

Title: To amend the Indian Self-Determination and Education Assistance Act to allow the Secretary of Agriculture to enter into self-determination contracts with Indian Tribes and Tribal organizations to carry out the food distribution program on Indian reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SELF-DETERMINATION FOR FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS.

(a) In General.—Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321 et seq.) is amended by adding at the end the following:

“SEC. 112. SELF-DETERMINATION FOR FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS.

“(a) Definitions.—In this section:

“(1) DEPARTMENT.—The term ‘Department’ means the Department of Agriculture.

“(2) FOOD DISTRIBUTION PROGRAM.—The term ‘food distribution program’ means the food distribution program on Indian reservations carried out under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

[“(4) TRIBAL ORGANIZATION.—The term ‘tribal organization’ has the meaning given the term in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012). [SLC Note: There is also a definition of ‘Tribal organization’ in section 4 of ISDEAA that you may consider using.]]

“(b) Self-determination Contracts Authorized.—

“(1) IN GENERAL.—The Secretary is directed, on the request of any Indian Tribe by tribal resolution, to enter into a self-determination contract with a tribal organization to plan, conduct, and administer the food distribution program.

“(2) INCLUSION OF ADMINISTRATIVE FUNCTIONS.—

“(A) IN GENERAL.—The program, functions, services, or activities that are contracted under a self-determination contract entered into under paragraph (1) shall include administrative functions of the Department that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in [this subsection] that are otherwise contractable.

“(B) CLARIFICATION.—The administrative functions referred to in subparagraph (A) shall be contractable without regard to the organizational level within the Department that carries out the functions.

“(3) PROPOSAL BY INDIAN TRIBE.—

“(A) IN GENERAL.—If authorized by an Indian Tribe under paragraph (1), a tribal organization may submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review.

“(B) APPROVAL.—Subject to subsection (d), the Secretary shall, not later than 90 days after the date on which the Secretary receives a proposal under subparagraph (A), approve the proposal and award the self-determination contract, unless the Secretary provides written notification to the [applicant / tribal organization] that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

“(i) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

“(ii) adequate protection of trust resources is not assured;

“(iii) the proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract;

“(iv) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under [section 106(a)]; or

“(v) the program, function, service, or activity that is the subject of the proposal is beyond the scope of programs, functions, services, or activities [described in paragraph (2)(A)] because the proposal includes activities that cannot lawfully be carried out by the [tribal organization].

“(c) Consolidation.—On request of a tribal organization that operates 2 or more mature self-determination contracts, those self-determination contracts may be consolidated into a single self-determination contract.

“(d) Approval.—

“(1) IN GENERAL.—The Secretary shall approve any severable portion of a contract proposal that does contain a specific finding described in clauses (i) through (v) of subsection (b)(3)(B).

“(2) APPROVAL OF SPECIFIC PORTIONS OF CONTRACT PROPOSALS.—

“(A) IN GENERAL.—[If the Secretary determines that a proposed contract meets 1 or more of the descriptions described in paragraph (3)], subject to any alteration in the scope of the proposal to which the Secretary and the tribal organization agree, the Secretary shall, as appropriate, approve the portion of the program, function, service, or activity as is authorized under [subsection (b)(1)?] or approve a level of funding authorized under [section 106(a)].

“(B) APPLICABILITY.—If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to subparagraph (A), [subsection ____--[SLC Note: What were you trying to refer to here?]] shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

“(3) DESCRIPTIONS.—The descriptions referred to in paragraph (2)(A) are that the contract

proposal—

“(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under [subsection (b)(2)(A)?]; or

“(B) proposes a level of funding that is in excess of the applicable level determined under [subsection (b)(3)(B)(iv)].

“(e) Procedure on Refusal of Request to Contract.—

“(1) IN GENERAL.—If the Secretary declines to enter into a self-determination contract under [subsection (b)(3)(A)], the Secretary shall—

“(A) state any objections in writing to the tribal organization;

“(B) provide assistance to the tribal organization to overcome the stated objections; and

“(C) subject to paragraph (2), provide the tribal organization with a hearing, on the record, with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.

“(2) ACTION AUTHORIZED.—An Indian Tribe or tribal organization may, in lieu of filing an appeal described in paragraph (1)(C), initiate an action in a district court of the United States and proceed directly to that court.

“(f) Burden of Proof at Hearing or Appeal Declining Contract; Final Agency Action.—

“(1) IN GENERAL.—With respect to any hearing or appeal conducted pursuant to [paragraph (1)(C) or (2) of subsection (e)] or any civil action conducted pursuant to [section 110(a)], the Secretary shall have the burden of proof to clearly demonstrate the validity of the grounds for declining the contract proposal (or portion thereof).

“(2) FINAL AGENCY ACTION.—Notwithstanding any other provision of law, a decision by an official of the Department that constitutes a final agency action and that relates to an appeal within the Department that is conducted under [subsection (e)(1)(C)] shall be made—

“(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

“(B) by an administrative judge.

“(g) Good Faith Requirement.—In the negotiation of self-determination contracts and funding agreements, the Secretary shall—

“(1) at all times negotiate in good faith to maximize implementation of the self-determination policy; and

“(2) carry out this section in a manner that maximizes the policy of Tribal self-determination.

“(h) Rule of Construction.—This section and each provision of a self-determination contract or funding agreement [entered into pursuant to this section] shall be liberally construed for the benefit of the Indian Tribe participating in the self-determination contract, and any ambiguity

shall be resolved in favor of the Indian Tribe.

“(i) Applicability of Federal Contracting Laws and Regulations; Waiver of Requirements.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, subject to [paragraph (2)], a [self-determination contract] entered into with a tribal organization pursuant to [this section] shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian Tribes.

“(2) STANDARDS.—Program standards applicable to a nonconstruction self-determination contract shall be included in the contract proposal and the final self-determination contract of the Indian Tribe or tribal organization.

“(j) Report.—Not later than 1 year after the date on which amounts are made available to carry out this section, and annually thereafter, the Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report describing the activities carried out under this section during the preceding year.

“(k) Funding Determination.—Funding for self-determination contracts entered into pursuant to this section shall be determined by the mechanism for determining contract funding and indirect costs described in section 106.

“(l) Authorization of Appropriations.—In addition to amounts otherwise available, there are authorized to be appropriated to carry out this section such sums as are necessary.”.

(b) Repeal.—Section 4003 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2013 note; Public Law 115–334) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).