

**Union Calendar No. 353**

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 3508**

**[Report No. 103-653]**

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**A BILL**

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

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AUGUST 3, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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### IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 1993

Mr. RICHARDSON introduced the following bill; which was referred to the Committee on Natural Resources

AUGUST 3, 1994

Additional sponsors: Mr. STUPAK, Mr. OBERSTAR, Mr. SABO, Mr. FALEOMAVAEGA, and Mr. VENTO

AUGUST 3, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on November 15, 1993]

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## A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Tribal Self-Governance*  
3 *Act of 1994”.*

4 **SEC. 2. FINDINGS.**

5 *Congress finds that—*

6 *(1) the tribal right of self-government flows from*  
7 *the inherent sovereignty of Indian tribes and nations;*

8 *(2) the United States recognizes a special govern-*  
9 *ment-to-government relationship with Indian tribes,*  
10 *including the right of the tribes to self-governance, as*  
11 *reflected in the Constitution, treaties, Federal statutes,*  
12 *and the course of dealings of the United States with*  
13 *Indian tribes;*

14 *(3) although progress has been made, the Federal*  
15 *bureaucracy, with its centralized rules and regula-*  
16 *tions, has eroded tribal self-governance and dominates*  
17 *tribal affairs;*

18 *(4) the Tribal Self-Governance Demonstration*  
19 *Project was designed to improve and perpetuate the*  
20 *government-to-government relationship between In-*  
21 *dian tribes and the United States and to strengthen*  
22 *tribal control over Federal funding and program*  
23 *management; and*

24 *(5) Congress has reviewed the results of the Trib-*  
25 *al Self-Governance Demonstration Project and finds*  
26 *that—*

1           (A) transferring control to tribal govern-  
2           ments, upon tribal request, over funding and de-  
3           cisionmaking for Federal programs, services,  
4           functions, and activities intended to benefit Indi-  
5           ans is an effective way to implement the Federal  
6           policy of government-to-government relations  
7           with Indian tribes; and

8           (B) transferring control to tribal govern-  
9           ments, upon tribal request, over funding and de-  
10          cisionmaking for Federal programs, services,  
11          functions, and activities strengthens the Federal  
12          policy of Indian self-determination.

13 **SEC. 3. DECLARATION OF POLICY.**

14          *It is the policy of this Act to permanently establish*  
15          *and implement tribal self-governance—*

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

19               (2) *to permit each Indian tribe to choose the ex-*  
20               *tent of the participation of such tribe in self-*  
21               *governance;*

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

1           (4) to ensure the continuation of the trust re-  
2           sponsibility of the United States to Indian tribes and  
3           Indian individuals;

4           (5) to permit an orderly transition from Federal  
5           domination of programs and services to provide In-  
6           dian tribes with meaningful authority to plan, con-  
7           duct, redesign, and administer programs, services,  
8           functions, and activities that meet the needs of the in-  
9           dividual tribal communities; and

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

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

14          *The Indian Self-Determination and Education Assist-*  
15          *ance Act is amended by adding at the end the following*  
16          *new title:*

17                   **“TITLE IV—TRIBAL SELF-**  
18                   **GOVERNANCE**

19   **“SEC. 401. ESTABLISHMENT.**

20          *“The Secretary of the Interior (hereinafter in this title*  
21          *referred to as the ‘Secretary’) shall establish and carry out*  
22          *a program within the Department of the Interior to be*  
23          *known as Tribal Self-Governance (hereinafter in this title*  
24          *referred to as ‘Self-Governance’) in accordance with this*  
25          *title.*

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

2       “(a) *CONTINUING PARTICIPATION.*—Each Indian tribe  
3 that is participating in the Tribal Self-Governance Dem-  
4 onstration Project at the Department of the Interior under  
5 title III on the date of enactment of this title shall thereafter  
6 participate in Self-Governance under this title and cease  
7 participation in the Tribal Self-Governance Demonstration  
8 Project under title III with respect to the Department of  
9 the Interior.

10       “(b) *ADDITIONAL PARTICIPANTS.*—(1) In addition to  
11 those Indian tribes participating in Self-Governance under  
12 subsection (a), the Secretary, acting through the Director  
13 of the Office of Self-Governance, may select up to 20 new  
14 tribes per year from the applicant pool described in sub-  
15 section (c) to participate in Self-Governance.

16       “(2)(A) Any consortium of Indian tribes may be treat-  
17 ed as a single Indian tribe for the purpose of participating  
18 in Self-Governance if each member tribe of the consortium  
19 first authorizes participation in the consortium.

20       “(B) An Indian tribe participating in Self-Governance  
21 as part of a consortium is not eligible to participate inde-  
22 pendently in the identical programs, services, functions, or  
23 activities in which the consortium is participating under  
24 this title.

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

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

3           “(2) has requested participation in Self-Govern-  
4           ance by resolution or other official action by the trib-  
5           al governing body; and

6           “(3) has demonstrated, for the previous three fis-  
7           cal years, financial stability and financial manage-  
8           ment capability as evidenced by the tribe having no  
9           material audit exceptions in the required annual  
10          audit of the self-determination contracts of the tribe.

