

112TH CONGRESS
1ST SESSION

H. R. 2444

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 7, 2011

Mr. BOREN (for himself, Mr. COLE, Mrs. NAPOLITANO, Mr. HONDA, Mr. INSLEE, Mr. KILDEE, Ms. MCCOLLUM, Mr. MARKEY, Mr. FALEOMAVAEGA, Mr. SABLAN, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Department of the Interior Tribal Self-Governance Act
6 of 2011”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INDIAN SELF-DETERMINATION

Sec. 101. Definitions; reporting and audit requirements; application of provisions.

Sec. 102. Contracts by Secretary of Interior.

Sec. 103. Administrative provisions.

Sec. 104. Contract funding and indirect costs.

Sec. 105. Contract or grant specifications.

TITLE II—TRIBAL SELF-GOVERNANCE

Sec. 201. Tribal self-governance.

1 **TITLE I—INDIAN SELF-**
 2 **DETERMINATION**

3 **SEC. 101. DEFINITIONS; REPORTING AND AUDIT REQUIRE-**
 4 **MENTS; APPLICATION OF PROVISIONS.**

5 (a) DEFINITIONS.—Section 4 of the Indian Self-De-
 6 termination and Education Assistance Act (25 U.S.C.
 7 450b) is amended by striking subsection (j) and inserting
 8 the following:

9 “(j) ‘self-determination contract’ means a contract
 10 entered into under title I (or a grant or cooperative agree-
 11 ment used under section 9) between a tribal organization
 12 and the appropriate Secretary for the planning, conduct,
 13 and administration of programs or services that are other-
 14 wise provided to Indian tribes and members of Indian
 15 tribes pursuant to Federal law, subject to the condition
 16 that, except as provided in section 105(a)(3), no contract
 17 entered into under title I (or grant or cooperative agree-
 18 ment used under section 9) shall be—

19 “(1) considered to be a procurement contract;

20 or

1 “(2) except as provided in section 107(a)(1),
2 subject to any Federal procurement law (including
3 regulations);”.

4 (b) REPORTING AND AUDIT REQUIREMENTS.—Sec-
5 tion 5(b) of the Indian Self-Determination and Education
6 Assistance Act (25 U.S.C. 450c(b)) is amended—

7 (1) by striking “after completion of the project
8 or undertaking referred to in the preceding sub-
9 section of this section” and inserting “after the re-
10 tention period for the report that is submitted to the
11 Secretary under subsection (a)”;

12 (2) by adding at the end the following: “The re-
13 tention period shall be defined in regulations pro-
14 mulgated by the Secretary pursuant to section
15 415.”.

16 (c) APPLICATION OF OTHER PROVISIONS.—Sections
17 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111
18 of the Indian Self-Determination and Education Assist-
19 ance Act, as amended (25 U.S.C. 450 et seq.) (Public Law
20 93–638; 88 Stat. 2203) and section 314 of the Depart-
21 ment of the Interior and Related Agencies Appropriations
22 Act, 1991 (Public Law 101–512; 104 Stat. 1959), apply
23 to compacts and funding agreements entered into under
24 title IV.

1 **SEC. 102. CONTRACTS BY SECRETARY OF INTERIOR.**

2 Section 102 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450f) is amended—

4 (1) in subsection (c)(2), by striking “economic
5 enterprises” and all that follows through “except
6 that” and inserting “economic enterprises (as de-
7 fined in section 3 of the Indian Financing Act of
8 1974 (25 U.S.C. 1452)), except that”; and

9 (2) by adding at the end the following:

10 “(f) GOOD FAITH REQUIREMENT.—In the negotia-
11 tion of contracts and funding agreements, the Secretary
12 shall—

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

16 “(2) carry out this Act in a manner that maxi-
17 mizes the policy of tribal self-determination, in a
18 manner consistent with the purposes specified in sec-
19 tion 3.

20 “(g) RULE OF CONSTRUCTION.—Each provision of
21 this Act and each provision of a contract or funding agree-
22 ment shall be liberally construed for the benefit of the In-
23 dian tribe participating in self-determination, and any am-
24 biguity shall be resolved in favor of the Indian tribe.”.

1 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

2 Section 105 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450j) is amended—

4 (1) in subsection (b), in the first sentence, by
5 striking “pursuant to” and all that follows through
6 “of this Act” and inserting “pursuant to sections
7 102 and 103”; and

8 (2) by adding at the end the following:

9 “(m) INTERPRETATION BY SECRETARY.—Except as
10 otherwise provided by law, the Secretary shall interpret
11 all Federal laws (including regulations) and Executive or-
12 ders in a manner that facilitates, to the maximum extent
13 practicable—

14 “(1) the inclusion in self-determination con-
15 tracts and funding agreements of—

16 “(A) applicable programs, services, func-
17 tions, and activities (or portions thereof); and

18 “(B) funds associated with those pro-
19 grams, services, functions, and activities;

20 “(2) the implementation of self-determination
21 contracts and funding agreements; and

22 “(3) the achievement of tribal health objec-
23 tives.”.

1 **SEC. 104. CONTRACT FUNDING AND INDIRECT COSTS.**

2 Section 106(a)(3) of the Indian Self-Determination
3 and Education Assistance Act (25 U.S.C. 450j-1(a)(3))
4 is amended—

5 (1) in subparagraph (A)—

6 (A) in clause (i), by striking “, and” and
7 inserting “; and”; and

8 (B) in clause (ii), by striking “expense re-
9 lated to the overhead incurred” and inserting
10 “expense incurred by the governing body of the
11 Indian tribe or tribal organization and any
12 overhead expense incurred”;

13 (2) by redesignating subparagraph (B) as sub-
14 paragraph (C); and

15 (3) by inserting after subparagraph (A) the fol-
16 lowing:

17 “(B) In calculating the reimbursement rate
18 for expenses described in subparagraph (A)(ii),
19 not less than 50 percent of the expenses de-
20 scribed in subparagraph (A)(ii) that are in-
21 curred by the governing body of an Indian tribe
22 or tribal organization relating to a Federal pro-
23 gram, function, service, or activity carried out
24 pursuant to the contract shall be considered to
25 be reasonable and allowable.”.

1 **SEC. 105. CONTRACT OR GRANT SPECIFICATIONS.**

2 Section 108 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450l) is amended—

4 (1) in subsection (a)(2), by inserting “subject
5 to subsections (a) and (b) of section 102,” before
6 “contain”; and

7 (2) in subsection (f)(2)(A)(ii) of the model
8 agreement contained in subsection (c), by inserting
9 “subject to subsections (a) and (b) of section 102 of
10 the Indian Self-Determination and Education Assist-
11 ance Act (25 U.S.C. 450f),” before “such other pro-
12 visions”.

13 **TITLE II—TRIBAL SELF-**
14 **GOVERNANCE**

15 **SEC. 201. TRIBAL SELF-GOVERNANCE.**

16 Title IV of the Indian Self-Determination and Edu-
17 cation Assistance Act (25 U.S.C. 458aa et seq.) is amend-
18 ed to read as follows:

19 **“TITLE IV—TRIBAL SELF-**
20 **GOVERNANCE**

21 **“SEC. 401. DEFINITIONS.**

22 “In this title:

23 “(1) COMPACT.—The term ‘compact’ means a
24 self-governance compact entered into under section
25 404.

1 “(2) CONSTRUCTION PROGRAM; CONSTRUCTION
2 PROJECT.—The term ‘construction program’ or ‘con-
3 struction project’ means a tribal undertaking relat-
4 ing to the administration, planning, environmental
5 determination, design, construction, repair, improve-
6 ment, or expansion of roads, bridges, buildings,
7 structures, systems, or other facilities for purposes
8 of housing, law enforcement, detention, sanitation,
9 water supply, education, administration, community,
10 health, irrigation, agriculture, conservation, flood
11 control, transportation, or port facilities, or for other
12 tribal purposes.

13 “(3) DEPARTMENT.—The term ‘Department’
14 means the Department of the Interior.

15 “(4) FUNDING AGREEMENT.—The term ‘fund-
16 ing agreement’ means a funding agreement entered
17 into under section 405.

