106th CONGRESS
2d Session

H.R. 4148

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2000

Mr. Young of Alaska (for himself and Mr. Hayworth), introduced the
following bill; which was referred to the Committee on Resources

A BILL

To make technical amendments to the provisions of the In­
dian Self-Determination and Education Assistance Act
relating to contract support costs, and for other pur­
poses.

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 Contract Sup­
5 port Cost Technical Amendments of 2000”.

[Signatures and transmittal form]
shall mean the Secretary of any Federal agency providing funds to such tribe or tribal organization.

"(c) OFFICE OF MANAGEMENT AND BUDGET CIRCULAR.—Not later than 24 months after the date of enactment of this Act, the Office of Management and Budget shall issue a circular exclusively devoted to the expenditure of Federal funds paid to tribes and tribal organizations under this or any other Federal law. In publishing such circular the Office of Management and Budget shall employ the procedures described in subsections 107(d)(1), 107(d)(2)(A), 107(d)(2)(B), and 107(d)(2)(D) and the references therein to the Secretary shall for such purposes include the Director of the Office of Management and Budget.

"(d) CONSOLIDATED CONTRACT AMOUNT.—

"(1) CONDITIONS FOR CONSOLIDATION.—Commencing in fiscal year 2002, the Secretary shall consolidate all funds paid to a tribe or tribal organization pursuant to subsections 106(a)(1) and (2) into a single consolidated contract amount, provided that the following conditions have been met:

"(A) The tribe or tribal organization qualifies as a mature contractor under title I or is operating a self-governance agreement under title III or IV.
"(B) The tribe's or tribal organization's indirect cost rate has not varied more than 10 percent over the prior year's rate for the preceding 3 years (for tribes or tribal organizations that have no indirect rate, this criterion shall be satisfied if the actual payment of contract support costs to the tribe or tribal organization has not varied more than 10 percent over the prior year's amount for the preceding 3 years).

"(C) At the time of the consolidation the tribe or tribal organization is receiving the full amount of contract support costs to which it is entitled under section 106(a)(2).

"(2) MEDICAL INFLATION RATE ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of Health and Human Services shall increase the amount of contract support costs paid as part of the consolidated amount by a amount equal to (i) the adjustment in the medical care component of the consumer price index over the preceding year multiplied by (ii) the contract support cost amount paid in the preceding year as part of the consolidated amount.

"(3) CONSUMER PRICE INDEX ADJUSTMENTS.—Each year following the consolidation re-
5

required by paragraph (1), the Secretary of the Inte-
rior shall increase the amount of contract support
costs paid as part of the consolidated amount by an
amount equal to (i) the adjustment in the consumer
price index over the preceding year multiplied by (ii)
the contract support cost amount paid in the pre-
ceding year as part of the consolidated amount.

"(4) EMPLOYMENT ADJUSTMENTS.—A tribe or
tribal organization shall be entitled to receive addi-
tional contract support costs associated with the
transfer of employees from Federal employment to
tribal employment. Such additional contract support
costs shall be added to the consolidated contract
amount determined and adjusted under paragraphs
(1), (2), and (3), and shall thereafter become a part
of the consolidated amount.

"(5) ADDITIONAL CONTRACT SUPPORT
COSTS.—Notwithstanding any other provision of this
Act, and except as provided in paragraphs (4) and
(9), the tribe or tribal organization shall not be enti-
tled to receive any contract support costs additional
to those contained within the consolidated contract
amount determined and adjusted under paragraphs
(1), (2), and (3).
"(6) LIABILITY FOR OVERPAYMENT OF INDIRECT COSTS.—Notwithstanding any other provision of this Act, the tribe or tribal organization shall not be held liable for any actual or theoretical overpayment of indirect costs or other adverse adjustment associated with the calculation of indirect cost rates or the payment of indirect costs.

"(7) REBUDGETING AUTHORITY UNAFFECTED.—The tribe or tribal organization may re-budget all contract funds as specified in section 106(a).

