

Calendar No. 607

103^D CONGRESS
2^D SESSION

H. R. 3508

AN ACT

To provide for tribal self-governance, and for other purposes.

SEPTEMBER 13 (legislative day, SEPTEMBER 12), 1994

Read twice and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

AUGUST 17 (legislative day, AUGUST 11), 1994

Received

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AN ACT

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 “Tribal Self-Governance
5 Act of 1994”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

1 (2) the United States recognizes a special gov-
2 ernment-to-government relationship with Indian
3 tribes, including the right of the tribes to self-gov-
4 ernance, as reflected in the Constitution, treaties,
5 Federal statutes, and the course of dealings of the
6 United States with Indian tribes;

7 (3) although progress has been made, the Fed-
8 eral bureaucracy, with its centralized rules and regu-
9 lations, has eroded tribal self-governance and domi-
10 nates tribal affairs;

11 (4) the Tribal Self-Governance Demonstration
12 Project was designed to improve and perpetuate the
13 government-to-government relationship between In-
14 dian tribes and the United States and to strengthen
15 tribal control over Federal funding and program
16 management; and

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

20 (A) transferring control to tribal govern-
21 ments, upon tribal request, over funding and
22 decisionmaking for Federal programs, services,
23 functions, and activities intended to benefit In-
24 dians is an effective way to implement the Fed-

1 eral policy of government-to-government rela-
2 tions with Indian tribes; and

3 (B) transferring control to tribal govern-
4 ments, upon tribal request, over funding and
5 decisionmaking for Federal programs, services,
6 functions, and activities strengthens the Fed-
7 eral policy of Indian self-determination.

8 **SEC. 3. DECLARATION OF POLICY.**

9 It is the policy of this Act to permanently establish
10 and implement tribal self-governance—

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

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

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

20 (4) to ensure the continuation of the trust re-
21 sponsibility of the United States to Indian tribes and
22 Indian individuals;

23 (5) to permit an orderly transition from Federal
24 domination of programs and services to provide In-
25 dian tribes with meaningful authority to plan, con-

1 duct, redesign, and administer programs, services,
2 functions, and activities that meet the needs of the
3 individual tribal communities; and

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

7 **SEC. 4. TRIBAL SELF-GOVERNANCE.**

8 The Indian Self-Determination and Education Assist-
9 ance Act is amended by adding at the end the following
10 new title:

11 **“TITLE IV—TRIBAL SELF-**
12 **GOVERNANCE**

13 **“SEC. 401. ESTABLISHMENT.**

14 “The Secretary of the Interior (hereinafter in this
15 title referred to as the ‘Secretary’) shall establish and
16 carry out a program within the Department of the Interior
17 to be known as Tribal Self-Governance (hereinafter in this
18 title referred to as ‘Self-Governance’) in accordance with
19 this title.

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

21 “(a) CONTINUING PARTICIPATION.—Each Indian
22 tribe that is participating in the Tribal Self-Governance
23 Demonstration Project at the Department of the Interior
24 under title III on the date of enactment of this title shall
25 thereafter participate in Self-Governance under this title

1 and cease participation in the Tribal Self-Governance
2 Demonstration Project under title III with respect to the
3 Department of the Interior.

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

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

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

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

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

21 “(3) has demonstrated, for the previous three
22 fiscal years, financial stability and financial manage-
23 ment capability as evidenced by the tribe having no
24 material audit exceptions in the required annual
25 audit of the self-determination contracts of the tribe.

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

7 “(1) legal and budgetary research; and

8 “(2) internal tribal government planning and
9 organizational preparation.

10 **“SEC. 403. FUNDING AGREEMENTS.**

11 “(a) AUTHORIZATION.—The Secretary shall nego-
12 tiate and enter into an annual written funding agreement
13 with the governing body of each participating tribal gov-
14 ernment.

