

**(f) Development of innovative approaches**

The Secretary shall consult and cooperate with Indian tribes and tribal organizations, and confer with urban Indian organizations, in developing innovative approaches to address all or part of the total unmet need for construction of health facilities, that may include—

- (1) the establishment of an area distribution fund in which a portion of health facility construction funding could be devoted to all Service areas;
- (2) approaches provided for in other provisions of this subchapter; and
- (3) other approaches, as the Secretary determines to be appropriate.

**(h)<sup>1</sup> Funds appropriated subject to section 450f of this title**

All funds appropriated under section 13 of this title for the planning, design, construction, or renovation of health facilities for the benefit of an Indian tribe or tribes shall be subject to the provisions of section 102 of the Indian Self-Determination Act [25 U.S.C. 450f].

**(g)<sup>2</sup> Priority of certain projects protected**

The priority of any project established under the construction priority system in effect on March 23, 2010, shall not be affected by any change in the construction priority system taking place after that date if the project—

- (1) was identified in the fiscal year 2008 Service budget justification as—
  - (A) 1 of the 10 top-priority inpatient projects;
  - (B) 1 of the 10 top-priority outpatient projects;
  - (C) 1 of the 10 top-priority staff quarters developments; or
  - (D) 1 of the 10 top-priority Youth Regional Treatment Centers;

(2) had completed both Phase I and Phase II of the construction priority system in effect on March 23, 2010; or

(3) is not included in clause (i) or (ii)<sup>3</sup> and is selected, as determined by the Secretary—

- (A) on the initiative of the Secretary; or
- (B) pursuant to a request of an Indian tribe or tribal organization.

(Pub. L. 94-437, title III, §301, Sept. 30, 1976, 90 Stat. 1406; Pub. L. 100-713, title III, §301, Nov. 23, 1988, 102 Stat. 4812; Pub. L. 102-573, title III, §301, title IX, §902(4)(B), Oct. 29, 1992, 106 Stat. 4560, 4591; Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

## REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(1)(B), (C), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, 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.

## CODIFICATION

Amendment by Pub. L. 111-148 is based on sections 141 and 142 of title I of S. 1790, One Hundred Eleventh Con-

gress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which were enacted into law by section 10221(a) of Pub. L. 111-148.

## AMENDMENTS

2010—Pub. L. 111-148 added subsecs. (c) to (f), redesignated former subsec. (d) as (h), added subsec. (g) at end, and struck out former subsec. (c) which related to annual report on health facility priority system.

1992—Subsec. (a)(2). Pub. L. 102-573, §301(1), substituted “Health Care Organizations” for “Hospitals”.

Subsec. (b)(1). Pub. L. 102-573, §301(2), struck out “other” before “outpatient health care facility” in introductory provisions and added subpars. (F) and (G).

Subsec. (c). Pub. L. 102-573, §301(3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “The President shall include with the budget submitted under section 1105 of title 31, for each of the fiscal years 1990, 1991, and 1992, program information documents for the construction of 10 Indian health facilities which—

- “(1) comply with applicable construction standards, and
- “(2) have been approved by the Secretary.”

Subsec. (c)(1). Pub. L. 102-573, §301(4), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The Secretary shall submit to the Congress an annual report which sets forth—”

Subsec. (c)(2) to (5). Pub. L. 102-573, §301(5), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: “The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.”

Subsecs. (d), (e). Pub. L. 102-573, §§301(3), 902(4)(B), redesignated subsec. (e) as (d) and substituted “section 102 of the Indian Self-Determination Act” for “sections 102 and 103(b) of the Indian Self-Determination Act”. Former subsec. (d) redesignated (c).

1988—Pub. L. 100-713 amended section generally, substituting subsecs. (a) to (e) relating to consultation, closure of facilities, and reports for former subsecs. (a) to (c) relating to construction and renovation of Service facilities.

**§ 1632. Safe water and sanitary waste disposal facilities****(a) Congressional findings**

The Congress hereby finds and declares that—

(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

<sup>1</sup> So in original. Subsec. (g) is set out below.

<sup>2</sup> So in original. Subsec. (h) is set out above.

<sup>3</sup> So in original. Probably should be “paragraph (1) or (2)”.

**(b) Authority; assistance; transfer of funds**

(1) In furtherance of the findings and declarations made in subsection (a), Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 2004a of title 42.

(2) The Secretary, acting through the Service, is authorized to provide under section 2004a of title 42—

(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

(3) Notwithstanding any other provision of law—

(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 2004a of title 42.

**(c) 10-year plan**

Beginning in fiscal year 1990, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

**(d) Tribal capability**

The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

**(e) Amount of assistance**

(1) The Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing, and maintaining the facilities provided under the plan described in subsection (c).

(2) For the purposes of paragraph (1), the term "Federal share" means 80 percent of the costs described in paragraph (1).

(3) With respect to Indian tribes with fewer than 1,000 enrolled members, the non-Federal portion of the costs of operating, managing, and maintaining such facilities may be provided, in part, through cash donations or in kind property, fairly evaluated.

**(f) Eligibility of programs administered by Indian tribes**

Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be eligible for—

(1) any funds appropriated pursuant to this section, and

(2) any funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Service.

**(g) Annual report; sanitation deficiency levels**

(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report which sets forth—

(A) the current Indian sanitation facility priority system of the Service;

(B) the methodology for determining sanitation deficiencies;

(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;

(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and

(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

(2) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) to determine the sanitation needs of each tribe.

(3) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

(4) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:

(A) level I is an Indian tribe or community with a sanitation system—

(i) which complies with all applicable water supply and pollution control laws, and

(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;

(B) level II is an Indian tribe or community with a sanitation system—

(i) which complies with all applicable water supply and pollution control laws, and

(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;

(C) level III is an Indian tribe or community with a sanitation system which—

(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or

(ii) has no solid waste disposal facility;

(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

(5) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

(Pub. L. 94-437, title III, §302, Sept. 30, 1976, 90 Stat. 1407; Pub. L. 100-713, title III, §302, Nov. 23, 1988, 102 Stat. 4814; Pub. L. 102-573, title III, §§302, 307(b)(1), Oct. 29, 1992, 106 Stat. 4560, 4564.)

#### REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Indian Self-Determination Act, referred to in subsecs. (f) and (g)(2), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II 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.

#### AMENDMENTS

1992—Subsec. (e). Pub. L. 102-573, §302(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.”

Subsec. (f)(1). Pub. L. 102-573, §302(2), substituted “this section” for “subsection (h)”.

Subsec. (g)(1). Pub. L. 102-573, §302(3)(A), substituted “The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report” for “The Secretary shall submit to the Congress an annual report”.

Subsec. (g)(2) to (6). Pub. L. 102-573, §302(3)(B), redesignated pars. (3) to (6) as (2) to (5), respectively, and struck out former par. (2) which read as follows: “The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.”

Subsec. (h). Pub. L. 102-573, §307(b)(1), struck out subsec. (h) which authorized appropriations to carry out subsec. (b)(2) for fiscal years 1990 to 1992.

1988—Pub. L. 100-713 amended section generally, substituting subsecs. (a) to (h) relating to safe water and sanitary waste disposal facilities for former subsecs. (a) to (c) relating to construction of safe water and sanitary waste disposal facilities.

### § 1633. Preferences to Indians and Indian firms

#### (a) Discretionary authority; covered activities

The Secretary, acting through the Service, may utilize the negotiating authority of section

47 of this title, to give preference to any Indian or any enterprise, partnership, corporation, or other type of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian tribes in the State of New York (hereinafter referred to as an “Indian firm”) in the construction and renovation of Service facilities pursuant to section 1631 of this title and in the construction of safe water and sanitary waste disposal facilities pursuant to section 1632 of this title. Such preference may be accorded by the Secretary unless he finds, pursuant to rules and regulations promulgated by him, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at his finding, shall consider whether the Indian or Indian firm will be deficient with respect to (1) ownership and control by Indians, (2) equipment, (3) bookkeeping and accounting procedures, (4) substantive knowledge of the project or function to be contracted for, (5) adequately trained personnel, or (6) other necessary components of contract performance.

#### (b) Pay rates

For the purpose of implementing the provisions of this subchapter, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or renovated in whole or in part by funds made available pursuant to this subchapter are not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141-3144, 3146, and 3147 of title 40.

(Pub. L. 94-437, title III, §303, Sept. 30, 1976, 90 Stat. 1407.)

#### CODIFICATION

“Sections 3141-3144, 3146, and 3147 of title 40” substituted in subsec. (b) for “the Act of March 3, 1931 (40 U.S.C. 276a-276a-5, known as the Davis-Bacon Act)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

### § 1634. Expenditure of non-Service funds for renovation

#### (a) Authority of Secretary

(1) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], including—

(A) any plans or designs for such renovation or modernization; and

(B) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met.

(2) The Secretary shall maintain a separate priority list to address the needs of such facilities for personnel or equipment.