

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1410

To amend the Indian Self-Determination and Education Assistance Act.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

Mr. INOUE (by request) introduced the following bill; which was read twice  
and referred to the Committee on Indian Affairs

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## A BILL

To amend the Indian Self-Determination and Education  
Assistance Act.

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 “Indian Self—Deter-  
5 mination and Education Assistance Act Amendments Act  
6 of 1993.

7 **SEC. 2. AMENDMENTS.**

8 The Indian Self-Determination and Education Assist-  
9 ance Act (25 U.S.C. 450 et seq.) is amended as follows:

1 (1) at the beginning of section 4, insert the fol-  
2 lowing new paragraph and redesignate all other  
3 paragraphs accordingly:

4 “(a) ‘construction contract’ means a fixed-price  
5 or cost-reimbursement self-determination contract  
6 for a construction project. Contracts (i) limited to  
7 providing architectural and engineering services,  
8 planning services, and/or construction management  
9 services; (ii) for the Housing Improvement Program  
10 or roads construction and maintenance program ad-  
11 ministered by the Secretary of the Interior; and (iii)  
12 for the health facility maintenance and improvement  
13 program administered by the Secretary of Health  
14 and Human Services, shall not be deemed to be con-  
15 struction contracts within the meaning of this Act”;

16 (2) amend the text of section 5(f) to read as  
17 follows:

18 “(f) For each fiscal year during which an Indian trib-  
19 al organization receives or expends funds pursuant to a  
20 contract or grant under this subchapter, the tribal organi-  
21 zation which requested such contract or grant shall submit  
22 to the appropriate Secretary a single agency audit report  
23 as required by chapter 75 of title 31, United States Code.  
24 Such tribal organization shall also submit such informa-  
25 tion on the conduct of the program or service involved,

1 and such other information as the appropriate Secretary  
2 may request through regulations promulgated in conform-  
3 ity with sections 552 and 553 of title 5, United States  
4 Code, except that the Secretary shall only request the  
5 minimal information necessary to assure the delivery of  
6 satisfactory services and protection of trust resources, con-  
7 sistent with the purposes of this Act to vest primary re-  
8 sponsibility for the administration of contracted programs  
9 in the tribal organization.”.

10 (3) in section 7(a) delete “of subcontractors”  
11 and insert in lieu thereof “or subcontractors (exclud-  
12 ing tribal organizations)”;

13 (4) at the end of section 7, add the following  
14 new subsection:

15 “(c) Notwithstanding subsections (a) and (b), where  
16 a self-determination contract, or portion thereof, is in-  
17 tended to benefit one tribe, a tribal organization contract-  
18 ing under this Act shall comply with tribal employment  
19 or contract preference laws adopted by such tribe.”.

20 (5) at the end of section 102(a)(1), add the fol-  
21 lowing new sentence: “Such programs shall include  
22 administrative functions of the Department of the  
23 Interior or the Department of Health and Human  
24 services which support the delivery of services to In-  
25 dians, including those administrative activities relat-

1 ed to, but not part of, the service delivery program,  
2 which are otherwise contractible, without regard to  
3 the organizational level within the Department  
4 where such functions are carried out.”.

5 (6) amend the text of section 102(a)(2) to read  
6 as follows:

7 “(2) If so authorized by an Indian tribe under  
8 paragraph (1) of this subsection, a tribal organiza-  
9 tion may submit a proposal for a self-determination  
10 contract, or to amend or renew a self-determination  
11 contract, to the Secretary for review. Subject to the  
12 provisions of subsection (4) hereof, the Secretary  
13 shall, within ninety days after receipt of the pro-  
14 posal, approve the proposal unless, within sixty days  
15 of receipt of the proposal, a specific finding is made  
16 that—

17 “(A) the service to be rendered by the trib-  
18 al organization to the Indian beneficiaries of  
19 the particular program or function to be con-  
20 tracted will not be satisfactory;

21 “(B) adequate protection of trust resources  
22 by the tribal organization is not assured; or

23 “(C) the proposed project or function to be  
24 contracted for cannot be properly completed or  
25 maintained by the proposed contract, either be-

1           cause (i) the amount of funds proposed in the  
2           contract is in excess of the funding levels speci-  
3           fied in section 106(a) of this Act, (ii) the pro-  
4           gram (or portion thereof) to be contracted is  
5           beyond the scope of paragraph (1) hereof, be-  
6           cause the proposal includes activities which can-  
7           not be lawfully carried out by the contractor, or  
8           (iii) the existence of some other deficiency justi-  
9           fying declination under this section.”.

