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IHS OFFICE OF SELF DETERMINATION + 89208691780

NO.143 001

It  
Introduced

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 Indian Self-Determination and Education Assistance Act relating to contract support costs, 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 Contract Sup-  
5 port Cost Technical Amendments of 2000".

OPTIONAL FORM 10 (7-97)

### FAX TRANSMITTAL

# of Pages 20

To Deanna Balman	From Dana McFadden
Dept./Agency Oneida	Phone #
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NSN 7540-01-317-7300

5010-101

GENERAL SERVICES ADMINISTRATION

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1 shall mean the Secretary of any Federal agency providing  
2 funds to such tribe or tribal organization.

3       “(c) OFFICE OF MANAGEMENT AND BUDGET CIR-  
4 CULAR.—Not later than 24 months after the date of en-  
5 actment of this Act, the Office of Management and Budg-  
6 et shall issue a circular exclusively devoted to the expendi-  
7 ture of Federal funds paid to tribes and tribal organiza-  
8 tions under this or any other Federal law. In publishing  
9 such circular the Office of Management and Budget shall  
10 employ the procedures described in subsections 107(d)(1),  
11 107(d)(2)(A), 107(d)(2)(B), and 107(d)(2)(D) and the  
12 references therein to the Secretary shall for such purposes  
13 include the Director of the Office of Management and  
14 Budget.

15       “(d) CONSOLIDATED CONTRACT AMOUNT.—

16       “(1) CONDITIONS FOR CONSOLIDATION.—Com-  
17 mencing in fiscal year 2002, the Secretary shall con-  
18 solidate all funds paid to a tribe or tribal organiza-  
19 tion pursuant to subsections 106(a)(1) and (2) into  
20 a single consolidated contract amount, provided that  
21 the following conditions have been met:

22       “(A) The tribe or tribal organization quali-  
23 fies as a mature contractor under title I or is  
24 operating a self-governance agreement under  
25 title III or IV.



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1           “(B) The tribe's or tribal organization's in-  
2           direct cost rate has not varied more than 10  
3           percent over the prior year's rate for the pre-  
4           ceding 3 years (for tribes or tribal organizations  
5           that have no indirect rate, this criterion shall be  
6           satisfied if the actual payment of contract sup-  
7           port costs to the tribe or tribal organization has  
8           not varied more than 10 percent over the prior  
9           year's amount for the preceding 3 years).

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

14           “(2) MEDICAL INFLATION RATE ADJUST-  
15           MENTS.—Each year following the consolidation re-  
16           quired by paragraph (1), the Secretary of Health  
17           and Human Services shall increase the amount of  
18           contract support costs paid as part of the consoli-  
19           dated amount by a amount equal to (i) the adjust-  
20           ment in the medical care component of the consumer  
21           price index over the preceding year multiplied by (ii)  
22           the contract support cost amount paid in the pre-  
23           ceding year as part of the consolidated amount.

24           “(3) CONSUMER PRICE INDEX ADJUST-  
25           MENTS.—Each year following the consolidation re-

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

8       “(4) EMPLOYMENT ADJUSTMENTS.—A tribe or  
9       tribal organization shall be entitled to receive addi-  
10      tional contract support costs associated with the  
11      transfer of employees from Federal employment to  
12      tribal employment. Such additional contract support  
13      costs shall be added to the consolidated contract  
14      amount determined and adjusted under paragraphs  
15      (1), (2), and (3), and shall thereafter become a part  
16      of the consolidated amount.

17      “(5) ADDITIONAL CONTRACT SUPPORT  
18      COSTS.—Notwithstanding any other provision of this  
19      Act, and except as provided in paragraphs (4) and  
20      (9), the tribe or tribal organization shall not be enti-  
21      tled to receive any contract support costs additional  
22      to those contained within the consolidated contract  
23      amount determined and adjusted under paragraphs  
24      (1), (2), and (3).



1           “(6) LIABILITY FOR OVERPAYMENT OF INDI-  
2           RECT COSTS.—Notwithstanding any other provision  
3           of this Act, the tribe or tribal organization shall not  
4           be held liable for any actual or theoretical overpay-  
5           ment of indirect costs or other adverse adjustment  
6           associated with the calculation of indirect cost rates  
7           or the payment of indirect costs.

