

Union Calendar No. 348

111TH CONGRESS
2^D SESSION

H. R. 4347

[Report No. 111-603]

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

DECEMBER 16, 2009

Mr. BOREN (for himself and Mr. WALZ) introduced the following bill; which was referred to the Committee on Natural Resources

SEPTEMBER 16, 2010

Additional sponsors: Mr. HEINRICH, Mr. KILDEE, Mr. YOUNG of Alaska, Mrs. NAPOLITANO, Mr. FALEOMAVAEGA, Mr. SABLAN, Mr. COLE, Ms. RICHARDSON, Mr. CLAY, Mr. HONDA, Mr. LARSEN of Washington, Mr. INSLEE, Mr. REHBERG, and Mr. PETERSON

SEPTEMBER 16, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on December 16, 2009]

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 “De-*
 5 *partment of the Interior Tribal Self-Governance Act of*
 6 *2010”.*

7 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 8 *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 provi-
sions.

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.

9 **TITLE I—INDIAN SELF-**
 10 **DETERMINATION**

11 **SEC. 101. DEFINITIONS; REPORTING AND AUDIT REQUIRE-**
 12 **MENTS; APPLICATION OF PROVISIONS.**

13 (a) *DEFINITIONS.*—*Section 4 of the Indian Self-Deter-*
 14 *mination and Education Assistance Act (25 U.S.C. 450b)*
 15 *is amended by striking subsection (j) and inserting the fol-*
 16 *lowing:*

17 “(j) ‘self-determination contract’ means a con-

18 tract entered into (or a grant or cooperative agree-

19 ment used under section 9) under title I between a

1 *tribal organization and the appropriate Secretary for*
2 *the planning, conduct, and administration of pro-*
3 *grams or services that are otherwise provided to In-*
4 *dian tribes and members of Indian tribes pursuant to*
5 *Federal law, subject to the condition that, except as*
6 *provided in section 105(a)(3), no contract entered*
7 *into (or grant or cooperative agreement used under*
8 *section 9) under title I shall be—*

9 *“(1) considered to be a procurement con-*
10 *tract; or*

11 *“(2) subject to any Federal procurement*
12 *law (including regulations);”.*

13 *(b) REPORTING AND AUDIT REQUIREMENTS.—Section*
14 *5(b) of the Indian Self-Determination and Education As-*
15 *sistance Act (25 U.S.C. 450c(b)) is amended by striking*
16 *“after completion of the project or undertaking referred to*
17 *in the preceding subsection of this section” and inserting*
18 *“after the date on which a report is submitted to the Sec-*
19 *retary under subsection (a)”.*

20 *(c) APPLICATION OF OTHER PROVISIONS.—Sections 4,*
21 *5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110 and 111 of the*
22 *Indian Self-Determination and Education Assistance Act,*
23 *as amended (25 U.S.C. 450 et seq.) (Public Law 93–638,*
24 *as amended, 88 Stat. 2203) and section 314 of the Depart-*
25 *ment of the Interior and Related Agencies Appropriations*

1 *Act, 1991 (Public Law 101–512; 104 Stat. 1959), apply to*
2 *compacts and funding agreements entered into under title*
3 *IV.*

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

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

7 *(1) in subsection (c)(2), by striking “economic*
8 *enterprises” and all that follows through “except*
9 *that” and inserting “economic enterprises (as defined*
10 *in section 3 of the Indian Financing Act of 1974 (25*
11 *U.S.C. 1452)), except that”;*

12 *(2) by striking subsection (e) and inserting the*
13 *following:*

14 *“(e) APPEALS.—In any appeal (including civil ac-*
15 *tions) involving decisions made by the Secretary under this*
16 *title, the Secretary shall have the burden of proof of dem-*
17 *onstrating, by a preponderance of the evidence—*

18 *“(1) the validity of the grounds for the decision*
19 *made; and*

20 *“(2) that the decision is fully consistent with the*
21 *provisions and policies of this title.”; and*

22 *(3) by adding at the end the following:*

23 *“(f) GOOD FAITH REQUIREMENT.—In the negotiation*
24 *of compacts and funding agreements, the Secretary shall at*
25 *all times negotiate in good faith to maximize implementa-*

1 *tion of the self-governance policy. The Secretary shall carry*
2 *out this title in a manner that maximizes the policy of trib-*
3 *al self-governance, in a manner consistent with the purposes*
4 *specified in section 3 of the Tribal Self-Governance Amend-*
5 *ments of 2000 (Public Law 106–260; 25 U.S.C. 458aaa*
6 *note).”.*

7 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

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

10 *(1) in subsection (b) in the first sentence, by*
11 *striking “pursuant to” and all that follows through*
12 *“of this Act” and inserting “pursuant to sections 102*
13 *and 103”;*

14 *(2) by striking subsection (j) and inserting the*
15 *following:*

16 *“(j) REDESIGN AND CONSOLIDATION.—If an Indian*
17 *tribe can demonstrate, for the previous three fiscal years,*
18 *the financial stability and financial management capa-*
19 *bility as evidenced by the Indian tribe having no material*
20 *audit exceptions in the required annual audit of the self-*
21 *determination contracts of the Indian tribe, then the Indian*
22 *tribe may redesign or consolidate programs, services, func-*
23 *tions, and activities (or portions thereof) included in a*
24 *funding agreement under this title and reallocate or redirect*
25 *funds for such programs, services, functions, and activities*

1 *(or portions thereof) that are eligible to be included in Con-*
2 *solidated Tribal Government Programs in any manner that*
3 *the Indian tribe determines to be in the best interest of the*
4 *health and welfare of the Indian community being served,*
5 *only if the redesign or consolidation does not have the effect*
6 *of denying eligibility for services to population groups oth-*
7 *erwise eligible to be served under applicable Federal law.”;*
8 *and*

9 *(3) by adding at the end the following:*

10 *“(p) INTERPRETATION BY SECRETARY.—Except as*
11 *otherwise provided by law, the Secretary shall interpret all*
12 *Federal laws (including regulations) and Executive orders*
13 *in a manner that facilitates, to the maximum extent prac-*
14 *ticable—*

15 *“(1) the inclusion in self-determination contracts*
16 *and funding agreements of—*

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

19 *“(B) funds associated with those programs,*
20 *services, functions, and activities;*

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

23 *“(3) the achievement of tribal health objectives.”.*

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

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

5 *(1) in clause (i), by striking “, and” at the end*
6 *and inserting a semicolon;*

7 *(2) in clause (ii), by striking “expense related to*
8 *the overhead incurred” and inserting in lieu thereof*
9 *“expenses incurred by the governing body of the In-*
10 *Indian tribe or tribal organization and overhead in-*
11 *curring”;*

12 *(3) in clause (ii), by striking the comma at the*
13 *end and inserting “; and”; and*

14 *(4) by inserting after clause (ii) the following:*

15 *“(iii) not less than 50 percent of the expenses in-*
16 *curring by the governing body of a Indian tribe or*
17 *tribal organization relating to a Federal program,*
18 *function, service, or activity pursuant to the contract*
19 *(which expenses shall be considered to be reasonable*
20 *and allowable without documentation for the purpose*
21 *of this paragraph), except that in the case of a Indian*
22 *tribe or tribal organization which derives all or sub-*
23 *stantially all of its program revenue from other gov-*
24 *ernments or organizations, not less than 100 percent*
25 *of such expenses shall be considered to be reasonable*
26 *and allowable without documentation.”.*

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 to*
 5 *subsections (a) and (b) of section 102,” before “con-*
 6 *tain”; and*

7 *(2) in subsection (f)(2)(A)(ii) of the model agree-*
 8 *ment contained in subsection (c), by inserting “sub-*
 9 *ject to subsections (a) and (b) of section 102 of the In-*
 10 *Indian Self-Determination and Education Assistance*
 11 *Act (25 U.S.C. 450f),” before “such other provisions”.*

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

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

15 *Title IV of the Indian Self-Determination and Edu-*
 16 *cation Assistance Act (25 U.S.C. 450 et seq.) is amended*
 17 *to read as follows:*

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

20 **“SEC. 401. DEFINITIONS.**

21 *“In this title:*

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

25 *“(2) CONSTRUCTION PROGRAM.—The term ‘con-*
 26 *struction program’ or ‘construction project’ means a*