18 “(5) GROSS MISMANAGEMENT.—The term
19 ‘gross mismanagement’ means a significant viola-
20 tion, shown by a preponderance of the evidence, of
21 a compact, funding agreement, or statutory or regu-
22 latory requirement applicable to Federal funds—

23 “(A) for a program administered by an In-
24 dian tribe; or

1 “(B) under a compact or funding agree-
2 ment that results in a significant reduction of
3 funds available for the programs assumed by an
4 Indian tribe.

5 “(6) INHERENT FEDERAL FUNCTION.—The
6 term ‘inherent Federal function’ means a Federal
7 function that may not legally be delegated to an In-
8 dian tribe.

9 “(7) PROGRAM.—The term ‘program’ means
10 any program, function, service, or activity (or por-
11 tion thereof) within the Department that is included
12 in a funding agreement.

13 “(8) SECRETARY.—The term ‘Secretary’ means
14 the Secretary of the Interior.

15 “(9) SELF-GOVERNANCE.—The term ‘self-gov-
16 ernance’ means the Tribal Self-Governance Program
17 established under section 402.

18 “(10) TRIBAL SHARE.—The term ‘tribal share’
19 means an Indian tribe’s portion of all funds and re-
20 sources that—

21 “(A) support any program within the Bu-
22 reau of Indian Affairs, the Office of Special
23 Trustee, or the Office of the Assistant Sec-
24 retary for Indian Affairs; and

1 “(B) are not required by the Secretary for
2 the performance of an inherent Federal func-
3 tion.

4 **“SEC. 402. ESTABLISHMENT.**

5 “The Secretary shall establish and carry out a pro-
6 gram within the Department to be known as the ‘Tribal
7 Self-Governance Program’.

8 **“SEC. 403. SELECTION OF PARTICIPATING INDIAN TRIBES.**

9 “(a) IN GENERAL.—

10 “(1) PARTICIPANTS.—

11 “(A) IN GENERAL.—The Secretary, acting
12 through the Director of the Office of Self-Gov-
13 ernance, may select up to 50 new Indian tribes
14 per year from those eligible under subsection
15 (b) to participate in self-governance.

16 “(B) JOINT PARTICIPATION.—On the re-
17 quest of each participating Indian tribe, 2 or
18 more otherwise eligible Indian tribes may be
19 treated as a single Indian tribe for the purpose
20 of participating in self-governance.

21 “(2) OTHER AUTHORIZED INDIAN TRIBE OR
22 TRIBAL ORGANIZATION.—If an Indian tribe author-
23 izes another Indian tribe or a tribal organization to
24 plan for or carry out a program on its behalf under
25 this title, the authorized Indian tribe or tribal orga-

1 nization shall have the rights and responsibilities of
2 the authorizing Indian tribe (except as otherwise
3 provided in the authorizing resolution).

4 “(3) JOINT PARTICIPATION.—Two or more In-
5 dian tribes that are not otherwise eligible under sub-
6 section (b) may be treated as a single Indian tribe
7 for the purpose of participating in self-governance as
8 a tribal organization if—

9 “(A) each Indian tribe so requests; and

10 “(B) the tribal organization itself, or at
11 least 1 of the Indian tribes participating in the
12 tribal organization, is eligible under subsection
13 (b).

14 “(4) TRIBAL WITHDRAWAL FROM A TRIBAL OR-
15 GANIZATION.—

16 “(A) IN GENERAL.—An Indian tribe that
17 withdraws from participation in a tribal organi-
18 zation, in whole or in part, shall be entitled to
19 participate in self-governance if the Indian tribe
20 is eligible under subsection (b).

21 “(B) EFFECT OF WITHDRAWAL.—If an In-
22 dian tribe withdraws from participation in a
23 tribal organization, the Indian tribe shall be en-
24 titled to its tribal share of funds and resources
25 supporting the programs that the Indian tribe

1 is entitled to carry out under the compact and
2 funding agreement of the Indian tribe.

3 “(C) PARTICIPATION IN SELF-GOVERN-
4 ANCE.—The withdrawal of an Indian tribe from
5 a tribal organization shall not affect the eligi-
6 bility of the tribal organization to participate in
7 self-governance on behalf of 1 or more other In-
8 dian tribes, if the tribal organization still quali-
9 fies under subsection (b).

10 “(D) WITHDRAWAL PROCESS.—

11 “(i) IN GENERAL.—An Indian tribe
12 may, by tribal resolution, fully or partially
13 withdraw its tribal share of any program
14 in a funding agreement from a partici-
15 pating tribal organization.

16 “(ii) NOTIFICATION.—The Indian
17 tribe shall provide a copy of the tribal reso-
18 lution described in clause (i) to the Sec-
19 retary.

20 “(iii) EFFECTIVE DATE.—

21 “(I) IN GENERAL.—A withdrawal
22 under clause (i) shall become effective
23 on the date that is specified in the
24 tribal resolution and mutually agreed
25 upon by the Secretary, the with-

1 drawing Indian tribe, and the tribal
2 organization that signed the compact
3 and funding agreement on behalf of
4 the withdrawing Indian tribe or tribal
5 organization.

6 “(II) NO SPECIFIED DATE.—In
7 the absence of a date specified in the
8 resolution, the withdrawal shall be-
9 come effective on—

10 “(aa) the earlier of—

11 “(AA) 1 year after the
12 date of submission of the re-
13 quest; and

14 “(BB) the date on
15 which the funding agree-
16 ment expires; or

17 “(bb) such date as may be
18 mutually agreed upon by the Sec-
19 retary, the withdrawing Indian
20 tribe, and the tribal organization
21 that signed the compact and
22 funding agreement on behalf of
23 the withdrawing Indian tribe or
24 tribal organization.

1 “(E) DISTRIBUTION OF FUNDS.—If an In-
2 dian tribe or tribal organization eligible to enter
3 into a self-determination contract under title I
4 or a compact or funding agreement under this
5 title fully or partially withdraws from a partici-
6 pating tribal organization, the withdrawing In-
7 dian tribe—

8 “(i) may elect to enter into a self-de-
9 termination contract or compact, in which
10 case—

11 “(I) the withdrawing Indian tribe
12 or tribal organization shall be entitled
13 to its tribal share of unexpended
14 funds and resources supporting the
15 programs that the Indian tribe will be
16 carrying out under its own self-deter-
17 mination contract or compact and
18 funding agreement (calculated on the
19 same basis as the funds were initially
20 allocated to the funding agreement of
21 the tribal organization); and

22 “(II) the funds referred to in
23 subclause (I) shall be withdrawn by
24 the Secretary from the funding agree-
25 ment of the tribal organization and

1 transferred to the withdrawing Indian
2 tribe, on the condition that sections
3 102 and 105(i), as appropriate, shall
4 apply to the withdrawing Indian tribe;
5 or

6 “(ii) may elect not to enter into a self-
7 determination contract or compact, in
8 which case all unexpended funds and re-
9 sources associated with the withdrawing
10 Indian tribe’s returned programs (cal-
11 culated on the same basis as the funds
12 were initially allocated to the funding
13 agreement of the tribal organization) shall
14 be returned by the tribal organization to
15 the Secretary for operation of the pro-
16 grams included in the withdrawal.

17 “(F) RETURN TO MATURE CONTRACT STA-
18 TUS.—If an Indian tribe elects to operate all or
19 some programs carried out under a compact or
20 funding agreement under this title through a
21 self-determination contract under title I, at the
22 option of the Indian tribe, the resulting self-de-
23 termination contract shall be a mature self-de-
24 termination contract as long as the Indian tribe

1 meets the requirements set forth in section
2 4(h).

3 “(b) ELIGIBILITY.—To be eligible to participate in
4 self-governance, an Indian tribe shall—

5 “(1) successfully complete the planning phase
6 described in subsection (c);

7 “(2) request participation in self-governance by
8 resolution or other official action by the tribal gov-
9 erning body; and

10 “(3) demonstrate, for the 3 fiscal years pre-
11 ceding the date on which the Indian tribe requests
12 participation, financial stability and financial man-
13 agement capability as evidenced by the Indian tribe
14 having no uncorrected significant and material audit
15 exceptions in the required annual audit of its self-
16 determination or self-governance agreements with
17 any Federal agency.