8           “(7) REBUDGETING AUTHORITY UNAF-  
9           FECTED.—The tribe or tribal organization may re-  
10          budget all contract funds as specified in section  
11          106(n).

12          “(8) DECONSOLIDATION.—Except as provided  
13          in paragraph (9), in the event the amount of pro-  
14          gram funds paid under section 106(a)(1) as part of  
15          the consolidated amount, when combined with other  
16          program funds paid to the tribe or tribal organiza-  
17          tion from other funding sources, increases or de-  
18          creases by more than 20 percent over the amount  
19          paid in the preceding year, the amounts paid by the  
20          Secretary under this section shall be deconsolidated,  
21          and such amounts shall be recalculated and paid as  
22          specified elsewhere in this Act. Upon such recalcula-  
23          tion, the recalculated amounts shall be reconsoli-  
24          dated into a single amount as otherwise described in  
25          this subsection.

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1           “(9) CONTRACTING ADDITIONAL PROGRAMS.—

2           Nothing in this subsection shall affect the right of  
3           a tribe or tribal organization to contract or compact  
4           for the operation of additional programs not in-  
5           cluded in the consolidated amount paid under para-  
6           graph (1), or to be paid the full amount of contract  
7           support costs associated with such additional con-  
8           tracted or compacted programs, as provided in sec-  
9           tion 106(a)(1) and other provisions of this Act. Any  
10          such additional programs and associated contract  
11          support costs shall be added to the consolidated  
12          amount determined and adjusted under paragraphs  
13          (1), (2), and (3).

14          “(e) NEGOTIATION OF CONTRACT SUPPORT COST  
15          AMOUNTS.—Within the Indian Health Service of the De-  
16          partment of Health and Human Services, the negotiation,  
17          review, and approval of tribal contract support cost enti-  
18          tlements shall be the responsibility of the Office of Tribal  
19          Programs.

20          “(f) DIRECT CONTRACT SUPPORT COSTS AND FED-  
21          ERAL EMPLOYEES.—The contract support costs that are  
22          eligible costs for the purposes of receiving funding under  
23          this Act shall include contract support costs associated  
24          with all Federal employees employed in connection with  
25          the program, service, function, or activity that is the sub-



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1 ject of the contract, including all Federal employees paid  
2 with funds generated from third-party collections."

3 SEC. 3. AMENDMENTS CLARIFYING CONTRACT SUPPORT  
4 COST ENTITLEMENT.

5 The Indian Self-Determination and Education Assist-  
6 ance Act is amended—

7 (1) in section 105(e)(1), by striking the last  
8 flush sentence;

9 (2) in section 106(b)—

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

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

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

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

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

23 "Notwithstanding any other provision of law, the Sec-  
24 retary shall pay preaward and startup costs without re-  
25 gard to the year in which such costs were incurred, includ-

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1 ing such costs incurred prior to the date of the enactment  
2 of this sentence.”;

3 (5) in section 106, by redesignating subsections  
4 (c) through (n) as subsections (d) through (o), re-  
5 spectively; and

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

8 **SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL**  
9 **REVIEW PERIOD.**

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

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

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

16 **SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.**

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

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

*Simulation*  
*on July 1st*  
*+ get EAJ*



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1       “(g) REPAYMENT OF DAMAGE AWARDS.—In the  
2 event damages are awarded in any proceeding where a  
3 court or administrative agency determines that an agency  
4 has willfully failed to follow the mandates of this Act, the  
5 court shall award the injured tribe or tribal organization  
6 additional damages equal to the amount of damages  
7 awarded by such court in favor of the tribe or tribal orga-  
8 nization, or \$10,000, whichever is greater.”.

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**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 Sup-  
3 port Cost Technical Amendments of 2000".