11          “(d) *PLANNING PHASE.*—Each Indian tribe seeking to  
12          begin participation in Self-Governance shall complete a  
13          planning phase in accordance with this subsection. The  
14          tribe shall be eligible for a grant to plan and negotiate par-  
15          ticipation in Self-Governance. The planning phase shall in-  
16          clude—

17                 “(1) legal and budgetary research; and

18                 “(2) internal tribal government planning and  
19                 organizational preparation.

20          **“SEC. 403. FUNDING AGREEMENTS.**

21                 “(a) *AUTHORIZATION.*—The Secretary shall negotiate  
22                 and enter into an annual written funding agreement with  
23                 the governing body of each participating tribal government.

24                 “(b) *CONTENTS.*—Each funding agreement shall—

1           “(1) authorize the tribe to plan, conduct, consoli-  
2           date, and administer programs or portions of pro-  
3           grams, services, functions, and activities administered  
4           by the Department of the Interior for the benefit of  
5           Indian tribes or Indians because of their status as In-  
6           dians without regard to the agency or office of the De-  
7           partment of the Interior within which it is performed,  
8           including (but not limited to)—

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

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

13                   “(C) programs or portions of programs,  
14                   services, functions, and activities administered  
15                   by the Secretary of the Interior for the benefit of  
16                   Indians for which appropriations are made to  
17                   agencies other than the Department of the Inte-  
18                   rior;

19           “(2) subject to such terms within the agreement  
20           as the Secretary shall require, authorize the tribe to  
21           redesign or consolidate programs, services, functions,  
22           or activities and to reallocate funds for such pro-  
23           grams, services, functions, or activities;

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

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

4           “(B) for elementary and secondary schools  
5           under the formula developed pursuant to section  
6           1128 of the Education Amendments of 1978 (25  
7           U.S.C. 2008); and

8           “(C) the Flathead Agency Irrigation Divi-  
9           sion or the Flathead Agency Power Division, ex-  
10          cept that nothing in this section shall affect the  
11          contract authority of such divisions under sec-  
12          tion 102;

13          “(4) specify the services to be provided, the func-  
14          tions to be performed, and the responsibilities of the  
15          tribe and the Secretary pursuant to the agreement;

16          “(5) authorize the tribe and the Secretary to re-  
17          allocate funds or modify budget allocations within  
18          any year, and specify the procedures to be used;

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

21          “(7) provide that, for the year for which, and to  
22          the extent to which, funding is provided to a tribe  
23          under this section, the tribe—

24                  “(A) shall not be entitled to contract with  
25                  the Secretary for such funds under section 102,

1           *except that such tribe shall be eligible for new*  
2           *programs on the same basis as other tribes; and*

3           *“(B) shall be responsible for the administra-*  
4           *tion of programs, services, functions, and activi-*  
5           *ties pursuant to agreements entered into under*  
6           *this section; and*

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

12          *“(c) ADDITIONAL ACTIVITIES.—Each funding agree-*  
13          *ment negotiated pursuant to subsections (a) and (b) may*  
14          *also include other programs or portions of programs, serv-*  
15          *ices, functions, and activities administered by the Secretary*  
16          *of the Interior which are of special geographic, historical,*  
17          *or cultural significance to the Indian tribe requesting a*  
18          *compact according to such additional terms as the parties*  
19          *deem appropriate.*

20          *“(d) PROVISIONS RELATING TO THE SECRETARY.—*  
21          *Funding agreements negotiated between the Secretary and*  
22          *an Indian tribe shall include—*

23                 *“(1) provisions which detail the terms and con-*  
24                 *ditions under which the Secretary can reassume a*  
25                 *program or portion of a program, service, function, or*

1       *activity based on a finding of imminent jeopardy to*  
2       *a physical trust asset;*

3             “(2) *provisions which detail the authority of the*  
4       *Secretary to prescribe corrective actions to rectify*  
5       *gross mismanagement of a trust asset by an Indian*  
6       *tribe;*

7             “(3) *a negotiated amount of residual funds to be*  
8       *retained by the Secretary which are necessary to the*  
9       *discharge of his trust responsibility to Indian tribes*  
10       *and individual Indians not covered under this fund-*  
11       *ing agreement; and*

12            “(4) *provisions which detail the authority of the*  
13       *Secretary to prescribe corrective actions to remedy*  
14       *problems of gross mismanagement of programmatic or*  
15       *administrative responsibilities of the Secretary which*  
16       *are required under his trust responsibility to Indian*  
17       *tribes and individual Indians.*

18            “(e) *CONSTRUCTION PROJECTS.—(1) Regarding con-*  
19       *struction programs or projects, the Secretary and Indian*  
20       *tribes may negotiate for the inclusion of specific provisions*  
21       *of the Office of Federal Procurement and Policy Act and*  
22       *Federal acquisition regulations in any funding agreement*  
23       *entered into under this Act.*

24            “(2) *In all construction projects performed pursuant*  
25       *to this title, the Secretary shall ensure that proper health*

1 *and safety standards are provided for in the funding agreee-*  
2 *ments.*

3       “(f) *SUBMISSION FOR REVIEW.*—*Not later than 90*  
4 *days before the proposed effective date of an agreement en-*  
5 *tered into under this section, the Secretary shall submit a*  
6 *copy of such agreement to—*

7               “(1) *each Indian tribe that is served by the*  
8 *Agency that is serving the tribe that is a party to the*  
9 *funding agreement;*

10              “(2) *the Committee on Indian Affairs of the Sen-*  
11 *ate; and*

12              “(3) *the Subcommittee on Native American Af-*  
13 *airs of the Committee on Natural Resources of the*  
14 *House of Representatives.*

15       “(g) *PAYMENT.*—(1) *At the request of the governing*  
16 *body of the tribe and under the terms of an agreement en-*  
17 *tered into under this section, the Secretary shall provide*  
18 *funding to the tribe to carry out the agreement.*

19              “(2) *The funding agreements authorized by this title*  
20 *and title III of this Act may provide for advance payments*  
21 *to the tribes in the form of annual or semi-annual install-*  
22 *ments.*

23              “(3) *Subject to paragraph (3) of this subsection and*  
24 *paragraphs (1) and (3) of subsection (b), the Secretary shall*  
25 *provide funds to the tribe for one or more programs, serv-*

1 *ices, functions, or activities in an amount equal to the*  
2 *amount that the tribe would have been eligible to receive*  
3 *under contracts and grants under this Act, including*  
4 *amounts for direct program and contract support costs and*  
5 *amounts for those activities that are specifically or func-*  
6 *tionally related, but not part of, the service delivery pro-*  
7 *gram, without regard to the organization level within the*  
8 *Department where such functions are carried out.*

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

14       “(h) *CIVIL ACTIONS.*—(1) *Except as provided in para-*  
15 *graph (2), for the purposes of section 110, the term ‘con-*  
16 *tract’ shall include agreements entered into under this title.*

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

1       “(i) *FACILITATION.*—(1) *Except as otherwise provided*  
2 *by law, the Secretary shall interpret each Federal law and*  
3 *regulation in a manner that will facilitate—*

4               “(A) *the inclusion of programs, services, func-*  
5 *tions, and activities in the agreements entered into*  
6 *under this section; and*

7               “(B) *the implementation of agreements entered*  
8 *into under this section.*

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

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

22       “(j) *FUNDS.*—*All funds provided under funding agree-*  
23 *ments entered into pursuant to this Act, and all funds pro-*  
24 *vided under contracts or grants made pursuant to this Act,*

1 *shall be treated as non-Federal funds for purposes of meet-*  
2 *ing matching requirements under any other Federal law.*

3 **“SEC. 404. BUDGET REQUEST.**

4 *“The Secretary shall identify, in the annual budget re-*  
5 *quest of the President to the Congress under section 1105*  
6 *of title 31, United States Code, any funds proposed to be*  
7 *included in Self-Governance.*

8 **“SEC. 405. REPORTS.**

9 *“(a) REQUIREMENT.—The Secretary shall submit to*  
10 *Congress a written report on January 1 of each year follow-*  
11 *ing the date of enactment of this title regarding the admin-*  
12 *istration of this title.*

13 *“(b) CONTENTS.—The report shall contain—*

14 *“(1) the relative costs and benefit of Self-Govern-*  
15 *ance;*

16 *“(2) identification of all funds that are specifi-*  
17 *cally and functionally related to the provision of serv-*  
18 *ices and benefits to the tribe and its members and the*  
19 *corresponding reduction in the Federal bureaucracy;*  
20 *and*

21 *“(3) the separate views of the tribes.*

22 **“SEC. 406. DISCLAIMERS.**

23 *“(a) OTHER SERVICES, CONTRACTS, AND FUNDS.—*  
24 *Nothing in this title shall be construed to limit or reduce*  
25 *in any way the services, contracts, or funds that any other*

1 *Indian tribe or tribal organization is eligible to receive*  
2 *under section 102 or any other applicable Federal law.*

3 *“(b) FEDERAL TRUST RESPONSIBILITIES.—Nothing*  
4 *in this Act shall be construed to diminish the Federal trust*  
5 *responsibility to Indian tribes, individual Indians, or Indi-*  
6 *ans with trust allotments.*

7 *“(c) APPLICATION OF OTHER SECTIONS OF ACT.—All*  
8 *provisions of sections 6, 102(c), 104, 105(f), 110, and 111*  
9 *of this Act shall apply to agreements provided under this*  
10 *title.*

11 **“SEC. 407. REGULATIONS.**

12 *“(a) IN GENERAL.—Not later than 12 months after the*  
13 *date of enactment of this title, the Secretary shall promul-*  
14 *gate final regulations for the implementation of this title.*  
15 *All regulations promulgated pursuant to this title shall be*  
16 *developed by the Secretary with the full and active partici-*  
17 *pation of the Indian tribes with agreements under this title*  
18 *and other affected Indian tribes.*

19 *“(b) EFFECT.—The lack of promulgated regulations*  
20 *shall not limit the effect of this title.*

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

22 *“There are authorized to be appropriated such sums*  
23 *as may be necessary to carry out this title.”.*

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