10           (7) at the end of section 102(a), add the follow-  
11           ing new paragraph (4):

12           “(4) The Secretary shall approve any severable  
13           portion of a contract proposal which does not sup-  
14           port a declination finding as provided in paragraph  
15           (3) of this subsection. Whenever the Secretary deter-  
16           mines under paragraph (3) that a contract proposal  
17           (A) proposes in part to plan, conduct or administer  
18           a program that is beyond the scope of paragraph  
19           (1), or (B) proposes a funding level in excess of the  
20           funding levels specified in section 106(a) of this Act,  
21           the Secretary shall approve the proposal to the ex-  
22           tent authorized to paragraph (1) or section 106(a)  
23           of this Act, as appropriate (subject to any agreed-  
24           upon alteration in the proposed scope of work). In  
25           the event the tribal organization elects to operate the

1 severable portion of a contract proposal, subsection  
2 (b) hereof shall apply only with respect to the de-  
3 clined portion of the contract.”.

4 (8) at the end of section 102, add the following:

5 “(e) In any hearing or appeal provided under sub-  
6 section (b)(3), the Secretary shall carry the burden of  
7 proof to establish by clear and convincing evidence that  
8 the contract proposal should be declined. Final depart-  
9 mental decisions in all such appeals shall be made at a  
10 level not lower than the level of the Assistant Secretary.

11 “(f) A tribal organization in Alaska authorized by  
12 tribal resolution(s) to contract under this Act the oper-  
13 ation of one or more programs may redelegate that au-  
14 thority, by formal action of the tribal organization’s gov-  
15 erning body, to another tribal organization provided ad-  
16 vance notice of such redelegation and a copy of the con-  
17 tracting proposal, prior to its submission to the Secretary,  
18 are provided to all tribes served by the tribal organization.  
19 Nothing herein is to be construed as a limitation on the  
20 authority of a tribe to limit, restrict or rescind its resolu-  
21 tion at any time or in any manner whatsoever. A tribe  
22 receiving such notice shall have sixty days from receipt  
23 of the notice to notify the tribal organization in writing  
24 of its intent to adopt a limiting resolution prohibiting or  
25 conditioning the proposed redelegation, and thereafter

1 shall have sixty days to adopt and transmit such resolution  
2 to the tribal organization. A tribal organization so notified  
3 of a tribe's intent shall not proceed with any redelegation  
4 proposal until the expiration of the sixty day period.

5 (9) amend the text of section 105(a), to read as  
6 follows:

7 “(a) Contracts, grants and cooperative agreements  
8 with tribal organizations pursuant to sections 102 and 103  
9 of this title shall not be subject to general Federal con-  
10 tracting, discretionary grant or cooperative agreement  
11 laws and regulations, except to the extent such laws ex-  
12 pressly apply to Indian tribes: *Provided*, That with respect  
13 to construction contracts as defined in section 4 of this  
14 Act (or subcontracts of such a construction contract), the  
15 Office of Federal Procurement Policy Act (88 Stat. 796;  
16 41 U.S.C. 401 et seq.) and Federal acquisition regulations  
17 promulgated thereunder shall only apply to the limited ex-  
18 tent such statute or regulations are necessary to assure  
19 proper completion of the contract and are not inconsistent  
20 with the provisions or policy of this Act.”.

21 (10) amend the text of section 105(e) to read  
22 as follows:

23 “(e) Whenever an Indian tribe or tribal organization  
24 requests retrocession of the appropriate Secretary for any  
25 contract, or portion thereof, entered into pursuant to this

1 Act, such retrocession shall, unless the request for ret-  
2 rocession is rescinded by such tribe or tribal organization,  
3 become effective one year from the date of the request by  
4 the Indian tribe or at such date as may be mutually agreed  
5 by the Secretary and the Indian tribe.”.