"(8) DECONSOLIDATION.—Except as provided in paragraph (9), in the event the amount of program funds paid under section 106(a)(1) as part of the consolidated amount, when combined with other program funds paid to the tribe or tribal organization from other funding sources, increases or decreases by more than 20 percent over the amount paid in the preceding year, the amounts paid by the Secretary under this section shall be deconsolidated, and such amounts shall be recalculated and paid as specified elsewhere in this Act. Upon such recalculation, the recalculated amounts shall be reconsolidated into a single amount as otherwise described in this subsection.
"(9) Contracting additional programs.—

Nothing in this subsection shall affect the right of a tribe or tribal organization to contract or compact for the operation of additional programs not included in the consolidated amount paid under paragraph (1), or to be paid the full amount of contract support costs associated with such additional contracted or compacted programs, as provided in section 106(a)(1) and other provisions of this Act. Any such additional programs and associated contract support costs shall be added to the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

"(e) Negotiation of contract support cost amounts.—Within the Indian Health Service of the Department of Health and Human Services, the negotiation, review, and approval of tribal contract support cost entitlements shall be the responsibility of the Office of Tribal Programs.

"(f) Direct contract support costs and federal employees.—The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include contract support costs associated with all Federal employees employed in connection with the program, service, function, or activity that is the sub-
ject of the contract, including all Federal employees paid
with funds generated from third-party collections.''.

SEC. 3. AMENDMENTS CLARIFYING CONTRACT SUPPORT
COST ENTITLEMENT.

The Indian Self-Determination and Education Assistance Act is amended—

(1) in section 105(c)(1), by striking the last
flush sentence;

(2) in section 106(b)—

(A) by striking "the provision of funds
under this Act is subject to the availability of
appropriations and"; and

(B) by adding at the end thereof the fol-
lowing flush sentence:

"Necessary amounts are appropriated to pay contract sup-
port costs when not otherwise provided for.";

(3) in section 1(b)(4) of the model contract set
forth in section 108(c), by striking "Subject to the
availability of appropriations, the" and inserting
"The";

(4) in section 106(a)(5) by adding at the end
thereof the following flush sentence:

"Notwithstanding any other provision of law, the Sec-

22 retary shall pay preaward and startup costs without re-
23 gard to the year in which such costs were incurred, includ-
ing such costs incurred prior to the date of the enactment of this sentence;”;

(5) in section 106, by redesignating subsections (c) through (n) as subsections (d) through (o), respectively; and

(6) by reenacting section 106(c) as in effect on November 9, 1998.

SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL REVIEW PERIOD.

Section 102(a)(2) of the Indian Self-Determination and Education Assistance Act is amended—

(1) by striking “ninety” in the second sentence and inserting “180”; and

(2) by striking “90-day” in the third sentence and inserting “180-day”.

SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.

(a) Section 110 of the Indian Self-Determination and Education Assistance Act is amended by adding at the end the following new subsections:

“(f) EQUAL ACCESS TO JUSTICE ACT.—In applying the Equal Access to Justice Act to proceedings instituted pursuant to this Act, a tribe or tribal organization shall be a ‘party’ regardless of the net worth or the size of the workforce of such tribe or tribal organization.

Sincerely,

[Signature]

[Qualification]

[Signature]

[Qualification]

[Signature]

[Qualification]
10

"(g) Repayment of Damage Awards.—In the event damages are awarded in any proceeding where a court or administrative agency determines that an agency has willfully failed to follow the mandates of this Act, the court shall award the injured tribe or tribal organization additional damages equal to the amount of damages awarded by such court in favor of the tribe or tribal organization, or $10,000, whichever is greater."
AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 4148

