

Calendar No. 332

103D CONGRESS
1ST SESSION

S. 1618

[Report No. 103-205]

A BILL

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

NOVEMBER 22, 1993

Reported with an amendment

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4 (legislative day, NOVEMBER 2), 1993

Mr. McCAIN (for himself, Mr. INOUE, Mr. MURKOWSKI, Mr. GORTON, Mr. SIMON, Mr. WELLSTONE, Mr. DURENBERGER, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 22, 1993

Reported by Mr. INOUE, with an amendment

[Omit the part struck through]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ‘‘Tribal Self-Governance
5 Act of 1993’’.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the tribal right of self-governance flows
4 from the inherent sovereignty of Indian tribes and
5 nations;

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

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

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

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

25 (A) transferring control to tribal govern-
26 ments, upon tribal request, over funding and

1 decisionmaking for Federal programs, services,
2 functions, and activities intended to benefit In-
3 dians, is an effective way to implement the Fed-
4 eral policy of government-to-government rela-
5 tions with Indian tribes; and

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

11 **SEC. 3. DECLARATION OF POLICY.**

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

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

17 (2) to permit each Indian tribe to choose the
18 extent of the participation of such tribe in Self-Gov-
19 ernance;

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

23 (4) to ensure the continuation of the trust re-
24 sponsibility of the United States to Indian tribes and
25 Indian individuals;

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

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

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

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

14 **“TITLE IV—TRIBAL SELF-**
 15 **GOVERNANCE**

16 **“SEC. 401. ESTABLISHMENT.**

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

22 **“SEC. 402. SELECTION OF TRIBES.**

23 “(a) CONTINUING PARTICIPATION.—Each tribe that
 24 is participating in the Tribal Self-Governance Demonstra-
 25 tion Project at the Department of the Interior under title

1 III on the date of enactment of this title shall thereafter
2 participate in Self-Governance under this title and cease
3 participation in the Tribal Self-Governance Demonstration
4 Project under title III with respect to the Department of
5 the Interior.

6 “(b) ADDITIONAL TRIBES.—In addition to those
7 tribes participating in Self-Governance under subsection
8 (a), the Secretary, acting through the Director of the Of-
9 fice of Self-Governance, may select up to 20 new tribes
10 per year, from the applicant pool described in subsection
11 (c), to participate in Self-Governance.

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

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

16 “(2) has requested participation in Self-Govern-
17 ance; and

18 “(3) has demonstrated, for the previous 3 fiscal
19 years, financial stability and financial management
20 capability as evidenced by the tribe having no mate-
21 rial audit exceptions in the required annual audit of
22 the self-determination contracts of the tribe.

23 “(d) PLANNING PHASE.—Each tribe seeking to begin
24 participation in Self-Governance shall complete a planning
25 phase in accordance with this subsection. The tribe shall

1 be eligible for a grant to plan and negotiate participation
2 in Self-Governance. The planning phase shall include—

3 “(1) legal and budgetary research; and

4 “(2) internal tribal government planning and
5 organizational preparation.

6 **“SEC. 403. FUNDING AGREEMENTS.**

7 “(a) AUTHORIZATION.—The Secretary shall nego-
8 tiate and enter into an annual written funding agreement
9 with the governing body of each participating tribal gov-
10 ernment.

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

12 “(1) authorize the tribe to plan, conduct, con-
13 solidate, and administer programs, services, func-
14 tions, and activities administered by the Department
15 of the Interior that are otherwise available to Indian
16 tribes or Indians, including—

17 “(A) the Act of April 16, 1934 (popularly
18 known as the ‘Johnson-O’Malley Act’) (48 Stat.
19 596, chapter 147; 25 U.S.C. 452 et seq.); and

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

23 “(2) subject to the terms of the agreement, au-
24 thorize the tribe to redesign programs, services,

1 functions, or activities, and to reallocate funds for
2 such programs, services, functions, or activities;

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

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

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

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

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

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

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

1 “(7) 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 “(8) 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) SUBMISSION FOR REVIEW.—Not later than 90
18 days before the proposed effective date of an agreement
19 entered into under this section, the Secretary shall submit
20 a copy of such agreement to—

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

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

1 “(3) the Committee on Natural Resources of
2 the House of Representatives.

3 “(d) PAYMENT.—

4 “(1) IN GENERAL.—At the request of the gov-
5 erning body of the tribe and under the terms of an
6 agreement entered into under this section, the Sec-
7 retary shall provide funding to the tribe to carry out
8 the agreement.

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

20 “(3) TRUST SERVICES.—Funds for trust serv-
21 ices to individual Indians shall be available under an
22 agreement entered into under this section only to the
23 extent that the same services that would have been
24 provided by the Secretary are provided to individual
25 Indians by the tribe.

1 “(e) CIVIL ACTIONS.—

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

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

15 “(f) FACILITATION.—

16 “(1) INTERPRETATION.—Except as otherwise
17 provided by law, the Secretary shall interpret each
18 Federal law and regulation in a manner that will fa-
19 cilitate—

20 “(A) the inclusion of programs, services,
21 functions, and activities in the agreements en-
22 tered into under this section; and

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

25 “(2) WAIVER.—

1 “(A) REQUEST.—A tribe may submit a
2 written request for a waiver to the Secretary
3 identifying the regulation sought to be waived
4 and the basis for the request.

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

16 “(C) APPEAL.—Not later than 60 days
17 after denial of a waiver request, the Secretary
18 shall, at the request of a tribe, provide the tribe
19 with a hearing on the record and opportunity
20 for an appeal.

21 **“SEC. 404. BUDGET REQUEST.**

22 “‘The Secretary shall identify, in the annual budget
23 request of the President to the Congress, any funds pro-
24 posed to be included in Self-Governance.

1 **“SEC. 405. REPORTS.**

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

6 “(b) CONTENTS.—The report shall—

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

9 “(2) identify, with particularity, all funds that
10 are specifically or functionally related to the provi-
11 sion by the Secretary of services and benefits to
12 Self-Governance tribes and their members, and the
13 corresponding reductions in the Federal bureauc-
14 racy; and

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

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

17 “Nothing in this title shall be construed to limit or
18 reduce in any way the services, contracts, or funds that
19 any other Indian tribe or tribal organization is eligible to
20 receive under section 102 or any other applicable Federal
21 law.

22 **“SEC. 407. NEGOTIATED RULEMAKING.**

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
26 Secretary shall initiate procedures under subchapter III

1 of chapter 5 of title 5, United States Code, to negotiate
2 and promulgate such regulations as are necessary to carry
3 out this title.

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

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

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

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

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