

policy of unilateral termination of Federal relations with any Indian nation.

(Pub. L. 100-297, title V, § 5202, as added Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063.)

#### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

House Concurrent Resolution 108 of the 83rd Congress, referred to in subsec. (f), is H. Con. Res. 108, Eighty-third Congress, Aug. 1, 1953, 67 Stat. B132, which is not classified to the Code.

#### PRIOR PROVISIONS

A prior section 2501, Pub. L. 100-297, title V, § 5202, Apr. 28, 1988, 102 Stat. 385, set forth findings, prior to repeal by Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063.

#### EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

#### SHORT TITLE

Pub. L. 100-297, title V, § 5201, Apr. 28, 1988, 102 Stat. 385, provided that: "This part [part B (§§ 5201-5212)] of title V of Pub. L. 100-297, enacting this chapter] may be cited as the 'Tribally Controlled Schools Act of 1988'."

#### TRIBAL SCHOOL CONSTRUCTION DEMONSTRATION PROGRAM

Pub. L. 108-7, div. F, title I, § 122, Feb. 20, 2003, 117 Stat. 241, as amended by Pub. L. 108-108, title I, § 136(a), Nov. 10, 2003, 117 Stat. 1270, provided that:

"(a) DEFINITIONS.—In this section:

"(1) CONSTRUCTION.—The term 'construction', with respect to a tribally controlled school, includes the construction or renovation of that school.

"(2) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

"(3) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(4) TRIBALLY CONTROLLED SCHOOL.—The term 'tribally controlled school' means a school that currently receives a grant under the Tribally Controlled Schools Act of 1988, as amended (25 U.S.C. 2501 et seq.) or is determined by the Secretary to meet the eligibility criteria of section 5205 of the Tribally Controlled Schools Act of 1988, as amended (25 U.S.C. 2504).

"(5) DEPARTMENT.—The term 'Department' means the Department of the Interior.

"(6) DEMONSTRATION PROGRAM.—The term 'demonstration program' means the Tribal School Construction Demonstration Program.

"(b) IN GENERAL.—The Secretary shall carry out a demonstration program for fiscal years 2003 through 2007 to provide grants to Indian tribes for the construction of tribally controlled schools.

"(1) IN GENERAL.—Subject to the availability of appropriations, in carrying out the demonstration program under subsection (b), the Secretary shall award a grant to each Indian tribe that submits an application that is approved by the Secretary under paragraph (2). The Secretary shall ensure that applications for funding to replace schools currently receiving funding for facility operation and maintenance from the Bureau of Indian Affairs receive the highest priority for grants under this section. Among such

applications, the Secretary shall give priority to applications of Indian tribes that agree to fund all future facility operation and maintenance costs of the tribally controlled school funded under the demonstration program from other than Federal funds.

"(2) GRANT APPLICATIONS.—An application for a grant under the section shall—

"(A) include a proposal for the construction of a tribally controlled school of the Indian tribe that submits the application; and

"(B) be in such form as the Secretary determines appropriate.

"(3) GRANT AGREEMENT.—As a condition to receiving a grant under this section, the Indian tribe shall enter into an agreement with the Secretary that specifies—

"(A) the costs of construction under the grant;

"(B) that the Indian tribe shall be required to contribute towards the cost of the construction a tribal share equal to 50 percent of the costs; and

"(C) any other term or condition that the Secretary determines to be appropriate.

"(4) ELIGIBILITY.—Grants awarded under the demonstration program shall be used only for construction or replacement of a tribally controlled school.

"(c) EFFECT OF GRANT.—(1) Except as provided in paragraph (2) of this subsection, A [sic] grant received under this section shall be in addition to any other funds received by an Indian tribe under any other provision of law. The receipt of a grant under this section shall not affect the eligibility of an Indian tribe receiving funding, or the amount of funding received by the Indian tribe, under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) or the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(2) A tribe receiving a grant for construction of a tribally controlled school under this section shall not be eligible to receive funding from the Bureau of Indian Affairs for that school for education operations or facility operation and maintenance if the school that was not at the time of the grant: (i) a school receiving funding for education operations or facility operation and maintenance under the Tribally Controlled Schools Act [25 U.S.C. 2501 et seq.] or the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] or (ii) a school operated by the Bureau of Indian Affairs.

"(d) REPORT.—At the conclusion of the five-year demonstration program, the Secretary shall report to Congress as to whether the demonstration program has achieved its purposes of providing additional tribes fair opportunities to construct tribally controlled schools, accelerating construction of needed educational facilities in Indian Country, and permitting additional funds to be provided for the Department's priority list for construction of replacement educational facilities."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107-63, title I, § 125, Nov. 5, 2001, 115 Stat. 440.

Pub. L. 106-291, title I, § 153, Oct. 11, 2000, 114 Stat. 960.

## § 2502. Grants authorized

### (a) In general

#### (1) Eligibility

The Secretary shall provide grants to Indian tribes, and tribal organizations that—

(A) operate contract schools under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and notify the Secretary of their election to operate the schools with assistance under this chapter rather than continuing the schools as contract schools;

(B) operate other tribally controlled schools eligible for assistance under this chapter and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

(C) elect to assume operation of Bureau-funded schools with the assistance under this chapter and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

**(2) Deposit of funds**

Grants provided under this chapter shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is made.

