

110TH CONGRESS  
1ST SESSION

# H. R. 3994

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

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2007

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

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## 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.**

4       This Act may be cited as the “Department of the In-  
5       terior Tribal Self-Governance Act of 2007”.

6       **SEC. 2. TRIBAL SELF-GOVERNANCE.**

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

## **“TITLE IV—TRIBAL SELF- GOVERNANCE**

### **“SEC. 401. DEFINITIONS.**

“In this title:

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

“(2) CONSTRUCTION PROGRAM.—The term ‘construction program’ or ‘construction project’ means a tribal undertaking relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community, health, irrigation, agriculture, conservation, flood control, transportation, or port facilities, or for other tribal purposes.

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

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

1           “(5) GROSS MISMANAGEMENT.—The term  
2           ‘gross mismanagement’ means a significant viola-  
3           tion, shown by clear and convincing evidence, of a  
4           compact, funding agreement, or statutory or regu-  
5           latory requirement applicable to Federal funds  
6           transferred to an Indian tribe under a compact or  
7           funding agreement that results in a significant re-  
8           duction of funds available for the programs assumed  
9           by an Indian tribe.

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

14           “(7) INDIAN TRIBE.—The term ‘Indian tribe’,  
15           in a case in which an Indian tribe authorizes an-  
16           other Indian tribe or a tribal organization to plan  
17           for or carry out a program on its behalf in accord-  
18           ance with section 403(a)(2), includes the other au-  
19           thorized Indian tribe or tribal organization.

20           “(8) INHERENT FEDERAL FUNCTION.—The  
21           term ‘inherent Federal function’ means a Federal  
22           function that cannot legally be delegated to an In-  
23           dian tribe.

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

1           “(10) SELF-GOVERNANCE.—The term ‘self-gov-  
2           ernance’ means the program of self-governance es-  
3           tablished under section 402.

4           “(11) TRIBAL SHARE.—The term ‘tribal share’  
5           means an Indian tribe’s portion of all funds and re-  
6           sources that support Secretarial programs that are  
7           not required by the Secretary for the performance of  
8           inherent Federal functions.

9   **“SEC. 402. ESTABLISHMENT.**

10          “The Secretary shall carry out a program within the  
11   Department to be known as the ‘Tribal Self-Governance  
12   Program.’.

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

14          “(a) IN GENERAL.—

15               “(1) PARTICIPANTS.—

16                   “(A) The Secretary, acting through the Di-  
17                   rector of the Office of Self-Governance, may se-  
18                   lect up to 50 new Indian tribes per year from  
19                   those eligible under subsection (b) to participate  
20                   in self-governance.

21                   “(B) If each Indian tribe requests, two or  
22                   more otherwise eligible Indian tribes may be  
23                   treated as a single Indian tribe for the purpose  
24                   of participating in Self-Governance.

1           “(2) OTHER AUTHORIZED INDIAN TRIBE OR  
2       TRIBAL ORGANIZATION.—If an Indian tribe author-  
3       izes another Indian tribe or a tribal organization to  
4       plan for or carry out a program on its behalf under  
5       this title, the authorized Indian tribe or tribal orga-  
6       nization shall have the rights and responsibilities of  
7       the authorizing Indian tribe (except as otherwise  
8       provided in the authorizing resolution).

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

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

15               “(B) the tribal organization itself or at  
16      least one of the tribes participating in the tribal  
17      organization is eligible under subsection (b).

18           “(4) TRIBAL WITHDRAWAL FROM A TRIBAL OR-  
19      GANIZATION.—

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

1           “(B) EFFECT OF WITHDRAWAL.—If an In-  
2           dian tribe withdraws from participation in a  
3           tribal organization, the Indian tribe shall be en-  
4           titled to its tribal share of funds and resources  
5           supporting the programs that the Indian tribe  
6           is entitled to carry out under the compact and  
7           funding agreement of the Indian tribe.

8           “(C) PARTICIPATION IN SELF-GOVERN-  
9           ANCE.—The withdrawal of an Indian tribe from  
10          a tribal organization shall not affect the eligi-  
11          bility of the tribal organization to participate in  
12          self-governance on behalf of one or more other  
13          Indian tribes.

14          “(D) WITHDRAWAL PROCESS.—

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

20               “(ii) EFFECTIVE DATE.—

21                   “(I) IN GENERAL.—A withdrawal  
22                   under clause (i) shall become effective  
23                   on the date specified in the tribal res-  
24                   olution.

1                   “(II) NO SPECIFIED DATE.—In  
2                   the absence of a date specified in the  
3                   resolution, the withdrawal shall be-  
4                   come effective on—

5                               “(aa) the earlier of—

6                                       “(AA) 1 year after the  
7                                       date of submission of the re-  
8                                       quest; or

9                                       “(BB) the date on  
10                                      which the funding agree-  
11                                      ment expires; or

12                                     “(bb) such date as may be  
13                                     mutually agreed upon by the Sec-  
14                                     retary, the withdrawing Indian  
15                                     tribe, and the tribal organization  
16                                     that signed the compact and  
17                                     funding agreement on behalf of  
18                                     the withdrawing Indian tribe or  
19                                     tribal organization.