**4 SEC. 2. AMENDMENT DETAILING CALCULATION AND PAY-  
5 MENT OF CONTRACT SUPPORT COSTS.**

6 The Indian Self-Determination and Education Assist-  
7 ance Act is amended by adding after section 106 the fol-  
8 lowing new section:

**9 "SEC. 106A. CONTRACT SUPPORT COSTS.**

10 "(e) OTHER FEDERAL AGENCIES — Except as other-  
11 wise provided by statute, an Indian tribe or tribal organi-  
12 zation administering a contract or compact under this Act  
13 shall be entitled to recover its full indirect costs associated  
14 with any other Federal funding received by such tribe or  
15 tribal organization (other than funds paid under this Act),  
16 consistent with the tribe's or tribal organization's indirect  
17 cost rate agreement with its cognizant Federal agency.  
18 This subsection shall not independently entitle such tribe



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1 or tribal organization to be paid additional amounts asso-  
2 ciated with such other Federal funding.

3       “(b) ALLOWABLE USES OF FUNDS.—Notwith-  
4 standing any other provision of law (including regulation  
5 or circular), an Indian tribe or tribal organization (1) ad-  
6 ministering a contract or compact under this Act and (2)  
7 employing an indirect cost pool that includes both funds  
8 paid under this Act and other Federal funds, shall be enti-  
9 tled to use or expend all Federal funds in such tribe's or  
10 tribal organization's indirect cost pool in the same manner  
11 as permitted in section 106(j) (relating to allowable uses  
12 of funds without approval of the Secretary), and for such  
13 purposes only the term ‘Secretary’ means the Secretary  
14 of any Federal agency providing funds to such tribe or  
15 tribal organization.

16       “(c) CONSOLIDATED CONTRACT AMOUNT.—

17       “(1) CONDITIONS FOR CONSOLIDATION.—Comm-  
18 mencing in fiscal year 2003, the Secretary shall con-  
19 solidate all funds paid to a tribe or tribal organiza-  
20 tion pursuant to paragraphs (1) and (2) of section  
21 106(a) into a single consolidated contract or com-  
22 pact amount if the following conditions have been  
23 met:

24       “(A) The tribe or tribal organization quali-  
25 fies to carry out a mature contract under this

BY: U.S. CONGRESS;

202 225 0449;

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1 title or is operating a self-governance agreement  
2 under any other title of this Act.

3 "(B) The tribe's or tribal organization's in-  
4 direct cost rate has not varied more than 10  
5 percent over the prior year's rate for the pre-  
6 ceeding 3 years (for tribes or tribal organizations  
7 that have no indirect rate, this criterion shall be  
8 satisfied if the ratio of the tribe's or tribal orga-  
9 nization's contract support requirement to its  
10 direct cost base has not varied more than 10  
11 percent over the ratio for the preceding 3  
12 years).

13 "(C) At the time of the consolidation the  
14 tribe or tribal organization is receiving its full  
15 contract support cost requirement as deter-  
16 mined under section 106(a)(2).

17 "(2) MEDICAL INFLATION RATE ADJUST-  
18 MENTS.—Each year following the consolidation re-  
19 quired by paragraph (1), the Secretary of Health  
20 and Human Services shall increase the amount of  
21 contract support costs paid as part of the consoli-  
22 dated amount by an amount equal to—

23 "(A) the adjustment in the medical care  
24 component of the national consumer price index  
25 over the preceding year, multiplied by



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

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

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

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

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

BY: U.S. CONGRESS;

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1           “(5)    ADDITIONAL    CONTRACT    SUPPORT  
2           COSTS.—Notwithstanding any other provision of this  
3           Act, and except as provided in paragraphs (4) and  
4           (8), the tribe or tribal organization shall not be enti-  
5           tled to receive any contract support costs additional  
6           to those contained within the consolidated amount  
7           determined and adjusted under paragraphs (1), (2),  
8           and (3).

9           “(6)    REBUDGETING    AUTHORITY    UNAF-  
10          FECTED.—The tribe or tribal organization may re-  
11          budget all contract or compact funds as specified in  
12          section 106(n).

