

Calendar No. 741

107TH CONGRESS
2D SESSION

S. 343

[Report No. 107-324]

To establish a demonstration project to authorize the integration and coordination of Federal funding dedicated to the community, business, and economic development of Native American communities.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2001

Mr. CAMPBELL (for himself, Mr. INOUE, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 4, 2002

Reported under authority of the order of the Senate of October 17, 2002, by Mr. INOUE, without amendment

A BILL

To establish a demonstration project to authorize the integration and coordination of Federal funding dedicated to the community, business, and economic development of Native American communities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TITLE.**

2 The Act may be cited as the “Indian Tribal Develop-
3 ment Consolidated Funding Act of 2001”.

4 **SEC. 2. FINDINGS; PURPOSES.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) A unique legal and political relationship ex-
8 ists between the United States and Indian tribes
9 that is reflected in article I, section 8, clause 3 of
10 the Constitution, various treaties, Federal statutes,
11 Supreme Court decisions, executive agreements, and
12 course of dealing.

13 (2) Despite the infusion of substantial Federal
14 dollars into Native American communities over sev-
15 eral decades, the majority of Native Americans re-
16 main mired in poverty, unemployment, and despair.

17 (3) The efforts of the United States to foster
18 community, economic, and business development in
19 Native American communities have been hampered
20 by fragmentation of authority, responsibility, and
21 performance, and by lack of timeliness and coordina-
22 tion in resources and decision-making.

23 (4) The effectiveness of Federal and tribal ef-
24 forts to generate employment opportunities and
25 bring value-added activities and economic growth to
26 Native American communities depends on coopera-

1 tive arrangements among the various Federal agen-
2 cies and Indian tribes.

3 (b) PURPOSES.—The purpose of this Act are to—

4 (1) enable Indian tribes and tribal organiza-
5 tions to use available Federal assistance more effec-
6 tively and efficiently;

7 (2) adapt and target such assistance more read-
8 ily to particular needs through wider use of projects
9 that are supported by more than 1 executive agency,
10 assistance program, or appropriation of the Federal
11 Government;

12 (3) encourage Federal-tribal arrangements
13 under which Indian tribes and tribal organizations
14 may more effectively and efficiently combine Federal
15 and tribal resources to support economic develop-
16 ment projects;

17 (4) promote the coordination of Native Amer-
18 ican economic programs to maximize the benefits of
19 these programs to encourage a more consolidated,
20 national policy for economic development; and

21 (5) establish a demonstration project to aid In-
22 dian tribes in obtaining Federal resources and in
23 more efficiently administering those resources for
24 the furtherance of tribal self-governance and self-de-
25 termination.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **APPLICANT.**—The term “applicant” means
4 an Indian tribe or tribal organization, or a consor-
5 tium of Indian tribes or tribal organizations, that
6 submits an application under this Act for assistance
7 for a community, economic, or business development
8 project, including a project designed to improve the
9 environment, housing facilities, community facilities,
10 business or industrial facilities, or transportation,
11 roads, or highways with respect to the Indian tribe,
12 tribal organization, or consortium.

13 (2) **ASSISTANCE.**—The term “assistance”
14 means the transfer of anything of value for a public
15 purpose, support, or stimulation that is—

16 (A) authorized by a law of the United
17 States;

18 (B) provided by the Federal Government
19 through grant or contractual arrangements, in-
20 cluding technical assistance programs providing
21 assistance by loan, loan guarantee, or insur-
22 ance; and

23 (C) authorized to include an Indian tribe
24 or tribal organization, or a consortium of In-
25 dian tribes or tribal organizations, as eligible
26 for receipt of funds under a statutory or admin-

1 istrative formula for the purposes of commu-
2 nity, economic, or business development.

3 (3) ASSISTANCE PROGRAM.—The term
4 “assistance program” means any program of the
5 Federal Government that provides assistance for
6 which Indian tribes or tribal organizations are eligi-
7 ble.

