIONS.**

20 The Indian Self-Determination and Education Assist-
21 ance Act (25 U.S.C. 450 et seq.), as amended by sections
22 2 through 4, is further amended—

23 (1) by striking subsections (a) and (b) of sec-
24 tion 107 and inserting the following new subsections:

1 “(a)(1) Except as may be specifically authorized in
2 this subsection, or in any other provision of this Act, the
3 Secretary of the Interior and the Secretary of Health and
4 Human Services may not promulgate any regulation, nor
5 impose any nonregulatory requirement, relating to self-de-
6 termination contracts or the approval, award, or declina-
7 tion of such contracts, except that the Secretary of the
8 Interior and the Secretary of Health and Human Services
9 may promulgate regulations under this Act relating to
10 chapter 171 of title 28, United States Code, commonly
11 known as the ‘Federal Tort Claims Act’, the Contract Dis-
12 putes Act of 1978 (41 U.S.C. 601 et seq.), declination and
13 waiver procedures, appeal procedures, reassumption proce-
14 dures, discretionary grant procedures for grants awarded
15 under section 103, property donation procedures arising
16 under section 105(f), internal agency procedures relating
17 to the implementation of this Act, retrocession and tribal
18 organization relinquishment procedures, contract proposal
19 contents, conflicts of interest, construction, programmatic
20 reports and data requirements, procurement standards,
21 property management standards, and financial manage-
22 ment standards.

23 “(2)(A) The regulations promulgated under this Act,
24 including the regulations referred to in this subsection,
25 shall be promulgated—

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

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

6 “(B) The authority to promulgate regulations set
7 forth in this Act shall expire if final regulations are not
8 promulgated within 18 months after the date of enactment
9 of the Indian Self-Determination Contract Reform Act of
10 1994.

11 “(b) The provisions of this Act shall supersede any
12 conflicting provisions of law (including any conflicting reg-
13 ulations) in effect on the day before the date of enactment
14 of the Indian Self-Determination Contract Reform Act of
15 1994, and the Secretary is authorized to repeal any regu-
16 lation inconsistent with the provisions of this Act.”; and

17 (2) by adding at the end of section 107, the fol-
18 lowing new subsections:

19 “(d)(1) In drafting and promulgating regulations as
20 provided in subsection (a) (including drafting and promul-
21 gating any revised regulations), the Secretary of the Inte-
22 rior and the Secretary of Health and Human Services
23 shall confer with, and allow for active participation by,
24 representatives of Indian tribes, tribal organizations, and
25 individual tribal members.

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

5 “(i) subchapter III of chapter 5 of title 5, Unit-
6 ed States Code, commonly known as the ‘Negotiated
7 Rulemaking Act of 1990’; and

8 “(ii) the recommendations of the Administrative
9 Conference of the United States numbered 82–4 and
10 85–5 entitled ‘Procedures for Negotiating Proposed
11 Regulations’ under sections 305.82–4 and 305.85–5
12 of title 1, Code of Federal Regulations, and any suc-
13 cessor recommendation or law (including any succes-
14 sor regulation).

15 “(B) The tribal participants in the negotiation proc-
16 ess referred to in subparagraph (A) shall be nominated
17 by and shall represent the groups described in this para-
18 graph and shall include tribal representatives from all geo-
19 graphic regions.

20 “(C) The negotiations referred to in subparagraph
21 (B) shall be conducted in a timely manner. Proposed regu-
22 lations to implement the amendments made by the Indian
23 Self-Determination Contract Reform Act of 1994 shall be
24 published in the Federal Register by the Secretary of the
25 Interior and the Secretary of Health and Human Services

1 not later than 180 days after the date of enactment of
2 such Act.

3 “(D) Notwithstanding any other provision of law (in-
4 cluding any regulation), the Secretary of the Interior and
5 the Secretary of Health and Human Services are author-
6 ized to jointly establish and fund such interagency com-
7 mittees or other interagency bodies, including advisory
8 bodies comprised of tribal representatives, as may be nec-
9 essary or appropriate to carry out the provisions of this
10 Act.

11 “(E) If the Secretary determines that an extension
12 of the deadlines under subsection (a)(2)(B) and subpara-
13 graph (C) of this paragraph is appropriate, the Secretary
14 may submit proposed legislation to Congress for the exten-
15 sion of such deadlines.