6 (11) amend the text of section 105(f)(2) to read  
7 as follows:

8 “(2) donate to an Indian tribe or tribal organi-  
9 zation the title to any personal or real property  
10 found to be excess to the needs of the Bureau of In-  
11 dian Affairs, the Indian Health Service, or the Gen-  
12 eral Services Administration, except that title to  
13 property and equipment furnished by the Federal  
14 Government for use in the performance of the con-  
15 tract or purchased with funds under any self-deter-  
16 mination contract or grant agreement shall, unless  
17 otherwise requested by the tribe or tribal organiza-  
18 tion, vest in the appropriate tribe or tribal organiza-  
19 tion, and upon retrocession, rescission or termi-  
20 nation of such self-determination contract or grant,  
21 title to such property having a present value in ex-  
22 cess of \$5,000 and remaining in use in support of  
23 the contracted program shall, at the Secretary’s op-  
24 tion, revert to the Secretary; and”.

1           (12) in section 105(g) add “for the provision of  
2           personal services” after “make any contract”;

3           (13) at the end of section 105, add the follow-  
4           ing new subsections (i), (j), (k), and (l):

5           “(i) Where a self-determination contract requires the  
6           Secretary to administratively divide a program which has  
7           previously been administered for the benefit of a greater  
8           number of tribes than are represented by the tribal organi-  
9           zation that is a party to the contract, the Secretary  
10          shall—

11           “(1) endeavor to minimize any adverse effect on  
12          the level of services to be provided to all affected  
13          tribes;

14           “(2) notify all affected tribes not party to the  
15          contract of the receipt of the contract proposal at  
16          the earliest possible date, and of the right of such  
17          tribes to comment on how the Secretary’s program  
18          should be divided to best meet the needs of all af-  
19          fected tribes;

20           “(3) explore the feasibility of instituting cooper-  
21          ative agreements amongst the affected tribes not a  
22          party to the contract, the tribal organization operat-  
23          ing the contract, and the Secretary; and

24           “(4) identify and report to Congress the nature  
25          of any diminution in quality, level or quantity of

1 services to any affected tribe resulting from the divi-  
2 sion of the Secretary's program, together with an es-  
3 timate of the funds which would be required to cor-  
4 rect such diminution. In determining whether to de-  
5 cline a contract under section 102(a)(2), the Sec-  
6 retary shall not consider the effect which a contract  
7 proposal will have on tribes not represented by the  
8 tribal organization submitting such proposal, nor on  
9 Indians not served by the portion of the program to  
10 be contracted. The Secretary shall make such special  
11 provisions as may be necessary to assure that serv-  
12 ices are provided to the tribes not served by a self-  
13 determination contract.

14 "(j) Upon notice to the Secretary, tribal organiza-  
15 tions carrying out self-determination contracts are author-  
16 ized to redesign programs, activities, functions and serv-  
17 ices under contract, including program standards, to best  
18 meet the local geographic, demographic, economic, cul-  
19 tural, health and institutional needs of the Indian people  
20 and tribes served under the contract. The Secretary shall  
21 evaluate any redesign proposal against the declination cri-  
22 teria set forth in section 102 of this Act.

23 "(k) For purposes of section 201(a) of the Act of  
24 June 30, 1949 (40 U.S.C. 481(a)) (involving Federal  
25 sources of supply), an Indian tribe or tribal organization

1 carrying out a contract, grant or cooperative agreement  
2 under this Act shall be deemed an executive agency when  
3 carrying out such contract, grant or agreement.