8 (4) INDIAN TRIBE.—The term “Indian tribe”
9 has the meaning given such term in section 4(e) of
10 the Indian Self-Determination and Education Assist-
11 ance Act (25 U.S.C. 450b(e)).

12 (5) PROJECT.—The term “project” means an
13 undertaking that includes components that con-
14 tribute materially to carrying out a purpose or close-
15 ly-related purposes that are proposed or approved
16 for assistance under more than 1 Federal Govern-
17 ment program.

18 (6) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

20 (7) TRIBAL ORGANIZATION.—The term “tribal
21 organization” has the meaning given such term in
22 section 4(l) of the Indian Self-Determination and
23 Education Assistance Act (25 U.S.C. 450b(l)).

1 **SEC. 4. LEAD AGENCY.**

2 The lead agency for purposes of carrying out this Act
3 shall be the Department of the Interior.

4 **SEC. 5. SELECTION OF PARTICIPATING TRIBES.**

5 (a) PARTICIPANTS.—

6 (1) IN GENERAL.—The Secretary may select
7 from the applicant pool described in subsection (b)
8 Indian tribes or tribal organizations, not to exceed
9 24 in each fiscal year, to submit an application to
10 carry out a project under this Act.

11 (2) CONSORTIA.—Two or more Indian tribes or
12 tribal organizations that are otherwise eligible to
13 participate in a program or activity to which this
14 Act applies may form a consortium to participate as
15 an applicant under paragraph (1).

16 (b) APPLICANT POOL.—The applicant pool described
17 in this subsection shall consist of each Indian tribe or trib-
18 al organization that—

19 (1) successfully completes the planning phase
20 described in subsection (c);

21 (2) has requested participation in a project
22 under this Act through a resolution or other official
23 action of the tribal governing body; and

24 (3) has demonstrated, for the 3 fiscal years im-
25 mediately preceding the fiscal year for which the re-
26 quested participation is being made, financial sta-

1 bility and financial management capability as dem-
 2 onstrated by the Indian tribe or tribal organization,
 3 or each member of a consortium of tribes or tribal
 4 organizations, having no material audit exceptions in
 5 the required annual audit of the self-determination
 6 contracts of the tribe or tribal organization.

7 (c) PLANNING PHASE.—Each applicant seeking to
 8 participate in a project under this Act shall complete a
 9 planning phase that shall include legal and budgetary re-
 10 search and internal tribal government and organizational
 11 preparation. The applicant shall be eligible for a grant
 12 under this section to plan and negotiate participation in
 13 a project under this Act.

14 **SEC. 6. APPLICATION REQUIREMENTS, REVIEW, AND AP-**
 15 **PROVAL.**

16 (a) REQUIREMENTS.—Each applicant seeking to par-
 17 ticipate in a project under this Act shall submit an appli-
 18 cation to the head of the Federal executive agency respon-
 19 sible for administering the primary Federal program to
 20 be affected by the project that—

- 21 (1) identifies the programs to be integrated;
- 22 (2) is consistent with the purposes set forth in
- 23 section 2(b);
- 24 (3) describes a comprehensive strategy that
- 25 identifies the way in which Federal funds are to be

1 integrated and delivered under the project and the
2 results expected from the project;

3 (4) identifies the projected expenditures under
4 the project in a single budget;

5 (5) identifies the agency or agencies of the trib-
6 al government that are to be involved in the imple-
7 mentation of the project;

8 (6) identifies any Federal statutory provisions,
9 regulations, policies, or procedures that the appli-
10 cant believes need to be waived in order to imple-
11 ment the project; and

12 (7) is approved by the governing body of the
13 applicant, including in the case of an applicant that
14 is a consortium or tribes or tribal organizations, the
15 governing body of each affected member tribe or
16 tribal organization.

17 (b) REVIEW.—Upon receipt of an application that
18 meets the requirements of subsection (a), the head of the
19 Federal executive agency receiving the application shall—

20 (1) consult with the head of each Federal exec-
21 utive agency that is proposed to provide funds to im-
22 plement the project and with the applicant submit-
23 ting the application; and

1 (2) consult and coordinate with the Department
2 of the Interior as the lead agency under this Act for
3 the purposes of processing the application.

4 (c) APPROVAL.—

5 (1) WAIVERS.—

6 (A) IN GENERAL.—With respect to any
7 Federal statutory provisions, regulations, poli-
8 cies, or procedures that the applicant believes
9 need to be waived in order to implement the
10 project that are identified in the application in
11 accordance with subsection (a)(6) or as a result
12 of the consultation required under subsection
13 (b), the head of the Federal executive agency
14 responsible for administering such provision,
15 regulation, policy, or procedure shall, subject to
16 subparagraph (B), waive the requirement so
17 identified, notwithstanding any other provision
18 of law.

19 (B) LIMITATION.—A statutory provision,
20 regulation, policy, or procedure identified for
21 waiver under subparagraph (A) may not be
22 waived by the head of the Federal executive
23 agency responsible for administering the provi-
24 sion, regulation, policy, or procedure if such

1 head determines that a waiver would be incon-
2 sistent with—

3 (i) the purposes set forth in section
4 2(b); or

5 (ii) the provisions of the statute from
6 which the program involved derives its au-
7 thority that are specifically applicable to
8 Indian programs.

9 (2) PROJECT.—Not later than 90 days after
10 the receipt of an application that meets the require-
11 ments of subsection (a), the head of the Federal ex-
12 ecutive agency receiving the application shall inform
13 the applicant submitting the application, in writing,
14 of the approval or disapproval of the application, in-
15 cluding the approval or disapproval of a waiver
16 sought in accordance with paragraph (1). If an ap-
17 plication or a waiver is disapproved, the written no-
18 tice shall identify the reasons for the disapproval
19 and the applicant submitting the application shall be
20 given an opportunity to amend the application or to
21 petition the head of the Federal executive agency
22 sending the notice to reconsider the disapproval of
23 the application or the waiver.

1 **SEC. 7. AUTHORITY OF HEADS OF FEDERAL EXECUTIVE**
2 **AGENCIES.**

3 (a) IN GENERAL.—The President, acting through the
4 heads of the appropriate Federal executive agencies, shall
5 promulgate regulations necessary to carry out this Act and
6 to ensure that this Act is applied and implemented by all
7 Federal executive agencies.

8 (b) SCOPE OF COVERAGE.—The Federal executive
9 agencies that are included within the scope of this Act
10 shall include—

- 11 (1) the Department of Agriculture;
- 12 (2) the Department of Commerce;
- 13 (3) the Department of Defense;
- 14 (4) the Department of Education;
- 15 (5) the Department of Energy;
- 16 (6) the Department of Health and Human
17 Services;
- 18 (7) the Department of Housing and Urban De-
19 velopment;
- 20 (8) the Department of the Interior;
- 21 (9) the Department of Justice;
- 22 (10) the Department of Labor;
- 23 (11) the Department of Transportation;
- 24 (12) the Department of the Treasury;
- 25 (13) the Department of Veterans Affairs;
- 26 (14) the Environmental Protection Agency; and

1 (15) the Small Business Administration.

2 (c) ACTIVITIES.—Notwithstanding any other provi-
3 sion of law, the head of each Federal executive agency,
4 acting alone or jointly through an agreement with another
5 Federal executive agency, may—

6 (1) identify related Federal programs that are
7 likely to be particularly suitable in providing for the
8 joint financing of specific kinds of projects with re-
9 spect to Indian tribes or tribal organizations;

10 (2) assist in planning and developing such
11 projects to be financed through different Federal
12 programs;

13 (3) with respect to Federal programs or
14 projects that are identified or developed under para-
15 graphs (1) or (2), develop and prescribe—

16 (A) guidelines;

17 (B) model or illustrative projects;

18 (C) joint or common application forms;

19 and

20 (D) other materials or guidance;

21 (4) review administrative program requirements
22 to identify those requirements that may impede the
23 joint financing of such projects and modify such re-
24 quirements when appropriate;

1 (5) establish common technical and administra-
2 tive regulations for related Federal programs to as-
3 sist in providing joint financing to support a specific
4 project or class of projects; and

5 (6) establish joint or common application proc-
6 essing and project supervision procedures, including
7 procedures for designating—

8 (A) an agency responsible for processing
9 applications; and

10 (B) a managing agency responsible for
11 project supervision.

12 (d) REQUIREMENTS.—In carrying out this Act, the
13 head of each Federal executive agency shall—

14 (1) take all appropriate actions to carry out this
15 Act when administering a Federal assistance pro-
16 gram; and

17 (2) consult and cooperate with the heads of
18 other Federal executive agencies to carry out this
19 Act in assisting in the administration of Federal as-
20 sistance programs of other Federal executive agen-
21 cies that may be used to jointly finance projects un-
22 dertaken by Indian tribes or tribal organizations.

1 **SEC. 8. PROCEDURES FOR PROCESSING REQUESTS FOR**
2 **JOINT FINANCING.**

3 In processing an application or request for assistance
4 for a project to be financed in accordance with this Act
5 by at least 2 assistance programs, the head of a Federal
6 executive agency shall take all appropriate actions to en-
7 sure that—

8 (1) required reviews and approvals are handled
9 expeditiously;

10 (2) complete account is taken of special consid-
11 erations of timing that are made known to the head
12 of the Federal agency involved by the applicant that
13 would affect the feasibility of a jointly financed
14 project;

15 (3) an applicant is required to deal with a min-
16 imum number of representatives of the Federal Gov-
17 ernment;

18 (4) an applicant is promptly informed of a deci-
19 sion or special problem that could affect the feasi-
20 bility of providing joint assistance under the applica-
21 tion; and

22 (5) an applicant is not required to get informa-
23 tion or assurances from 1 Federal executive agency
24 for a requesting Federal executive agency when the
25 requesting agency makes the information or assur-
26 ances directly.

1 **SEC. 9. UNIFORM ADMINISTRATIVE PROCEDURES.**

2 (a) IN GENERAL.—To make participation in a project
3 simpler than would otherwise be possible because of the
4 application of varying or conflicting technical or adminis-
5 trative regulations or procedures that are not specifically
6 required by the statute that authorizes the Federal pro-
7 gram under which such project is funded, the head of a
8 Federal executive agency may promulgate uniform regula-
9 tions concerning inconsistent or conflicting requirements
10 with respect to—

11 (1) the financial administration of the project
12 including with respect to accounting, reporting, and
13 auditing, and maintaining a separate bank account,
14 to the extent consistent with this Act;

15 (2) the timing of payments by the Federal Gov-
16 ernment for the project when 1 payment schedule or
17 a combined payment schedule is to be established for
18 the project;

19 (3) the provision of assistance by grant rather
20 than procurement contract; and

21 (4) the accountability for, or the disposition of,
22 records, property, or structures acquired or con-
23 structed with assistance from the Federal Govern-
24 ment under the project.

25 (b) REVIEW.—In making the processing of applica-
26 tions for assistance under a project simpler under this Act,

1 the head of a Federal executive agency may provide for
 2 review of proposals for a project by a single panel, board,
 3 or committee where reviews by separate panels, boards,
 4 or committees are not specifically required by the statute
 5 that authorizes the Federal program under which the
 6 project is funded.

7 **SEC. 10. DELEGATION OF SUPERVISION OF ASSISTANCE.**

8 Pursuant to regulations established to implement this
 9 Act, the head of a Federal executive agency may delegate
 10 or otherwise enter into an arrangement to have another
 11 Federal executive agency carry out or supervise a project
 12 or class of projects jointly financed in accordance with this
 13 Act. Such a delegation—

14 (1) shall be made under conditions ensuring
 15 that the duties and powers delegated are exercised
 16 consistent with Federal law; and

17 (2) may not be made in a manner that relieves
 18 the head of a Federal executive agency of responsi-
 19 bility for the proper and efficient management of a
 20 project for which the agency provides assistance.

21 **SEC. 11. JOINT ASSISTANCE FUNDS AND PROJECT FACILI-**
 22 **TATION.**

23 (a) JOINT ASSISTANCE FUND.—In providing support
 24 for a project in accordance with this Act, the head of a
 25 Federal executive agency may provide for the establish-

1 ment by the applicant of a joint assistance fund to ensure
2 that amounts received from more than 1 Federal assist-
3 ance program or appropriation are more effectively admin-
4 istered.

5 (b) AGREEMENT.—A joint assistance fund may only
6 be established under subsection (a) in accordance with an
7 agreement by the Federal executive agencies involved con-
8 cerning the responsibilities of each such agency. Such an
9 agreement shall—

10 (1) ensure the availability of necessary informa-
11 tion to the executive agencies and Congress; and

12 (2) provide that the agency administering the
13 fund is responsible and accountable by program and
14 appropriation for the amounts provided for the pur-
15 poses of each account in the fund.

16 (c) USE OF EXCESS FUNDS.—In any demonstration
17 project conducted under this Act under which a joint as-
18 sistance fund has been established under subsection (a)
19 and the actual costs of the project are less than the esti-
20 mated costs, use of the resulting excess funds shall be de-
21 termined by the head of the Federal executive agency ad-
22 ministering the joint assistance fund, after consultation
23 with the applicant.

1 **SEC. 12. FINANCIAL MANAGEMENT, ACCOUNTABILITY, AND**
2 **AUDITS.**

3 (a) SINGLE AUDIT ACT.—Recipients of funding pro-
4 vided in accordance with this Act shall be subject to the
5 provisions of chapter 75 of title 31, United States Code.

6 (b) RECORDS.—With respect to each project financed
7 through an account in a joint management fund estab-
8 lished under section 11, the recipient of amounts from the
9 fund shall maintain records as required by the head of
10 the Federal executive agency responsible for administering
11 the fund. Such records shall include—

12 (1) the amount and disposition by the recipient
13 of assistance received under each Federal assistance
14 program and appropriation;

15 (2) the total cost of the project for which such
16 assistance was given or used;

17 (3) that part of the cost of the project provided
18 from other sources; and

19 (4) other records that will make it easier to
20 conduct an audit of the project.

21 (c) AVAILABILITY.—Records of a recipient related to
22 an amount received from a joint management fund under
23 this Act shall be made available to the head of the Federal
24 executive agency responsible for administering the fund
25 and the Comptroller General for inspection and audit.

1 **SEC. 13. TECHNICAL ASSISTANCE AND PERSONNEL TRAIN-**
2 **ING.**

3 Amounts available for technical assistance and per-
4 sonnel training under any Federal assistance program
5 shall be available for technical assistance and training
6 under a project approved for joint financing under this
7 Act where a portion of such financing involves such Fed-
8 eral assistance program and another assistance program.

9 **SEC. 14. JOINT STATE FINANCING FOR FEDERAL-TRIBAL**
10 **ASSISTED PROJECTS.**

11 Under regulations promulgated under this Act, the
12 head of a Federal executive agency may enter into an
13 agreement with a State to extend the benefits of this Act
14 to a project that involves assistance from at least 1 Fed-
15 eral executive agency, the State, and at least 1 tribal agen-
16 cy or instrumentality. The agreement may include ar-
17 rangements to process requests or administer assistance
18 on a joint basis.

19 **SEC. 15. REPORT TO CONGRESS.**

20 Not later than 1 year after the date of enactment
21 of this Act, the President shall prepare and submit to Con-
22 gress a report concerning the actions taken under this Act
23 together with recommendations for the continuation of
24 this Act or proposed amendments thereto. Such report
25 shall include a detailed evaluation of the operation of this
26 Act, including information on the benefits and costs of

- 1 jointly financed projects that accrue to participating In-
- 2 dian tribes and tribal organizations.

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