1 *tribal undertaking relating to the administration,*
2 *planning, environmental determination, design, con-*
3 *struction, repair, improvement, or expansion of roads,*
4 *bridges, buildings, structures, systems, or other facili-*
5 *ties for purposes of housing, law enforcement, deten-*
6 *tion, sanitation, water supply, education, administra-*
7 *tion, community, health, irrigation, agriculture, con-*
8 *servation, flood control, transportation, or port facili-*
9 *ties, or for other tribal purposes.*

10 “(3) *DEPARTMENT.*—*The term ‘Department’*
11 *means the Department of the Interior.*

12 “(4) *FUNDING AGREEMENT.*—*The term ‘funding*
13 *agreement’ means a funding agreement entered into*
14 *under section 405.*

15 “(5) *GROSS MISMANAGEMENT.*—*The term ‘gross*
16 *mismanagement’ means a significant violation,*
17 *shown by a preponderance of the evidence, of a com-*
18 *compact, funding agreement, or statutory or regulatory*
19 *requirement applicable to Federal funds—*

20 “(A) *for a program administered by an In-*
21 *dian tribe; or*

22 “(B) *under a compact or funding agreement*
23 *that results in a significant reduction of funds*
24 *available for the programs assumed by an In-*
25 *dian tribe.*

1 “(6) *PROGRAM.*—*The term ‘program’ means any*
2 *program, function, service, or activity (or portion*
3 *thereof) within the Department of the Interior that is*
4 *included in a funding agreement.*

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

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

10 “(9) *SELF-GOVERNANCE.*—*The term ‘self-govern-*
11 *ance’ means the program of self-governance estab-*
12 *lished under section 402.*

13 “(10) *TRIBAL SHARE.*—*The term ‘tribal share’*
14 *means an Indian tribe’s portion of all funds and re-*
15 *sources that support any program within the Bureau*
16 *of Indian Affairs, the Office of Special Trustee, and*
17 *the Office of the Assistant Secretary for Indian Af-*
18 *airs and that are not required by the Secretary for*
19 *the performance of an inherent Federal function.*

20 **“SEC. 402. ESTABLISHMENT.**

21 *“The Secretary shall carry out a program within the*
22 *Department to be known as the ‘Tribal Self-Governance*
23 *Program’.*

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

25 “(a) *IN GENERAL.*—

1 “(1) *PARTICIPANTS.*—

2 “(A) *The Secretary, acting through the Di-*
3 *rector of the Office of Self-Governance, may select*
4 *up to 50 new Indian tribes per year from those*
5 *eligible under subsection (b) to participate in*
6 *self-governance.*

7 “(B) *If each Indian tribe requests, two or*
8 *more otherwise eligible Indian tribes may be*
9 *treated as a single Indian tribe for the purpose*
10 *of participating in self-governance.*

11 “(2) *OTHER AUTHORIZED INDIAN TRIBE OR*
12 *TRIBAL ORGANIZATION.*—*If an Indian tribe author-*
13 *izes another Indian tribe or a tribal organization to*
14 *plan for or carry out a program on its behalf under*
15 *this title, the authorized Indian tribe or tribal organi-*
16 *zation shall have the rights and responsibilities of the*
17 *authorizing Indian tribe (except as otherwise pro-*
18 *vided in the authorizing resolution).*

19 “(3) *JOINT PARTICIPATION.*—*Two or more In-*
20 *Indian tribes that are not otherwise eligible under sub-*
21 *section (b) may be treated as a single Indian tribe for*
22 *the purpose of participating in self-governance as a*
23 *tribal organization if—*

24 “(A) *each Indian tribe so requests; and*

1 “(B) *the tribal organization itself or at least*
2 *one of the Indian tribes participating in the*
3 *tribal organization is eligible under subsection*
4 *(b).*

5 “(4) *TRIBAL WITHDRAWAL FROM A TRIBAL OR-*
6 *GANIZATION.—*

7 “(A) *IN GENERAL.—An Indian tribe that*
8 *withdraws from participation in a tribal organi-*
9 *zation, in whole or in part, shall be entitled to*
10 *participate in self-governance if the Indian tribe*
11 *is eligible under subsection (b).*

12 “(B) *EFFECT OF WITHDRAWAL.—If an In-*
13 *Indian tribe withdraws from participation in a*
14 *tribal organization, the Indian tribe shall be en-*
15 *titled to its tribal share of funds and resources*
16 *supporting the programs that the Indian tribe is*
17 *entitled to carry out under the compact and*
18 *funding agreement of the Indian tribe.*

19 “(C) *PARTICIPATION IN SELF-GOVERN-*
20 *ANCE.—The withdrawal of an Indian tribe from*
21 *a tribal organization shall not affect the eligi-*
22 *bility of the tribal organization to participate in*
23 *self-governance on behalf of one or more other In-*
24 *Indian tribes provided that the tribal organization*
25 *still qualifies under subsection (b).*

1 “(D) *WITHDRAWAL PROCESS.*—

2 “(i) *IN GENERAL.*—*An Indian tribe*
3 *may, by tribal resolution, fully or partially*
4 *withdraw its tribal share of any program*
5 *in a funding agreement from a partici-*
6 *parting tribal organization. The Indian tribe*
7 *shall provide a copy of the tribal resolution*
8 *to the Secretary.*

9 “(ii) *EFFECTIVE DATE.*—

10 “(I) *IN GENERAL.*—*A withdrawal*
11 *under clause (i) shall become effective*
12 *on the date specified in the tribal reso-*
13 *lution and that is mutually agreed*
14 *upon by the Secretary, the with-*
15 *drawing Indian tribe, and the tribal*
16 *organization that signed the compact*
17 *and funding agreement on behalf of the*
18 *withdrawing Indian tribe or tribal or-*
19 *ganization.*

20 “(II) *NO SPECIFIED DATE.*—*In*
21 *the absence of a date specified in the*
22 *resolution, the withdrawal shall become*
23 *effective on—*

24 “(aa) *the earlier of—*

1 “(AA) 1 year after the
2 date of submission of the re-
3 quest; or

4 “(BB) the date on which
5 the funding agreement ex-
6 pires; or

7 “(bb) such date as may be
8 mutually agreed upon by the Sec-
9 retary, the withdrawing Indian
10 tribe, and the tribal organization
11 that signed the compact and fund-
12 ing agreement on behalf of the
13 withdrawing Indian tribe or trib-
14 al organization.

15 “(E) *DISTRIBUTION OF FUNDS.*—If an In-
16 dian tribe or tribal organization eligible to enter
17 into a self-determination contract under title I
18 or a compact or funding agreement under this
19 title fully or partially withdraws from a partici-
20 pating tribal organization, the withdrawing In-
21 dian tribe—

22 “(i) may elect to enter a self-deter-
23 mination contract or compact, in which
24 case—

1 “(I) the withdrawing Indian tribe
2 or tribal organization shall be entitled
3 to its tribal share of unexpended funds
4 and resources supporting the programs
5 that the Indian tribe will be carrying
6 out under its own self-determination
7 contract or compact and funding
8 agreement (calculated on the same
9 basis as the funds were initially allo-
10 cated to the funding agreement of the
11 tribal organization); and

12 “(II) the funds referred to in sub-
13 clause (I) shall be withdrawn by the
14 Secretary from the funding agreement
15 of the tribal organization and trans-
16 ferred to the withdrawing Indian tribe,
17 on the condition that the provisions of
18 sections 102 and 105(i), as appro-
19 priate, shall apply to the withdrawing
20 Indian tribe; or

21 “(ii) may elect not to enter a self-deter-
22 mination contract or compact, in which
23 case all funds not obligated by the tribal or-
24 ganization associated with the withdrawing
25 Indian tribe’s returned programs, less close-

1 *out costs, shall be returned by the tribal or-*
2 *ganization to the Secretary for operation of*
3 *the programs included in the withdrawal.*

4 *“(F) RETURN TO MATURE CONTRACT STA-*
5 *TUS.—If an Indian tribe elects to operate all or*
6 *some programs carried out under a compact or*
7 *funding agreement under this title through a*
8 *self-determination contract under title I, at the*
9 *option of the Indian tribe, the resulting self-de-*
10 *termination contract shall be a mature self-deter-*
11 *mination contract as long as the Indian tribe*
12 *meets the requirements set forth in section 4(h)*
13 *of this Act.*

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

16 *“(1) successfully complete the planning phase de-*
17 *scribed in subsection (c);*