4 “(l) Upon the request of an Indian tribe or tribal or-  
5 ganization, the Secretary shall enter into leases with In-  
6 dian tribes and tribal organizations which hold title to,  
7 a leasehold interest in, or a beneficial interest in, facilities  
8 used by Indian tribes or tribal organizations for the ad-  
9 ministration and delivery of contract services under the  
10 Act. The Secretary shall compensate such Indian tribes  
11 or tribal organizations for the use of leased facilities for  
12 contract purposes. Lease compensation may include: rent,  
13 depreciation based on the useful life of the building, prin-  
14 cipal and interest paid or accrued, operation and mainte-  
15 nance expenses, and such other reasonable expenses deter-  
16 mined by regulation to be allowable.

17 (14) amend the text of section 106(a) to read  
18 as follows:

19 “(a)(1) The amount of funds provided under the  
20 terms of self-determination contracts entered into pursu-  
21 ant to this Act shall not be less than the appropriate Sec-  
22 retary would have otherwise provided for the operation of  
23 the programs or portions thereof for the period covered  
24 by the contract, without regard to the organizational level  
25 or levels within the Department at which the program (or

1 portion thereof), including supportive administrative func-  
2 tions which are otherwise contractible, is operated.

3 “(2) There shall be added to the amount required by  
4 paragraph (1) contract support costs which shall consist  
5 of an amount for the reasonable costs for activities which  
6 must be carried on by a tribal organization as a contractor  
7 to ensure compliance with the terms of the contract and  
8 prudent management, but which—

9 “(A) normally are not carried on by the respec-  
10 tive Secretary in his direct operation of the program;  
11 or

12 “(B) are provided by the Secretary in support  
13 of the contracted program from resources other than  
14 those under contract.

15 “Contract support costs shall include, without distinction,  
16 funds to reimburse tribal contractors for reasonable and  
17 allowable costs of contracting attributable to direct pro-  
18 gram expenses, and reasonable administrative or other  
19 overhead expenses in connection with tribal operation of  
20 Federal programs. The amount of funds to which a tribe  
21 or tribal organization is entitled pursuant to this subpara-  
22 graph shall be negotiated annually with the Secretary.

23 “(3) Any savings in operation under a self-determina-  
24 tion contract (including a cost reimbursement construction  
25 contract) shall be utilized to provide additional services or

1 benefits under the contract or be expended in the succeed-  
2 ing fiscal year as provided in section 13a of this title.

3 “(4) During the initial year of a self-determination  
4 contract there shall be included, in the amount required  
5 to be paid under paragraph (2), start-up costs consisting  
6 of the reasonable costs, either previously incurred or to  
7 be incurred under the contract on a one-time basis, nec-  
8 essary to plan, prepare for and take over operation of the  
9 contracted program and to also ensure compliance with  
10 the terms of the contract and prudent management: *Pro-*  
11 *vided*, That previously incurred costs shall not be included  
12 to the extent the Secretary was not notified in advance  
13 and in writing of the nature and extent of the costs to  
14 be incurred.”;

15 (15) amend section 106(c) as follows:

16 (A) in clause (1) delete “and indirect  
17 costs” and insert in lieu thereof “indirect costs  
18 and negotiated contract support costs”;

19 (B) in clause (2) insert immediately after  
20 “indirect costs” the following: “and negotiated  
21 contract support costs”;

22 (C) delete “and” at the end of clause (4);

23 (D) delete the period at the end of clause  
24 (5) and insert in lieu thereof a semicolon and  
25 “and”; and

1 (E) at the end thereof, add the following:

2 “(6) a reporting of any deficiency of funds  
3 needed to maintain the preexisting level of services  
4 to any tribes affected by contracting activities under  
5 this Act.”.

6 (16) at the end of section 106(d)(2), add the  
7 following new sentence: “Notwithstanding any other  
8 provision of law, and subject to the availability of  
9 appropriations, every Federal agency and every  
10 State shall pay its full proportionate share of the in-  
11 direct costs associated with federally funded con-  
12 tracts or grants awarded to tribes or tribal organiza-  
13 tions under any other law. In the event that appro-  
14 priations are not sufficient for agencies other than  
15 the Department of the Interior and the Department  
16 of Health and Human Services, or for State govern-  
17 ments or State agencies, to pay their full propor-  
18 tionate share as provided herein, the Secretary shall,  
19 subject to the availability of appropriations for this  
20 purpose, fund and pay such shortfalls and report all  
21 unfunded shortfalls to the Congress, as provided in  
22 section 106(c)(2).”;