OFFERED BY MR. YOUNG OF ALASKA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.
2 This Act may be cited as the "Tribal Contract Support Cost Technical Amendments of 2000".
3
4 SEC. 2. AMENDMENT DETAILING CALCULATION AND PAYMENT OF CONTRACT SUPPORT COSTS.
5 The Indian Self-Determination and Education Assistance Act is amended by adding after section 106 the following new section:
6
7 "SEC. 106A. CONTRACT SUPPORT COSTS.
8 "(a) OTHER FEDERAL AGENCIES.—Except as otherwise provided by statute, an Indian tribe or tribal organization administering a contract or compact under this Act shall be entitled to recover its full indirect costs associated with any other Federal funding received by such tribe or tribal organization (other than funds paid under this Act), consistent with the tribe's or tribal organization's indirect cost rate agreement with its cognizant Federal agency."
9 This subsection shall not independently entitle such tribe..."
or tribal organization to be paid additional amounts associated with such other Federal funding.

(b) **ALLOWABLE USES OF FUNDS.**—Notwithstanding any other provision of law (including regulation or circular), an Indian tribe or tribal organization (1) administering a contract or compact under this Act and (2) employing an indirect cost pool that includes both funds paid under this Act and other Federal funds, shall be entitled to use or expend all Federal funds in such tribe’s or tribal organization’s indirect cost pool in the same manner as permitted in section 106(j) (relating to allowable uses of funds without approval of the Secretary), and for such purposes only the term ‘Secretary’ means the Secretary of any Federal agency providing funds to such tribe or tribal organization.

(c) **CONSOLIDATED CONTRACT AMOUNT.**—

(1) **CONDITIONS FOR CONSOLIDATION.**—Con­

commencing in fiscal year 2003, the Secretary shall con­

solidate all funds paid to a tribe or tribal organiza­

tion pursuant to paragraphs (1) and (2) of section 106(c) into a single consolidated contract or com­

pact amount if the following conditions have been met:

(A) The tribe or tribal organization qualifies to carry out a mature contract under this
(B) The tribe's or tribal organization's indirect cost rate has not varied more than 10 percent over the prior year's rate for the preceding 3 years (for tribes or tribal organizations that have no indirect rate, this criterion shall be satisfied if the ratio of the tribe's or tribal organization's contract support requirement to its direct cost base has not varied more than 10 percent over the ratio for the preceding 3 years).

(C) At the time of the consolidation the tribe or tribal organization is receiving its full contract support cost requirement as determined under section 108(a)(2).

(2) MEDICAL INFLATION RATE ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of Health and Human Services shall increase the amount of contract support costs paid as part of the consolidated amount by an amount equal to—

(A) the adjustment in the medical care component of the national consumer price index over the preceding year, multiplied by
"(B) the contract support cost amount
paid in the preceding year as part of the con-
solidated amount.

"(3) CONSUMER PRICE INDEX ADJUST-
MENTS.—Each year following the consolidation re-
quired by paragraph (1), the Secretary of the Inter-
rior shall increase the amount of contract support
costs paid as part of the consolidated amount by an
amount equal to—

"(A) the adjustment in the national con-
sumer price index over the preceding year, mul-
tiplied by

"(B) the contract support cost amount
paid in the preceding year as part of the con-
solidated amount.

"(4) EMPLOYMENT ADJUSTMENTS.—A tribe or
tribal organization shall be entitled to receive addi-
tional contract support costs associated with the
transfer of employees from Federal employment to
tribal employment. Such additional contract support
costs shall be added to the consolidated amount de-
termined and adjusted under paragraphs (1), (2),
and (3), and shall thereafter become a part of the
consolidated amount.
"(5) ADDITIONAL CONTRACT SUPPORT

 costs.—Notwithstanding any other provision of this Act, and except as provided in paragraphs (4) and (8), the tribe or tribal organization shall not be entitled to receive any contract support costs additional to those contained within the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

 "(6) REBUDGETING AUTHORITY UNAF-

FECTED.—The tribe or tribal organization may rebudget all contract or compact funds as specified in section 106(n).

 "(7) DECONSOLIDATION.—Except as provided in paragraph (8), in the event—

 "(A) the amount of program funds paid under section 106(a)(1) as part of the consolidated amount, when combined with other program funds paid to the tribe or tribal organization from other funding sources, increases or decreases by more than—

 "(i) 20 percent over the amount paid in the preceding year; or

 "(ii) 40 percent over the amount paid in the preceding three years; or
“(B) the Secretary for good cause shown agrees, the amounts paid by the Secretary under this section shall be deconsolidated, and such amounts shall be recalculated and paid as specified elsewhere in this Act. Upon such recalculation, the recalculated amounts shall be reconсолidated into a single amount as otherwise described in this subsection.

“(3) CONTRACTING ADDITIONAL PROGRAMS—Nothing in this subsection shall affect the right of a tribe or tribal organization to contract or compact for the operation of new or expanded programs, services, functions, or activities not included in the consolidated amount paid under paragraph (1), or to be paid the full amount of contract support costs associated with such additional contracted or compacted programs, as provided in section 106(a)(1) and other provisions of this Act. Any such additional programs and associated contract support costs shall be added to the consolidated amount determined and adjusted under paragraphs (1), (2), and (3).

“(9) SEPARATE CONTRACTS AND COMPACTS—Nothing in this subsection shall require a tribe or tribal organization to consolidate separate contracts
or compacts administered under this Act into a single contract or compact.

(d) **Negotiation of Contract Support Costs**

AMOUNTS.—Within the Indian Health Service of the Department of Health and Human Services, the negotiation, review, and approval of tribal contract support cost entitlements shall be the responsibility of the Office of Tribal Programs, subject to the tribe's or tribal organization's indirect cost rate agreement with the tribe's or tribal organization's cognizant Federal agency.

(e) **Direct Contract Support Costs and Federal Employees**.—The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include direct contract support costs associated with all Federal employees employed in connection with the program, service, function, or activity that is the subject of the contract, including all Federal employees paid with funds generated from third-party collections.

(f) **Regulations**.—The Secretary of the Interior and the Secretary of Health and Human Services are authorized to promulgate joint regulations relating to the allowability of costs expended under this Act, including all pooled indirect costs and direct contract support costs. In promulgating such regulations the Secretaries shall follow the procedures set forth in sections 107(a)(2)(A),
(1) in section 105(c)(1), by striking the last flush sentence;

(2) in section 106(b)—

(A) by striking "the provision of funds under this Act is subject to the availability of appropriations and", and

(B) by adding at the end thereof the following flush sentence:

"Necessary amounts are appropriated to pay contract support costs when not otherwise provided for."

(3) in section 1(b)(4) of the model contract set forth in section 108(e), by striking "Subject to the availability of appropriations, the" and inserting "The"; and

(4) in section 108(a)(5) by adding at the end thereof the following flush sentence:

"Notwithstanding any other provision of law, the Secretary shall fully pay preaward and startup costs without regard to the year in which such costs were incurred or will be incurred, including such costs payable to tribes and tribal organizations identified by the Indian Health Service as 'ISD Queene Tribes' in its September 17, 1999, report entitled 'FY 1999 IHS CSC Shortfall Data'."
1 SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL REVIEW PERIOD.

Section 102(a)(2) of the Indian Self-Determination and Education Assistance Act is amended—

(1) by striking "ninety" in the second sentence and inserting "180"; and
(2) by striking "90-day" in the third sentence and inserting "180-day".

9 SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.

Section 110 of the Indian Self-Determination and Education Assistance Act is amended—

(1) in subsection (c), by inserting after "administrative appeals" the following: ":, and section 2412(d)(2)(A) of title 28, United States Code, shall apply to appeals filed with administrative appeals boards, in appeals"; and

(2) by adding at the end the following new subsections:

"(f) REIMBURSEMENT OF PAYMENTS—None of the funds appropriated to the Secretary to carry out programs, functions, services, or activities that are contractible under this Act shall be available to reimburse payments made in satisfaction of judgments awarded under subsections (a) and (d)."