18 *“(2) request participation in self-governance by*
19 *resolution or other official action by the tribal gov-*
20 *erning body; and*

21 *“(3) demonstrate, for the 3 fiscal years preceding*
22 *the date on which the Indian tribe requests participa-*
23 *tion, financial stability and financial management*
24 *capability as evidenced by the Indian tribe having no*
25 *uncorrected significant and material audit exceptions*

1 *in the required annual audit of its self-determination*
2 *or self-governance agreements with any Federal agen-*
3 *cy.*

4 “(c) *PLANNING PHASE.*—

5 “(1) *IN GENERAL.*—*An Indian tribe seeking to*
6 *begin participation in self-governance shall complete*
7 *a planning phase in accordance with this subsection.*

8 “(2) *ACTIVITIES.*—*The planning phase—*

9 “(A) *shall be conducted to the satisfaction of*
10 *the Indian tribe; and*

11 “(B) *shall include—*

12 “(i) *legal and budgetary research; and*

13 “(ii) *internal tribal government plan-*
14 *ning and organizational preparation.*

15 “(d) *GRANTS.*—

16 “(1) *IN GENERAL.*—*Subject to the availability of*
17 *appropriations, an Indian tribe or tribal organiza-*
18 *tion that meets the requirements of paragraphs (2)*
19 *and (3) of subsection (b) shall be eligible for grants—*

20 “(A) *to plan for participation in self-gov-*
21 *ernance; and*

22 “(B) *to negotiate the terms of participation*
23 *by the Indian tribe or tribal organization in self-*
24 *governance, as set forth in a compact and a*
25 *funding agreement.*

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

4 **“SEC. 404. COMPACTS.**

5 “(a) *IN GENERAL.*—*The Secretary shall negotiate and*
6 *enter into a written compact with each Indian tribe partici-*
7 *pating in self-governance in a manner consistent with the*
8 *trust responsibility of the Federal Government, treaty obli-*
9 *gations, and the government-to-government relationship be-*
10 *tween Indian tribes and the United States.*

11 “(b) *CONTENTS.*—*A compact under subsection (a)*
12 *shall—*

13 “(1) *specify and affirm the general terms of the*
14 *government-to-government relationship between the*
15 *Indian tribe and the Secretary; and*

16 “(2) *include such terms as the parties intend*
17 *shall control during the term of the compact.*

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

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

22 “(1) *the date of the execution of the compact by*
23 *the parties; or*

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

1 “(e) *DURATION.*—A compact under subsection (a) shall
2 remain in effect for so long as permitted by Federal law
3 or until termination by written agreement, retrocession, or
4 reassumption.

5 “(f) *EXISTING COMPACTS.*—An Indian tribe partici-
6 pating in self-governance under this title, as in effect on
7 the date of the enactment of the Department of the Interior
8 Tribal Self-Governance Act of 2010, shall have the option
9 at any time after that date—

10 “(1) to retain its negotiated compact (in whole
11 or in part) to the extent that the provisions of the
12 compact are not directly contrary to any express pro-
13 vision of this title; or

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

16 **“SEC. 405. FUNDING AGREEMENTS.**

17 “(a) *IN GENERAL.*—The Secretary shall negotiate and
18 enter into a written funding agreement with the governing
19 body of an Indian tribe or tribal organization in a manner
20 consistent with the trust responsibility of the Federal Gov-
21 ernment, treaty obligations, and the government-to-govern-
22 ment relationship between Indian tribes and the United
23 States.

24 “(b) *INCLUDED PROGRAMS.*—

1 “(1) *BUREAU OF INDIAN AFFAIRS AND OFFICE*
2 *OF SPECIAL TRUSTEE.*—

3 “(A) *IN GENERAL.*—*A funding agreement*
4 *shall, as determined by the Indian tribe, author-*
5 *ize the Indian tribe to plan, conduct, consolidate,*
6 *administer, and receive full tribal share funding*
7 *for all programs carried out by the Bureau of*
8 *Indian Affairs, the Office of the Assistant Sec-*
9 *retary for Indian Affairs, and the Office of Spe-*
10 *cial Trustee, without regard to the agency or of-*
11 *fice within which the program is performed (in-*
12 *cluding funding for agency, area, and central of-*
13 *fice functions in accordance with subsection*
14 *409(c)), that—*

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

17 “(ii) *the Secretary administers for the*
18 *benefit of Indians under the Act of Novem-*
19 *ber 2, 1921 (25 U.S.C. 13), or any subse-*
20 *quent Act;*

21 “(iii) *the Secretary administers for the*
22 *benefit of Indians with appropriations*
23 *made to agencies other than the Department*
24 *of the Interior; or*

1 “(iv) are provided for the benefit of In-
2 dians because of their status as Indians.

3 “(B) *INCLUSIONS.*—Programs described in
4 subparagraph (A) shall include all programs
5 with respect to which Indian tribes or Indians
6 are primary or significant beneficiaries.

7 “(2) *DISCRETIONARY PROGRAMS OF SPECIAL*
8 *SIGNIFICANCE.*—A funding agreement under sub-
9 section (a) may, in accordance with such additional
10 terms as the parties consider to be appropriate, in-
11 clude programs, services, functions, and activities (or
12 portions thereof), administered by the Secretary, in
13 addition to programs described in paragraphs (1)
14 and (3), that are of special geographic, historical, or
15 cultural significance to the Indian tribe. Such agree-
16 ments, including the additional terms, shall be gov-
17 erned by the provisions of this title, except that, sub-
18 ject to the discretion of the Secretary—

19 “(A) the Indian tribe may have realloca-
20 tion, consolidation, and redesign authority over
21 any program assumed under this paragraph (2);

22 “(B) the Secretary may reassume any pro-
23 gram and associated funding assumed under this
24 paragraph (2) upon a specific finding by the

1 *Secretary of a gross violation by the Indian tribe*
2 *of the terms of the funding agreement;*

3 “(C) *the Secretary may require special*
4 *terms and conditions regarding a construction*
5 *program or project assumed under this para-*
6 *graph (2) notwithstanding the provisions of sec-*
7 *tion 408;*

8 “(D) *all Federal regulations that otherwise*
9 *govern the operation of any program assumed*
10 *under this paragraph (2) apply to the Indian*
11 *tribe unless a specific regulation is waived by the*
12 *Secretary under the procedures set forth in sec-*
13 *tion 410(b)(2), which waiver request may be de-*
14 *denied upon a specific finding by the Secretary*
15 *that the waiver is prohibited by Federal law or*
16 *is inconsistent with the express provisions of the*
17 *funding agreement; and*

18 “(E) *a stable base budget, as described in*
19 *paragraph (7), may be provided for any pro-*
20 *gram assumed under this paragraph (2).*

21 “(3) *PROGRAMS OTHERWISE AVAILABLE.—A*
22 *funding agreement shall, as determined by the Indian*
23 *tribe, authorize the Indian tribe to plan, conduct,*
24 *consolidate, administer, and receive full tribal share*
25 *funding for any program administered by the Depart-*

1 *ment of the Interior other than through the Bureau*
2 *of Indian Affairs, the Office of the Assistant Secretary*
3 *for Indian Affairs, or the Office of the Special Trust-*
4 *ee, that is otherwise available to Indian tribes or In-*
5 *dians under section 102 of this Act.*

6 “(4) *COMPETITIVE BIDDING.*—*Nothing in this*
7 *section—*

8 “(A) *supersedes any express statutory re-*
9 *quirement for competitive bidding; or*

10 “(B) *prohibits the inclusion in a funding*
11 *agreement of a program in which non-Indians*
12 *have an incidental or legally identifiable inter-*
13 *est.*

14 “(5) *EXCLUDED FUNDING.*—*A funding agree-*
15 *ment shall not authorize an Indian tribe to plan, con-*
16 *duct, administer, or receive tribal share funding*
17 *under any program that—*

18 “(A) *is provided under the Tribally Con-*
19 *trolled College or University Assistance Act of*
20 *1978 (25 U.S.C. 1801 et seq.); and*

21 “(B) *is provided for elementary and sec-*
22 *ondary schools under the formula developed*
23 *under section 1127 of the Education Amend-*
24 *ments of 1978 (25 U.S.C. 2007).*