23 (17) amend section 106(f) by inserting imme-  
24 diately after the second sentence thereof the follow-  
25 ing: “For the purpose of the three hundred and

1 sixty-five day period, an audit report shall be  
2 deemed received on the date of actual receipt by the  
3 Secretary, absent a notice by the Secretary within  
4 sixty days of receipt that the report will be rejected  
5 as insufficient due to non-compliance with chapter  
6 75 of title 31 of the United States Code, or other  
7 applicable law.”;

8 (18) amend the text of section 106(g) to read  
9 as follows:

10 “(g) Upon approval of a self-determination contract,  
11 the Secretary shall allocate to the contract the full amount  
12 to which the contractor is entitled under section 106(a),  
13 subject to adjustments for each subsequent year that Fed-  
14 eral programs are administered by such tribe or tribal  
15 organization.”.

16 (19) amend the text of section 106(i) to read as  
17 follows:

18 “(i) The Secretary shall consult annually with, and  
19 solicit the participation of, Indian tribes and tribal organi-  
20 zations in the development of the budget for the Indian  
21 Health Service and the Bureau of Indian Affairs, includ-  
22 ing participation in the formulation of annual budget re-  
23 quests to Congress.”.

24 (20) amend section 106 by adding at the end  
25 thereof the following:

1       “(j) A tribal organization may use funds provided  
2 under a self-determination contract to meet matching or  
3 cost participation requirements under other Federal and  
4 non-Federal programs.

5       “(k) Without intending any limitation, a tribal orga-  
6 nization may, without approval, expend funds provided  
7 under a self-determination contract for the following pur-  
8 poses to the extent supportive of a contracted program:

9           “(1) depreciation and use allowances not other-  
10 wise specifically prohibited by law, including depre-  
11 ciation of facilities owned by the tribe and tribal or-  
12 ganization and constructed with Federal financial  
13 assistance;

14           “(2) publication and printing costs;

15           “(3) building, realty and facilities costs, includ-  
16 ing rental costs or mortgage expenses;

17           “(4) automated data processing and similar  
18 equipment or services;

19           “(5) cost of capital assets and repairs;

20           “(6) management studies;

21           “(7) professional services other than services  
22 provided in connection with judicial proceedings by  
23 or against the United States;

24           “(8) insurance and indemnification, including  
25 insurance covering the risk of loss of or damage to

1 property used in connection with the contract with-  
2 out regard to the ownership of such property;

3 “(9) costs incurred to raise funds or contribu-  
4 tions from non-Federal sources for the purpose of  
5 furthering the goals and objectives of a self-deter-  
6 mination contract;

7 “(10) interest expenses paid on capital expendi-  
8 tures such as buildings, building renovation, or ac-  
9 quisition or fabrication of capital equipment, and in-  
10 terest expenses on loans necessitated due to Sec-  
11 retarial delays in providing funds under a contract;  
12 and

13 “(11) expenses of a tribal organization’s gov-  
14 erning body to the extent attributable to the man-  
15 agement or operation of programs under this Act.

16 “(l) Within twelve months following the date of enact-  
17 ment of this subsection, the Office of Management and  
18 Budget, with the active participation of Indian tribes and  
19 tribal organizations, the Department of the Interior, Of-  
20 fice of the Inspector General, and the Health and Human  
21 Services Department, Cost Determination Branch, shall  
22 develop a separate set of cost principles applicable to In-  
23 dian tribes and tribal organizations consistent with the  
24 government-to-government Federal-tribal relationship em-  
25 bodied in this Act.

1       “(m) Except in connection with rescission and  
2 reassumption of a contract under section 109 of this Act,  
3 the Secretary shall in no circumstance suspend, withhold  
4 or delay the payment of funds to a tribal organization  
5 under a self-determination contract.