20                   “(E) DISTRIBUTION OF FUNDS.—If an In-  
21                   dian tribe or tribal organization eligible to enter  
22                   into a self-determination contract under title I  
23                   or a compact or funding agreement under this  
24                   title fully or partially withdraws from a partici-

1           pating tribal organization, the withdrawing In-  
2           dian tribe—

3                   “(i) may elect to enter a self-deter-  
4                   mination contract or compact, in which  
5                   case—

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

17                           “(II) the funds referred to in  
18                           subclause (I) shall be withdrawn by  
19                           the Secretary from the funding agree-  
20                           ment of the tribal organization and  
21                           transferred to the withdrawing Indian  
22                           tribe, on the condition that the provi-  
23                           sions of sections 102 and 105(i), as  
24                           appropriate, shall apply to the with-  
25                           drawing Indian tribe; or



1 “(ii) may elect not to enter a self-de-  
2 termination contract or compact, in which  
3 case all funds not obligated by the tribal  
4 organization associated with the with-  
5 drawing Indian tribe’s returned programs,  
6 less close-out costs, shall be returned by  
7 the tribal organization to the Secretary for  
8 operation of the programs included in the  
9 withdrawal.

10 “(F) RETURN TO MATURE CONTRACT STA-  
11 TUS.—If an Indian tribe elects to operate all or  
12 some programs carried out under a compact or  
13 funding agreement under this title through a  
14 self-determination contract under title I, at the  
15 option of the Indian tribe, the resulting self-de-  
16 termination contract shall be a mature self-de-  
17 termination contract as defined in section 4(h)  
18 of this Act.

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

21 “(1) successfully complete the planning phase  
22 described in subsection (c);

23 “(2) request participation in self-governance by  
24 resolution or other official action by the tribal gov-  
25 erning body; and

1           “(3) demonstrate, for the 3 fiscal years pre-  
2           ceding the date on which the Indian tribe requests  
3           participation, financial stability and financial man-  
4           agement capability as evidenced by the Indian tribe  
5           having no uncorrected significant and material audit  
6           exceptions in the required annual audit of its self-  
7           determination or self-governance agreements with  
8           any Federal agency.

9           “(c) PLANNING PHASE.—

10           “(1) IN GENERAL.—An Indian tribe seeking to  
11           begin participation in Self-Governance shall complete  
12           a planning phase in accordance with this subsection.

13           “(2) ACTIVITIES.—The planning phase—

14                   “(A) shall be conducted to the satisfaction  
15                   of the Indian tribe; and

16                   “(B) shall include—

17                           “(i) legal and budgetary research; and

18                           “(ii) internal tribal government plan-  
19                   ning and organizational preparation.

20           “(d) GRANTS.—

21           “(1) IN GENERAL.—Subject to the availability  
22           of appropriations, an Indian tribe or tribal organiza-  
23           tion that meets the requirements of paragraphs (2)  
24           and (3) of subsection (b) shall be eligible for  
25           grants—

1           “(A) to plan for participation in self-gov-  
2 ernance; and

3           “(B) to negotiate the terms of participa-  
4 tion by the Indian tribe or tribal organization  
5 in self-governance, as set forth in a compact  
6 and a funding agreement.

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

10 **“SEC. 404. COMPACTS.**

11       “(a) IN GENERAL.—The Secretary shall negotiate  
12 and enter into a written compact with each Indian tribe  
13 participating in self-governance in a manner consistent  
14 with the trust responsibility of the Federal Government,  
15 treaty obligations, and the government-to-government re-  
16 lationship between Indian tribes and the United States.

17       “(b) CONTENTS.—A compact under subsection (a)  
18 shall—

19           “(1) specify and affirm the general terms of the  
20 government-to-government relationship between the  
21 Indian tribe and the Secretary, and

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

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

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

3               “(1) the date of the execution of the compact  
4 by the parties; or

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

6       “(e) DURATION.—A compact under subsection (a)  
7 shall remain in effect for so long as permitted by Federal  
8 law or until termination by written agreement, retroces-  
9 sion, or reassumption.

10       “(f) EXISTING COMPACTS.—An Indian tribe partici-  
11 pating in self-governance under this title, as in effect on  
12 the date of the enactment of the Department of the Inte-  
13 rior Tribal Self-Governance Act of 2007, shall have the  
14 option at any time after that date—

15               “(1) to retain its negotiated compact (in whole  
16 or in part) to the extent that the provisions of the  
17 compact are not directly contrary to any express  
18 provision of this title; or

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

21 **“SEC. 405. FUNDING AGREEMENTS.**

22       “(a) IN GENERAL.—The Secretary shall negotiate  
23 and enter into a written funding agreement with the gov-  
24 erning body of an Indian tribe or tribal organization in  
25 a manner consistent with the trust responsibility of the

1 Federal Government, treaty obligations, and the govern-  
2 ment-to-government relationship between Indian tribes  
3 and the United States.