18 “(c) PLANNING PHASE.—

19 “(1) IN GENERAL.—An Indian tribe seeking to
20 begin participation in self-governance shall complete
21 a planning phase as provided in this subsection.

22 “(2) ACTIVITIES.—The planning phase shall—

23 “(A) be conducted to the satisfaction of
24 the Indian tribe; and

25 “(B) include—

1 “(i) legal and budgetary research; and

2 “(ii) internal tribal government plan-
3 ning, training, and organizational prepara-
4 tion.

5 “(d) GRANTS.—

6 “(1) IN GENERAL.—Subject to the availability
7 of appropriations, an Indian tribe or tribal organiza-
8 tion that meets the requirements of paragraphs (2)
9 and (3) of subsection (b) shall be eligible for
10 grants—

11 “(A) to plan for participation in self-gov-
12 ernance; and

13 “(B) to negotiate the terms of participa-
14 tion by the Indian tribe or tribal organization
15 in self-governance, as set forth in a compact
16 and a funding agreement.

17 “(2) RECEIPT OF GRANT NOT REQUIRED.—Re-
18 ceipt of a grant under paragraph (1) shall not be a
19 requirement of participation in self-governance.

20 **“SEC. 404. COMPACTS.**

21 “(a) IN GENERAL.—The Secretary shall negotiate
22 and enter into a written compact with each Indian tribe
23 participating in self-governance in a manner consistent
24 with the trust responsibility of the Federal Government,

1 treaty obligations, and the government-to-government re-
2 lationship between Indian tribes and the United States.

3 “(b) CONTENTS.—A compact under subsection (a)
4 shall—

5 “(1) specify and affirm the general terms of the
6 government-to-government relationship between the
7 Indian tribe and the Secretary; and

8 “(2) include such terms as the parties intend
9 shall control during the term of the compact.

10 “(c) AMENDMENT.—A compact under subsection (a)
11 may be amended only by agreement of the parties.

12 “(d) EFFECTIVE DATE.—The effective date of a com-
13 pact under subsection (a) shall be—

14 “(1) the date of the execution of the compact
15 by the parties; or

16 “(2) another date agreed upon by the parties.

17 “(e) DURATION.—A compact under subsection (a)
18 shall remain in effect—

19 “(1) for so long as permitted by Federal law;
20 or

21 “(2) until termination by written agreement,
22 retrocession, or reassumption.

23 “(f) EXISTING COMPACTS.—An Indian tribe partici-
24 pating in self-governance under this title, as in effect on
25 the date of enactment of the Department of the Interior

1 Tribal Self-Governance Act of 2011, shall have the option
2 at any time after that date—

3 “(1) to retain its negotiated compact (in whole
4 or in part) to the extent that the provisions of the
5 compact are not directly contrary to any express
6 provision of this title; or

7 “(2) to negotiate a new compact in a manner
8 consistent with this title.

9 **“SEC. 405. FUNDING AGREEMENTS.**

10 “(a) IN GENERAL.—The Secretary shall negotiate
11 and enter into a written funding agreement with the gov-
12 erning body of an Indian tribe or tribal organization in
13 a manner consistent with the trust responsibility of the
14 Federal Government, treaty obligations, and the govern-
15 ment-to-government relationship between Indian tribes
16 and the United States.

17 “(b) INCLUDED PROGRAMS.—

18 “(1) BUREAU OF INDIAN AFFAIRS AND OFFICE
19 OF SPECIAL TRUSTEE.—

20 “(A) IN GENERAL.—The Secretary is di-
21 rected, upon the request of any Indian tribe or
22 tribal organization, to enter into a funding
23 agreement to plan, conduct, consolidate, admin-
24 ister, and receive full tribal share funding for
25 all programs selected by the Indian tribe and

1 carried out by the Bureau of Indian Affairs, the
2 Office of the Assistant Secretary for Indian Af-
3 fairs, and the Office of the Special Trustee,
4 without regard to the agency or office within
5 which the program is performed (including
6 funding for agency, area, and central office
7 functions in accordance with section 409(c)),
8 that—

9 “(i) are provided for in the Act of
10 April 16, 1934 (25 U.S.C. 452 et seq.);

11 “(ii) the Secretary administers for the
12 benefit of Indians under the Act of Novem-
13 ber 2, 1921 (25 U.S.C. 13), or any subse-
14 quent Act;

15 “(iii) the Secretary administers for
16 the benefit of Indians with appropriations
17 made to agencies other than the Depart-
18 ment of the Interior; or

19 “(iv) are provided for the benefit of
20 Indians because of their status as Indians.

21 “(B) INCLUSIONS.—Programs described in
22 subparagraph (A) shall include all programs
23 with respect to which Indian tribes or Indians
24 are primary or significant beneficiaries.

1 “(2) DISCRETIONARY PROGRAMS OF SPECIAL
2 SIGNIFICANCE.—

3 “(A) IN GENERAL.—A funding agreement
4 under subsection (a) may, in accordance with
5 such additional terms as the parties consider to
6 be appropriate, include programs, services,
7 functions, and activities (or portions thereof),
8 administered by the Secretary, in addition to
9 programs described in paragraphs (1) and (3),
10 that are of special geographical, historical, or
11 cultural significance to the Indian tribe.

12 “(B) GOVERNING PROVISIONS.—A funding
13 agreement described in subparagraph (A), in-
14 cluding the additional terms, shall be governed
15 by this title, except that, subject to the discre-
16 tion of the Secretary—

17 “(i) in accordance with section
18 406(d), the Indian tribe may have realloca-
19 tion, consolidation, and redesign authority
20 over any program assumed under this
21 paragraph;

22 “(ii) notwithstanding section 408, the
23 Secretary may require special terms and
24 conditions regarding a construction pro-

1 gram or project assumed under this para-
2 graph;

3 “(iii) all Federal regulations that oth-
4 erwise govern the operation of any pro-
5 gram assumed under this paragraph apply
6 to the Indian tribe, unless a specific regu-
7 lation is waived by the Secretary under the
8 procedures set forth in section 410(b)(2),
9 which waiver request may be denied upon
10 a specific finding by the Secretary that the
11 waiver is prohibited by Federal law or is
12 inconsistent with the express provisions of
13 the funding agreement; and

14 “(iv) a stable base budget, as de-
15 scribed in paragraph (7)(B), may be pro-
16 vided for any program assumed under this
17 paragraph.

18 “(3) PROGRAMS OTHERWISE AVAILABLE.—The
19 Secretary is directed, upon the request of any Indian
20 tribe or tribal organization, to enter into a funding
21 agreement to plan, conduct, consolidate, administer,
22 and receive full funding for any program selected by
23 the Indian tribe and administered by the Depart-
24 ment other than through the Bureau of Indian Af-
25 fairs, the Office of the Assistant Secretary for In-

1 dian Affairs, or the Office of the Special Trustee,
2 that the Secretary has determined is otherwise avail-
3 able to Indian tribes or Indians under section 102.
4 Nothing in this paragraph may be construed to pro-
5 vide any Indian tribe with a preference with respect
6 to the opportunity of that Indian tribe to administer
7 programs, services, functions, or activities, or por-
8 tions thereof, unless that preference is otherwise
9 provided for by law.

10 “(4) COMPETITIVE BIDDING.—Nothing in this
11 section—

12 “(A) supersedes any express statutory re-
13 quirement for competitive bidding; or

14 “(B) prohibits the inclusion in a funding
15 agreement of a program in which non-Indians
16 have an incidental or legally identifiable inter-
17 est.

18 “(5) EXCLUDED FUNDING.—A funding agree-
19 ment shall not authorize an Indian tribe to plan,
20 conduct, administer, or receive tribal share funding
21 under any program that—

22 “(A) is provided under the Tribally Con-
23 trolled Colleges and Universities Assistance Act
24 of 1978 (25 U.S.C. 1801 et seq.); and

1 “(B) is provided for elementary and sec-
2 ondary schools under the formula developed
3 under section 1127 of the Education Amend-
4 ments of 1978 (25 U.S.C. 2007).