6       “(n) Program income earned by a tribal organization  
7 in the course of carrying out a self-determination contract  
8 shall be used by the tribal organization to further the gen-  
9 eral purposes of the contract and shall not be a basis for  
10 reducing the amount of funds otherwise obligated to the  
11 contract, provided that use of collections made under title  
12 IV of Public Law 94-437 shall be further limited to the  
13 extent provided in that Act.

14       “(o) To the extent contracting activities under this  
15 Act reduce the Secretary’s administrative or other respon-  
16 sibilities in connection with the operation of Indian pro-  
17 grams, resulting in savings which have not otherwise been  
18 included in the contract amount specified in subsection (a)  
19 hereof, and to the extent that doing so will not adversely  
20 affect the Secretary’s ability to carry out his responsibil-  
21 ities to other tribes and tribal organizations, the Secretary  
22 shall make such savings available to tribal organizations  
23 contracting under this Act.

24       “(p) Notwithstanding any laws or regulations to the  
25 contrary, a tribal organization may rebudget within the

1 approved budget of its contract to meet contract require-  
2 ments, provided that such rebudgeting does not have a sig-  
3 nificant and adverse effect upon the level or nature of  
4 services.”;

5 (21) amend the text of section 107(a) to read  
6 as follows:

7 “(a) The Secretaries of the Interior and of Health  
8 and Human Services are each authorized to perform any  
9 and all acts and to make such rules and regulations as  
10 may be necessary and proper for the purposes of carrying  
11 out the provisions of this subchapter: *Provided, however,*  
12 That all Federal requirements for self-determination con-  
13 tracts and grants under this Act shall be promulgated as  
14 a single set of regulations in title 25 of the Code of Fed-  
15 eral Regulations and in conformity with sections 552 and  
16 553 of title 5. Notwithstanding the preceding sentence, the  
17 amendments made by the Indian Self-Determination and  
18 Education Act Amendments of 1993 shall be effective as  
19 of October 5, 1988.”.

20 (22) amend the text of section 107(b) to read  
21 as follows:

22 “(b) In drafting, and promulgating, regulations for  
23 implementation of this Act, as amended, the Secretaries  
24 shall comply with the following procedures:

1           “(1) prior to publishing proposed regulations,  
2           the Secretaries shall within forty-five days from the  
3           date of enactment of these amendments convene re-  
4           gional meetings and a national meeting to obtain  
5           input from interested parties in the development of  
6           proposed regulations to implement the provisions of  
7           this Act, as amended. Such meetings shall include  
8           representatives of Indian tribes, tribal organizations,  
9           individual tribal members, and representatives of  
10          other parties interested in the implementation of this  
11          Act, as amended.

12          “(2) during the meetings identified in subpara-  
13          graph (1), the tribal representatives shall identify  
14          key issues concerning implementation of the Indian  
15          Self-Determination Act, as amended. The Secretar-  
16          ies shall provide for a comprehensive discussion and  
17          exchange of information on these issues. Likewise,  
18          the Secretaries may identify issues concerning imple-  
19          mentation of the Indian Self-Determination Act, as  
20          amended, and provide for a comprehensive discus-  
21          sion and exchange of information on these issues.  
22          The Secretaries shall take into account the informa-  
23          tion received at such meetings in the development of  
24          proposed regulations, and shall publish a summary

1 of such information in the Federal Register along  
2 with a notice of proposed rulemaking.

3 “(3) subsequent to the regional and national  
4 meetings and prior to publication of proposed regu-  
5 lations in the Federal Register, the Secretaries shall  
6 prepare draft regulations implementing the Indian  
7 Self-Determination Act, as amended, including regu-  
8 lations addressing all key issues identified by the  
9 tribal organizations and those key issues identified  
10 by the Secretaries pursuant to paragraph (2), and  
11 the Secretaries shall submit the draft regulations to  
12 a negotiated rulemaking process. The process shall  
13 waive application of the Federal Advisory Committee  
14 Act (5 U.S.C. App. 2 § 1 et seq.). The rulemaking  
15 process shall follow the guidance of the Negotiated  
16 Rulemaking Act of 1990 and of the Administrative  
17 Conference of the United States in Recommenda-  
18 tions 82-4 and 85-5, “Procedures for Negotiating  
19 Proposed Regulations” (1 CFR 305.82-4 and  
20 305.85-5), and any successor recommendation, regu-  
21 lation or law. Participants in the negotiation shall  
22 be chosen by the Secretaries from among partici-  
23 pants in the regional and national meetings, rep-  
24 resenting the groups described in paragraph (1) and  
25 from all geographic regions. The Secretaries shall