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

3 “(A) *the services to be provided under the*
4 *funding agreement;*

5 “(B) *the functions to be performed under*
6 *the funding agreement; and*

7 “(C) *the responsibilities of the Indian tribe*
8 *and the Secretary under the funding agreement.*

9 “(7) *BASE BUDGET.—A funding agreement pur-*
10 *suant to subsections (b)(1) and (b)(3) shall, at the op-*
11 *tion of the Indian tribe, provide for a stable base*
12 *budget specifying the recurring funds (including*
13 *funds available under section 106(a)) to be trans-*
14 *ferred to the Indian tribe, for such period as the In-*
15 *Indian tribe specifies in the funding agreement, subject*
16 *to annual adjustment only to reflect changes in con-*
17 *gressional appropriations. Upon agreement by the*
18 *Secretary, a funding agreement under subsection*
19 *(b)(2) may also provide for a stable base budget sub-*
20 *ject to the terms of this provision.*

21 “(8) *NO WAIVER OF TRUST RESPONSIBILITY.—A*
22 *funding agreement shall prohibit the Secretary from*
23 *waiving, modifying, or diminishing in any way the*
24 *trust responsibility of the United States with respect*
25 *to Indian tribes and individual Indians that exists*

1 *under treaties, Executive orders, court decisions, and*
2 *other laws.*

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

7 “(d) *EFFECTIVE DATE.—A funding agreement shall*
8 *become effective on the date specified in the funding agree-*
9 *ment.*

10 “(e) *EXISTING AND SUBSEQUENT FUNDING AGREE-*
11 *MENTS.—*

12 “(1) *SUBSEQUENT FUNDING AGREEMENTS.—Ab-*
13 *sent notification from an Indian tribe that it is with-*
14 *drawing or retroceding the operation of one or more*
15 *programs identified in a funding agreement under*
16 *subsections (b)(1) or (b)(3), or unless otherwise agreed*
17 *to by the parties to the funding agreement—*

18 “(A) *a funding agreement shall remain in*
19 *full force and effect until a subsequent funding*
20 *agreement is executed, with funding paid annu-*
21 *ally for each fiscal year the agreement is in effect*
22 *or by the nature of any noncontinuing program,*
23 *services, functions, or activities contained in a*
24 *funding agreement; and*

1 “(B) the term of the subsequent funding
2 agreement shall be retroactive to the end of the
3 term of the preceding funding agreement for the
4 purposes of calculating the amount of funding to
5 which the Indian tribe is entitled.

6 “(2) *DISPUTES*.—Disputes over the implementa-
7 tion of paragraph (1)(A) shall be subject to section
8 407(c).

9 “(3) *EXISTING FUNDING AGREEMENTS*.—An In-
10 dian tribe that was participating in self-governance
11 under this title on the date of enactment of the De-
12 partment of the Interior Tribal Self-Governance Act
13 of 2010 shall have the option at any time after that
14 date—

15 “(A) to retain its existing funding agree-
16 ment (in whole or in part) to the extent that the
17 provisions of that funding agreement are not di-
18 rectly contrary to any express provision of this
19 title; or

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

22 “(4) *MULTIYEAR FUNDING AGREEMENTS*.—An
23 Indian tribe may, at the discretion of the Indian
24 tribe, negotiate with the Secretary for a funding
25 agreement with a term that exceeds one year.

1 **“SEC. 406. GENERAL PROVISIONS.**

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

5 “(b) *CONFLICTS OF INTEREST.*—*An Indian tribe par-*
6 *ticipating in self-governance shall ensure that internal*
7 *measures are in place to address, pursuant to tribal law*
8 *and procedures, conflicts of interest in the administration*
9 *of programs.*

10 “(c) *AUDITS.*—

11 “(1) *SINGLE AGENCY AUDIT ACT.*—*Chapter 75 of*
12 *title 31, United States Code, shall apply to a funding*
13 *agreement under this title.*

14 “(2) *COST PRINCIPLES.*—*An Indian tribe shall*
15 *apply cost principles under the applicable Office of*
16 *Management and Budget circular, except as modified*
17 *by—*

18 “(A) *any provision of law, including section*
19 *106 of this Act; or*

20 “(B) *any exemptions to applicable Office of*
21 *Management and Budget circulars subsequently*
22 *granted by the Office of Management and Budg-*
23 *et.*

24 “(3) *FEDERAL CLAIMS.*—*Any claim by the Fed-*
25 *eral Government against the Indian tribe relating to*
26 *funds received under a funding agreement based on*

1 *any audit under this subsection shall be subject to the*
2 *provisions of section 106(f).*

3 “(d) *REDESIGN AND CONSOLIDATION.*—*An Indian*
4 *tribe may redesign or consolidate programs or reallocate*
5 *funds for programs in any manner that the Indian tribe*
6 *deems to be in the best interest of the Indian community*
7 *being served, so long as the redesign or consolidation does*
8 *not have the effect of denying eligibility for services to popu-*
9 *lation groups otherwise eligible to be served under applica-*
10 *ble Federal law, except that, with respect to the reallocation,*
11 *consolidation, and redesign of programs described in section*
12 *405(b)(2), a joint agreement between the Secretary and the*
13 *Indian tribe shall be required.*

14 “(e) *RETROCESSION.*—

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

18 “(2) *EFFECTIVE DATE.*—

19 “(A) *AGREEMENT.*—*Unless the Indian tribe*
20 *rescinds the request for retrocession, such ret-*
21 *rocession shall become effective on the date speci-*
22 *fied by the parties in the compact or funding*
23 *agreement.*

24 “(B) *NO AGREEMENT.*—*In the absence of a*
25 *specification of an effective date in the compact*

1 *or funding agreement, the retrocession shall be-*
2 *come effective on—*

3 *“(i) the earlier of—*

4 *“(I) one year after the date of sub-*
5 *mission of such request; or*

6 *“(II) the date on which the fund-*
7 *ing agreement expires; or*

8 *“(ii) such date as may be mutually*
9 *agreed upon by the Secretary and the In-*
10 *dian tribe.*

11 *“(f) NONDUPLICATION.—A funding agreement shall*
12 *provide that, for the period for which, and to the extent*
13 *to which, funding is provided to an Indian tribe under this*
14 *title, the Indian tribe—*

15 *“(1) shall not be entitled to contract with the*
16 *Secretary for funds under section 102, except that*
17 *such Indian tribe shall be eligible for new programs*
18 *on the same basis as other Indian tribes; and*

19 *“(2) shall be responsible for the administration*
20 *of programs in accordance with the compact or fund-*
21 *ing agreement.*

22 *“(g) RECORDS.—*

23 *“(1) IN GENERAL.—Unless an Indian tribe*
24 *specifies otherwise in the compact or funding agree-*
25 *ment, records of an Indian tribe shall not be consid-*

1 *ered Federal records for purposes of chapter 5 of title*
2 *5, United States Code.*

3 *“(2) RECORDKEEPING SYSTEM.—An Indian tribe*
4 *shall—*

5 *“(A) maintain a recordkeeping system; and*

6 *“(B) on 30 days’ notice, provide the Sec-*
7 *retary with reasonable access to the records to*
8 *enable the Department to meet the requirements*
9 *of sections 3101 through 3106 of title 44, United*
10 *States Code.*

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

12 *“(a) TRUST EVALUATIONS.—A funding agreement*
13 *shall include a provision to monitor the performance of*
14 *trust functions by the Indian tribe through the annual trust*
15 *evaluation.*

16 *“(b) REASSUMPTION.—*

17 *“(1) IN GENERAL.—A compact or funding agree-*
18 *ment shall include provisions for the Secretary to re-*
19 *assume a program and associated funding if there is*
20 *a specific finding relating to that program of—*

21 *“(A) imminent jeopardy to a trust asset,*
22 *natural resources, or public health and safety*
23 *that—*

24 *“(i) is caused by an act or omission of*
25 *the Indian tribe; and*

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

3 “(B) gross mismanagement with respect to
4 funds transferred to an Indian tribe under a
5 compact or funding agreement, as determined by
6 the Secretary in consultation with the Inspector
7 General, as appropriate.

8 “(2) PROHIBITION.—The Secretary shall not re-
9 assume operation of a program in whole or part un-
10 less—

11 “(A) the Secretary first provides written no-
12 tice and a hearing on the record to the Indian
13 tribe; and

14 “(B) the Indian tribe does not take correc-
15 tive action to remedy the mismanagement of the
16 funds or programs, or the imminent jeopardy to
17 a trust asset, natural resource, or public health
18 and safety.