5 “(6) SERVICES, FUNCTIONS, AND RESPONSIBIL-
6 ITIES.—A funding agreement shall specify—

7 “(A) the services to be provided under the
8 funding agreement;

9 “(B) the functions to be performed under
10 the funding agreement; and

11 “(C) the responsibilities of the Indian tribe
12 and the Secretary under the funding agreement.

13 “(7) BASE BUDGET.—

14 “(A) IN GENERAL.—A funding agreement
15 pursuant to paragraph (1) shall, at the option
16 of the Indian tribe, provide for a stable base
17 budget specifying the recurring funds (which
18 may include funds available under section
19 106(a)) to be transferred to the Indian tribe,
20 for such period as the Indian tribe specifies in
21 the funding agreement, subject to annual ad-
22 justment only to reflect changes in congres-
23 sional appropriations.

24 “(B) DISCRETIONARY PROGRAMS OF SPE-
25 CIAL SIGNIFICANCE.—Upon agreement by the

1 Secretary, a funding agreement under para-
2 graphs (2) and (3) may also provide for a sta-
3 ble base budget.

4 “(8) NO WAIVER OF TRUST RESPONSIBILITY.—

5 A funding agreement shall prohibit the Secretary
6 from waiving, modifying, or diminishing in any way
7 the trust responsibility of the United States with re-
8 spect to Indian tribes and individual Indians that ex-
9 ists under treaties, Executive orders, court decisions,
10 and other laws.

11 “(c) AMENDMENT.—The Secretary shall not revise,
12 amend, or require additional terms in a new or subsequent
13 funding agreement without the consent of the Indian tribe,
14 unless such terms are required by Federal law.

15 “(d) EFFECTIVE DATE.—A funding agreement shall
16 become effective on the date specified in the funding
17 agreement.

18 “(e) EXISTING AND SUBSEQUENT FUNDING AGREE-
19 MENTS.—

20 “(1) SUBSEQUENT FUNDING AGREEMENTS.—

21 Absent notification from an Indian tribe that the In-
22 dian tribe is withdrawing or retroceding the oper-
23 ation of 1 or more programs identified in a funding
24 agreement under paragraph (1) or (3) of subsection
25 (b), or unless otherwise agreed to by the parties to

1 the funding agreement or by the nature of any non-
2 continuing program, service, function, or activity
3 contained in a funding agreement—

4 “(A) a funding agreement shall remain in
5 full force and effect until a subsequent funding
6 agreement is executed, with funding paid annu-
7 ally for each fiscal year the agreement is in ef-
8 fect; and

9 “(B) the term of the subsequent funding
10 agreement shall be retroactive to the end of the
11 term of the preceding funding agreement for
12 the purposes of calculating the amount of fund-
13 ing to which the Indian tribe is entitled.

14 “(2) DISPUTES.—Disputes over the implemen-
15 tation of paragraph (1)(A) shall be subject to section
16 407(c).

17 “(3) EXISTING FUNDING AGREEMENTS.—An
18 Indian tribe that was participating in self-govern-
19 ance under this title on the date of enactment of the
20 Department of the Interior Tribal Self-Governance
21 Act of 2011 shall have the option at any time after
22 that date—

23 “(A) to retain its existing funding agree-
24 ment (in whole or in part) to the extent that
25 the provisions of that funding agreement are

1 not directly contrary to any express provision of
2 this title; or

3 “(B) to negotiate a new funding agreement
4 in a manner consistent with this title.

5 “(4) MULTIYEAR FUNDING AGREEMENTS.—An
6 Indian tribe may, at the discretion of the Indian
7 tribe, negotiate with the Secretary for a funding
8 agreement with a term that exceeds 1 year.

9 **“SEC. 406. GENERAL PROVISIONS.**

10 “(a) APPLICABILITY.—An Indian tribe and the Sec-
11 retary shall include in any compact or funding agreement
12 provisions that reflect the requirements of this title.

13 “(b) CONFLICTS OF INTEREST.—An Indian tribe
14 participating in self-governance shall ensure that internal
15 measures are in place to address, pursuant to tribal law
16 and procedures, conflicts of interest in the administration
17 of programs.

18 “(c) AUDITS.—

19 “(1) SINGLE AGENCY AUDIT ACT.—Chapter 75
20 of title 31, United States Code, shall apply to a
21 funding agreement under this title.

22 “(2) COST PRINCIPLES.—An Indian tribe shall
23 apply cost principles under the applicable Office of
24 Management and Budget circular, except as modi-
25 fied by—

1 “(A) any provision of law, including section
2 106; or

3 “(B) any exemptions to applicable Office
4 of Management and Budget circulars subse-
5 quently granted by the Office of Management
6 and Budget.

7 “(3) FEDERAL CLAIMS.—Any claim by the Fed-
8 eral Government against an Indian tribe relating to
9 funds received under a funding agreement based on
10 any audit under this subsection shall be subject to
11 section 106(f).

12 “(d) REDESIGN AND CONSOLIDATION.—Except as
13 provided in section 408, an Indian tribe may redesign or
14 consolidate programs or reallocate funds for programs in
15 any manner that the Indian tribe determines to be in the
16 best interest of the Indian community being served, so
17 long as that the redesign or consolidation does not have
18 the effect of denying eligibility for services to population
19 groups otherwise eligible to be served under applicable
20 Federal law, except that, with respect to the reallocation,
21 consolidation, and redesign of programs described in sec-
22 tions 405(b)(2) and 405(b)(3), a joint agreement between
23 the Secretary and the Indian tribe shall be required.

24 “(e) RETROCESSION.—

1 “(1) IN GENERAL.—An Indian tribe may fully
2 or partially retrocede to the Secretary any program
3 under a compact or funding agreement.

4 “(2) EFFECTIVE DATE.—

5 “(A) AGREEMENT.—Unless an Indian
6 tribe rescinds a request for retrocession under
7 paragraph (1), the retrocession shall become ef-
8 fective on the date specified by the parties in
9 the compact or funding agreement.

10 “(B) NO AGREEMENT.—In the absence of
11 a specification of an effective date in the com-
12 pact or funding agreement, the retrocession
13 shall become effective on—

14 “(i) the earlier of—

15 “(I) 1 year after the date on
16 which the request is submitted; and

17 “(II) the date on which the fund-
18 ing agreement expires; or

19 “(ii) such date as may be mutually
20 agreed upon by the Secretary and the In-
21 dian tribe.

22 “(f) NONDUPLICATION.—A funding agreement shall
23 provide that, for the period for which, and to the extent
24 to which, funding is provided to an Indian tribe under this
25 title, the Indian tribe—

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

5 “(2) shall be responsible for the administration
6 of programs in accordance with the compact or
7 funding agreement.

8 “(g) RECORDS.—

9 “(1) IN GENERAL.—Unless an Indian tribe
10 specifies otherwise in the compact or funding agree-
11 ment, records of an Indian tribe shall not be consid-
12 ered to be Federal records for purposes of chapter
13 5 of title 5, United States Code.

14 “(2) RECORDKEEPING SYSTEM.—An Indian
15 tribe shall—

16 “(A) maintain a recordkeeping system; and

17 “(B) on a notice period of not less than 30
18 days, provide the Secretary with reasonable ac-
19 cess to the records to enable the Department to
20 meet the requirements of sections 3101 through
21 3106 of title 44, United States Code.

22 **“SEC. 407. PROVISIONS RELATED TO THE SECRETARY.**

23 “(a) TRUST EVALUATIONS.—A funding agreement
24 shall include a provision to monitor the performance of

1 trust functions by the Indian tribe through the annual
2 trust evaluation.

3 “(b) REASSUMPTION.—

4 “(1) IN GENERAL.—A compact or funding
5 agreement shall include provisions for the Secretary
6 to reassume a program and associated funding if
7 there is a specific finding relating to that program
8 of—

9 “(A) imminent jeopardy to a trust asset,
10 natural resources, or public health and safety
11 that—

12 “(i) is caused by an act or omission of
13 the Indian tribe; and

14 “(ii) arises out of a failure to carry
15 out the compact or funding agreement; or

16 “(B) gross mismanagement with respect to
17 funds transferred to an Indian tribe under a
18 compact or funding agreement, as determined
19 by the Secretary in consultation with the In-
20 spector General, as appropriate.

