

Editorial Notes

CODIFICATION

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

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Interior and Insular Affairs of the Senate abolished and replaced by Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4, Ninety-fifth Congress (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977. Section 105 of Senate Resolution No. 4 established a temporary Select Committee on Indian Affairs having jurisdiction over matters relating to Indian affairs (such matters previously having been within the jurisdiction of the Committee on Interior and Insular Affairs). Senate Resolution No. 127, June 6, 1984, Ninety-eighth Congress, established the Select Committee on Indian Affairs as a permanent committee of the Senate, and section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress, redesignated the Select Committee on Indian Affairs as the Committee on Indian Affairs.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 5355. Eligibility for funds of tribe or tribal organization controlling or managing private schools

The Secretary is authorized and directed to provide funds, pursuant to this chapter; the the¹ Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.]; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school.

(Pub. L. 93-638, title II, §208, Jan. 4, 1975, 88 Stat. 2216; Pub. L. 97-375, title I, §108(d), Dec. 21, 1982, 96 Stat. 1820.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

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

AMENDMENTS

1982—Pub. L. 97-375 struck out provisions relating to annual reporting requirements of Secretary to Congress-

¹ So in original.

sional committees respecting educational assistance program conducted pursuant to this section.

§ 5356. Supplemental assistance to funds provided to local educational agencies

The assistance provided in this chapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title VI of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7401 et seq.].

(Pub. L. 93-638, title II, § 209, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 103-382, title III, §393(c), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 114-95, title IX, §9215(rr), Dec. 10, 2015, 129 Stat. 2181.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title VI of the Act is classified generally to subchapter VI (§7401 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

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

AMENDMENTS

2015—Pub. L. 114-95 substituted "assistance provided under title VI of the Elementary and Secondary Education Act of 1965." for "assistance provided under title IX of the Elementary and Secondary Education Act of 1965."

1994—Pub. L. 103-382 substituted "title IX of the Elementary and Secondary Education Act of 1965" for "title IV of the Act of June 23, 1972 (86 Stat. 235)".

SUBCHAPTER IV—TRIBAL SELF-GOVERNANCE—DEPARTMENT OF THE INTERIOR**§ 5361. Definitions****In this subchapter:****(1) Compact**

The term "compact" means a self-governance compact entered into under section 5364 of this title.

(2) Construction program; construction project

The term "construction program" or "construction project" means a Tribal undertaking relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community, health, irrigation, agriculture, conservation, flood control, transportation, or port facilities, or for other Tribal purposes.

(3) Department

The term "Department" means the Department of the Interior.

(4) Funding agreement

The term “funding agreement” means a funding agreement entered into under section 5363 of this title.

(5) Gross mismanagement

The term “gross mismanagement” means a significant violation, shown by a preponderance of the evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds for a program administered by an Indian Tribe under a compact or funding agreement.

(6) Inherent Federal function

The term “inherent Federal function” means a Federal function that may not legally be delegated to an Indian Tribe.

(7) Non-BIA program

The term “non-BIA program” means all or a portion of a program, function, service, or activity that is administered by any bureau, service, office, or agency of the Department of the Interior other than—

- (A) the Bureau of Indian Affairs;
- (B) the Office of the Assistant Secretary for Indian Affairs; or
- (C) the Office of the Special Trustee for American Indians.

(8) Program

The term “program” means any program, function, service, or activity (or portion thereof) within the Department that is included in a funding agreement.

(9) Secretary

The term “Secretary” means the Secretary of the Interior.

(10) Self-determination contract

The term “self-determination contract” means a self-determination contract entered into under section 5321 of this title.

(11) Self-governance

The term “self-governance” means the Tribal Self-Governance Program established under section 5362 of this title.

(12) Tribal share

The term “Tribal share” means the portion of all funds and resources of an Indian Tribe that—

- (A) support any program within the Bureau of Indian Affairs, the Office of the Special Trustee for American Indians, or the Office of the Assistant Secretary for Indian Affairs; and
- (B) are not required by the Secretary for the performance of an inherent Federal function.

(13) Tribal water rights settlement

The term “Tribal water rights settlement” means any settlement, compact, or other agreement expressly ratified or approved by an Act of Congress that—

- (A) includes an Indian Tribe and the United States as parties; and
- (B) quantifies or otherwise defines any water right of the Indian Tribe.

(Pub. L. 93-638, title IV, §401, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4271;

Pub. L. 116-180, title I, §101(b), Oct. 21, 2020, 134 Stat. 858.)