16 “(e) The Secretary may, with respect to a contract
17 entered into under this Act, make exceptions in the regula-
18 tions promulgated to carry out this Act, or waive such reg-
19 ulations, if the Secretary finds that such exception or
20 waiver is in the best interest of the Indians served by the
21 contract or is consistent with the policies of this Act, and
22 is not contrary to statutory law. In reviewing each request,
23 the Secretary shall follow the timeline, findings, assist-
24 ance, hearing, and appeal procedures set forth in section
25 102.”.

1 **SEC. 106. CONFORMING AMENDMENTS.**

2 Section 105(h) of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450j(h)) is amended
4 by striking “and the rules and regulations adopted by the
5 Secretaries of the Interior and Health and Human Serv-
6 ices pursuant to section 107 of this Act”.

7 **TITLE II—SELF-GOVERNANCE**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Tribal Self-Govern-
10 ance Act of 1994”.

11 **SEC. 202. FINDINGS.**

12 Congress finds that—

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

16 (2) the United States recognizes a special gov-
17 ernment-to-government relationship with Indian
18 tribes, including the right of the tribes to self-gov-
19 ernance, as reflected in the Constitution, treaties,
20 Federal statutes, and the course of dealings of the
21 United States with Indian tribes;

22 (3) although progress has been made, the Fed-
23 eral bureaucracy, with its centralized rules and regu-
24 lations, has eroded tribal self-governance and domi-
25 nates tribal affairs;

1 (4) the Tribal Self-Governance Demonstration
2 Project was designed to improve and perpetuate the
3 government-to-government relationship between In-
4 dian tribes and the United States and to strengthen
5 tribal control over Federal funding and program
6 management; and

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

10 (A) transferring control to tribal govern-
11 ments, upon tribal request, over funding and
12 decisionmaking for Federal programs, services,
13 functions, and activities, or portions thereof, is
14 an effective way to implement the Federal pol-
15 icy of government-to-government relations with
16 Indian tribes; and

17 (B) transferring control to tribal govern-
18 ments, upon tribal request, over funding and
19 decisionmaking for Federal programs, services,
20 functions, and activities strengthens the Fed-
21 eral policy of Indian self-determination.

22 **SEC. 203. DECLARATION OF POLICY.**

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

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

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

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

10 (4) to ensure the continuation of the trust re-
11 sponsibility of the United States to Indian tribes and
12 Indian individuals;

13 (5) to permit an orderly transition from Federal
14 domination of programs and services to provide In-
15 dian tribes with meaningful authority to plan, con-
16 duct, redesign, and administer programs, services,
17 functions, and activities that meet the needs of the
18 individual tribal communities; and

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

22 **SEC. 204. TRIBAL SELF-GOVERNANCE.**

23 The Indian Self-Determination and Education Assist-
24 ance Act is amended by adding at the end the following
25 new title:

1 **“TITLE IV—TRIBAL SELF-**
2 **GOVERNANCE**

3 **“SEC. 401. ESTABLISHMENT.**

4 “The Secretary of the Interior (hereinafter in this
5 title referred to as the ‘Secretary’) shall establish and
6 carry out a program within the Department of the Interior
7 to be known as Tribal Self-Governance (hereinafter in this
8 title referred to as ‘Self-Governance’) in accordance with
9 this title.

10 **“SEC. 402. SELECTION OF PARTICIPATING INDIAN TRIBES.**

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

19 “(b) ADDITIONAL PARTICIPANTS.—(1) In addition to
20 those Indian tribes participating in Self-Governance under
21 subsection (a), the Secretary, acting through the Director
22 of the Office of Self-Governance, may select up to 20 new
23 tribes per year from the applicant pool described in sub-
24 section (c) to participate in Self-Governance.

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

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

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

9 “(2) has requested participation in Self-Govern-
10 ance by resolution or other official action by the
11 tribal governing body; and

12 “(3) has demonstrated, for the previous three
13 fiscal years, financial stability and financial manage-
14 ment capability as evidenced by the tribe having no
15 material audit exceptions in the required annual
16 audit of the self-determination contracts of the tribe.

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

23 “(1) legal and budgetary research; and

24 “(2) internal tribal government planning and
25 organizational preparation.