21 “(2) PROHIBITION.—The Secretary shall not
22 reassume operation of a program, in whole or part,
23 unless—

1 “(A) the Secretary first provides written
2 notice and a hearing on the record to the In-
3 dian tribe; and

4 “(B) the Indian tribe does not take correc-
5 tive action to remedy the mismanagement of
6 the funds or programs, or the imminent jeop-
7 ardy to a trust asset, natural resource, or pub-
8 lic health and safety.

9 “(3) EXCEPTION.—

10 “(A) IN GENERAL.—Notwithstanding para-
11 graph (2), the Secretary may, on written notice
12 to the Indian tribe, immediately reassume oper-
13 ation of a program if—

14 “(i) the Secretary makes a finding of
15 imminent and substantial jeopardy and ir-
16 reparable harm to a trust asset, a natural
17 resource, or the public health and safety
18 caused by an act or omission of the Indian
19 tribe; and

20 “(ii) the imminent and substantial
21 jeopardy, and irreparable harm to the trust
22 asset, natural resource, or public health
23 and safety arises out of a failure by the In-
24 dian tribe to carry out the terms of an ap-
25 plicable compact or funding agreement.

1 “(B) REASSUMPTION.—If the Secretary re-
2 assumes operation of a program under subpara-
3 graph (A), the Secretary shall provide the In-
4 dian tribe with a hearing on the record not
5 later than 10 days after the date of reassump-
6 tion.

7 “(c) INABILITY TO AGREE ON COMPACT OR FUND-
8 ING AGREEMENT.—

9 “(1) FINAL OFFER.—If the Secretary and a
10 participating Indian tribe are unable to agree, in
11 whole or in part, on the terms of a compact or fund-
12 ing agreement (including funding levels), the Indian
13 tribe may submit a final offer to the Secretary.

14 “(2) DETERMINATION.—Not more than 60
15 days after the date of receipt of a final offer by the
16 official(s) designated pursuant to paragraph (4), the
17 Secretary shall review and make a determination
18 with respect to the final offer.

19 “(3) EXTENSIONS.—The deadline described in
20 paragraph (2) may be extended for any length of
21 time, as agreed upon by both the Indian tribe and
22 the Secretary.

23 “(4) DESIGNATED OFFICIALS.—The Secretary
24 shall designate 1 or more appropriate officials in the
25 Department to receive a copy of the final offer de-

1 scribed in paragraph (1). The Secretary’s Executive
2 Secretariat shall be the designated official if no
3 other official is designated.

4 “(5) NO TIMELY DETERMINATION.—If the Sec-
5 retary fails to make a determination with respect to
6 a final offer within the period specified in paragraph
7 (2), the Secretary shall be deemed to have agreed to
8 the offer.

9 “(6) REJECTION OF FINAL OFFER.—

10 “(A) IN GENERAL.—If the Secretary re-
11 jects a final offer (or 1 or more provisions or
12 funding levels in a final offer), the Secretary
13 shall—

14 “(i) provide timely written notification
15 to the Indian tribe that contains a specific
16 finding that clearly demonstrates, or that
17 is supported by a controlling legal author-
18 ity, that—

19 “(I) the amount of funds pro-
20 posed in the final offer exceeds the
21 applicable funding level as determined
22 under section 450j-1(a)(1);

23 “(II) the program that is the
24 subject of the final offer is an inher-
25 ent Federal function or is subject to

1 the discretion of the Secretary under
2 section 405(b)(2);

3 “(III) the Indian tribe cannot
4 carry out the program in a manner
5 that would not result in significant
6 danger or risk to the public health or
7 safety, to natural resources, or to
8 trust resources;

9 “(IV) the Indian tribe is not eli-
10 gible to participate in self-governance
11 under section 403(b); or

12 “(V) the funding agreement
13 would violate a Federal statute or reg-
14 ulation;

15 “(ii) provide technical assistance to
16 overcome the objections stated in the noti-
17 fication required by clause (i);

18 “(iii) provide the Indian tribe with—

19 “(I) a hearing on the record with
20 the right to engage in full discovery
21 relevant to any issue raised in the
22 matter; and

23 “(II) the opportunity for appeal
24 on the objections raised (except that
25 the Indian tribe may, in lieu of filing

1 such appeal, directly proceed to ini-
2 tiate an action in a United States dis-
3 trict court under section 110(a)); and
4 “(iv) provide the Indian tribe the op-
5 tion of entering into the severable portions
6 of a final proposed compact or funding
7 agreement (including a lesser funding
8 amount, if any), that the Secretary did not
9 reject, subject to any additional alterations
10 necessary to conform the compact or fund-
11 ing agreement to the severed provisions.

12 “(B) EFFECT OF EXERCISING CERTAIN
13 OPTION.—If an Indian tribe exercises the op-
14 tion specified in subparagraph (A)(iv)—

15 “(i) the Indian tribe shall retain the
16 right to appeal the rejection by the Sec-
17 retary under this section; and

18 “(ii) clauses (i), (ii), and (iii) of sub-
19 paragraph (A) shall apply only to the por-
20 tion of the proposed final compact or fund-
21 ing agreement that was rejected by the
22 Secretary.

23 “(d) BURDEN OF PROOF.—In any administrative ac-
24 tion, hearing, or appeal or civil action brought under this
25 section, the Secretary shall have the burden of proof—

1 “(1) of demonstrating, by a preponderance of
2 the evidence, the validity of the grounds for a re-
3 assumption under subsection (b); and

4 “(2) of clearly demonstrating the validity of the
5 grounds for rejecting a final offer made under sub-
6 section (c).

7 “(e) GOOD FAITH.—

8 “(1) IN GENERAL.—In the negotiation of com-
9 pacts and funding agreements, the Secretary shall at
10 all times negotiate in good faith to maximize imple-
11 mentation of the self-governance policy.

12 “(2) POLICY.—The Secretary shall carry out
13 this title in a manner that maximizes the policy of
14 tribal self-governance.

15 “(f) SAVINGS.—

16 “(1) IN GENERAL.—To the extent that pro-
17 grams carried out for the benefit of Indian tribes
18 and tribal organizations under this title reduce the
19 administrative or other responsibilities of the Sec-
20 retary with respect to the operation of Indian pro-
21 grams and result in savings that have not otherwise
22 been included in the amount of tribal shares and
23 other funds determined under section 409(c), except
24 for funding agreements entered into for programs
25 under section 405(b)(2), the Secretary shall make

1 such savings available to the Indian tribes or tribal
2 organizations for the provision of additional services
3 to program beneficiaries in a manner equitable to di-
4 rectly served, contracted, and compacted programs.

5 “(2) DISCRETIONARY PROGRAMS OF SPECIAL
6 SIGNIFICANCE.—For any savings generated as a re-
7 sult of the assumption of a program by an Indian
8 tribe under section 405(b)(2), such savings shall be
9 made available to that Indian tribe.

10 “(g) TRUST RESPONSIBILITY.—The Secretary may
11 not waive, modify, or diminish in any way the trust re-
12 sponsibility of the United States with respect to Indian
13 tribes and individual Indians that exists under treaties,
14 Executive orders, other laws, or court decisions.

15 “(h) DECISIONMAKER.—A decision that constitutes
16 final agency action and relates to an appeal within the
17 Department conducted under subsection (c)(4) may be
18 made by—

19 “(1) an official of the Department who holds a
20 position at a higher organizational level within the
21 Department than the level of the departmental agen-
22 cy in which the decision that is the subject of the
23 appeal was made; or

24 “(2) an administrative law judge.

1 “(i) RULES OF CONSTRUCTION.—Each provision of
2 this title and each provision of a compact or funding
3 agreement shall be liberally construed for the benefit of
4 the Indian tribe participating in self-governance, and any
5 ambiguity shall be resolved in favor of the Indian tribe.

6 **“SEC. 408. CONSTRUCTION PROGRAMS AND PROJECTS.**

7 “(a) IN GENERAL.—Indian tribes participating in
8 tribal self-governance may carry out construction projects
9 under this title.