4 “(b) INCLUDED PROGRAMS.—

5 “(1) BUREAU OF INDIAN AFFAIRS AND OFFICE  
6 OF SPECIAL TRUSTEE.—

7 “(A) IN GENERAL.—A funding agreement  
8 shall, as determined by the Indian tribe, au-  
9 thorize the Indian tribe to plan, conduct, con-  
10 solidate, administer, and receive full tribal  
11 share funding for all programs carried out by  
12 the Bureau of Indian Affairs and Office of Spe-  
13 cial Trustee, without regard to the agency or  
14 office within which the program is performed  
15 (including funding for agency, area, and central  
16 office functions in accordance with subsection  
17 409(c)), that—

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

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

24 “(iii) the Secretary administers for  
25 the benefit of Indians with appropriations

1           made to agencies other than the Depart-  
2           ment of the Interior; or

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

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

9           “(2) OTHER AGENCIES.—

10          “(A) IN GENERAL.—A funding agreement  
11          under subsection (a) shall, as determined by the  
12          Indian tribe, authorize the Indian tribe to plan,  
13          conduct, consolidate, administer, and receive  
14          full tribal share funding for all programs car-  
15          ried out by the Secretary outside of the Bureau  
16          of Indian Affairs, without regard to the agency  
17          or office within which the program is per-  
18          formed, including funding for agency, area, and  
19          central office functions in accordance with sub-  
20          section 409(c). The programs within the scope  
21          of this subparagraph are those provided for the  
22          benefit of Indians because of their status as In-  
23          dians, or those programs with respect to which  
24          Indian tribes or Indians are primary or signifi-  
25          cant beneficiaries.

1           “(B) FEDERALLY RESERVED RIGHTS.—  
2           Programs described in subparagraph (A) shall  
3           include, at the option of the tribe, all programs  
4           (or portions thereof) that restore, maintain or  
5           preserve a resource (for example fisheries, wild-  
6           life, water, or minerals) in which an Indian  
7           tribe has a federally reserved right, as quan-  
8           tified by a Federal court. The Secretary shall  
9           make available a proportional share of the fund-  
10          ing of such a program (or portion thereof) that  
11          the Secretary would otherwise provide to re-  
12          store, maintain or preserve such a resource in  
13          an amount equal to the proportional share of  
14          the resource that is associated with the tribe’s  
15          federally reserved right.

16          “(3) DISCRETIONARY PROGRAMS.—A funding  
17          agreement under subsection (a) may, in accordance  
18          with such additional terms as the parties consider to  
19          be appropriate, include programs administered by  
20          the Secretary, in addition to programs described in  
21          paragraphs (1) and (2), that are of special geo-  
22          graphic, historical, or cultural significance to the In-  
23          dian tribe.

24          “(4) COMPETITIVE BIDDING.—Nothing in this  
25          section—

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

3           “(B) prohibits the inclusion in a funding  
4           agreement of a program in which non-Indians  
5           have an incidental or legally identifiable inter-  
6           est.

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

11           “(A) is provided under the Tribally Con-  
12           trolled Community College Assistance Act of  
13           1978 (25 U.S.C. 1801 et seq.); and

14           “(B) is provided for elementary and sec-  
15           ondary schools under the formula developed  
16           under section 1128 of the Educational Amend-  
17           ments of 1978 (25 U.S.C. 2008).

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

20           “(A) the services to be provided under the  
21           funding agreement;

22           “(B) the functions to be performed under  
23           the funding agreement; and

24           “(C) the responsibilities of the Indian tribe  
25           and the Secretary under the funding agreement.



1           “(7) BASE BUDGET.—A funding agreement  
2       shall, at the option of the Indian tribe, provide for  
3       a stable base budget specifying the recurring funds  
4       (including funds available under section 106(a)) to  
5       be transferred to the Indian tribe, for such period as  
6       the Indian tribe specifies in the funding agreement,  
7       subject to annual adjustment only to reflect changes  
8       in congressional appropriations.

9           “(8) NO WAIVER OF TRUST RESPONSIBILITY.—  
10      A funding agreement shall prohibit the Secretary  
11      from waiving, modifying, or diminishing in any way  
12      the trust responsibility of the United States with re-  
13      spect to Indian tribes and individual Indians that ex-  
14      ists under treaties, Executive orders, court decisions,  
15      and other laws.

16      “(c) AMENDMENT.—The Secretary shall not revise,  
17      amend, or require additional terms in a new or subsequent  
18      funding agreement without the consent of the Indian tribe.

19      “(d) EFFECTIVE DATE.—A funding agreement shall  
20      become effective on the date specified in the funding  
21      agreement.

