

108TH CONGRESS
1ST SESSION

S. 1528

To establish a procedure 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

JULY 31 (legislative day, JULY 21), 2003

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

A BILL

To establish a procedure 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,*

3 **SECTION 1. TITLE.**

4 The Act may be cited as the “Indian Tribal Develop-
5 ment Consolidated Funding Act of 2003”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) a unique legal and political relationship ex-
2 ists between the United States and Indian tribes
3 that is reflected in article I, section 8, clause 3 of
4 the Constitution, various treaties, Federal statutes,
5 Supreme Court decisions, executive agreements, and
6 course of dealing;

7 (2) despite the infusion of a substantial amount
8 of Federal funds into Native American communities
9 over several decades, the majority of Native Ameri-
10 cans remain mired in poverty, unemployment, and
11 despair;

12 (3) the efforts of the United States to foster
13 community, economic, and business development in
14 Native American communities have been hampered
15 by fragmentation of authority, responsibility, and
16 performance, and lack of timeliness and coordination
17 in resources and decisionmaking; and

18 (4) the effectiveness of Federal and tribal ef-
19 forts in generating employment opportunities and
20 bringing value-added activities and economic growth
21 to Native American communities depends on cooper-
22 ative arrangements among the various Federal agen-
23 cies and Indian tribes.

24 (b) PURPOSES.—The purposes of this Act are—

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

4 (2) to adapt and target such assistance more
5 readily to particular needs through wider use of
6 projects that are supported by more than 1 agency,
7 assistance program, or appropriation of the Federal
8 Government;

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

14 (4) to promote the coordination of Native
15 American economic programs to maximize the bene-
16 fits of those programs to encourage a more consoli-
17 dated, national policy for economic development; and

18 (5) to establish a procedure to aid Indian tribes
19 in obtaining Federal resources and in more effi-
20 ciently administering those resources for the further-
21 ance of tribal self-governance and self-determination.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) **APPLICANT.**—The term “applicant” means
25 an Indian tribe or tribal organization, or a consor-

1 tium of Indian tribes or tribal organizations, that
2 submits an application under this Act for assistance
3 in carrying out a project.

4 (2) ASSISTANCE.—The term “assistance”
5 means the transfer of anything of value for a public
6 purpose, support, or stimulation that is—

7 (A) authorized by a law of the United
8 States;

9 (B) provided by the Federal Government
10 through grant or contractual arrangements (in-
11 cluding technical assistance programs providing
12 assistance by loan, loan guarantee, or insur-
13 ance); and

14 (C) authorized to include an Indian tribe
15 or tribal organization, or a consortium of In-
16 dian tribes or tribal organizations, as eligible
17 for receipt of funds under a statutory or admin-
18 istrative formula for the purposes of commu-
19 nity, economic, or business development.

20 (3) ASSISTANCE PROGRAM.—The term “assist-
21 ance program” means any program of the Federal
22 Government that provides assistance for which In-
23 dian tribes or tribal organizations are eligible.

24 (4) INDIAN TRIBE.—The term “Indian tribe”
25 has the meaning given the term in section 4 of the

1 Indian Self-Determination and Education Assistance
2 Act (25 U.S.C. 450b).

3 (5) PROJECT.—

4 (A) IN GENERAL.—The term “project”
5 means a community, economic, or business de-
6 velopment undertaking that includes compo-
7 nents that contribute materially to carrying out
8 a purpose or closely-related purposes that are
9 proposed or approved for assistance under more
10 than 1 Federal Government program.

11 (B) INCLUSION.—The term “project” in-
12 cludes a project designed to improve the envi-
13 ronment, a housing facility, a community facil-
14 ity, a business or industrial facility, or trans-
15 portation, a road, or a highway, with respect to
16 an Indian tribe, tribal organization, or consor-
17 tium.

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 the term in
22 section 4 of the Indian Self-Determination and Edu-
23 cation Assistance Act (25 U.S.C. 450b).