1 **“SEC. 403. FUNDING AGREEMENTS.**

2 “(a) AUTHORIZATION.—The Secretary shall nego-
3 tiate and enter into an annual written funding agreement
4 with the governing body of each participating tribal gov-
5 ernment in a manner consistent with the Federal Govern-
6 ment’s laws and trust relationship to and responsibility
7 for the Indian people.

8 “(b) CONTENTS.—Each funding agreement shall—

9 “(1) authorize the tribe to plan, conduct, con-
10 solidate, and administer programs, services, func-
11 tions, and activities, or portions thereof, adminis-
12 tered by the Department of the Interior through the
13 Bureau of Indian Affairs, without regard to the
14 agency or office of the Bureau of Indian Affairs
15 within which the program, service, function, and ac-
16 tivity, or portion thereof, is performed, including
17 funding for agency, area, and central office func-
18 tions in accordance with subsection (g)(3), and in-
19 cluding any program, service, function, and activity,
20 or portion thereof, administered under the authority
21 of—

22 “(A) the Act of April 16, 1934 (25 U.S.C.
23 452 et seq.);

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

1 “(C) programs, services, functions, and ac-
2 tivities or portions thereof administered by the
3 Secretary of the Interior that are otherwise
4 available to Indian tribes or Indians for which
5 appropriations are made to agencies other than
6 the Department of the Interior;

7 “(2) subject to such terms as may be nego-
8 tiated, authorize the tribe to plan, conduct, consoli-
9 date, and administer programs, services, functions,
10 and activities, or portions thereof, administered by
11 the Department of the Interior, other than through
12 the Bureau of Indian Affairs, that are otherwise
13 available to Indian tribes or Indians, as identified in
14 section 405(c), except that nothing in this subsection
15 may be construed to provide any tribe with a pref-
16 erence with respect to the opportunity of the tribe
17 to administer programs, services, functions, and ac-
18 tivities, or portions thereof, unless such preference is
19 otherwise provided for by law;

20 “(3) subject to the terms of the agreement, au-
21 thorize the tribe to redesign or consolidate pro-
22 grams, services, functions, and activities, or portions
23 thereof, and reallocate funds for such programs,
24 services, functions, and activities, or portions there-
25 of, except that, with respect to the reallocation, con-

1 solidation, and redesign of programs described in
2 paragraph (2), a joint agreement between the Sec-
3 retary and the tribe shall be required;

4 “(4) prohibit the inclusion of funds provided—

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

8 “(B) for elementary and secondary schools
9 under the formula developed pursuant to sec-
10 tion 1128 of the Education Amendments of
11 1978 (25 U.S.C. 2008); and

12 “(C) the Flathead Agency Irrigation Divi-
13 sion or the Flathead Agency Power Division,
14 except that nothing in this section shall affect
15 the contract authority of such divisions under
16 section 102;

17 “(5) specify the services to be provided, the
18 functions to be performed, and the responsibilities of
19 the tribe and the Secretary pursuant to the agree-
20 ment;

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

24 “(7) allow for retrocession of programs or por-
25 tions of programs pursuant to section 105(e);

1 “(8) provide that, for the year for which, and
2 to the extent to which, funding is provided to a tribe
3 under this section, the tribe—

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

8 “(B) shall be responsible for the adminis-
9 tration of programs, services, functions, and ac-
10 tivities pursuant to agreements entered into
11 under this section; and

12 “(9) prohibit the Secretary from waiving, modi-
13 fying, or diminishing in any way the trust respon-
14 sibility of the United States with respect to Indian
15 tribes and individual Indians that exists under trea-
16 ties, Executive orders, and other laws.

17 “(c) ADDITIONAL ACTIVITIES.—Each funding agree-
18 ment negotiated pursuant to subsections (a) and (b) may,
19 in accordance to such additional terms as the parties deem
20 appropriate, also include other programs, services, func-
21 tions, and activities, or portions thereof, administered by
22 the Secretary of the Interior which are of special geo-
23 graphic, historical, or cultural significance to the partici-
24 pating Indian tribe requesting a compact.