22      “(e) EXISTING AND SUBSEQUENT FUNDING AGREE-  
23      MENTS.—

24           “(1) SUBSEQUENT FUNDING AGREEMENTS.—  
25      Absent notification from an Indian tribe that it is

1 withdrawing or retroceding the operation of one or  
2 more programs identified in a funding agreement, or  
3 unless otherwise agreed to by the parties to the  
4 funding agreement—

5 “(A) a funding agreement shall remain in  
6 effect until a subsequent funding agreement is  
7 executed; and

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

13 “(2) EXISTING FUNDING AGREEMENTS.—An  
14 Indian tribe that was participating in self-govern-  
15 ance under this title on the date of enactment of the  
16 Department of the Interior Tribal Self-Governance  
17 Act of 2007 shall have the option at any time after  
18 that date—

19 “(A) to retain its existing funding agree-  
20 ment (in whole or in part) to the extent that  
21 the provisions of that funding agreement are  
22 not directly contrary to any express provision of  
23 this title; or

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

1           “(3) MULTI-YEAR FUNDING AGREEMENTS.—An  
2       Indian tribe may, at the discretion of the Indian  
3       tribe, negotiate with the Secretary for a funding  
4       agreement with a term that exceeds one year.

5       **“SEC. 406. GENERAL PROVISIONS.**

6           “(a) APPLICABILITY.—An Indian tribe may include  
7       in any compact or funding agreement provisions that re-  
8       flect the requirements of this title.

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

14          “(c) AUDITS.—

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

18               “(2) COST PRINCIPLES.—An Indian tribe shall  
19      apply cost principles under the applicable Office of  
20      Management and Budget circular, except as modi-  
21      fied by—

22                       “(A) any provision of law, including section  
23                       106 of this Act; or

24                       “(B) any exemptions to applicable Office  
25                       of Management and Budget circulars subse-

1           quently granted by the Office of Management  
2           and Budget.

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

8           “(d) REDESIGN AND CONSOLIDATION.—An Indian  
9           tribe may redesign or consolidate programs or reallocate  
10          funds for programs in any manner that the Indian tribe  
11          deems to be in the best interest of the Indian community  
12          being served, so long as the redesign or consolidation does  
13          not have the effect of denying eligibility for services to  
14          population groups otherwise eligible to be served under ap-  
15          plicable Federal law.

16          “(e) RETROCESSION.—

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

20                 “(2) EFFECTIVE DATE.—

21                         “(A) AGREEMENT.—Unless the Indian  
22                         tribe rescinds the request for retrocession, such  
23                         retrocession shall become effective on the date  
24                         specified by the parties in the compact or fund-  
25                         ing agreement.

1                   “(B) NO AGREEMENT.—In the absence of  
2                   a specification of an effective date in the com-  
3                   pact or funding agreement, the retrocession  
4                   shall become effective on—

5                   “(i) the earlier of—

6                                 “(I) one year after the date of  
7                                 submission of such request; or

8                                 “(II) the date on which the fund-  
9                                 ing agreement expires; or

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

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

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

21                   “(2) shall be responsible for the administration  
22                   of programs in accordance with the compact or  
23                   funding agreement.

24           “(g) RECORDS.—

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

6           “(2) RECORDKEEPING SYSTEM.—An Indian  
7           tribe shall—

8                   “(A) maintain a recordkeeping system; and

9                   “(B) on 30 days’ notice, provide the Sec-  
10           retary with reasonable access to the records to  
11           enable the Department to meet the require-  
12           ments of sections 3101 through 3106 of title  
13           44, United States Code.

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

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

19           “(b) REASSUMPTION.—

20                   “(1) IN GENERAL.—A compact or funding  
21           agreement shall include provisions for the Secretary  
22           to reassume a program and associated funding if  
23           there is a specific finding relating to that program  
24           of—

1           “(A) imminent jeopardy to a physical trust  
2           asset, natural resources, or public health and  
3           safety that—

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

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

8           “(B) gross mismanagement with respect to  
9           funds transferred to an Indian tribe under a  
10          compact or funding agreement, as determined  
11          by the Secretary in consultation with the In-  
12          specter General, as appropriate.

13          “(2) PROHIBITION.—The Secretary shall not  
14          reassume operation of a program in whole or part  
15          unless—

16                   “(A) the Secretary first provides written  
17           notice and a hearing on the record to the In-  
18           dian tribe; and

19                   “(B) the Indian tribe does not take correc-  
20           tive action to remedy gross mismanagement of  
21           the funds or the imminent jeopardy to a phys-  
22           ical trust asset, natural resource, or public  
23           health and safety.

24          “(3) EXCEPTION.—

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

5           “(i) the Secretary makes a finding of  
6 both imminent and substantial jeopardy  
7 and irreparable harm to a physical trust  
8 asset, a natural resource, or the public  
9 health and safety caused by an act or  
10 omission of the Indian tribe; and

11          “(ii) the imminent and substantial  
12 jeopardy, and irreparable harm to the  
13 physical trust asset, natural resource, or  
14 public health and safety arises out of a  
15 failure by the Indian tribe to carry out its  
16 compact or funding agreement.

