

103D CONGRESS  
1ST SESSION

**S. 1618**

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**AN ACT**

To establish Tribal Self-Governance, and for other purposes.

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## **AN ACT**

To establish 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 1993”.

4 **SEC. 2. FINDINGS.**

5       Congress finds that—

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

9           (2) the United States recognizes a special gov-  
10      ernment-to-government relationship with Indian  
11      tribes, including the right of the tribes to self-gov-  
12      ernance, as reflected in the Constitution, treaties,  
13      Federal statutes, and the course of dealings of the  
14      United States Government with Indian tribes;

15          (3) although progress has been made, the Fed-  
16      eral bureaucracy, with its centralized rules and regu-  
17      lations, has eroded tribal self-governance and domi-  
18      nates tribal affairs;

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

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

4           (A) transferring control to tribal govern-  
5 ments, upon tribal request, over funding and  
6 decisionmaking for Federal programs, services,  
7 functions, and activities intended to benefit In-  
8 dians, is an effective way to implement the Fed-  
9 eral policy of government-to-government rela-  
10 tions with Indian tribes; and

11           (B) transferring control to tribal govern-  
12 ments, upon tribal request, over funding and  
13 decisionmaking for Federal programs, services,  
14 functions, and activities strengthens the Fed-  
15 eral policy of Indian self-determination.

16 **SEC. 3. DECLARATION OF POLICY.**

17       It is the policy of this Act to permanently establish  
18 and implement Self-Governance—

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

22           (2) to permit each Indian tribe to choose the  
23 extent of the participation of such tribe in Self-Gov-  
24 ernance;

1 (3) to co-exist with the provisions of the Indian  
 2 Self-Determination Act relating to provision of In-  
 3 dian services by designated Federal agencies;

4 (4) to ensure the continuation of the trust re-  
 5 sponsibility of the United States to Indian tribes and  
 6 Indian individuals;

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

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

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

17 The Indian Self-Determination and Education Assist-  
 18 ance Act (25 U.S.C. 450 et seq.) is amended by adding  
 19 at the end the following new title:

20 **“TITLE IV—TRIBAL SELF-**  
 21 **GOVERNANCE**

22 **“SEC. 401. ESTABLISHMENT.**

23 “The Secretary of the Interior (referred to in this  
 24 title as the ‘Secretary’) shall establish and carry out a pro-  
 25 gram within the Department of the Interior to be known

1 as Tribal Self-Governance (referred to in this title as ‘Self-  
2 Governance’) in accordance with this title.

3 **“SEC. 402. SELECTION OF TRIBES.**

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

12 “(b) ADDITIONAL TRIBES.—In addition to those  
13 tribes participating in Self-Governance under subsection  
14 (a), the Secretary, acting through the Director of the Of-  
15 fice of Self-Governance, may select up to 20 new tribes  
16 per year, from the applicant pool described in subsection  
17 (c), to participate in Self-Governance.

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

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

22 “(2) has requested participation in Self-Govern-  
23 ance; and

24 “(3) has demonstrated, for the previous 3 fiscal  
25 years, financial stability and financial management

1 capability as evidenced by the tribe having no mate-  
2 rial audit exceptions in the required annual audit of  
3 the self-determination contracts of the tribe.

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

9 “(1) legal and budgetary research; and

10 “(2) internal tribal government planning and  
11 organizational preparation.

12 **“SEC. 403. FUNDING AGREEMENTS.**

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

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

18 “(1) authorize the tribe to plan, conduct, con-  
19 solidate, and administer programs, services, func-  
20 tions, and activities administered by the Department  
21 of the Interior that are otherwise available to Indian  
22 tribes or Indians, including—

23 “(A) the Act of April 16, 1934 (popularly  
24 known as the ‘Johnson-O’Malley Act’) (48 Stat.  
25 596, chapter 147; 25 U.S.C. 452 et seq.); and

1           “(B) the Act of November 2, 1921 (popu-  
2           larly known as the ‘Snyder Act’) (42 Stat. 208,  
3           chapter 115; 25 U.S.C. 13);

4           “(2) subject to the terms of the agreement, au-  
5           thorize the tribe to redesign programs, services,  
6           functions, or activities, and to reallocate funds for  
7           such programs, services, functions, or activities;

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

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

12          “(B) for elementary and secondary schools  
13          under the formula developed pursuant to sec-  
14          tion 1128 of the Education Amendments of  
15          1978 (25 U.S.C. 2008); and

16          “(C) to the Flathead Agency Irrigation Di-  
17          vision or the Flathead Agency Power Division,  
18          except that nothing in this section shall affect  
19          the contract authority of such divisions under  
20          section 102;

21          “(4) specify the services to be provided, the  
22          functions to be performed, and the responsibilities of  
23          the tribe and the Secretary pursuant to the agree-  
24          ment;



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

4           “(6) provide for retrocession of programs or  
5       portions of programs pursuant to section 105(e);

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

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

13          “(B) shall be responsible for the adminis-  
14       tration of programs, services, functions, and ac-  
15       tivities pursuant to agreements entered into  
16       under this section; and

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

22          “(c) SUBMISSION FOR REVIEW.—Not later than 90  
23       days before the proposed effective date of an agreement  
24       entered into under this section, the Secretary shall submit  
25       a copy of such agreement to—

1           “(1) each tribe that is served by the Agency  
2           that is serving the tribe that is a party to the fund-  
3           ing agreement;

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

6           “(3) the Committee on Natural Resources of  
7           the House of Representatives.