**(3) Use of funds**

**(A) In general**

Except as otherwise provided in this paragraph, grants provided under this chapter shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education related activities for which any funds that compose the grant may be used under the laws described in section 2504(a) of this title, including expenditures for—

- (i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes; and
- (ii) support services for the school, including transportation.

**(B) Exception**

Grants provided under this chapter may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operations and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 2504(a) of this title.

**(b) Limitations**

**(1) One grant per tribe or organization per fiscal year**

Not more than one grant may be provided under this chapter with respect to any Indian tribe or tribal organization for any fiscal year.

**(2) Nonsectarian use**

Funds provided under any grant made under this chapter may not be used in connection with religious worship or sectarian instruction.

**(3) Administrative costs limitation**

Funds provided under any grant under this chapter may not be expended for administrative costs (as defined in section 1128(h)(1) of the Education Amendments of 1978 [25 U.S.C. 2008(h)(1)]) in excess of the amount generated for such costs under section 1128 of such Act.

**(c) Limitation on transfer of funds among school sites**

**(1) In general**

In the case of a grantee that operates schools at more than one school site, the grantee may expend at any school site operated by the grantee not more than the lesser of—

- (A) 10 percent of the funds allocated for another school site under section 1128 of the

Education Amendments of 1978 [25 U.S.C. 2008]; or

- (B) \$400,000 of the funds allocated for another school site.

**(2) Definition of school site**

For purposes of this subsection, the term “school site” means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract or grant with, the Bureau for which a discreet<sup>1</sup> student count is identified under the funding formula established under section 1127 of the Education Amendments of 1978 [25 U.S.C. 2007].

**(d) No requirement to accept grants**

Nothing in this chapter may be construed—

- (1) to require a tribe or tribal organization to apply for or accept; or
- (2) to allow any person to coerce any tribe or tribal organization to apply for, or accept,

a grant under this chapter to plan, conduct, and administer all of, or any portion of, any Bureau program. Such applications and the timing of such applications shall be strictly voluntary. Nothing in this chapter may be construed as allowing or requiring any grant with any entity other than the entity to which the grant is provided.

**(e) No effect on Federal responsibility**

Grants provided under this chapter shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.

**(f) Retrocession**

**(1) In general**

Whenever a tribal governing body requests retrocession of any program for which assistance is provided under this chapter, such retrocession shall become effective upon a date specified by the Secretary that is not later than 120 days after the date on which the tribal governing body requests the retrocession. A later date may be specified if mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this chapter prior to the retrocession.

**(2) Status after retrocession**

The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau-operated school or as a school operated under contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.].

**(3) Transfer of equipment and materials**

Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program

<sup>1</sup> So in original. Probably should be “discrete”.

as a contract school) the existing equipment and materials which were acquired—

(A) with assistance under this chapter; or

(B) upon assumption of operation of the program under this chapter, if the school was a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] before receiving assistance under this chapter.

**(g) Prohibition of termination for administrative convenience**

Grants provided under this chapter may not be terminated, modified, suspended, or reduced solely for the convenience of the administering agency.

(Pub. L. 100-297, title V, § 5203, as added Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2064.)

REFERENCES IN TEXT

The Education Amendments of 1978, referred to in subsecs. (a)(1)(A) and (f)(3)(B), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§ 2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (f)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2502, Pub. L. 100-297, title V, § 5203, Apr. 28, 1988, 102 Stat. 385, set forth declaration of policy, prior to repeal by Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2501 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, title X, set out as a note under section 6301 of Title 20, Education.

**§ 2503. Composition of grants**

**(a) In general**

The grant provided under this chapter to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1127 and 1128 of the Education Amendments of 1978 [25 U.S.C. 2007, 2008] with respect to the tribally controlled schools eligible for assistance under this chapter which are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs;

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 450j of this title, or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to those referenced under section 1126(d) of the Education Amendments of 1978 [25 U.S.C. 2006(d)] or any other law); and

(3) the total amount of funds that are allocated to such schools for such fiscal year under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; and

(C) any other Federal education law, that are allocated to such schools for such fiscal year.<sup>1</sup>

**(b) Special rules**

**(1) In general**

**(A) Applicability of certain laws**

Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) of this section shall be subject to the provisions of this chapter and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

(i) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(ii) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; or

(iii) any Federal education law other than title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.].

**(B) Applicability of Bureau provisions**

Indian tribes and tribal organizations to which grants are provided under this chapter, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).

**(2) Schools considered contract schools**

Tribally controlled schools for which grants are provided under this chapter shall be treated as contract schools for the purposes of allocation of funds under sections 1126(e), 1127, and 1128 of the Education Amendments of 1978 [25 U.S.C. 2006(e), 2007, 2008].

**(3) Schools considered Bureau schools**

Tribally controlled schools for which grants are provided under this chapter shall be treated as Bureau schools for the purposes of allocation of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; and

(C) any other Federal education law, that are distributed through the Bureau.

**(4) Accounts; use of certain funds**

**(A) Separate account**

**(i) In general**

Notwithstanding section 2503(a)(2)<sup>2</sup> of this title, with respect to funds from facilities improvement and repair, alteration

<sup>1</sup>So in original. The words “, that are allocated to such schools for such fiscal year” probably should not appear.

<sup>2</sup>So in original. Probably should be “2502(a)(2)”.