17          “(B) REASSUMPTION.—If the Secretary re-  
18 assumes operation of a program under subpara-  
19 graph (A), the Secretary shall provide the In-  
20 dian tribe with a hearing on the record not  
21 later than 10 days after the date of reassump-  
22 tion.

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



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

6           “(2) DETERMINATION.—Not more than 45  
7       days after the date of submission of a final offer, or  
8       as otherwise agreed to by the Indian tribe, the Sec-  
9       retary shall review and make a determination with  
10      respect to the final offer.

11          “(3) NO TIMELY DETERMINATION.—If the Sec-  
12      retary fails to make a determination with respect to  
13      a final offer within the time specified in paragraph  
14      (2), the Secretary shall be deemed to have agreed to  
15      the offer.

16          “(4) REJECTION OF FINAL OFFER.—

17              “(A) IN GENERAL.—If the Secretary re-  
18      jects a final offer (or one or more provisions or  
19      funding levels in a final offer), the Secretary  
20      shall—

21                  “(i) provide timely written notification  
22                  to the Indian tribe that contains a specific  
23                  finding that clearly demonstrates, or that  
24                  is supported by a controlling legal author-  
25                  ity, that—

1           “(I) the amount of funds pro-  
2           posed in the final offer exceeds the  
3           applicable funding level to which the  
4           Indian tribe is entitled under this  
5           title;

6           “(II) the program that is the  
7           subject of the final offer is an inher-  
8           ent Federal function;

9           “(III) the Indian tribe cannot  
10          carry out the program in a manner  
11          that would not result in significant  
12          danger or risk to the public health; or

13          “(IV) the Indian tribe is not eli-  
14          gible to participate in self-governance  
15          under section 403(b);

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

19          “(iii) provide the Indian tribe with a  
20          hearing on the record with the right to en-  
21          gage in full discovery relevant to any issue  
22          raised in the matter and the opportunity  
23          for appeal on the objections raised (except  
24          that the Indian tribe may, in lieu of filing  
25          such appeal, directly proceed to initiate an

1 action in a Federal district court under  
2 section 110(a)); and

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

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

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

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

22 “(d) BURDEN OF PROOF.—In any administrative  
23 hearing or appeal or civil action brought under this sec-  
24 tion, the Secretary shall have the burden of demonstrating  
25 by clear and convincing evidence the validity of the

1 grounds for rejecting a final offer made under subsection  
2 (c) or the grounds for a reassumption under subsection  
3 (b).

4 “(e) GOOD FAITH.—

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

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

12 “(f) SAVINGS.—To the extent that programs carried  
13 out by Indian tribes and tribal organizations under this  
14 title reduce the administrative or other responsibilities of  
15 the Secretary with respect to the operation of Indian pro-  
16 grams and result in savings that have not otherwise been  
17 included in the amount of tribal shares and other funds  
18 determined under section 409(c), the Secretary shall make  
19 such savings available to the Indian tribes or tribal organi-  
20 zations for the provision of additional services to program  
21 beneficiaries in a manner equitable to directly served, con-  
22 tracted, and compacted programs.

23 “(g) TRUST RESPONSIBILITY.—The Secretary may  
24 not waive, modify, or diminish in any way the trust re-  
25 sponsibility of the United States with respect to Indian

1 tribes and individual Indians that exists under treaties,  
2 Executive orders, other laws, or court decisions.

3 “(h) DECISIONMAKER.—A decision that constitutes  
4 final agency action and relates to an appeal within the  
5 Department conducted under subsection (c)(4) may be  
6 made—

7 “(1) by an official of the Department who holds  
8 a position at a higher organizational level within the  
9 Department than the level of the departmental agen-  
10 cy in which the decision that is the subject of the  
11 appeal was made; or

12 “(2) by an administrative law judge.

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

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

19 “(a) IN GENERAL.—Nothing in this title shall be con-  
20 strued to alter the applicability of the National Environ-  
21 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the  
22 National Historic Preservation Act (16 U.S.C. 470 et  
23 seq.), and related provisions of law to any construction  
24 project undertaken pursuant to this title.

25 “(b) NEGOTIATIONS.—

1           “(1) CONSTRUCTION PROJECTS.—A provision  
2       shall be included in the funding agreement that, for  
3       each construction project—

4           “(A) states the approximate start and  
5       completion dates, which may extend for one or  
6       more years;

7           “(B) provides a general description of the  
8       construction project;

9           “(C) states the responsibilities of the In-  
10      dian tribe and the Secretary with respect to the  
11      construction project;

12          “(D) describes—

13           “(i) the ways in which project-related  
14      environmental considerations shall be ad-  
15      dressed; and

16           “(ii) the standards by which the In-  
17      dian tribe shall accomplish the project;

18          “(E) states the amount of funds provided  
19      for the project; and

20          “(F) states that each project must comply  
21      with applicable Federal laws, program statutes  
22      and regulations.