10 “(b) TRIBAL OPTION TO CARRY OUT CERTAIN FED-
11 ERAL ENVIRONMENTAL ACTIVITIES.—In carrying out a
12 construction project under this title, an Indian tribe may,
13 subject to the agreement of the Secretary, elect to assume
14 some Federal responsibilities under the National Environ-
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the
16 National Historic Preservation Act (16 U.S.C. 470 et
17 seq.), and related provisions of law and regulations that
18 would apply if the Secretary were to undertake a construc-
19 tion project, by adopting a resolution—

20 “(1) designating a certifying tribal officer to
21 represent the Indian tribe and to assume the status
22 of a responsible Federal official under those Acts or
23 regulations; and

24 “(2) accepting the jurisdiction of the United
25 States courts for the purpose of enforcing the re-

1 sponsibilities of the certifying tribal officer assuming
2 the status of a responsible Federal official under
3 those Acts or regulations.

4 “(c) SAVINGS CLAUSE.—Notwithstanding subsection
5 (b), nothing in this section authorizes the Secretary to in-
6 clude in any compact or funding agreement duties of the
7 Secretary under the National Environmental Policy Act
8 (42 U.S.C. 4321 et seq.), the National Historic Preserva-
9 tion Act (16 U.S.C. 470 et seq.), and other related provi-
10 sions of law that are inherent Federal functions.

11 “(d) CODES AND STANDARDS.—In carrying out a
12 construction project under this title, an Indian tribe
13 shall—

14 “(1) adhere to applicable Federal, State, local,
15 and tribal building codes, architectural and engineer-
16 ing standards, and applicable Federal guidelines re-
17 garding design, space, and operational standards,
18 appropriate for the particular project; and

19 “(2) use only architects and engineers who—

20 “(A) are licensed to practice in the State
21 in which the facility will be built; and

22 “(B) certify that—

23 “(i) they are qualified to perform the
24 work required by the specific construction
25 involved; and

1 “(ii) upon completion of design, the
2 plans and specifications meet or exceed the
3 applicable construction and safety codes.

4 “(e) TRIBAL ACCOUNTABILITY.—

5 “(1) IN GENERAL.—In carrying out a construc-
6 tion project under this title, an Indian tribe shall as-
7 sume responsibility for the successful completion of
8 the construction project and of a facility that is usa-
9 ble for the purpose for which the Indian tribe re-
10 ceived funding.

11 “(2) REQUIREMENTS.—For each construction
12 project carried out by an Indian tribe under this
13 title, the Indian tribe and the Secretary shall nego-
14 tiate a provision to be included in the funding agree-
15 ment that identifies—

16 “(A) the approximate start and completion
17 dates for the project, which may extend over a
18 period of 1 or more years;

19 “(B) a general description of the project,
20 including the scope of work, references to de-
21 sign criteria, and other terms and conditions;

22 “(C) the responsibilities of the Indian tribe
23 and the Secretary for the project;

24 “(D) how project-related environmental
25 considerations will be addressed;

1 “(E) the amount of funds provided for the
2 project;

3 “(F) the obligations of the Indian tribe to
4 comply with the codes referenced in subsection
5 (e)(1) and applicable Federal laws and regula-
6 tions;

7 “(G) the agreement of the parties over who
8 will bear any additional costs necessary to meet
9 changes in scope, or errors or omissions in de-
10 sign and construction; and

11 “(H) the agreement of the Secretary to
12 issue a certificate of occupancy, if requested by
13 the Indian tribe, based upon the review and
14 verification by the Secretary, to the satisfaction
15 of the Secretary, that the Indian tribe has se-
16 cured upon completion the review and approval
17 of the plans and specifications, sufficiency of
18 design, life safety, and code compliance by
19 qualified, licensed, and independent architects
20 and engineers.

21 “(f) FUNDING.—

22 “(1) IN GENERAL.—Funding appropriated for
23 construction projects carried out under this title
24 shall be included in funding agreements as annual or

1 semiannual advance payments at the option of the
2 Indian tribe.

3 “(2) ADVANCE PAYMENTS.—The Secretary
4 shall include all associated project contingency funds
5 with each advance payment, and the Indian tribe
6 shall be responsible for the management of such con-
7 tingency funds.

8 “(g) NEGOTIATIONS.—At the option of the Indian
9 tribe, construction project funding proposals shall be nego-
10 tiated pursuant to the statutory process in section 105,
11 and any resulting construction project agreement shall be
12 incorporated into the funding agreement as addenda.

13 “(h) FEDERAL REVIEW AND VERIFICATION.—On a
14 schedule negotiated by the Secretary and the Indian tribe:

15 “(1) IN GENERAL.—

16 “(A) The Secretary shall review and verify,
17 to the satisfaction of the Secretary, that project
18 planning and design documents prepared by the
19 Indian tribe in advance of initial construction
20 are in conformity with the obligations of the In-
21 dian tribe under subsection (c).

22 “(B) Before the project planning and de-
23 sign documents are implemented, the Secretary
24 shall review and verify to the satisfaction of the
25 Secretary that subsequent document amend-

1 ments which result in a significant change in
2 construction are in conformity with the obliga-
3 tions of the Indian tribe under subsection (c).

4 “(2) REPORTS.—The Indian tribe shall provide
5 the Secretary with project progress and financial re-
6 ports not less than semiannually.

7 “(3) OVERSIGHT VISITS.—The Secretary may
8 conduct onsite project oversight visits semiannually
9 or on an alternate schedule agreed to by the Sec-
10 retary and the Indian tribe.

11 “(i) APPLICATION OF OTHER LAWS.—Unless other-
12 wise agreed to by the Indian tribe and except as otherwise
13 provided in this Act, no provision of the Office of Federal
14 Procurement Policy Act (41 U.S.C. 401 et seq.), the Fed-
15 eral Acquisition Regulations issued pursuant to that Act,
16 or any other law or regulation pertaining to Federal pro-
17 curement (including Executive orders) shall apply to any
18 construction program or project carried out under this
19 title.

20 “(j) FUTURE FUNDING.—Upon completion of a facil-
21 ity constructed under this title, the Secretary shall include
22 the facility among those eligible for annual operation and
23 maintenance funding support comparable to that provided
24 for similar facilities funded by the Department as annual
25 appropriations are available and to the extent that the fa-

1 cility size and complexity and other factors do not exceed
2 the funding formula criteria for comparable buildings.

3 **“SEC. 409. PAYMENT.**

4 “(a) IN GENERAL.—At the request of the governing
5 body of an Indian tribe and under the terms of an applica-
6 ble funding agreement, the Secretary shall provide funding
7 to the Indian tribe to carry out the funding agreement.

8 “(b) ADVANCE ANNUAL PAYMENT.—At the option of
9 the Indian tribe, a funding agreement shall provide for
10 an advance annual payment to an Indian tribe.

11 “(c) AMOUNT.—

12 “(1) IN GENERAL.—Subject to subsection (e)
13 and sections 405 and 406, the Secretary shall pro-
14 vide funds to the Indian tribe under a funding
15 agreement for programs in an amount that is equal
16 to the amount that the Indian tribe would have been
17 entitled to receive under contracts and grants under
18 this Act (including amounts for direct program and
19 contract support costs and, in addition, any funds
20 that are specifically or functionally related to the
21 provision by the Secretary of services and benefits to
22 the Indian tribe or its members) without regard to
23 the organization level within the Department at
24 which the programs are carried out.

1 “(2) SAVINGS CLAUSE.—Nothing in this section
2 reduces programs, services, or funds of, or provided
3 to, another Indian tribe.

4 “(d) TIMING.—

5 “(1) IN GENERAL.—Pursuant to the terms of
6 any compact or funding agreement entered into
7 under this title, the Secretary shall transfer to the
8 Indian tribe all funds provided for in the funding
9 agreement, pursuant to subsection (c), and provide
10 funding for periods covered by joint resolution
11 adopted by Congress making continuing appropria-
12 tions, to the extent permitted by such resolution.