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

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

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) requests participation in a project under
22 this Act through a resolution or other official action
23 of the tribal governing body; and

24 (3) demonstrates, for the 3 fiscal years imme-
25 diately preceding the fiscal year for which participa-
26 tion is requested, financial stability and financial

1 management capability as demonstrated by a show-
 2 ing by the Indian tribe or tribal organization that
 3 there were no material audit exceptions in the re-
 4 quired annual audit of the self-determination con-
 5 tracts of the Indian tribe or tribal organization.

6 (c) PLANNING PHASE.—Each applicant—

7 (1) shall complete a planning phase that in-
 8 cludes—

9 (A) legal and budgetary research; and

10 (B) internal tribal government and organi-
 11 zational preparation; and

12 (2) on completion of the planning phase, shall
 13 be eligible for joint assistance with respect to a
 14 project.

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

17 (a) REQUIREMENTS.—An applicant shall submit to
 18 the head of the Federal agency responsible for admin-
 19 istering the primary Federal program to be affected by
 20 the project an application that—

21 (1) identifies the programs to be integrated;

22 (2) proposes programs that are consistent with
 23 the purposes described in section 2(b);

24 (3) describes—

1 (A) a comprehensive strategy that identi-
2 fies the manner in which Federal funds are to
3 be integrated and delivered under the project;
4 and

5 (B) the results expected from the project;

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

8 (5) identifies the agency or agencies of the trib-
9 al government that are to be involved in the project;

10 (6) identifies any Federal statutory provisions,
11 regulations, policies, or procedures that the appli-
12 cant requests be waived in order to implement the
13 project; and

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

19 (b) REVIEW.—On receipt of an application that
20 meets the requirements of subsection (a), the head of the
21 Federal agency receiving the application shall—

22 (1) consult with the applicant and with the
23 head of each Federal agency that is proposed to pro-
24 vide funds to implement the project; and

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

(c) APPROVAL.—

(1) WAIVERS.—

(A) IN GENERAL.—Subject to subparagraph (B), notwithstanding any other provision of law, the head of the Federal agency responsible for administering any statutory provision, regulation, policy, or procedure that is identified in an application in accordance with subsection (a)(6) or as a result of the consultation required under subsection (b), and that is requested by the applicant to be waived, shall waive the statutory provision, regulation, policy, or procedure.

(B) LIMITATION.—A statutory provision, regulation, policy, or procedure identified for waiver under subparagraph (A) may not be waived by an agency head if the agency head determines that a waiver would be inconsistent with—

- (i) the purposes described in section 2(b); or

1 (ii) any provision of the statute gov-
2 erning the program involved that is specifi-
3 cally applicable to Indian programs.

4 (2) PROJECT.—

5 (A) IN GENERAL.—Not later than 90 days
6 after the date of receipt of an application that
7 meets the requirements of subsection (a), the
8 head of the Federal agency receiving the appli-
9 cation shall inform the applicant, in writing, of
10 the approval or disapproval of the application,
11 including the approval or disapproval of any
12 waiver sought under paragraph (1).

13 (B) DISAPPROVAL.—If an application or
14 waiver is disapproved—

15 (i) the written notice shall identify the
16 reasons for the disapproval; and

17 (ii) the applicant shall be provided an
18 opportunity to amend the application or to
19 petition the agency head to reconsider the
20 disapproval.

21 **SEC. 7. AUTHORITY OF HEADS OF FEDERAL AGENCIES.**

22 (a) IN GENERAL.—The President, acting through the
23 heads of the appropriate Federal agencies, shall promul-
24 gate regulations necessary—

25 (1) to carry out this Act; and

1 (2) to ensure that this Act is applied and imple-
2 mented by all Federal agencies.

3 (b) SCOPE OF COVERAGE.—The Federal agencies
4 that are included within the scope of this Act shall in-
5 clude—

6 (1) the Department of Agriculture;

7 (2) the Department of Commerce;

8 (3) the Department of Defense;

9 (4) the Department of Education;

10 (5) the Department of Energy;

11 (6) the Department of Health and Human
12 Services;

13 (7) the Department of Homeland Security;

14 (8) the Department of Housing and Urban De-
15 velopment;

16 (9) the Department of the Interior;

17 (10) the Department of Justice;

18 (11) the Department of Labor;

19 (12) the Department of Transportation;

20 (13) the Department of the Treasury;

21 (14) the Department of Veterans Affairs;

22 (15) the Environmental Protection Agency;

23 (16) the Small Business Administration; and

24 (17) such other agencies as the President deter-
25 mines to be appropriate.

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

5 (1) identify related Federal programs that are
6 suitable for providing joint financing of specific
7 kinds of projects with respect to Indian tribes or
8 tribal organizations;

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

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

15 (A) guidelines;

16 (B) model or illustrative projects;

17 (C) joint or common application forms;

18 and

19 (D) other materials or guidance;

20 (4) review administrative program requirements
21 to identify requirements that may impede the joint
22 financing of such projects and modify the require-
23 ments appropriately;

24 (5) establish common technical and administra-
25 tive regulations for related Federal programs to as-

1 sist in providing joint financing to support a specific
2 project or class of projects; and

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

6 (A) an agency responsible for processing
7 applications; and

8 (B) a lead agency responsible for project
9 supervision.

10 (d) REQUIREMENTS.—In carrying out this Act, the
11 head of each Federal agency shall—

12 (1) take all appropriate actions to carry out this
13 Act when administering an assistance program;

14 (2) consult and cooperate with the heads of
15 other Federal agencies; and

16 (3) assist in the administration of assistance
17 programs of other Federal agencies that may be
18 used to jointly finance projects undertaken by Indian
19 tribes or tribal organizations.

20 **SEC. 8. PROCEDURES FOR PROCESSING REQUESTS FOR**
21 **JOINT FINANCING.**

22 In processing an application for assistance for a
23 project to be financed in accordance with this Act by at
24 least 2 assistance programs, the head of a Federal agency
25 shall take all appropriate actions to ensure that—

1 (1) required reviews and approvals are handled
2 expeditiously;

3 (2) complete account is taken of special consid-
4 erations of timing that are made known to the head
5 of the Federal agency by the applicant that would
6 affect the feasibility of a jointly financed project;

7 (3) an applicant is required to deal with a min-
8 imum number of representatives of the Federal Gov-
9 ernment;

10 (4) an applicant is promptly informed of a deci-
11 sion or problem that could affect the feasibility of
12 providing joint assistance under the application; and

13 (5) an applicant is not required to get informa-
14 tion or assurances from 1 Federal agency for a re-
15 questing Federal agency in a case in which the re-
16 questing agency makes the information or assur-
17 ances directly.

18 **SEC. 9. UNIFORM ADMINISTRATIVE PROCEDURES.**

19 (a) IN GENERAL.—To make participation in a project
20 simpler than would otherwise be practicable because of the
21 application of inconsistent or conflicting technical or ad-
22 ministrative regulations or procedures that are not specifi-
23 cally required by the statute that governs the Federal pro-
24 gram under which the project is funded, the head of a
25 Federal agency may promulgate uniform regulations con-

cerning inconsistent or conflicting requirements with re-
spect to—

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

(2) the timing of payments by the Federal Gov-
ernment for the project in a case in which 1 pay-
ment schedule or a combined payment schedule is to
be established for the project;

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

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

(b) REVIEW.—To make the processing of applications
for assistance under a project simpler under this Act, the
head of a Federal agency may provide for review of pro-
posals for a project by a single panel, board, or committee
in any case in which reviews by separate panels, boards,
or committees are not specifically required by the statute
that authorizes the Federal program under which the
project is funded.

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

2 (a) IN GENERAL.—In accordance with regulations
3 promulgated under section 7(a), the head of a Federal
4 agency may delegate or otherwise enter into an arrange-
5 ment to have another Federal agency carry out or super-
6 vise a project or class of projects jointly financed in ac-
7 cordance with this Act.

8 (b) CONDITIONS.—A delegation or other arrange-
9 ment under subsection (a)—

10 (1) shall be made under conditions ensuring
11 that the duties and powers delegated are exercised
12 consistent with Federal law; and

13 (2) may not be made in a manner that relieves
14 the head of a Federal agency of responsibility for
15 the proper and efficient management of a project for
16 which the agency provides assistance.

17 **SEC. 11. JOINT ASSISTANCE FUNDS AND PROJECT FACILI-**
18 **TATION.**

19 (a) JOINT ASSISTANCE FUND.—In providing support
20 for a project in accordance with this Act, the head of a
21 Federal agency may provide for the establishment in the
22 Treasury by an applicant of a joint assistance fund to en-
23 sure that amounts received by the applicant from more
24 than 1 assistance program or appropriation are effectively
25 administered.

26 (b) AGREEMENT.—

1 (1) IN GENERAL.—A joint assistance fund may
2 be established under subsection (a) only in accord-
3 ance with an agreement by the Federal agencies in-
4 volved concerning the responsibilities of each such
5 agency.

6 (2) REQUIREMENTS OF AGREEMENT.—An
7 agreement under paragraph (1) shall—

8 (A) ensure the availability of necessary in-
9 formation to Federal agencies and Congress;
10 and

11 (B) provide that the agency providing for
12 the establishment of the fund under subsection
13 (a) is responsible and accountable by program
14 and appropriation for the amounts provided for
15 the purposes of each fund.

16 (c) USE OF EXCESS FUNDS.—In any project con-
17 ducted under this Act for which a joint assistance fund
18 has been established under subsection (a) and the actual
19 costs of the project are less than the estimated costs, use
20 of the excess funds shall be determined by the head of
21 the Federal agency administering the joint assistance
22 fund, after consultation 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 chap-
5 ter 75 of title 31, United States Code.

6 (b) RECORDS.—

7 (1) IN GENERAL.—With respect to each project
8 financed through an account in a joint assistance
9 fund established under section 11, the recipient of
10 amounts from the fund shall maintain records as re-
11 quired by the head of the Federal agency responsible
12 for administering the fund.

13 (2) REQUIREMENTS.—Records described in
14 paragraph (1) shall disclose—

15 (A) the amount and disposition by the re-
16 cipient of assistance received under each Fed-
17 eral assistance program and appropriation;

18 (B) the total cost of the project for which
19 such assistance was given or used;

20 (C) the part of the cost of the project pro-
21 vided from other sources; and

22 (D) such other information as the head of
23 the Federal agency responsible for admin-
24 istering the fund determines will facilitate the
25 conduct of an audit of the project.

1 (c) AVAILABILITY.—Records of a recipient related to
2 an amount received from a joint assistance fund under
3 this Act shall be made available, for inspection and audit,
4 to—

5 (1) the head of the Federal agency responsible
6 for administering the fund; and

7 (2) the Comptroller General of the United
8 States.

9 **SEC. 13. TECHNICAL ASSISTANCE AND PERSONNEL TRAIN-**
10 **ING.**

11 Amounts available for technical assistance and per-
12 sonnel training under any Federal assistance program
13 shall be available for technical assistance and training
14 under a project approved for joint financing under this
15 Act if the use of the funds involves the Federal assistance
16 program and the project approved for joint financing.

17 **SEC. 14. JOINT STATE FINANCING FOR FEDERAL-TRIBAL**
18 **ASSISTED PROJECTS.**

19 (a) IN GENERAL.—Under regulations promulgated
20 under section 7(a), the head of a Federal agency may
21 enter into an agreement with a State to extend the bene-
22 fits of this Act to a project that involves assistance from—

23 (1) at least 1 Federal agency;

24 (2) a State; and

25 (3) at least 1 tribal agency or instrumentality.

1 (b) JOINT ACTION.—An agreement under subsection
2 (a) may include arrangements to process requests or ad-
3 minister assistance on a joint basis.

4 **SEC. 15. REPORT TO CONGRESS.**

5 Not later than 1 year after the date of enactment
6 of this Act, the President shall submit to Congress a re-
7 port that includes—

8 (1) a description of actions taken under this
9 Act;

10 (2) a detailed evaluation of the implementation
11 of this Act, including information on the benefits
12 and costs of jointly financed projects that accrue to
13 participating Indian tribes and tribal organizations;
14 and

15 (3) recommendations (including legislative rec-
16 ommendations) of the President with respect to im-
17 provement of this Act.

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