23      “(c) CODES AND STANDARDS; TRIBAL ASSUR-  
24      ANCES.—

1           “(1) IN GENERAL.—The funding agreement  
2       shall specify how the Indian tribe shall ensure that  
3       proper health and safety standards are followed in  
4       carrying out all construction-related activities, in-  
5       cluding—

6           “(A) the use of architects and engineers li-  
7       censed and qualified to perform the type of con-  
8       struction involved in the funding agreement;

9           “(B) applicable Federal, State, local, or  
10      tribal codes and applicable engineering stand-  
11      ards, appropriate for the particular project; and

12          “(C) necessary inspections and testing by  
13      the Indian tribe.

14          “(2) CERTIFICATION.—The assurances set  
15      forth in paragraph (1) may be satisfied if the fund-  
16      ing agreement contains a certification by the Indian  
17      tribe that the Indian tribe will establish and enforce  
18      procedures designed to ensure that all construction-  
19      related programs undertaken through the funding  
20      agreement adhere to building and other codes and  
21      architectural and engineering standards (including  
22      public health and safety standards, licensing require-  
23      ments, and procedures identified in paragraph (1)).

24          “(d) RESPONSIBILITY FOR COMPLETION.—The In-  
25      dian tribe shall assume responsibility for the successful

1 completion of the construction project in accordance with  
2 the funding agreement.

3 “(e) FUNDING.—

4 “(1) IN GENERAL.—Funding for construction  
5 projects carried out under this title shall be included  
6 in funding agreements as annual advance payments,  
7 with semiannual payments at the option of the In-  
8 dian tribe. Annual advance and semiannual payment  
9 amounts shall be determined based on mutually  
10 agreeable project schedules reflecting work to be ac-  
11 complished within the advance payment period, work  
12 accomplished and funds expended in previous pay-  
13 ment periods, and the total prior payments, subject  
14 to the availability of appropriations for that purpose.

15 “(2) CONTINGENCY FUNDS.—The Secretary  
16 shall include associated project contingency and re-  
17 tention funds in an advance payment described in  
18 paragraph (1), and the Indian tribe shall be respon-  
19 sible for the management of the contingency funds  
20 included in the funding agreement.

21 “(3) REALLOCATION OF SAVINGS.—

22 “(A) IN GENERAL.—An Indian tribe may  
23 reallocate any financial savings realized by the  
24 Indian tribe arising from efficiencies in the de-



1 sign, construction, or any other aspect of a con-  
2 struction program or construction project.

3 “(B) PURPOSES.—A reallocation under  
4 subparagraph (A) shall be for construction-re-  
5 lated activity purposes for which the funds were  
6 appropriated and distributed to the Indian tribe  
7 under the funding agreement.

8 “(f) APPROVAL.—

9 “(1) IN GENERAL.—The Secretary shall have at  
10 least one opportunity to approve project planning  
11 and design documents prepared by the Indian tribe  
12 in advance of construction of the facilities specified  
13 in the scope of work for each negotiated construction  
14 project agreement or any amendment thereof which  
15 results in a significant change in the original scope  
16 of work.

17 “(2) CONSISTENT WITH CERTIFICATION.—If  
18 the planning and design documents for a construc-  
19 tion project have been prepared by an Indian tribe  
20 in a manner consistent with the certification by a li-  
21 censed and qualified architect or engineer given by  
22 the Indian tribe as required under subsection (c),  
23 approval by the Secretary of a funding agreement  
24 providing for the assumption of the construction  
25 project shall be deemed to be an approval by the

1 Secretary of the construction project planning and  
2 design documents.

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

6 “(4) INSPECTION.—The Secretary may conduct  
7 onsite project inspections at a construction project  
8 semiannually or on an alternate schedule agreed to  
9 by the Secretary and the Indian tribe.

10 “(g) WAGES.—

11 “(1) IN GENERAL.—All laborers and mechanics  
12 employed by a contractor or subcontractor in the  
13 construction, alteration, or repair (including painting  
14 or decorating) of a building or other facility in con-  
15 nection with construction projects funded under this  
16 title shall be paid wages at not less than those pre-  
17 vailing wages on similar construction in the locality  
18 as determined by the Secretary of Labor in accord-  
19 ance with subchapter IV of chapter 31 of title 40,  
20 United States Code.

21 “(2) AUTHORITY.—With respect to construction  
22 alteration, or repair work to which that subchapter  
23 is applicable under this section, the Secretary of  
24 Labor shall have the authority and functions speci-

1       fied in the Reorganization Plan numbered 14, of  
2       1950, and section 3145 of title 40.