13          “(7)    DECONSOLIDATION.—Except as provided  
14          in paragraph (8), in the event—

15               “(A) the amount of program funds paid  
16               under section 106(a)(1) as part of the consoli-  
17               dated amount, when combined with other pro-  
18               gram funds paid to the tribe or tribal organiza-  
19               tion from other funding sources, increases or  
20               decreases by more than—

21                       “(i) 20 percent over the amount paid  
22                       in the preceding year; or

23                       “(ii) 40 percent over the amount paid  
24                       in the preceding three years; or



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1           “(B) the Secretary for good cause shown  
2           agrees,  
3           the amounts paid by the Secretary under this section  
4           shall be deconsolidated, and such amounts shall be  
5           recalculated and paid as specified elsewhere in this  
6           Act. Upon such recalculation, the recalculated  
7           amounts shall be reconsolidated into a single amount  
8           as otherwise described in this subsection.

9           “(8) CONTRACTING ADDITIONAL PROGRAMS.—  
10          Nothing in this subsection shall affect the right of  
11          a tribe or tribal organization to contract or compact  
12          for the operation of new or expanded programs,  
13          services, functions, or activities not included in the  
14          consolidated amount paid under paragraph (1), or to  
15          be paid the full amount of contract support costs as-  
16          sociated with such additional contracted or com-  
17          pacted programs, as provided in section 106(a)(1)  
18          and other provisions of this Act. Any such additional  
19          programs and associated contract support costs shall  
20          be added to the consolidated amount determined and  
21          adjusted under paragraphs (1), (2), and (3).

22          “(9) SEPARATE CONTRACTS AND COMPACTS.—  
23          Nothing in this subsection shall require a tribe or  
24          tribal organization to consolidate separate contracts

BY: U.S. CONGRESS;

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1 or compacts administered under this Act into a sin-  
2 gle contract or compact.

3 "(d) NEGOTIATION OF CONTRACT SUPPORT COST  
4 AMOUNTS.—Within the Indian Health Service of the De-  
5 partment of Health and Human Services, the negotiation,  
6 review, and approval of tribal contract support cost enti-  
7 tlements shall be the responsibility of the Office of Tribal  
8 Programs, subject to the tribe's or tribal organization's  
9 indirect cost rate agreement with the tribe's or tribal orga-  
10 nization's cognizant Federal agency.

11 "(e) DIRECT CONTRACT SUPPORT COSTS AND FED-  
12 ERAL EMPLOYEES.—The contract support costs that are  
13 eligible costs for the purposes of receiving funding under  
14 this Act shall include direct contract support costs associ-  
15 ated with all Federal employees employed in connection  
16 with the program, service, function, or activity that is the  
17 subject of the contract, including all Federal employees  
18 paid with funds generated from third-party collections.

19 "(f) REGULATIONS.—The Secretary of the Interior  
20 and the Secretary of Health and Human Services are au-  
21 thorized to promulgate joint regulations relating to the al-  
22 lowability of costs expended under this Act, including all  
23 pooled indirect costs and direct contract support costs. In  
24 promulgating such regulations the Secretaries shall follow  
25 the procedures set forth in sections 107(a)(2)(A),



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

3 (2) in section 106(b)—

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

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

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

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

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

17 "Notwithstanding any other provision of law, the Sec-  
18 retary shall fully pay preaward and startup costs without  
19 regard to the year in which such costs were incurred or  
20 will be incurred, including such costs payable to tribes and  
21 tribal organizations identified by the Indian Health Serv-  
22 ice as 'ISD Quene Tribes' in its September 17, 1999, re-  
23 port entitled 'FY 1999 IHS CSC Shortfall Data'."

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1 SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL

2 REVIEW PERIOD.

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

5 (1) by striking "ninety" in the second sentence  
6 and inserting "180"; and

7 (2) by striking "90-day" in the third sentence  
8 and inserting "180-day".

9 SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.

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

12 (1) in subsection (c), by inserting after "admin-  
13 istrative appeals" the following: ", and section  
14 2412(d)(2)(A) of title 28, United States Code, shall  
15 apply to appeals filed with administrative appeals  
16 boards, in appeals"; and

17 (2) by adding at the end the following new sub-  
18 sections:

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