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

16 “(1) authorize the tribe to plan, conduct, con-
17 solidate, and administer programs, services, func-
18 tions, and activities, or portions thereof, adminis-
19 tered by the Department of the Interior that are
20 otherwise available to Indian tribes or Indians, with-
21 out regard to the agency or office of the Department
22 of the Interior within which it is performed, includ-
23 ing (but not limited to) those administered under
24 the authority of—

1 “(A) the Act of April 16, 1934 (25 U.S.C.
2 452 et seq.);

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

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

11 “(2) subject to the terms of the agreement, au-
12 thorize the tribe to redesign or consolidate pro-
13 grams, services, functions, and activities, or portions
14 thereof, and to reallocate funds for such programs,
15 services, functions, or activities, or portions thereof;

16 “(3) prohibit the inclusion of funds provided—

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

20 “(B) for elementary and secondary schools
21 under the formula developed pursuant to sec-
22 tion 1128 of the Education Amendments of
23 1978 (25 U.S.C. 2008); and

24 “(C) the Flathead Agency Irrigation Divi-
25 sion or the Flathead Agency Power Division,

1 except that nothing in this section shall affect
2 the contract authority of such divisions under
3 section 102;

4 “(4) specify the services to be provided, the
5 functions to be performed, and the responsibilities of
6 the tribe and the Secretary pursuant to the agree-
7 ment;

8 “(5) authorize the tribe and the Secretary to
9 reallocate funds or modify budget allocations within
10 any year, and specify the procedures to be used;

11 “(6) allow for retrocession of programs or por-
12 tions of programs pursuant to section 105(e);

13 “(7) provide that, for the year for which, and
14 to the extent to which, funding is provided to a tribe
15 under this section, the tribe—

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

20 “(B) shall be responsible for the adminis-
21 tration of programs, services, functions, and ac-
22 tivities pursuant to agreements entered into
23 under this section; and

24 “(8) prohibit the Secretary from waiving, modi-
25 fying, or diminishing in any way the trust respon-

1 sibility of the United States with respect to Indian
2 tribes and individual Indians that exists under trea-
3 ties, Executive orders, and other laws.

4 “(c) ADDITIONAL ACTIVITIES.—Each funding agree-
5 ment negotiated pursuant to subsections (a) and (b) may,
6 in accordance to such additional terms as the parties deem
7 appropriate, also include other programs, services, func-
8 tions, and activities, or portions thereof, administered by
9 the Secretary of the Interior which are of special geo-
10 graphic, historical, or cultural significance to the partici-
11 pating Indian tribe requesting a compact.

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

15 “(1) to monitor the performance of trust func-
16 tions by the tribe through the annual trust evalua-
17 tion, and

18 “(2) for the Secretary to reassume a program,
19 service, function, or activity, or portions thereof, if
20 there is a finding of imminent jeopardy to a physical
21 trust asset.

22 “(e) CONSTRUCTION PROJECTS.—(1) Regarding con-
23 struction programs or projects, the Secretary and Indian
24 tribes may negotiate for the inclusion of specific provisions
25 of the Office of Federal Procurement and Policy Act and

1 Federal acquisition regulations in any funding agreement
2 entered into under this Act. Absent a negotiated agree-
3 ment, such provisions and regulatory requirements shall
4 not apply.

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

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

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

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

18 “(3) the Subcommittee on Native American Af-
19 fairs of the Committee on Natural Resources of the
20 House of Representatives.

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

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

5 “(3) Subject to paragraph (3) of this subsection and
6 paragraphs (1) and (3) of subsection (b), the Secretary
7 shall provide funds to the tribe under an agreement under
8 this title for programs, services, functions, and activities,
9 or portions thereof, in an amount equal to the amount
10 that the tribe would have been eligible to receive under
11 contracts and grants under this Act, including amounts
12 for direct program and contract support costs and, in ad-
13 dition, any funds that are specifically or functionally relat-
14 ed to the provision by the Secretary of services and bene-
15 fits to the tribe or its members, without regard to the or-
16 ganization level within the Department where such func-
17 tions are carried out.

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

23 “(h) CIVIL ACTIONS.—(1) Except as provided in
24 paragraph (2), for the purposes of section 110, the term

1 'contract' shall include agreements entered into under this
2 title.