3       “(h) APPLICABILITY OF OTHER LAW.—Unless other-  
4       wise agreed to by the Indian tribe, no provision of the Of-  
5       fice of Federal Procurement Policy Act (41 U.S.C. 401  
6       et seq.), the Federal Acquisition Regulation, or any other  
7       law or regulation pertaining to Federal procurement (in-  
8       cluding Executive orders) shall apply to any construction  
9       program or project conducted under this title.

10    **“SEC. 409. PAYMENT.**

11       “(a) IN GENERAL.—At the request of the governing  
12       body of the Indian tribe and under the terms of an agree-  
13       ment, the Secretary shall provide funding to the Indian  
14       tribe to carry out the funding agreement.

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

18       “(c) AMOUNT.—Subject to subsection (e) and sec-  
19       tions 405 and 406 of this title, the Secretary shall provide  
20       funds to the Indian tribe under a funding agreement for  
21       programs in an amount that is equal to the amount that  
22       the Indian tribe would have been entitled to receive under  
23       contracts and grants under this Act (including amounts  
24       for direct program and contract support costs and, in ad-  
25       dition, any funds that are specifically or functionally re-

1 lated to the provision by the Secretary of services and ben-  
 2 efits to the Indian tribe or its members) without regard  
 3 to the organization level within the Department in which  
 4 the programs are carried out.

5 “(d) TIMING.—Unless the funding agreement pro-  
 6 vides otherwise, the transfer of funds shall be made not  
 7 later than 10 days after the apportionment of funds by  
 8 the Office of Management and Budget to the Department.

9 “(e) AVAILABILITY.—Funds for trust services to indi-  
 10 vidual Indians shall be available under a funding agree-  
 11 ment only to the extent that the same services that would  
 12 have been provided by the Secretary are provided to indi-  
 13 vidual Indians by the Indian tribe.

14 “(f) MULTIYEAR FUNDING.—A funding agreement  
 15 may provide for multiyear funding.

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

18 “(1) fail to transfer to an Indian tribe its full  
 19 share of any central, headquarters, regional, area, or  
 20 service unit office or other funds due under this  
 21 title, except as required by Federal law;

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

24 “(3) reduce the amount of funds required under  
 25 this title—

1 “(A) to make funding available for self-  
2 governance monitoring or administration by the  
3 Secretary;

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

6 “(i) a reduction in appropriations  
7 from the previous fiscal year for the pro-  
8 gram to be included in a compact or fund-  
9 ing agreement;

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

12 “(iii) a tribal authorization;

13 “(iv) a change in the amount of pass-  
14 through funds subject to the terms of the  
15 funding agreement; or

16 “(v) completion of an activity under a  
17 program for which the funds were pro-  
18 vided;

19 “(C) to pay for Federal functions, includ-  
20 ing—

21 “(i) Federal pay costs;

22 “(ii) Federal employee retirement ben-  
23 efits;

24 “(iii) automated data processing;

25 “(iv) technical assistance; and

1                   “(v) monitoring of activities under  
2                   this title; or

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

6           “(h) FEDERAL RESOURCES.—If an Indian tribe  
7   elects to carry out a compact or funding agreement with  
8   the use of Federal personnel, Federal supplies (including  
9   supplies available from Federal warehouse facilities), Fed-  
10   eral supply sources (including lodging, airline transpor-  
11   tation, and other means of transportation including the  
12   use of interagency motor pool vehicles) or other Federal  
13   resources (including supplies, services, and resources  
14   available to the Secretary under any procurement con-  
15   tracts in which the Department is eligible to participate),  
16   the Secretary shall acquire and transfer such personnel,  
17   supplies, or resources to the Indian tribe.

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

22           “(j) INTEREST OR OTHER INCOME.—

23           “(1) IN GENERAL.—An Indian tribe may retain  
24           interest or income earned on any funds paid under

1 a compact or funding agreement to carry out gov-  
2 ernmental purposes

3 “(2) NO EFFECT ON OTHER AMOUNTS.—The  
4 retention of interest or income under paragraph (1)  
5 shall not diminish the amount of funds an Indian  
6 tribe is entitled to receive under a funding agree-  
7 ment in the year the interest or income is earned or  
8 in any subsequent fiscal year.

9 “(3) INVESTMENT STANDARD.—Funds trans-  
10 ferred under this title shall be managed using the  
11 prudent investment standard.

12 “(k) CARRYOVER OF FUNDS.—

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

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

23 “(l) LIMITATION OF COSTS.—

24 “(1) IN GENERAL.—An Indian tribe shall not  
25 be obligated to continue performance that requires

1 an expenditure of funds in excess of the amount of  
2 funds transferred under a compact or funding agree-  
3 ment.

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

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

16 “(m) DISTRIBUTION OF FUNDS.—The Office of Self-  
17 Governance shall be responsible for distribution of all Bu-  
18 reau of Indian Affairs funds provided under this title un-  
19 less otherwise agreed by the parties.

20 **“SEC. 410. FACILITATION.**

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

24 “(1) the inclusion of programs in funding  
25 agreements; and



1 “(2) the implementation of funding agreements.