1 publish the product of the negotiated rulemaking  
2 process in the Federal Register in the form of a pro-  
3 posed rule. The Secretaries shall also include in the  
4 final rule as much as the proposed rule as is prac-  
5 ticable. The negotiations shall be conducted in a  
6 timely manner and the proposed rule shall be pub-  
7 lished in the Federal Register by the Secretaries  
8 within six months from the date of enactment of  
9 these Amendments.”.

10 (23) amend section 107 by adding at the end  
11 thereof the following new subsection (d):

12 “(d) Notwithstanding any laws or regulations to the  
13 contrary, the Secretary shall retain the authority to waive  
14 or make exceptions to his regulations where the Secretary  
15 finds that such waiver or exception is in the best interest  
16 of the Indians served by the contract. The Secretary shall  
17 review a waiver request under the declination criteria con-  
18 tained in section 102(a)(2) of this Act.”.

19 (24) amend the text of section 109 to read as  
20 follows: “Each contract or grant agreement entered  
21 into pursuant to sections 102 and 103 of this title  
22 shall provide that in any case where the appropriate  
23 Secretary determines that the tribal organization’s  
24 performance under such contract or grant agreement  
25 involves (1) the violation of the rights or

1       endangerment of the health, safety, or welfare of  
2       any persons; or (2) gross negligence or mismanage-  
3       ment in the handling or use of funds provided to the  
4       tribal organization pursuant to such contract or  
5       grant agreement, such Secretary may, under regula-  
6       tions prescribed by him and after providing notice  
7       and a hearing on the record to such tribal organiza-  
8       tion, rescind such contract or grant agreement and  
9       assume or resume control or operation of the pro-  
10      gram, activity, or service involved if he determines  
11      that the tribal organization has not taken corrective  
12      action as prescribed by him to remedy the contract  
13      deficiency: *Provided*, That the appropriate Secretary  
14      may, upon written notice to a tribal organization,  
15      and the tribe(s) served thereby, immediately rescind  
16      a contract or grant and resume control or operation  
17      of a program, activity, or service if he finds that  
18      there is an immediate threat of imminent harm to  
19      the safety of any person and that such threat arises  
20      from the contractor's failure to fulfill the require-  
21      ments of the contract. In such cases, he shall pro-  
22      vide the tribal organization with a hearing on the  
23      record within ten days or such later date as the trib-  
24      al organization may approve. Such Secretary may  
25      decline to enter into a new contract or grant agree-

1       ment and retain control of such program, activity, or  
 2       service until such time as he is satisfied that the vio-  
 3       lations of rights or endangerment of health, safety,  
 4       or welfare which necessitated the rescission has been  
 5       corrected. In any hearing or appeal provided for  
 6       under this section, the Secretary shall carry the bur-  
 7       den of proof to establish by clear and convincing evi-  
 8       dence that the contract should be rescinded, as-  
 9       sumed or reassumed. Nothing in this section shall be  
 10      construed as contravening the Occupational Safety  
 11      and Health Act of 1970, as amended.

12           (25) amend section 110(a) by inserting imme-  
 13      diately before the period at the end thereof the fol-  
 14      lowing: “(including immediate injunctive relief to  
 15      compel the Secretary to fund an approved self-deter-  
 16      mination contract)”.

17           (26) amend section 110(d) by inserting imme-  
 18      diately before the period at the end thereof the fol-  
 19      lowing: “except that all such administrative appeals  
 20      shall be heard by the Interior Board of Contract Ap-  
 21      peals”.

○

S 1410—IS—2

S 1410—IS—3

S 1410—IS—4