1 “(d) PROVISIONS RELATING TO THE SECRETARY.—
2 Funding agreements negotiated between the Secretary
3 and an Indian tribe shall include provisions—

4 “(1) to monitor the performance of trust func-
5 tions by the tribe through the annual trust evalua-
6 tion, and

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

12 “(e) CONSTRUCTION PROJECTS.—(1) Regarding con-
13 struction programs or projects, the Secretary and Indian
14 tribes may negotiate for the inclusion of specific provisions
15 of the Office of Federal Procurement and Policy Act and
16 Federal acquisition regulations in any funding agreement
17 entered into under this Act. Absent a negotiated agree-
18 ment, such provisions and regulatory requirements shall
19 not apply.

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

24 “(f) SUBMISSION FOR REVIEW.—Not later than 90
25 days before the proposed effective date of an agreement

1 entered into under this section, the Secretary shall submit
2 a copy of such agreement to—

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

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

8 “(3) the Subcommittee on Native American Af-
9 fairs of the Committee on Natural Resources of the
10 House of Representatives.

11 “(g) PAYMENT.—(1) At the request of the governing
12 body of the tribe and under the terms of an agreement
13 entered into under this section, the Secretary shall provide
14 funding to the tribe to carry out the agreement.

15 “(2) The funding agreements authorized by this title
16 and title III of this Act shall provide for advance payments
17 to the tribes in the form of annual or semi-annual install-
18 ments at the discretion of the tribes.

19 “(3) Subject to paragraph (4) of this subsection and
20 paragraphs (1) through (3) of subsection (b), the Sec-
21 retary shall provide funds to the tribe under an agreement
22 under this title for programs, services, functions, and ac-
23 tivities, or portions thereof, in an amount equal to the
24 amount that the tribe would have been eligible to receive
25 under contracts and grants under this Act, including

1 amounts for direct program and contract support costs
2 and, in addition, any funds that are specifically or func-
3 tionally related to the provision by the Secretary of serv-
4 ices and benefits to the tribe or its members, without re-
5 gard to the organization level within the Department
6 where such functions are carried out.

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

12 “(h) CIVIL ACTIONS.—(1) Except as provided in
13 paragraph (2), for the purposes of section 110, the term
14 ‘contract’ shall include agreements entered into under this
15 title.

16 “(2) For the period that an agreement entered into
17 under this title is in effect, the provisions of section 2103
18 of the Revised Statutes of the United States (25 U.S.C.
19 81), and section 16 of the Act of June 18, 1934 (25
20 U.S.C. 476), shall not apply to attorney and other profes-
21 sional contracts by Indian tribal governments participat-
22 ing in Self-Governance under this title.

23 “(i) FACILITATION.—(1) Except as otherwise pro-
24 vided by law, the Secretary shall interpret each Federal
25 law and regulation in a manner that will facilitate—

1 “(A) the inclusion of programs, services, func-
2 tions, and activities in the agreements entered into
3 under this section; and

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

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

9 “(B) Not later than 60 days after receipt by the Sec-
10 retary of a written request by a tribe to waive application
11 of a Federal regulation for an agreement entered into
12 under this section, the Secretary shall either approve or
13 deny the requested waiver in writing to the tribe. A denial
14 may be made only upon a specific finding by the Secretary
15 that identified language in the regulation may not be
16 waived because such waiver is prohibited by Federal law.
17 The Secretary’s decision shall be final for the Department.

18 “(j) FUNDS.—All funds provided under funding
19 agreements entered into pursuant to this Act, and all
20 funds provided under contracts or grants made pursuant
21 to this Act, shall be treated as non-Federal funds for pur-
22 poses of meeting matching requirements under any other
23 Federal law.

24 “(k) DISCLAIMER.—Nothing in this section is in-
25 tended or shall be construed to expand or alter existing

1 statutory authorities in the Secretary so as to authorize
2 the Secretary to enter into any agreement under sections
3 403(b)(2) and 405(c)(1) with respect to functions that are
4 inherently Federal or where the statute establishing the
5 existing program does not authorize the type of participa-
6 tion sought by the tribe: *Provided*, however an Indian tribe
7 or tribes need not be identified in the authorizing statute
8 in order for a program or element of a program to be in-
9 cluded in a compact under section 403(b)(2).

10 **“SEC. 404. BUDGET REQUEST.**

11 “The Secretary shall identify, in the annual budget
12 request of the President to the Congress under section
13 1105 of title 31, United States Code, any funds proposed
14 to be included in agreements authorized under this title.

15 **“SEC. 405. REPORTS.**

16 “(a) REQUIREMENT.—The Secretary shall submit to
17 Congress a written report on January 1 of each year fol-
18 lowing the date of enactment of this title regarding the
19 administration of this title.

20 “(b) CONTENTS.—The report shall—

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

23 “(2) identify, with particularity, all funds that
24 are specifically or functionally related to the provi-

1 sion by the Secretary of services and benefits to
2 Self-Governance tribes and their members;

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

6 “(4) include the separate views of the tribes;
7 and

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

12 “(c) REPORT ON NON-BIA PROGRAMS.—(1) In order
13 to optimize opportunities for including non-Bureau of In-
14 dian Affairs programs, services, functions, and activities,
15 or portions thereof, in agreements with tribes participat-
16 ing in Self-Governance under this title, the Secretary
17 shall—

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

23 “(B) not later than 90 days after the date of
24 enactment of this title, provide to the appropriate
25 committees of Congress a listing of all such pro-

1 grams, services, functions, and activities, or portions
2 thereof, that the Secretary determines, with the con-
3 currence of tribes participating in Self-Governance
4 under this title, are eligible for inclusion in such
5 agreements at the request of a participating Indian
6 tribe.

7 “(2) The Secretary shall establish programmatic tar-
8 gets, after consultation with tribes participating in Self-
9 Governance under this title, to encourage bureaus of the
10 Department to assure that a significant portion of such
11 programs, services, functions, and activities are actually
12 included in the agreements negotiated under section 403.

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

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

24 “(d) REPORT ON CENTRAL OFFICE FUNDS.—Within
25 90 days after the date of the enactment of this title, the

1 Secretary shall, in consultation with Indian tribes, develop
2 a funding formula to determine the individual tribal share
3 of funds controlled by the Central Office of the Bureau
4 of Indian Affairs for inclusion in the Self-Governance com-
5 pacts. The Secretary shall include such formula in the an-
6 nual report submitted to the Congress under subsection
7 (b), together with the views of the affected Indian tribes.

8 **“SEC. 406. DISCLAIMERS.**

9 “(a) OTHER SERVICES, CONTRACTS, AND FUNDS.—
10 Nothing in this title shall be construed to limit or reduce
11 in any way the services, contracts, or funds that any other
12 Indian tribe or tribal organization is eligible to receive
13 under section 102 or any other applicable Federal law.

14 “(b) FEDERAL TRUST RESPONSIBILITIES.—Nothing
15 in this Act shall be construed to diminish the Federal trust
16 responsibility to Indian tribes, individual Indians, or Indi-
17 ans with trust allotments.

18 “(c) APPLICATION OF OTHER SECTIONS OF ACT.—
19 All provisions of sections 6, 102(c), 104, 105(f), 110, and
20 111 of this Act shall apply to agreements provided under
21 this title.

22 **“SEC. 407. REGULATIONS.**

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

1 Secretary shall initiate procedures under subchapter III
 2 of chapter 5 of title 5, United States Code, to negotiate
 3 and promulgate such regulations as are necessary to carry
 4 out this title.

5 “(b) COMMITTEE.—A negotiated rulemaking commit-
 6 tee established pursuant to section 565 of title 5, United
 7 States Code, to carry out this section shall have as its
 8 members only Federal and tribal government representa-
 9 tives, a majority of whom shall be representatives of In-
 10 dian tribes with agreements under this title.

11 “(c) ADAPTATION OF PROCEDURES.—The Secretary
 12 shall adapt the negotiated rulemaking procedures to the
 13 unique context of Self-Governance and the government-to-
 14 government relationship between the United States and
 15 the Indian tribes.

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

18 **“SEC. 408. AUTHORIZATION OF APPROPRIATIONS.**

19 “There are authorized to be appropriated such sums
 20 as may be necessary to carry out this title.”.

Passed the House of Representatives October 7 (leg-
 islative day, October 6), 1994.

Attest: DONNALD K. ANDERSON,
Clerk.

HR 4842 RDS—2

HR 4842 RDS—3

HR 4842 RDS—4

HR 4842 RDS—5

HR 4842 RDS—6