19 “(3) EXCEPTION.—

20 “(A) IN GENERAL.—Notwithstanding para-
21 graph (2), the Secretary may, on written notice
22 to the Indian tribe, immediately reassume oper-
23 ation of a program if—

24 “(i) the Secretary makes a finding of
25 both imminent and substantial jeopardy

1 *and irreparable harm to a trust asset, a*
2 *natural resource, or the public health and*
3 *safety caused by an act or omission of the*
4 *Indian tribe; and*

5 “(ii) *the imminent and substantial*
6 *jeopardy, and irreparable harm to the trust*
7 *asset, natural resource, or public health and*
8 *safety arises out of a failure by the Indian*
9 *tribe to carry out the terms of its compact*
10 *or funding agreement.*

11 “(B) *REASSUMPTION.*—*If the Secretary re-*
12 *assumes operation of a program under subpara-*
13 *graph (A), the Secretary shall provide the Indian*
14 *tribe with a hearing on the record not later than*
15 *10 days after the date of reassumption.*

16 “(c) *INABILITY TO AGREE ON COMPACT OR FUNDING*
17 *AGREEMENT.*—

18 “(1) *FINAL OFFER.*—*If the Secretary and a par-*
19 *ticipating Indian tribe are unable to agree, in whole*
20 *or in part, on the terms of a compact or funding*
21 *agreement (including funding levels), the Indian tribe*
22 *may submit a final offer to the Secretary.*

23 “(2) *DETERMINATION.*—*Not more than 45 days*
24 *after the date of submission of a final offer, or as oth-*
25 *erwise agreed to by the Indian tribe, the Secretary*

1 *shall review and make a determination with respect*
2 *to the final offer.*

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

8 “(4) *REJECTION OF FINAL OFFER.*—

9 “(A) *IN GENERAL.*—*If the Secretary rejects*
10 *a final offer (or one or more provisions or fund-*
11 *ing levels in a final offer), the Secretary shall—*

12 “(i) *provide timely written notification*
13 *to the Indian tribe that contains a specific*
14 *finding that clearly demonstrates, or that is*
15 *supported by a controlling legal authority,*
16 *that—*

17 “(I) *the amount of funds proposed*
18 *in the final offer exceeds the applicable*
19 *funding level to which the Indian tribe*
20 *is entitled under this title because it*
21 *would reduce the funds that any other*
22 *Indian tribe or tribal organization is*
23 *entitled to receive under Federal law;*

24 “(II) *the program that is the sub-*
25 *ject of the final offer is an inherent*

1 *Federal function or is subject to the*
2 *discretion of the Secretary under sec-*
3 *tion 405(b)(2);*

4 “*(III) the Indian tribe cannot*
5 *carry out the program in a manner*
6 *that would not result in significant*
7 *danger or risk to the public health;*

8 “*(IV) the Indian tribe is not eligi-*
9 *ble to participate in self-governance*
10 *under section 403(b); or*

11 “*(V) the funding agreement would*
12 *violate Federal statute or regulation;*

13 “*(ii) provide technical assistance to*
14 *overcome the objections stated in the notifi-*
15 *cation required by clause (i);*

16 “*(iii) provide the Indian tribe with a*
17 *hearing on the record with the right to en-*
18 *gage in full discovery relevant to any issue*
19 *raised in the matter and the opportunity*
20 *for appeal on the objections raised (except*
21 *that the Indian tribe may, in lieu of filing*
22 *such appeal, directly proceed to initiate an*
23 *action in a Federal district court under sec-*
24 *tion 110(a)); and*

1 “(iv) provide the Indian tribe the op-
2 tion of entering into the severable portions
3 of a final proposed compact or funding
4 agreement (including a lesser funding
5 amount, if any), that the Secretary did not
6 reject, subject to any additional alterations
7 necessary to conform the compact or fund-
8 ing agreement to the severed provisions.

9 “(B) *EFFECT OF EXERCISING CERTAIN OP-*
10 *TION.—If an Indian tribe exercises the option*
11 *specified in subparagraph (A)(iv)—*

12 “(i) the Indian tribe shall retain the
13 right to appeal the rejection by the Sec-
14 retary under this section; and

15 “(ii) clauses (i), (ii), and (iii) of sub-
16 paragraph (A) shall apply only to the por-
17 tion of the proposed final compact or fund-
18 ing agreement that was rejected by the Sec-
19 retary.

20 “(d) *BURDEN OF PROOF.—In any administrative*
21 *hearing or appeal or civil action brought under this section,*
22 *the Secretary shall have the burden of demonstrating by a*
23 *preponderance of the evidence the validity of the grounds*
24 *for rejecting a final offer made under subsection (c) or the*
25 *grounds for a reassumption under subsection (b).*

1 “(e) *GOOD FAITH.*—

2 “(1) *IN GENERAL.*—*In the negotiation of com-*
3 *pacts and funding agreements, the Secretary shall at*
4 *all times negotiate in good faith to maximize imple-*
5 *mentation of the self-governance policy.*

6 “(2) *POLICY.*—*The Secretary shall carry out this*
7 *title in a manner that maximizes the policy of tribal*
8 *self-governance.*

9 “(f) *SAVINGS.*—*To the extent that programs carried*
10 *out for the benefit of Indian tribes and tribal organizations*
11 *under this title reduce the administrative or other respon-*
12 *sibilities of the Secretary with respect to the operation of*
13 *Indian programs and result in savings that have not other-*
14 *wise been included in the amount of tribal shares and other*
15 *funds determined under section 409(c), except for programs*
16 *entered into funding agreements under section 405(b)(2),*
17 *the Secretary shall make such savings available to the In-*
18 *dian tribes or tribal organizations for the provision of addi-*
19 *tional services to program beneficiaries in a manner equi-*
20 *table to directly served, contracted, and compacted pro-*
21 *grams. For any savings generated as a result of the assump-*
22 *tion of a program by an Indian tribe under section*
23 *405(b)(2), such savings shall be made available to that In-*
24 *dian tribe.*

1 “(g) *TRUST RESPONSIBILITY.*—*The Secretary may not*
2 *waive, modify, or diminish in any way the trust responsi-*
3 *bility of the United States with respect to Indian tribes and*
4 *individual Indians that exists under treaties, Executive or-*
5 *ders, other laws, or court decisions.*

6 “(h) *DECISIONMAKER.*—*A decision that constitutes*
7 *final agency action and relates to an appeal within the De-*
8 *partment conducted under subsection (c)(4) may be made—*

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

14 “(2) *by an administrative law judge.*

15 “(i) *RULES OF CONSTRUCTION.*—*Each provision of*
16 *this title and each provision of a compact or funding agree-*
17 *ment shall be liberally construed for the benefit of the In-*
18 *dian tribe participating in self-governance, and any ambi-*
19 *guity shall be resolved in favor of the Indian tribe.*

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

21 “(a) *IN GENERAL.*—*Indian tribes participating in*
22 *tribal self-governance may carry out construction projects*
23 *under this title.*

24 “(b) *TRIBAL OPTION TO CARRY OUT CERTAIN FED-*
25 *ERAL ENVIRONMENTAL ACTIVITIES.*—*In carrying out a*

1 *construction project under this title, an Indian tribe may,*
2 *subject to the Secretary’s agreement, elect to assume some*
3 *Federal responsibilities under the National Environmental*
4 *Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National*
5 *Historic Preservation Act (16 U.S.C. 470 et seq.), and re-*
6 *lated provisions of law and regulations that would apply*
7 *if the Secretary were to undertake a construction project,*
8 *by adopting a resolution—*

9 “(1) *designating a certifying tribal officer to rep-*
10 *resent the Indian tribe and to assume the status of a*
11 *responsible Federal official under such laws; and*

12 “(2) *accepting the jurisdiction of the Federal*
13 *courts for the purpose of enforcing the responsibilities*
14 *of the certifying tribal officer assuming the status of*
15 *a responsible Federal official under such laws.*

16 “(c) *SAVINGS CLAUSE.—Notwithstanding subsection*
17 *(b), nothing in this Act authorizes the Secretary to include*
18 *in any compact or funding agreement duties of the Sec-*
19 *retary under the National Environmental Policy Act, the*
20 *National Historic Preservation Act, and other related pro-*
21 *visions of law that are inherent Federal functions.*