13 “(2) TRANSFERS.—Not later than 1 year after
14 the date of enactment of the Department of the In-
15 terior Tribal Self-Governance Act of 2011, in any in-
16 stance in which a funding agreement requires an an-
17 nual transfer of funding to be made at the beginning
18 of a fiscal year or requires semiannual or other peri-
19 odic transfers of funding to be made commencing at
20 the beginning of a fiscal year, the first such transfer
21 shall be made not later than 10 days after the ap-
22 portionment of such funds by the Office of Manage-
23 ment and Budget to the Department, unless the
24 funding agreement provides otherwise.

1 “(e) AVAILABILITY.—Funds for trust services to indi-
2 vidual Indians shall be available under a funding agree-
3 ment only to the extent that the same services that would
4 have been provided by the Secretary are provided to indi-
5 vidual Indians by the Indian tribe.

6 “(f) MULTIYEAR FUNDING.—A funding agreement
7 may provide for multiyear funding.

8 “(g) LIMITATIONS ON AUTHORITY OF THE SEC-
9 RETARY.—The Secretary shall not—

10 “(1) fail to transfer to an Indian tribe its full
11 share of any central, headquarters, regional, area, or
12 service unit office or other funds due under this title
13 for programs eligible under paragraph (1) or (3) of
14 section 405(b), except as required by Federal law;

15 “(2) withhold any portion of such funds for
16 transfer over a period of years; or

17 “(3) reduce the amount of funds required under
18 this title—

19 “(A) to make funding available for self-
20 governance monitoring or administration by the
21 Secretary;

22 “(B) in subsequent years, except as nec-
23 essary as a result of—

24 “(i) a reduction in appropriations
25 from the previous fiscal year for the pro-

1 gram to be included in a compact or fund-
2 ing agreement;

3 “ (ii) a congressional directive in legis-
4 lation or an accompanying report;

5 “ (iii) a tribal authorization;

6 “ (iv) a change in the amount of pass-
7 through funds subject to the terms of the
8 funding agreement; or

9 “ (v) completion of an activity under a
10 program for which the funds were pro-
11 vided;

12 “ (C) to pay for Federal functions, includ-
13 ing—

14 “ (i) Federal pay costs;

15 “ (ii) Federal employee retirement ben-
16 efits;

17 “ (iii) automated data processing;

18 “ (iv) technical assistance; and

19 “ (v) monitoring of activities under
20 this title; or

21 “ (D) to pay for costs of Federal personnel
22 displaced by self-determination contracts under
23 this Act or self-governance under this title.

24 “ (h) FEDERAL RESOURCES.—If an Indian tribe
25 elects to carry out a compact or funding agreement with

1 the use of Federal personnel, Federal supplies (including
2 supplies available from Federal warehouse facilities), Fed-
3 eral supply sources (including lodging, airline transpor-
4 tation, and other means of transportation, including the
5 use of interagency motor pool vehicles), or other Federal
6 resources (including supplies, services, and resources
7 available to the Secretary under any procurement con-
8 tracts in which the Department is eligible to participate),
9 the Secretary shall, as soon as practicable, acquire and
10 transfer such personnel, supplies, or resources to the In-
11 dian tribe under this title.

12 “(i) PROMPT PAYMENT ACT.—Chapter 39 of title 31,
13 United States Code, shall apply to the transfer of funds
14 due under a compact or funding agreement authorized
15 under this title.

16 “(j) INTEREST OR OTHER INCOME.—

17 “(1) IN GENERAL.—An Indian tribe may retain
18 interest or income earned on any funds paid under
19 a compact or funding agreement to carry out gov-
20 ernmental purposes.

21 “(2) NO EFFECT ON OTHER AMOUNTS.—The
22 retention of interest or income under paragraph (1)
23 shall not diminish the amount of funds an Indian
24 tribe is entitled to receive under a funding agree-

1 ment in the year the interest or income is earned or
2 in any subsequent fiscal year.

3 “(3) INVESTMENT STANDARD.—Funds trans-
4 ferred under this title shall be managed by the In-
5 dian tribe using the prudent investment standard,
6 provided that the Secretary shall not be liable for
7 any investment losses of funds managed by the In-
8 dian tribe that are not otherwise guaranteed or in-
9 sured by the Federal Government.

10 “(k) CARRYOVER OF FUNDS.—

11 “(1) IN GENERAL.—Notwithstanding any provi-
12 sion of an appropriations Act, all funds paid to an
13 Indian tribe in accordance with a compact or fund-
14 ing agreement shall remain available until expended.

15 “(2) EFFECT OF CARRYOVER.—If an Indian
16 tribe elects to carry over funding from 1 year to the
17 next, the carryover shall not diminish the amount of
18 funds the Indian tribe is entitled to receive under a
19 funding agreement in that fiscal year or any subse-
20 quent fiscal year.

21 “(l) LIMITATION OF COSTS.—

22 “(1) IN GENERAL.—An Indian tribe shall not
23 be obligated to continue performance that requires
24 an expenditure of funds in excess of the amount of

1 funds transferred under a compact or funding agree-
2 ment.

3 “(2) NOTICE OF INSUFFICIENCY.—If at any
4 time the Indian tribe has reason to believe that the
5 total amount provided for a specific activity under a
6 compact or funding agreement is insufficient, the In-
7 dian tribe shall provide reasonable notice of such in-
8 sufficiency to the Secretary.

9 “(3) SUSPENSION OF PERFORMANCE.—If, after
10 notice under paragraph (2), the Secretary does not
11 increase the amount of funds transferred under the
12 funding agreement, the Indian tribe may suspend
13 performance of the activity until such time as addi-
14 tional funds are transferred.

15 “(4) SAVINGS CLAUSE.—Nothing in this section
16 reduces any programs, services, or funds of, or pro-
17 vided to, another Indian tribe.

18 “(m) DISTRIBUTION OF FUNDS.—The Office of Self-
19 Governance shall be responsible for distribution of all Bu-
20 reau of Indian Affairs funds provided under this title un-
21 less otherwise agreed by the parties to an applicable fund-
22 ing agreement.

1 **“SEC. 410. FACILITATION.**

2 “(a) IN GENERAL.—Except as otherwise provided by
3 law, the Secretary shall interpret each Federal law and
4 regulation in a manner that facilitates—

5 “(1) the inclusion of programs in funding
6 agreements; and

7 “(2) the implementation of funding agreements.

8 “(b) REGULATION WAIVER.—

9 “(1) REQUEST.—An Indian tribe may submit
10 to the Secretary a written request for a waiver of
11 applicability of a Federal regulation, including—

12 “(A) an identification of the specific text in
13 the regulation sought to be waived; and

14 “(B) the basis for the request.

15 “(2) DETERMINATION BY THE SECRETARY.—
16 Not later than 120 days after receipt by the Sec-
17 retary and the designated officials under paragraph
18 (4) of a request under paragraph (1), the Secretary
19 shall approve or deny the requested waiver in writ-
20 ing to the Indian tribe.

21 “(3) EXTENSIONS.—The deadline described in
22 paragraph (2) may be extended for any length of
23 time, as agreed upon by both the Indian tribe and
24 the Secretary.

25 “(4) DESIGNATED OFFICIALS.—The Secretary
26 shall designate 1 or more appropriate officials in the

1 Department to receive a copy of the waiver request
2 described in paragraph (1).

3 “(5) GROUND FOR DENIAL.—The Secretary
4 may deny a request under paragraph (1)—

5 “(A) for a program eligible under para-
6 graph (1) or (3) of section 405(b), only upon a
7 specific finding by the Secretary that the identi-
8 fied text in the regulation may not be waived
9 because such a waiver is prohibited by Federal
10 law; and

11 “(B) for a program eligible under section
12 405(b)(2), upon a specific finding by the Sec-
13 retary that the waiver is prohibited by Federal
14 law or is inconsistent with the express provi-
15 sions of the funding agreement.

16 “(6) FAILURE TO MAKE DETERMINATION.—If
17 the Secretary fails to approve or deny a waiver re-
18 quest within the period required under paragraph
19 (2), the Secretary shall be deemed to have approved
20 the request.

21 “(7) FINALITY.—A decision of the Secretary
22 under this section shall be final for the Department.

