

103^D CONGRESS
1ST SESSION

H. R. 3508

To provide for tribal self-governance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 1993

Mr. RICHARDSON introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To provide for tribal self-governance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Self-Governance
5 Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

11 (2) the United States recognizes a special gov-
12 ernment-to-government relationship with Indian

1 tribes, including the right of the tribes to self-gov-
2 ernance, as reflected in the Constitution, treaties,
3 Federal statutes, and the course of dealings of the
4 United States with Indian tribes;

5 (3) although progress has been made, the Fed-
6 eral bureaucracy, with its centralized rules and regu-
7 lations, has eroded tribal self-governance and domi-
8 nates tribal affairs;

9 (4) the Tribal Self-Governance Demonstration
10 Project was designed to improve and perpetuate the
11 government-to-government relationship between In-
12 dian tribes and the United States and to strengthen
13 tribal control over Federal funding and program
14 management; and

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

18 (A) transferring control to tribal govern-
19 ments, upon tribal request, over funding and
20 decisionmaking for Federal programs, services,
21 functions, and activities intended to benefit In-
22 dians is an effective way to implement the Fed-
23 eral policy of government-to-government rela-
24 tions with Indian tribes; and

1 (B) transferring control to tribal govern-
2 ments, upon tribal request, over funding and
3 decisionmaking for Federal programs, services,
4 functions, and activities strengthens the Fed-
5 eral policy of Indian self-determination.

6 **SEC. 3. DECLARATION OF POLICY.**

7 It is the policy of this Act to permanently establish
8 and implement tribal self-governance—

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

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

15 (3) to coexist with the provisions of the Indian
16 Self-Determination Act relating to the provision of
17 Indian services by designated Federal agencies;

18 (4) to ensure the continuation of the trust re-
19 sponsibility of the United States to Indian tribes and
20 Indian individuals;

21 (5) to permit an orderly transition from Federal
22 domination of programs and services to provide In-
23 dian tribes with meaningful authority to plan, con-
24 duct, redesign, and administer programs, services,

1 functions, and activities that meet the needs of the
2 individual tribal communities; and

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

6 **SEC. 4. TRIBAL SELF-GOVERNANCE.**

7 The Indian Self-Determination and Education Assist-
8 ance Act is amended by adding at the end the following
9 new title:

10 **“TITLE IV—TRIBAL SELF-**
11 **GOVERNANCE**

12 **“SEC. 401. ESTABLISHMENT.**

13 “The Secretary of the Interior (hereinafter in this
14 title referred to as the ‘Secretary’) shall establish and
15 carry out a program within the Department of the Interior
16 to be known as Tribal Self-Governance (hereinafter in this
17 title referred to as ‘Self-Governance’) in accordance with
18 this title.

19 **“SEC. 402. SELECTION OF PARTICIPATING INDIAN TRIBES.**

20 “(a) CONTINUING PARTICIPATION.—Each Indian
21 tribe that is participating in the Tribal Self-Governance
22 Demonstration Project at the Department of the Interior
23 under title III on the date of enactment of this title shall
24 thereafter participate in Self-Governance under this title
25 and cease participation in the Tribal Self-Governance

1 Demonstration Project under title III with respect to the
2 Department of the Interior.

3 “(b) ADDITIONAL PARTICIPANTS.—In addition to
4 those Indian tribes participating in Self-Governance under
5 subsection (a), the Secretary, acting through the Director
6 of the Office of Self-Governance, may select up to 20 new
7 tribes per year from the applicant pool described in sub-
8 section (c) to participate in Self-Governance.

9 “(c) APPLICANT POOL.—The qualified applicant pool
10 for Self-Governance shall consist of each tribe that—

11 “(1) successfully completes the planning phase
12 described in subsection (d);

13 “(2) has requested participation in Self-Govern-
14 ance; and

15 “(3) has demonstrated, for the previous three
16 fiscal years, financial stability and financial manage-
17 ment capability as evidenced by the tribe having no
18 material audit exceptions in the required annual
19 audit of the self-determination contracts of the tribe.

20 “(d) PLANNING PHASE.—Each Indian tribe seeking
21 to begin participation in Self-Governance shall complete
22 a planning phase in accordance with this subsection. The
23 tribe shall be eligible for a grant to plan and negotiate
24 participation in Self-Governance. The planning phase shall
25 include—

1 “(1) legal and budgetary research; and

2 “(2) internal tribal government planning and
3 organizational preparation.