22 “(d) *CODES AND STANDARDS.—In carrying out a con-*
23 *struction project under this title, an Indian tribe shall—*

24 “(1) *adhere to applicable Federal, State, local,*
25 *and tribal building codes architectural and engineer-*

1 *ing standards and applicable Federal guidelines re-*
2 *garding design, space, and operational standards, ap-*
3 *propriate for the particular project; and*

4 *“(2) use only architects and engineers who are*
5 *licensed to practice in the State in which the facility*
6 *will be built and who certify—*

7 *“(A) that they are qualified to perform the*
8 *work required by the specific construction in-*
9 *volved; and*

10 *“(B) upon completion of design, that the*
11 *plans and specifications meet or exceed the ap-*
12 *plicable construction and safety codes.*

13 *“(e) TRIBAL ACCOUNTABILITY.—*

14 *“(1) In carrying out a construction project*
15 *under this title, an Indian tribe shall assume respon-*
16 *sibility for the successful completion of the construc-*
17 *tion project and of a facility that is usable for the*
18 *purpose for which it was funded.*

19 *“(2) For each construction project carried out by*
20 *an Indian tribe under this title, the Indian tribe and*
21 *the Secretary shall negotiate a provision to be in-*
22 *cluded in the funding agreement that identifies—*

23 *“(A) the approximate start and completion*
24 *dates for the project, which may extend over a*
25 *period of one or more years;*

1 “(B) a general description of the project, in-
2 cluding the scope of work, references to design
3 criteria, and other terms and conditions;

4 “(C) the responsibilities of the Indian tribe
5 and the Secretary for the project;

6 “(D) how project-related environmental con-
7 siderations will be addressed;

8 “(E) the amount of funds provided for the
9 project;

10 “(F) the obligations of the Indian tribe to
11 comply with the codes referenced in subsection
12 (c)(1) and applicable Federal laws, statutes, and
13 regulations;

14 “(G) the agreement of the parties over who
15 will bear any additional costs necessary to meet
16 changes in scope, or errors or omissions in de-
17 sign and construction; and

18 “(H) the agreement of the Secretary to issue
19 a certificate of occupancy, if requested by the In-
20 dian tribes, based upon the review and
21 verification by the Secretary, to his or her satis-
22 faction, that the Indian tribe has secured upon
23 completion the review and approval of the plans
24 and specifications, sufficiency of design, life safe-

1 *ty, and code compliance by qualified, licensed,*
2 *and independent architects and engineers.*

3 “(f) *FUNDING.—Funding appropriated for construc-*
4 *tion projects carried out under this title shall be included*
5 *in funding agreements as annual or semiannual advance*
6 *payments at the option of the Indian tribe. The Secretary*
7 *shall include all associated project contingency funds with*
8 *each advance payment. The Indian tribe shall be respon-*
9 *sible for the management of such contingency funds.*

10 “(g) *NEGOTIATIONS.—At the option of the Indian*
11 *tribe, construction project funding proposals shall be nego-*
12 *tiated pursuant to the statutory process in section 450j(m)*
13 *of title 25 and any resulting construction project agreement*
14 *shall be incorporated into the funding agreement as ad-*
15 *denda.*

16 “(h) *FEDERAL REVIEW AND VERIFICATION.—The Sec-*
17 *retary shall have at least one opportunity to review and*
18 *verify, to the satisfaction of the Secretary, that project plan-*
19 *ning and design documents prepared by the Indian tribe*
20 *in advance of initial construction are in conformity with*
21 *the obligations of the Indian tribe under subsection (c) and,*
22 *before they are implemented, at least one opportunity to*
23 *review and verify to the satisfaction of the Secretary that*
24 *subsequent document amendments which result in a signifi-*
25 *cant change in construction are in conformity with the obli-*

1 *gations of the Indian tribe under subsection (c). The Indian*
2 *tribe shall provide the Secretary with project progress and*
3 *financial reports not less than semiannually. The Secretary*
4 *may conduct onsite project oversight visits semiannually or*
5 *on an alternate schedule agreed to by the Secretary and the*
6 *Indian tribe.*

7 “(i) *APPLICATION OF OTHER LAWS.—Unless otherwise*
8 *agreed to by the Indian tribe, no provision of the Office*
9 *of Federal Procurement Policy Act (41 U.S.C. 401 et seq.),*
10 *the Federal Acquisition Regulations issued pursuant there-*
11 *to, or any other law or regulation pertaining to Federal*
12 *procurement (including Executive orders) shall apply to*
13 *any construction program or project carried out under this*
14 *title.*

15 “(j) *FUTURE FUNDING.—Upon completion of a facil-*
16 *ity constructed under this title, the Secretary shall include*
17 *the facility among those eligible for annual operation and*
18 *maintenance funding support comparable to that provided*
19 *for similar facilities funded by the Department as annual*
20 *appropriations are available and to the extent that the fa-*
21 *cility size and complexity and other factors do not exceed*
22 *the funding formula criteria for comparable buildings.*

23 **“SEC. 409. PAYMENT.**

24 “(a) *IN GENERAL.—At the request of the governing*
25 *body of the Indian tribe and under the terms of an agree-*

1 *ment, the Secretary shall provide funding to the Indian*
2 *tribe to carry out the funding agreement.*

3 “(b) *ADVANCE ANNUAL PAYMENT.*—*At the option of*
4 *the Indian tribe, a funding agreement shall provide for an*
5 *advance annual payment to an Indian tribe.*

6 “(c) *AMOUNT.*—

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

20 “(2) *SAVINGS CLAUSE.*—*Nothing in this section*
21 *shall be construed to reduce funds of or provided to*
22 *another Indian tribe.*

23 “(d) *TIMING.*—*Pursuant to the terms of any compact*
24 *or funding agreement entered into under this part, the Sec-*
25 *retary shall transfer to the Indian tribe all funds provided*

1 *for in the funding agreement, pursuant to subsection (c),*
2 *and provide funding for periods covered by joint resolution*
3 *adopted by Congress making continuing appropriations, to*
4 *the extent permitted by such resolution. Within 12 months*
5 *from the date of enactment of this bill, in any instance*
6 *where a funding agreement requires an annual transfer of*
7 *funding to be made at the beginning of a fiscal year, or*
8 *requires semiannual or other periodic transfers of funding*
9 *to be made commencing at the beginning of a fiscal year,*
10 *the first such transfer shall be made not later than 10 days*
11 *after the apportionment of such funds by the Office of Man-*
12 *agement and Budget to the Department, unless the funding*
13 *agreement provides otherwise.*

14 “(e) *AVAILABILITY.—Funds for trust services to indi-*
15 *vidual Indians shall be available under a funding agree-*
16 *ment only to the extent that the same services that would*
17 *have been provided by the Secretary are provided to indi-*
18 *vidual Indians by the Indian tribe.*

19 “(f) *MULTIYEAR FUNDING.—A funding agreement*
20 *may provide for multiyear funding.*

21 “(g) *LIMITATIONS ON AUTHORITY OF THE SEC-*
22 *RETARY.—The Secretary shall not—*

23 “(1) *fail to transfer to an Indian tribe its full*
24 *share of any central, headquarters, regional, area, or*
25 *service unit office or other funds due under this title*

1 *for programs eligible under section 405(b)(1) or*
2 *(b)(3), except as required by Federal law;*

3 *“(2) withhold any portion of such funds for*
4 *transfer over a period of years; or*

5 *“(3) reduce the amount of funds required under*
6 *this title—*

7 *“(A) to make funding available for self-gov-*
8 *ernance monitoring or administration by the*
9 *Secretary;*

10 *“(B) in subsequent years, except as nec-*
11 *essary as a result of—*

12 *“(i) a reduction in appropriations*
13 *from the previous fiscal year for the pro-*
14 *gram to be included in a compact or fund-*
15 *ing agreement;*

16 *“(ii) a congressional directive in legis-*
17 *lation or an accompanying report;*

18 *“(iii) a tribal authorization;*

19 *“(iv) a change in the amount of pass-*
20 *through funds subject to the terms of the*
21 *funding agreement; or*

22 *“(v) completion of an activity under a*
23 *program for which the funds were provided;*