23 **“SEC. 411. DISCLAIMERS.**

24 “Nothing in this title expands or alters any statutory
25 authority of the Secretary in a manner that authorizes the

1 Secretary to enter into any agreement under section
2 405—

3 “(1) with respect to an inherent Federal func-
4 tion;

5 “(2) in a case in which the law establishing a
6 program explicitly prohibits the type of participation
7 sought by the Indian tribe (without regard to wheth-
8 er 1 or more Indian tribes are identified in the au-
9 thorizing law); or

10 “(3) that limits or reduces in any way the serv-
11 ices, contracts, or funds that any other Indian tribe
12 or tribal organization is eligible to receive under sec-
13 tion 102 or any other applicable Federal law.

14 **“SEC. 412. DISCRETIONARY APPLICATION OF OTHER SEC-**
15 **TIONS.**

16 “(a) IN GENERAL.—Except as otherwise provided in
17 section 101(c), at the option of a participating Indian tribe
18 or Indian tribes, any of the provisions of title I may be
19 incorporated in any compact or funding agreement under
20 this title.

21 “(b) EFFECT.—Each incorporated provision under
22 subsection (a) shall—

23 “(1) have the same force and effect as if set out
24 in full in this title;

1 “(2) supplement or replace any related provi-
2 sion in this title; and

3 “(3) apply to any agency otherwise governed by
4 this title.

5 “(c) EFFECTIVE DATE.—If an Indian tribe requests
6 incorporation at the negotiation stage of a compact or
7 funding agreement, the incorporation shall—

8 “(1) be effective immediately; and

9 “(2) control the negotiation and resulting com-
10 pact and funding agreement.

11 **“SEC. 413. ANNUAL BUDGET LIST.**

12 “The Secretary shall list, in the annual budget re-
13 quest submitted to Congress under section 1105 of title
14 31, United States Code, any funds proposed to be included
15 in funding agreements authorized under this Act.

16 **“SEC. 414. REPORTS.**

17 “(a) IN GENERAL.—

18 “(1) REQUIREMENT.—On January 1 of each
19 year, the Secretary shall submit to Congress a re-
20 port regarding the administration of this title.

21 “(2) ANALYSIS.—Any tribe may submit to the
22 Office of Self-Governance and to the appropriate
23 Committees of Congress a detailed annual analysis
24 of unmet tribal need for funding agreements under
25 this title.

1 “(b) CONTENTS.—The report under subsection (a)(1)
2 shall—

3 “(1) be compiled from information contained in
4 funding agreements, annual audit reports, and data
5 of the Secretary regarding the disposition of Federal
6 funds;

7 “(2) identify—

8 “(A) the relative costs and benefits of self-
9 governance;

10 “(B) with particularity, all funds that are
11 specifically or functionally related to the provi-
12 sion by the Secretary of services and benefits to
13 self-governance Indian tribes and members of
14 Indian tribes;

15 “(C) the funds transferred to each Indian
16 tribe and the corresponding reduction in the
17 Federal employees and workload; and

18 “(D) the funding formula for individual
19 tribal shares of all Central Office funds, to-
20 gether with the comments of affected Indian
21 tribes, developed under subsection (d);

22 “(3) before being submitted to Congress, be dis-
23 tributed to the Indian tribes for comment (with a
24 comment period of no less than 30 days);

1 “(4) include the separate views and comments
2 of each Indian tribe or tribal organization; and

3 “(5) include a list of—

4 “(A) all such programs that the Secretary
5 determines, in consultation with Indian tribes
6 participating in self-governance, are eligible for
7 negotiation to be included in a funding agree-
8 ment at the request of a participating Indian
9 tribe; and

10 “(B) all such programs which Indian tribes
11 have formally requested to include in a funding
12 agreement under section 405(b)(2) due to the
13 special geographic, historical, or cultural signifi-
14 cance of the program to the Indian tribe, indi-
15 cating whether each request was granted or de-
16 nied, and stating the grounds for any denial.

17 “(c) REPORT ON NON-BIA, NON-OST PROGRAMS.—

18 “(1) IN GENERAL.—In order to optimize oppor-
19 tunities for including non-Bureau of Indian Affairs
20 and non-Office of Special Trustee programs in
21 agreements with Indian tribes participating in self-
22 governance under this title, the Secretary shall re-
23 view all programs administered by the Department,
24 other than through the Bureau of Indian Affairs or

1 Office of the Special Trustee, without regard to the
2 agency or office concerned.

3 “(2) PROGRAMMATIC TARGETS.—The Secretary
4 shall establish programmatic targets, after consulta-
5 tion with Indian tribes participating in self-govern-
6 ance, to encourage bureaus of the Department to en-
7 sure that an appropriate portion of those programs
8 are available to be included in funding agreements.

9 “(3) PUBLICATION.—The lists under subsection
10 (b)(5) and targets under subsection (c)(2) shall be
11 published in the Federal Register and made avail-
12 able to any Indian tribe participating in self-govern-
13 ance.

14 “(4) ANNUAL REVIEW.—

15 “(A) IN GENERAL.—The Secretary shall
16 annually review and publish in the Federal Reg-
17 ister, after consultation with Indian tribes par-
18 ticipating in self-governance, revised lists and
19 programmatic targets.

20 “(B) CONTENTS.—In preparing the revised
21 lists and programmatic targets, the Secretary
22 shall consider all programs that were eligible
23 for contracting in the original list published in
24 the Federal Register in 1995, except for pro-

1 grams specifically determined not to be
2 contractible as a matter of law.

3 “(d) REPORT ON CENTRAL OFFICE FUNDS.—Not
4 later than January 1, 2012, the Secretary shall, in con-
5 sultation with Indian tribes, develop a funding formula to
6 determine the individual tribal share of funds controlled
7 by the Central Office of the Bureau of Indian Affairs and
8 the Office of the Special Trustee for inclusion in the com-
9 pacts.

10 **“SEC. 415. REGULATIONS.**

11 “(a) IN GENERAL.—

12 “(1) PROMULGATION.—Not later than 90 days
13 after the date of enactment of the Department of
14 the Interior Tribal Self-Governance Act of 2011, the
15 Secretary shall initiate procedures under subchapter
16 III of chapter 5 of title 5, United States Code, to
17 negotiate and promulgate such regulations as are
18 necessary to carry out this title.

19 “(2) PUBLICATION OF PROPOSED REGULA-
20 TIONS.—Proposed regulations to implement this title
21 shall be published in the Federal Register not later
22 than 21 months after the date of enactment of the
23 Department of the Interior Tribal Self-Governance
24 Act of 2011.

1 “(3) EXPIRATION OF AUTHORITY.—The author-
2 ity to promulgate regulations under paragraph (1)
3 shall expire on the date that is 30 months after the
4 date of enactment of the Department of the Interior
5 Tribal Self-Governance Act of 2011.

6 “(b) COMMITTEE.—

7 “(1) MEMBERSHIP.—A negotiated rulemaking
8 committee established pursuant to section 565 of
9 title 5, United States Code, to carry out this section
10 shall have as its members only representatives of the
11 Federal Government and tribal government.

12 “(2) LEAD AGENCY.—Among the Federal rep-
13 resentatives described in paragraph (1), the Office of
14 Self-Governance shall be the lead agency for the De-
15 partment.

16 “(c) ADAPTATION OF PROCEDURES.—The Secretary
17 shall adapt the negotiated rulemaking procedures to the
18 unique context of self-governance and the government-to-
19 government relationship between the United States and
20 Indian tribes.

21 “(d) EFFECT.—

22 “(1) REPEAL.—The Secretary may repeal any
23 regulation that is inconsistent with this Act.

1 “(1) the validity of the grounds for the decision;
2 and

3 “(2) the consistency of the decision with the re-
4 quirements and policies of this title.

5 **“SEC. 418. APPLICATION OF OTHER PROVISIONS.**

6 “Section 314 of the Department of the Interior and
7 Related Agencies Appropriations Act, 1991 (Public Law
8 101–512; 104 Stat. 1959), shall apply to compacts and
9 funding agreements entered into under this title.

10 **“SEC. 419. AUTHORIZATION OF APPROPRIATIONS.**

11 “There are authorized to be appropriated such sums
12 as are necessary to carry out this title.”.

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