4 **“SEC. 403. FUNDING AGREEMENTS.**

5 “(a) AUTHORIZATION.—The Secretary shall nego-
6 tiate and enter into an annual written funding agreement
7 with the governing body of each participating tribal
8 government.

9 “(b) CONTENTS.—Each funding agreement shall—

10 “(1) authorize the tribe to plan, conduct, con-
11 solidate, and administer programs, services, func-
12 tions, and activities administered by the Department
13 of the Interior that are otherwise available to Indian
14 tribes or Indians, including (but not limited to)—

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

17 “(B) the Act of November 2, 1921 (25
18 U.S.C. 13);

19 “(2) subject to the terms of the agreement, au-
20 thorize the tribe to redesign programs, services,
21 functions, or activities and to reallocate funds for
22 such programs, services, functions, or activities;

23 “(3) prohibit the inclusion of funds provided—

1 “(A) pursuant to the Tribally Controlled
2 Community College Assistance Act of 1978 (25
3 U.S.C. 1801 et seq.);

4 “(B) for elementary and secondary schools
5 under the formula developed pursuant to sec-
6 tion 1128 of the Education Amendments of
7 1978 (25 U.S.C. 2008); and

8 “(C) the Flathead Agency Irrigation Divi-
9 sion or the Flathead Agency Power Division,
10 except that nothing in this section shall affect
11 the contract authority of such divisions under
12 section 102;

13 “(4) specify the services to be provided, the
14 functions to be performed, and the responsibilities of
15 the tribe and the Secretary pursuant to the agree-
16 ment;

17 “(5) authorize the tribe and the Secretary to
18 reallocate funds or modify budget allocations within
19 any year, and specify the procedures to be used;

20 “(6) allow for retrocession of programs or por-
21 tions of programs pursuant to section 105(e);

22 “(7) provide that, for the year for which, and
23 to the extent to which, funding is provided to a tribe
24 under this section, the tribe—

1 “(A) shall not be entitled to contract with
2 the Secretary for such funds under section 102,
3 except that such tribe shall be eligible for new
4 programs on the same basis as other tribes; and

5 “(B) shall be responsible for the adminis-
6 tration of programs, services, functions, and ac-
7 tivities pursuant to agreements entered into
8 under this section; and

9 “(8) prohibit the Secretary from waiving, modi-
10 fying, or diminishing in any way the trust respon-
11 sibility of the United States with respect to Indian
12 tribes and individual Indians that exists under trea-
13 ties, Executive orders, and other laws.

14 “(c) SUBMISSION FOR REVIEW.—Not later than 90
15 days before the proposed effective date of an agreement
16 entered into under this section, the Secretary shall submit
17 a copy of such agreement to—

18 “(1) each Indian tribe that is served by the
19 Agency that is serving the tribe that is a party to
20 the funding agreement;

21 “(2) the Committee on Indian Affairs of the
22 Senate; and

23 “(3) the Subcommittee on Native American Af-
24 fairs of the Committee on Natural Resources of the
25 House of Representatives.

1 “(d) PAYMENT.—

2 “(1) IN GENERAL.—At the request of the gov-
3 erning body of the tribe and under the terms of an
4 agreement entered into under this section, the Sec-
5 retary shall provide funding to the tribe to carry out
6 the agreement.

7 “(2) AMOUNT.—Subject to paragraph (3) of
8 this subsection and paragraphs (1) and (3) of sub-
9 section (b), the Secretary shall provide funds to the
10 tribe for one or more programs, services, functions,
11 or activities in an amount equal to the amount that
12 the tribe would have been eligible to receive under
13 contracts and grants under this Act, including direct
14 program costs, and for any funds that are specifi-
15 cally or functionally related to the provision by the
16 Secretary of services and benefits to the tribe and its
17 members.

18 “(3) TRUST SERVICES.—Funds for trust serv-
19 ices to individual Indians shall be available under an
20 agreement entered into under this section only to the
21 extent that the same services that would have been
22 provided by the Secretary are provided to individual
23 Indians by the tribe.

24 “(e) CIVIL ACTIONS.—

1 “(1) DEFINITION OF CONTRACT.—Except as
2 provided in paragraph (2), for the purposes of sec-
3 tion 110, the term ‘contract’ shall include agree-
4 ments entered into under this title.

5 “(2) PROFESSIONAL CONTRACTS.—For the pe-
6 riod that an agreement entered into under this title
7 is in effect, the provisions of section 2103 of the Re-
8 vised Statutes of the United States (25 U.S.C. 81),
9 and section 16 of the Act of June 18, 1934 (25
10 U.S.C. 476), shall not apply to attorney and other
11 professional contracts by Indian tribal governments
12 participating in Self-Governance under this title.

13 “(f) FACILITATION.—

14 “(1) INTERPRETATION.—Except as otherwise
15 provided by law, the Secretary shall interpret each
16 Federal law and regulation in a manner that will fa-
17 cilitate—

18 “(A) the inclusion of programs, services,
19 functions, and activities in the agreements en-
20 tered into under this section; and

21 “(B) the implementation of agreements en-
22 tered into under this section.

23 “(2) WAIVER.—

24 “(A) REQUEST.—A tribe may submit a
25 written request for a waiver to the Secretary

1 identifying the regulation sought to be waived
2 and the basis for the request.

3 “(B) DECISION.—Not later than 60 days
4 after receipt by the Secretary of a written re-
5 quest by a tribe to waive application of a Fed-
6 eral regulation for an agreement entered into
7 under this section, the Secretary shall either ap-
8 prove or deny the requested waiver in writing to
9 the tribe. A denial may be made only upon a
10 specific finding by the Secretary that identified
11 language in the regulation may not be waived
12 because that regulation is expressly required by
13 Federal law.

14 “(C) APPEAL.—Not later than 60 days
15 after denial of a waiver request, the Secretary
16 shall at the request of the tribe, provide the
17 tribe with a hearing on the record and an op-
18 portunity for an appeal.

19 **“SEC. 404. BUDGET REQUEST.**

20 “The Secretary shall identify, in the annual budget
21 request of the President to the Congress under section
22 1105 of title 31, United States Code, any funds proposed
23 to be included in Self-Governance.

1 **“SEC. 405. REPORTS.**

2 “(a) REQUIREMENT.—The Secretary shall submit to
3 Congress a written report on January 1 of each year fol-
4 lowing the date of enactment of this title regarding the
5 administration of this title.

6 “(b) CONTENTS.—The report shall contain—

7 “(1) the relative costs and benefit of Self-Gov-
8 ernance;

9 “(2) identification of all funds that are specifi-
10 cally and functionally related to the provision of
11 services and benefits to the tribe and its members
12 and the corresponding reduction in the Federal bu-
13 reaucracy; and

14 “(3) the separate views of the tribes.

15 **“SEC. 406. EFFECT ON OTHER AGREEMENTS AND LAWS.**

16 “Nothing in this title shall be construed to limit or
17 reduce in any way the services, contracts, or funds that
18 any other Indian tribe or tribal organization is eligible to
19 receive under section 102 or any other applicable Federal
20 law.

21 **“SEC. 407. NEGOTIATED RULEMAKING.**

22 “(a) IN GENERAL.—Not later than 90 days after the
23 date of enactment of this title, at the request of a majority
24 of the Indian tribes with agreements under this title, the
25 Secretary shall initiate procedures under subchapter III
26 of chapter 5 of title 5, United States Code, to negotiate

1 and promulgate such regulations as are necessary to carry
2 out this title.

3 “(b) COMMITTEE.—A negotiated rulemaking commit-
4 tee established pursuant to section 565 of title 5, United
5 States Code, to carry out this section, shall have as a ma-
6 jority of its members representatives of Indian tribes with
7 agreements under this title.

8 “(c) ADAPTATION OF PROCEDURES.—The Secretary
9 shall adapt the negotiated rulemaking procedures to the
10 unique context of Self-Governance and the government-to-
11 government relationship between the United States and
12 the Indian tribes.

13 “(d) EFFECT.—The lack of promulgated regulations
14 shall not limit the effect of this title.

15 **“SEC. 408. AUTHORIZATION OF APPROPRIATIONS.**

16 “There are authorized to be appropriated such sums
17 as may be necessary to carry out this title.”.

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