24 *“(C) to pay for Federal functions, includ-*
25 *ing—*

1 “(i) *Federal pay costs;*

2 “(ii) *Federal employee retirement bene-*
3 *fits;*

4 “(iii) *automated data processing;*

5 “(iv) *technical assistance; and*

6 “(v) *monitoring of activities under this*
7 *title; or*

8 “(D) *to pay for costs of Federal personnel*
9 *displaced by self-determination contracts under*
10 *this Act or self-governance under this title.*

11 “(h) *FEDERAL RESOURCES.—If an Indian tribe elects*
12 *to carry out a compact or funding agreement with the use*
13 *of Federal personnel, Federal supplies (including supplies*
14 *available from Federal warehouse facilities), Federal supply*
15 *sources (including lodging, airline transportation, and*
16 *other means of transportation including the use of inter-*
17 *agency motor pool vehicles), or other Federal resources (in-*
18 *cluding supplies, services, and resources available to the*
19 *Secretary under any procurement contracts in which the*
20 *Department is eligible to participate), the Secretary shall,*
21 *as soon as practicable, transfer such personnel, or acquire*
22 *such supplies, or resources to the Indian tribe under this*
23 *title.*

24 “(i) *PROMPT PAYMENT ACT.—Chapter 39 of title 31,*
25 *United States Code, shall apply to the transfer of funds due*

1 *under a compact or funding agreement authorized under*
2 *this title.*

3 “(j) *INTEREST OR OTHER INCOME.*—

4 “(1) *IN GENERAL.*—*An Indian tribe may retain*
5 *interest or income earned on any funds paid under*
6 *a compact or funding agreement to carry out govern-*
7 *mental purposes.*

8 “(2) *NO EFFECT ON OTHER AMOUNTS.*—*The re-*
9 *tention of interest or income under paragraph (1)*
10 *shall not diminish the amount of funds an Indian*
11 *tribe is entitled to receive under a funding agreement*
12 *in the year the interest or income is earned or in any*
13 *subsequent fiscal year.*

14 “(3) *INVESTMENT STANDARD.*—*Funds trans-*
15 *ferred under this title shall be managed by the Indian*
16 *tribe using the prudent investment standard, provided*
17 *that the Secretary shall not be liable for any invest-*
18 *ment losses of funds managed by the Indian tribe*
19 *which are not otherwise guaranteed or insured by the*
20 *Federal Government.*

21 “(k) *CARRYOVER OF FUNDS.*—

22 “(1) *IN GENERAL.*—*Notwithstanding any provi-*
23 *sion of an Act of appropriation, all funds paid to an*
24 *Indian tribe in accordance with a compact or fund-*
25 *ing agreement shall remain available until expended.*

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

7 “(1) *LIMITATION OF COSTS.*—

8 “(1) *IN GENERAL.*—*An Indian tribe shall not be*
9 *obligated to continue performance that requires an ex-*
10 *penditure of funds in excess of the amount of funds*
11 *transferred under a compact or funding agreement.*

12 “(2) *NOTICE OF INSUFFICIENCY.*—*If at any time*
13 *the Indian tribe has reason to believe that the total*
14 *amount provided for a specific activity under a com-*
15 *compact or funding agreement is insufficient, the Indian*
16 *tribe shall provide reasonable notice of such insuffi-*
17 *ciency to the Secretary.*

18 “(3) *SUSPENSION OF PERFORMANCE.*—*If, after*
19 *notice under paragraph (2), the Secretary does not*
20 *increase the amount of funds transferred under the*
21 *funding agreement, the Indian tribe may suspend*
22 *performance of the activity until such time as addi-*
23 *tional funds are transferred.*

24 “(m) *DISTRIBUTION OF FUNDS.*—*The Office of Self-*
25 *Governance shall be responsible for distribution of all Bu-*

1 *reau of Indian Affairs funds provided under this title unless*
2 *otherwise agreed by the parties.*

3 **“SEC. 410. FACILITATION.**

4 *“(a) IN GENERAL.—Except as otherwise provided by*
5 *law, the Secretary shall interpret each Federal law and reg-*
6 *ulation in a manner that facilitates—*

7 *“(1) the inclusion of programs in funding agree-*
8 *ments; and*

9 *“(2) the implementation of funding agreements.*

10 **“(b) REGULATION WAIVER.—**

11 *“(1) REQUEST.—An Indian tribe may submit a*
12 *written request for a waiver to the Secretary identi-*
13 *fying the specific text in regulation sought to be*
14 *waived and the basis for the request.*

15 *“(2) DETERMINATION BY THE SECRETARY.—Not*
16 *later than 120 days after receipt by the Secretary of*
17 *a request under paragraph (1), the Secretary shall*
18 *approve or deny the requested waiver in writing to*
19 *the Indian tribe.*

20 *“(3) GROUND FOR DENIAL.—The Secretary may*
21 *deny a request under paragraph (1)—*

22 *“(A) for a program eligible under sections*
23 *405(b)(1) and 405(b)(3) only upon a specific*
24 *finding by the Secretary that the identified text*

1 *in the regulation may not be waived because*
2 *such a waiver is prohibited by Federal law; and*

3 “(B) *for a program eligible under section*
4 *405(b)(2), on a specific finding by the Secretary*
5 *that the identified text in the regulation may not*
6 *be waived because such a waiver is prohibited*
7 *under Federal law.*

8 “(4) *FAILURE TO MAKE DETERMINATION.—If the*
9 *Secretary fails to approve or deny a waiver request*
10 *within the time required under paragraph (2), the*
11 *Secretary shall be deemed to have approved the re-*
12 *quest.*

13 “(5) *FINALITY.—The Secretary’s decision shall*
14 *be final for the Department.*

15 **“SEC. 411. DISCLAIMERS.**

16 *“Nothing in this title expands or alters any statutory*
17 *authority of the Secretary so as to authorize the Secretary*
18 *to enter into any agreement under section 405—*

19 “(1) *with respect to an inherent Federal func-*
20 *tion;*

21 “(2) *in a case in which the law establishing a*
22 *program explicitly prohibits the type of participation*
23 *sought by the Indian tribe (without regard to whether*
24 *one or more Indian tribes are identified in the au-*
25 *thorizing law); or*

1 “(3) which limits or reduces in any way the
2 services, contracts, or funds that any other Indian
3 tribe or tribal organization is eligible to receive under
4 section 102 or any other applicable Federal law.

5 **“SEC. 412. DISCRETIONARY APPLICATION OF OTHER SEC-**
6 **TIONS.**

7 “(a) *IN GENERAL.*—At the option of a participating
8 Indian tribe or Indian tribes, any of the provisions of title
9 I shall be incorporated in any Department compact or
10 funding agreement.

11 “(b) *EFFECT.*—Each incorporated provision—

12 “(1) shall have the same force and effect as if set
13 out in full in this title; and

14 “(2) shall be deemed to supplement or replace
15 any related provision in this title and to apply to
16 any agency otherwise governed by this title.

17 “(c) *EFFECTIVE DATE.*—If an Indian tribe requests
18 incorporation at the negotiation stage of a compact or fund-
19 ing agreement, the incorporation—

20 “(1) shall be deemed effective immediately; and

21 “(2) shall control the negotiation and resulting
22 compact and funding agreement.

23 **“SEC. 413. FUNDING NEEDS.**

24 “(a) *REQUIREMENT OF ANNUAL BUDGET REQUEST.*—

1 “(1) *IN GENERAL.*—*The President shall identify*
2 *in a report to accompany the annual budget request*
3 *submitted to Congress under section 1105 of title 31,*
4 *United States Code, all amounts necessary to fully*
5 *fund all funding agreements entered into under this*
6 *Act.*

7 “(2) *DUTY OF SECRETARY.*—*The Secretary shall*
8 *identify in a report which accompanies each budget*
9 *request the amount of funds that are sufficient for*
10 *planning and negotiation grants and sufficient to*
11 *cover any shortfall in funding identified under sub-*
12 *section (b).*

13 “(3) *RULE OF CONSTRUCTION.*—*Nothing in this*
14 *subsection authorizes the Secretary to reduce the*
15 *amount of funds that an Indian tribe is otherwise en-*
16 *titled to receive under a funding agreement or other*
17 *applicable law.*

18 “(b) *PRESENT FUNDING; SHORTFALLS.*—*In each re-*
19 *port identified in subsection (a), the Secretary shall identify*
20 *the level of need presently funded and any shortfall in fund-*
21 *ing (including direct program costs, tribal shares, and con-*
22 *tract support costs) for each Indian tribe, either directly*
23 *by the Secretary, under self-determination contracts, or*
24 *under compacts and funding agreements. The first report*
25 *identified in subsection (a) shall be limited to the Bureau*

1 of Indian Affairs agency office and shall be due on Feb-
2 ruary 1, 2012. The next report due on February 1, 2013,
3 shall include all funding at the Bureau of Indian Affairs
4 agency and regional offices. The next report due on Feb-
5 ruary 1, 2014, and all subsequent reports, shall include all
6 funding at the Bureau of Indian Affairs agency, regional,
7 and central offices, the Office of the Assistant Secretary for
8 Indian Affairs, and the Office of the Special Trustee.

