

SHORT TITLE

For short title of this subchapter as the “Tribal Self-Governance Act of 1994”, see section 201 of Pub. L. 103-413, set out as a Short Title of 1994 Amendment note under section 5301 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 103-413, title II, §202, Oct. 25, 1994, 108 Stat. 4270, provided that: “Congress finds that—

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

“(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

“(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

“(4) the Tribal Self-Governance Demonstration Project [see Pub. L. 93-638, title III, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, formerly set out as a note under former 25 U.S.C. 450f] was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management; and

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

“(A) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities, or portions thereof, is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and

“(B) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.”

CONGRESSIONAL DECLARATION OF POLICY

Pub. L. 103-413, title II, §203, Oct. 25, 1994, 108 Stat. 4271, provided that: “It is the policy of this title [enacting this subchapter] to permanently establish and implement tribal self-governance—

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

“(2) to permit each Indian tribe to choose the extent of the participation of such tribe in self-governance;

“(3) to coexist with the provisions of the Indian Self-Determination Act [title I of Pub. L. 93-638, see Short Title note set out under section 5301 of this title] relating to the provision of Indian services by designated Federal agencies;

“(4) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(5) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and

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

§ 5362. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project

at the Department of the Interior under title III¹ on October 25, 1994, shall thereafter participate in Self-Governance under this subchapter and cease participation in the Tribal Self-Governance Demonstration Project under title III¹ with respect to the Department of the Interior.

(b) Additional participants

(1) In addition to those Indian tribes participating in self-governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 50 new tribes per year from the applicant pool described in subsection (c) of this section to participate in self-governance.

(2) If each tribe requests, two or more otherwise eligible Indian tribes may be treated as a single Indian tribe for the purpose of participating in Self-Governance as a consortium.

(c) Applicant pool

The qualified applicant pool for Self-Governance shall consist of each tribe that—

(1) successfully completes the planning phase described in subsection (d) of this section;

(2) has requested participation in Self-Governance by resolution or other official action by the tribal governing body; and

(3) has demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

(d) Planning phase

Each Indian tribe seeking to begin participation in Self-Governance shall complete a planning phase in accordance with this subsection. The tribe shall be eligible for a grant to plan and negotiate participation in Self-Governance. The planning phase shall include—

(1) legal and budgetary research; and

(2) internal tribal government planning and organizational preparation.

(Pub. L. 93-638, title IV, §402, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4272; amended Pub. L. 104-208, div. A, title I, §101(d) [title I, §117], Sept. 30, 1996, 110 Stat. 3009-181, 3009-201.)

REFERENCES IN TEXT

Title III, referred to in subsec. (a), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

CODIFICATION

Section was formerly classified to section 458bb of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-208 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In addition to those Indian tribes participating in Self-Governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 20 new tribes per

¹ See References in Text note below.

year from the applicant pool described in subsection (c) of this section to participate in Self-Governance.”

§ 5363. Funding agreements

(a) Authorization

The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government in a manner consistent with the Federal Government's laws and trust relationship to and responsibility for the Indian people.

(b) Contents

Each funding agreement shall—

(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior through the Bureau of Indian Affairs, without regard to the agency or office of the Bureau of Indian Affairs within which the program, service, function, and activity, or portion thereof, is performed, including funding for agency, area, and central office functions in accordance with subsection (g)(3) of this section, and including any program, service, function, and activity, or portion thereof, administered under the authority of—

(A) the Act of April 16, 1934 (25 U.S.C. 452 et seq.);¹

(B) section 13 of this title; and

(C) programs, services, functions, and activities or portions thereof administered by the Secretary of the Interior that are otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 5365(c) of this title, except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law;

(3) subject to the terms of the agreement, authorize the tribe to redesign or consolidate programs, services, functions, and activities, or portions thereof, and reallocate funds for such programs, services, functions, and activities, or portions thereof, except that, with respect to the reallocation, consolidation, and redesign of programs described in paragraph (2), a joint agreement between the Secretary and the tribe shall be required;

(4) prohibit the inclusion of funds provided—

(A) pursuant to the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

(B) for elementary and secondary schools under the formula developed pursuant to section 2008 of this title; and

(C) the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 5321 of this title;

(5) specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to the agreement;

(6) authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used;

(7) allow for retrocession of programs or portions of programs pursuant to section 5324(e) of this title;

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

(A) shall not be entitled to contract with the Secretary for such funds under section 5321 of this title, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

(B) shall be responsible for the administration of programs, services, functions, and activities pursuant to agreements entered into under this section; and

(9) prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, and other laws.

(c) Additional activities

Each funding agreement negotiated pursuant to subsections (a) and (b) of this section may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.

(d) Provisions relating to Secretary

Funding agreements negotiated between the Secretary and an Indian tribe shall include provisions—

(1) to monitor the performance of trust functions by the tribe through the annual trust evaluation, and

(2) for the Secretary to reassume a program, service, function, or activity, or portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety.

(e) Construction projects

(1) Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and Federal acquisition regulations in any funding agreement entered into under this chapter. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(2) In all construction projects performed pursuant to this subchapter, the Secretary shall en-

¹ See References in Text note below.