8           “(d) PAYMENT.—

9           “(1) IN GENERAL.—At the request of the gov-  
10          erning body of the tribe and under the terms of an  
11          agreement entered into under this section, the Sec-  
12          retary shall provide funding to the tribe to carry out  
13          the agreement.

14          “(2) AMOUNT.—Subject to paragraph (3) of  
15          this subsection and paragraphs (1) and (3) of sub-  
16          section (b), the Secretary shall provide funds to the  
17          tribe for one or more programs, services, functions,  
18          or activities in an amount equal to the amount that  
19          the tribe would have been eligible to receive under  
20          contracts and grants under this Act, including direct  
21          program costs and indirect costs, and for any funds  
22          that are specifically or functionally related to the  
23          provision by the Secretary of services and benefits to  
24          the tribe and its members.

1           “(3) TRUST SERVICES.—Funds for trust serv-  
2           ices to individual Indians shall be available under an  
3           agreement entered into under this section only to the  
4           extent that the same services that would have been  
5           provided by the Secretary are provided to individual  
6           Indians by the tribe.

7           “(e) CIVIL ACTIONS.—

8           “(1) DEFINITION OF ‘CONTRACT’.—Except as  
9           provided in paragraph (2), for the purposes of sec-  
10          tion 110, the term ‘contract’ shall include agree-  
11          ments entered into under this title.

12          “(2) PROFESSIONAL CONTRACTS.—For the pe-  
13          riod that an agreement entered into under this title  
14          is in effect, the provisions of section 2103 of the Re-  
15          vised Statutes of the United States (25 U.S.C. 81),  
16          and section 16 of the Act of June 18, 1934 (48  
17          Stat. 987, chapter 576; 25 U.S.C. 476), shall not  
18          apply to attorney and other professional contracts by  
19          Indian tribal governments participating in Self-Gov-  
20          ernance under this title.

21          “(f) FACILITATION.—

22          “(1) INTERPRETATION.—Except as otherwise  
23          provided by law, the Secretary shall interpret each  
24          Federal law and regulation in a manner that will fa-  
25          cilitate—

1           “(A) the inclusion of programs, services,  
2 functions, and activities in the agreements en-  
3 tered into under this section; and

4           “(B) the implementation of agreements en-  
5 tered into under this section.

6           “(2) WAIVER.—

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

11           “(B) DECISION.—Not later than 60 days  
12 after receipt by the Secretary of a written re-  
13 quest by a tribe to waive application of a Fed-  
14 eral regulation for an agreement entered into  
15 under this section, the Secretary shall either ap-  
16 prove or deny the requested waiver in writing to  
17 the tribe. A denial may be made only upon a  
18 specific finding by the Secretary that identified  
19 language in the regulation may not be waived  
20 because such waiver is prohibited by Federal  
21 law.

22           “(C) APPEAL.—Not later than 60 days  
23 after denial of a waiver request, the Secretary  
24 shall, at the request of a tribe, provide the tribe

1           with a hearing on the record and opportunity  
2           for an appeal.

3   **“SEC. 404. BUDGET REQUEST.**

4           “The Secretary shall identify, in the annual budget  
5 request of the President to the Congress, any funds pro-  
6 posed to be included in Self-Governance.

7   **“SEC. 405. REPORTS.**

8           “(a) REQUIREMENT.—Not later than January 1 of  
9 each year after the date of enactment of this title, the Sec-  
10 retary shall submit to Congress a report regarding the ad-  
11 ministration of this title.

12          “(b) CONTENTS.—The report shall—

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

15               “(2) identify, with particularity, all funds that  
16 are specifically or functionally related to the provi-  
17 sion by the Secretary of services and benefits to  
18 Self-Governance tribes and their members, and the  
19 corresponding reductions in the Federal bureauc-  
20 racy; and

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

22   **“SEC. 406. EFFECT ON OTHER AGREEMENTS AND LAWS.**

23           “Nothing in this title shall be construed to limit or  
24 reduce in any way the services, contracts, or funds that  
25 any other Indian tribe or tribal organization is eligible to

1 receive under section 102 or any other applicable Federal  
2 law.

3 **“SEC. 407. NEGOTIATED RULEMAKING.**

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

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

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

22       “(d) EFFECT.—The lack of promulgated regulations  
23 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 are necessary to carry out this title.’”.

        Passed the Senate November 24 (legislative day, November 23), 1993.

        Attest:

*Secretary.*

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