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

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

13 “(A) the inclusion of programs, services, func-
14 tions, and activities in the agreements entered into
15 under this section; and

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

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

21 “(B) Not later than 60 days after receipt by the Sec-
22 retary of a written request by a tribe to waive application
23 of a Federal regulation for an agreement entered into
24 under this section, the Secretary shall either approve or
25 deny the requested waiver in writing to the tribe. A denial

1 may be made only upon a specific finding by the Secretary
2 that identified language in the regulation may not be
3 waived because that regulation is expressly required by
4 Federal law. The Secretary’s decision shall be final for the
5 Department.

6 “(j) FUNDS.—All funds provided under funding
7 agreements entered into pursuant to this Act, and all
8 funds provided under contracts or grants made pursuant
9 to this Act, shall be treated as non-Federal funds for pur-
10 poses of meeting matching requirements under any other
11 Federal law.

12 **“SEC. 404. BUDGET REQUEST.**

13 “The Secretary shall identify, in the annual budget
14 request of the President to the Congress under section
15 1105 of title 31, United States Code, any funds proposed
16 to be included in agreements authorized under this title.

17 **“SEC. 405. REPORTS.**

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

22 “(b) CONTENTS.—The report shall—

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

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

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

8 “(4) include the separate views of the tribes;
9 and

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

14 “(c) REPORT ON NON-BIA PROGRAMS.—

15 “(1) In order to optimize opportunities for in-
16 cluding non-Bureau of Indian Affairs programs for
17 compacts under section 403(b)(1) and special pro-
18 grams under section 403(c) in agreements tribes
19 participating in Self-Governance under this title, the
20 Secretary—

21 “(A) shall review all programs, services,
22 and functions administered by the Department
23 of the Interior, other than the Bureau of Indian
24 Affairs, without regard to the agency or office
25 concerned, and

1 “(B) within 90 days after the enactment of
2 this title, provide to the appropriate committees
3 of the Congress a listing of all such programs,
4 services, functions, and activities, or portions
5 thereof, which the Secretary determines are eli-
6 gible for inclusion in such agreements at the re-
7 quest of a participating Indian tribe.

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

15 “(3) The listing and targets under paragraphs
16 (1) and (2) shall be published in the Federal Reg-
17 ister and be made available to any Indian tribe par-
18 ticipating in Self-Governance under this title. The
19 list shall be published before January 1, 1995, and
20 annually thereafter by January 1 preceding the fis-
21 cal year in which the targets are to be met.

22 “(4) Thereafter, the Secretary shall annually
23 review and publish in the Federal Register, after
24 consultation with tribes participating in Self-Govern-

1 ance under this title, a revised listing and pro-
2 grammatic targets.

3 “(d) REPORT ON CENTRAL OFFICE FUNDS.—Within
4 90 days after the date of the enactment of this title, the
5 Secretary shall, in consultation with Indian tribes, develop
6 a funding formula to determine the individual tribal share
7 of funds controlled by the Central Office of the Bureau
8 of Indian Affairs for inclusion in the Self-Governance com-
9 pacts. The Secretary shall include such formula in the an-
10 nual report submitted to the Congress under subsection
11 (b), together with the views of the affected Indian tribes.

12 **“SEC. 406. DISCLAIMERS.**

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

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

22 “(c) APPLICATION OF OTHER SECTIONS OF ACT.—
23 All provisions of sections 6, 102(c), 104, 105(f), 110, and
24 111 of this Act shall apply to agreements provided under
25 this title.

1 **“SEC. 407. REGULATIONS.**

2 “(a) IN GENERAL.—Not later than 90 days after the
3 date of enactment of this title, at the request of a majority
4 of the Indian tribes with agreements under of this title,
5 the Secretary shall initiate procedures under subchapter
6 III of chapter 5 of title 5, United States Code, to negotiate
7 and promulgate such regulations as are necessary to carry
8 out this title.

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

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

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

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

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

Passed the House of Representatives August 16,
1994.

Attest: DONNALD K. ANDERSON,
Clerk.