Editorial Notes

CODIFICATION

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

AMENDMENTS

2020—Pub. L. 116-180 amended section generally. Prior to amendment, section related to establishment of a Tribal Self-Governance program. See section 5362 of this title.

Statutory Notes and Related Subsidiaries

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.

CONSTRUCTION OF 2020 AMENDMENT

Pub. L. 116-180, title I, §101(a), Oct. 21, 2020, 134 Stat. 857, provided that: “Nothing in this Act [see Short Title of 2020 Amendment note set out under section 5301 of this title], or the amendments made by this Act, shall be construed—

“(1) to modify, limit, expand, or otherwise affect—

“(A) the authority of the Secretary of the Interior, as provided for under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] (as in effect on the day before the date of enactment of this Act [Oct. 21, 2020]), regarding—

“(i) the inclusion of any non-BIA program (as defined in section 401 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5361]) in a self-determination contract or funding agreement under section 403(c) of such Act [25 U.S.C. 5363(c)] (as so in effect); or

“(ii) the implementation of any contract or agreement described in clause (i) that is in effect on the day described in subparagraph (A);

“(B) the meaning, application, or effect of any Tribal water rights settlement, including the performance required of a party thereto or any payment or funding obligation thereunder;

“(C) the authority, jurisdiction, or responsibility of a State to manage, control, or regulate fish and wildlife under State law (including regulations) on land or water in the State, including Federal public land;

“(D) except for the authority provided to the Secretary as described in subparagraph (A), the applicability or effect of any Federal law related to the protection or management of fish or wildlife; or

“(E) any treaty-reserved right or other right of any Indian Tribe as recognized by any other means, including treaties or agreements with the United States, Executive orders, statutes, regulations, or case law; or

“(2) to authorize any provision of a contract or agreement that is not consistent with the terms of a Tribal water rights settlement.”

APPLICATION OF OTHER PROVISIONS

Pub. L. 116-180, title II, §201(d), Oct. 21, 2020, 134 Stat. 879, provided that: “Sections 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304, 5305, 5306, 5307, 5321(c), 5323, 5324(a)(1), 5324(f), 5331, and 5332) and section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959) [25 U.S.C. 5321 note], apply to compacts and funding agreements entered into under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.).”

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. Tribal Self-Governance Program**(a) Establishment**

The Secretary shall establish and carry out a program within the Department to be known as the "Tribal Self-Governance Program".

(b) Selection of participating Indian Tribes**(1) In general****(A) Eligibility**

The Secretary, acting through the Director of the Office of Self-Governance, may se-

lect not more than 50 new Indian Tribes per year from those tribes eligible under subsection (c) to participate in self-governance.

(B) Joint participation

On the request of each participating Indian Tribe, 2 or more otherwise eligible Indian Tribes may be treated as a single Indian Tribe for the purpose of participating in self-governance.

(2) Other authorized Indian Tribe or Tribal organization

If an Indian Tribe authorizes another Indian Tribe or a Tribal organization to plan for or carry out a program on its behalf under this subchapter, the authorized Indian Tribe or Tribal organization shall have the rights and responsibilities of the authorizing Indian Tribe (except as otherwise provided in the authorizing resolution).

(3) Joint participation as organization

Two or more Indian Tribes that are not otherwise eligible under subsection (c) may be treated as a single Indian Tribe for the purpose of participating in self-governance as a Tribal organization if—

(A) each Indian Tribe so requests; and

(B) the Tribal organization itself, or at least one of the Indian Tribes participating in the Tribal organization, is eligible under subsection (c).

(4) Tribal withdrawal from a Tribal organization**(A) In general**

An Indian Tribe that withdraws from participation in a Tribal organization, in whole or in part, shall be entitled to participate in self-governance if the Indian Tribe is eligible under subsection (c).

(B) Effect of withdrawal

If an Indian Tribe withdraws from participation in a Tribal organization, the Indian Tribe shall be entitled to its Tribal share of funds and resources supporting the programs that the Indian Tribe is entitled to carry out under the compact and funding agreement of the Indian Tribe.

(C) Participation in self-governance

The withdrawal of an Indian Tribe from a Tribal organization shall not affect the eligibility of the Tribal organization to participate in self-governance on behalf of one or more other Indian Tribes, if the Tribal organization still qualifies under subsection (c).

(D) Withdrawal process**(i) In general**

An Indian Tribe may, by Tribal resolution, fully or partially withdraw its Tribal share of any program in a funding agreement from a participating Tribal organization.

(ii) Notification

The Indian Tribe shall provide a copy of the Tribal resolution described in clause (i) to the Secretary.