9 **“SEC. 414. REPORTS.**

10 “(a) *IN GENERAL.*—

11 “(1) *REQUIREMENT.*—On February 1 of each
12 year, the Secretary shall submit to Congress a report
13 regarding the administration of this title.

14 “(2) *ANALYSIS.*—A report under paragraph (1)
15 shall include a detailed analysis of tribal unmet need
16 for each Indian tribe, whether the Indian tribe is
17 served directly by the Secretary, under self-determina-
18 tion contracts under title I, or under compacts and
19 funding agreements authorized under this title.

20 “(3) *NO ADDITIONAL REPORTING REQUIRE-*
21 *MENTS.*—In preparing reports under paragraph (1),
22 the Secretary may not impose any reporting require-
23 ments on participating Indian tribes not otherwise
24 provided by 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 In-*
14 *dian tribes;*

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

18 “(D) *the funding formula for individual*
19 *tribal shares of all Central Office funds, together*
20 *with the comments of affected Indian tribes, de-*
21 *veloped under subsection (d); and*

22 “(E) *amounts expended in the preceding fis-*
23 *cal year to carry out inherent Federal functions,*
24 *including an identification of inherent Federal*
25 *functions;*

1 “(3) contain a description of the methods used to
2 determine the individual tribal share of funds con-
3 trolled by all components of the Department (includ-
4 ing funds assessed by any other Federal agency) for
5 inclusion in compacts or funding agreements;

6 “(4) before being submitted to Congress, be dis-
7 tributed to the Indian tribes for comment (with a
8 comment period of no less than 30 days); and

9 “(5) include the separate views and comments of
10 each Indian tribe or tribal organization.

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

12 “(1) *IN GENERAL.*—In order to optimize oppor-
13 tunities for Indian tribes participating in self-govern-
14 ance under this title, the Secretary shall—

15 “(A) review all programs administered by
16 the Department, other than through the Bureau
17 of Indian Affairs, the Office of the Assistant Sec-
18 retary for Indian Affairs, or the Office of Special
19 Trustee, without regard to the agency or office
20 concerned; and

21 “(B) not later than January 1 of each year,
22 submit to Congress—

23 “(i) a list of all such programs that the
24 Secretary determines, with the concurrence
25 of Indian tribes participating in self-gov-

1 ernance under this title, are eligible to be
2 included in a funding agreement at the re-
3 quest of a participating Indian tribe; and

4 “(i) a list of all such programs for
5 which Indian tribes have requested to in-
6 clude in a funding agreement under section
7 405(b)(2) or 405(b)(3), indicating whether
8 each request was granted or denied, and
9 stating the grounds for any denial.

10 “(2) *PROGRAMMATIC TARGETS.*—The Secretary
11 shall establish programmatic targets, after consulta-
12 tion with Indian tribes participating in self-govern-
13 ance, to encourage bureaus of the Department to en-
14 sure that a significant portion of the programs identi-
15 fied in paragraph (1) are included in funding agree-
16 ments.

17 “(3) *PUBLICATION.*—The lists and targets under
18 paragraphs (1) and (2) shall be published in the *Fed-*
19 *eral Register* and made available to any Indian tribe
20 participating in self-governance.

21 “(4) *ANNUAL REVIEW.*—

22 “(A) *IN GENERAL.*—The Secretary shall an-
23 nually review and publish in the *Federal Reg-*
24 *ister*, after consultation with Indian tribes par-

1 *ticipating in self-governance, revised lists and*
2 *programmatic targets.*

3 “(B) *CONTENTS.*—*The revised lists and pro-*
4 *grammatic targets shall include all programs*
5 *that were eligible for contracting in the original*
6 *list published in the Federal Register in 1995,*
7 *except for programs specifically determined not*
8 *to be contractible as a matter of law.*

9 “(d) *REPORT ON CENTRAL OFFICE FUNDS.*—*Not later*
10 *than February 1, 2012, the Secretary shall, in consultation*
11 *with Indian tribes, develop a funding formula to determine*
12 *the individual tribal share of funds controlled by the Cen-*
13 *tral Office of the Bureau of Indian Affairs and the Office*
14 *of the Special Trustee and the Office of the Assistant Sec-*
15 *retary for Indian Affairs for inclusion in the compacts.*

16 **“SEC. 415. REGULATIONS.**

17 “(a) *IN GENERAL.*—

18 “(1) *PROMULGATION.*—*Not later than 90 days*
19 *after the date of the enactment of the Department of*
20 *the Interior Tribal Self-Governance Act of 2009, the*
21 *Secretary shall initiate procedures under subchapter*
22 *III of chapter 5 of title 5, United States Code, to ne-*
23 *gotiate and promulgate such regulations as are nec-*
24 *essary to carry out the amendments made by this*
25 *title.*

1 “(2) *PUBLICATION OF PROPOSED REGULA-*
2 *TIONS.—Proposed regulations to implement the*
3 *amendments shall be published in the Federal Reg-*
4 *ister not later than 18 months after the date of the*
5 *enactment of this title.*

6 “(3) *EXPIRATION OF AUTHORITY.—The author-*
7 *ity to promulgate regulations under paragraph (1)*
8 *shall expire on the date that is 24 months after the*
9 *date of the enactment of this title.*

10 “(b) *COMMITTEE.—*

11 “(1) *MEMBERSHIP.—A negotiated rulemaking*
12 *committee established pursuant to section 565 of title*
13 *5, United States Code, to carry out this section shall*
14 *have as its members only Federal and tribal govern-*
15 *ment representatives.*

16 “(2) *LEAD AGENCY.—Among the Federal rep-*
17 *resentatives, the Office of Self-Governance shall be the*
18 *lead agency for the Department.*

19 “(c) *ADAPTATION OF PROCEDURES.—The Secretary*
20 *shall adapt the negotiated rulemaking procedures to the*
21 *unique context of self-governance and the government-to-*
22 *government relationship between the United States and In-*
23 *dian tribes.*

24 “(d) *EFFECT.—*

1 “(1) *REPEAL.*—*The Secretary is authorized to*
2 *repeal any regulation inconsistent with the provisions*
3 *of this Act.*

4 “(2) *CONFLICTING PROVISIONS.*—*The provisions*
5 *of this title shall supersede any conflicting provisions*
6 *of law (including any conflicting regulations).*

7 “(3) *EFFECTIVENESS WITHOUT REGARD TO REG-*
8 *ULATIONS.*—*The lack of promulgated regulations on*
9 *an issue shall not limit the effect or the implementa-*
10 *tion of this title.*

11 **“SEC. 416. EFFECT OF CIRCULARS, POLICIES, MANUALS,**
12 **GUIDANCES, AND RULES.**

13 *“Unless expressly agreed to by a participating Indian*
14 *tribe in the compact or funding agreement, the partici-*
15 *pating Indian tribe shall not be subject to any agency cir-*
16 *cular, policy, manual, guidance, or rule adopted by the De-*
17 *partment, except for—*

18 *“(1) the eligibility provisions of section 105(g);*

19 *and*

20 *“(2) regulations promulgated under section 415.*

21 **“SEC. 417. APPEALS.**

22 *“In any administrative appeal or civil action for judi-*
23 *cial review of any decision made by the Secretary under*
24 *this title, the Secretary shall have the burden of proof of*
25 *demonstrating by a preponderance of the evidence—*

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

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

5 **“SEC. 418. AUTHORIZATION OF APPROPRIATIONS.**

6 *“There are authorized to be appropriated such sums*
7 *as may be necessary to carry out this title.”.*

Union Calendar No. 348

11TH CONGRESS
2^D SESSION

H. R. 4347

[Report No. 111-603]

A BILL

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

SEPTEMBER 16, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed