

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.

(iii) Effective date**(I) In general**

A withdrawal under clause (i) shall become effective on the date that is specified in the Tribal resolution and mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the Tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian Tribe or Tribal organization.

(II) No specified date

In the absence of a date specified in the resolution, the withdrawal shall become effective on—

(aa) the earlier of—

(AA) 1 year after the date of submission of the request; and

(BB) the date on which the funding agreement expires; or

(bb) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the Tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian Tribe or Tribal organization.

(E) Distribution of funds

If an Indian Tribe or Tribal organization eligible to enter into a self-determination contract or a compact or funding agreement fully or partially withdraws from a participating Tribal organization, the withdrawing Indian Tribe—

(i) may elect to enter into a self-determination contract or compact, in which case—

(I) the withdrawing Indian Tribe or Tribal organization shall be entitled to its Tribal share of unexpended funds and resources supporting the programs that the Indian Tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated to the funding agreement of the Tribal organization); and

(II) the funds referred to in subclause (I) shall be withdrawn by the Secretary from the funding agreement of the Tribal organization and transferred to the withdrawing Indian Tribe, on the condition that sections 5321 and 5324(i) of this title, as appropriate, shall apply to the withdrawing Indian Tribe; or

(ii) may elect not to enter into a self-determination contract or compact, in which case all unexpended funds and resources associated with the withdrawing Indian Tribe's returned programs (calculated on the same basis as the funds were initially allocated to the funding agreement of the Tribal organization) shall be returned by the Tribal organization to the Secretary for operation of the programs included in the withdrawal.

(F) Return to mature contract status

If an Indian Tribe elects to operate all or some programs carried out under a compact or funding agreement under this subchapter through a self-determination contract under subchapter I, at the option of the Indian Tribe, the resulting self-determination contract shall be a mature self-determination contract as long as the Indian Tribe meets the requirements set forth in section 5304(h) of this title.

(c) Eligibility

To be eligible to participate in self-governance, an Indian Tribe shall—

(1) successfully complete the planning phase described in subsection (d);

(2) request participation in self-governance by resolution or other official action by the Tribal governing body; and

(3) demonstrate, for the 3 fiscal years preceding the date on which the Indian Tribe requests participation, financial stability and financial management capability as evidenced by the Indian Tribe having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

(d) Planning phase**(1) In general**

An Indian Tribe seeking to begin participation in self-governance shall complete a planning phase as provided in this subsection.

(2) Activities

The planning phase shall—

(A) be conducted to the satisfaction of the Indian Tribe; and

(B) include—

(i) legal and budgetary research; and

(ii) internal Tribal government planning, training, and organizational preparation.

(e) Grants**(1) In general**

Subject to the availability of appropriations, an Indian Tribe or Tribal organization that meets the requirements of paragraphs (2) and (3) of subsection (c) shall be eligible for grants—

(A) to plan for participation in self-governance; and

(B) to negotiate the terms of participation by the Indian Tribe or Tribal organization in self-governance, as set forth in a compact and a funding agreement.

(2) Receipt of grant not required

Receipt of a grant under paragraph (1) shall not be a requirement of participation in self-governance.

(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; Pub. L. 116-180, title I, §101(c), Oct. 21, 2020, 134 Stat. 859.)

Editorial Notes

REFERENCES IN TEXT

Subchapter I, referred to in subsec. (b)(4)(F), was in the original "title I", meaning title I of Pub. L. 93-638,

known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458bb 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 selection of Indian tribes to participate in Self-Governance.

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 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, on the request of any Indian Tribe or Tribal organization, negotiate and enter into a written funding agreement with the governing body of the Indian Tribe or the Tribal organization in a manner consistent with—

- (1) the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States; and
- (2) subsection (b).

(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, the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee for American Indians, without regard to the agency or office of that Bureau or those Offices 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—

- (A) any program, service, function, and activity, or portion thereof, administered under the authority of—
 - (i) the Act of April 16, 1934 (25 U.S.C. 452 et seq.);¹ and
 - (ii) section 13 of this title;

(B) 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; and

(C) any other program, service, function, or activity (or portion thereof) that is provided through the Bureau of Indian Affairs,

the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians with respect to which Indian Tribes or Indians are primary or significant beneficiaries;

(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 5372(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; and

(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.

(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 ensure that proper health and safety standards are provided for in the funding agreements.

(f) Submission

Not later than 90 days before the proposed effective date of an agreement entered into under

¹ See References in Text note below.