2 “(b) REGULATION WAIVER.—

3 “(1) REQUEST.—An Indian tribe may submit a  
4 written request for a waiver to the Secretary identi-  
5 fying the specific text in regulation sought to be  
6 waived and the basis for the request.

7 “(2) DETERMINATION BY THE SECRETARY.—  
8 Not later than 120 days after receipt by the Sec-  
9 retary of a request under paragraph (1), the Sec-  
10 retary shall approve or deny the requested waiver in  
11 writing to the Indian tribe.

12 “(3) GROUND FOR DENIAL.—The Secretary  
13 may deny a request under paragraph (1) only upon  
14 a specific finding by the Secretary that the identified  
15 text in the regulation may not be waived because  
16 such a waiver is prohibited by Federal law.

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

22 “(5) FINALITY.—The Secretary’s decision shall  
23 be final for the Department.

1 **“SEC. 411. DISCLAIMERS.**

2 “Nothing in this title expands or alters any statutory  
3 authority of the Secretary so as to authorize the Secretary  
4 to enter into any agreement under sections 405(b)(2) or  
5 405(b)(3)—

6 “(1) with respect to an inherent Federal func-  
7 tion;

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

13 “(3) limits or reduces in any way the services,  
14 contracts, or funds that any other Indian tribe or  
15 tribal organization is eligible to receive under section  
16 102 or any other applicable Federal law.

17 **“SEC. 412. APPLICATION OF OTHER SECTIONS OF THE ACT.**

18 “(a) MANDATORY APPLICATION.—Sections 5(d), 6,  
19 7, 102(c), 104, 105(f), 105(m)(1)(B), 110, and 111 apply  
20 to compacts and funding agreements under this title.

21 “(b) DISCRETIONARY APPLICATION.—

22 “(1) IN GENERAL.—At the option of a partici-  
23 pating Indian tribe or Indian tribes, any or all of the  
24 provisions of title I shall be incorporated in any De-  
25 partment compact or funding agreement.

26 “(2) EFFECT.—Each incorporated provision—

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

3           “(B) shall be deemed to supplement or re-  
4           place any related provision in this title and to  
5           apply to any agency otherwise governed by this  
6           title.

7           “(3) EFFECTIVE DATE.—If an Indian tribe re-  
8           quests incorporation at the negotiation stage of a  
9           compact or funding agreement, the incorporation—

10           “(A) shall be deemed effective immediately;  
11           and

12           “(B) shall control the negotiation and re-  
13           sulting compact and funding agreement.

14   **“SEC. 413. BUDGET REQUEST.**

15           “(a) REQUIREMENT OF ANNUAL BUDGET RE-  
16   QUEST.—

17           “(1) IN GENERAL.—The President shall iden-  
18           tify in the annual budget request submitted to Con-  
19           gress under section 1105 of title 31, United States  
20           Code, all funds necessary to fully fund all funding  
21           agreements authorized under this title.

22           “(2) DUTY OF SECRETARY.—The Secretary  
23           shall ensure that there are included, in each budget  
24           request, requests for funds in amounts that are suf-  
25           ficient for planning and negotiation grants and suffi-

1       cient to cover any shortfall in funding identified  
2       under subsection (b).

3           “(3) RULE OF CONSTRUCTION.—Nothing in  
4       this subsection authorizes the Secretary to reduce  
5       the amount of funds that an Indian tribe is other-  
6       wise entitled to receive under a funding agreement  
7       or other applicable law.

8           “(b) PRESENT FUNDING; SHORTFALLS.—In all  
9       budget requests, the President shall identify the level of  
10      need presently funded and any shortfall in funding (in-  
11      cluding direct program costs, tribal shares, and contract  
12      support costs) for each Indian tribe, either directly by the  
13      Secretary, under self-determination contracts, or under  
14      compacts and funding agreements.

15   **“SEC. 414. REPORTS.**

16           “(a) IN GENERAL.—

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

20           “(2) ANALYSIS.—A report under paragraph (1)  
21      shall include a detailed analysis of tribal unmet need  
22      for each Indian tribe, either directly by the Sec-  
23      retary, under self-determination contracts under title  
24      I, or under compacts and funding agreements au-  
25      thorized under this title.

1           “(3) NO ADDITIONAL REPORTING REQUIRE-  
2           MENTS.—In preparing reports under paragraph (1),  
3           the Secretary may not impose any reporting require-  
4           ments on participating Indian tribes not otherwise  
5           provided by this title.

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

8           “(1) be compiled from information contained in  
9           funding agreements, annual audit reports, and data  
10          of the Secretary regarding the disposition of Federal  
11          funds;

12          “(2) identify—

13               “(A) the relative costs and benefits of self-  
14               governance;

15               “(B) with particularity, all funds that are  
16               specifically or functionally related to the provi-  
17               sion by the Secretary of services and benefits to  
18               self-governance Indian tribes and members of  
19               Indian tribes;

20               “(C) the funds transferred to each Indian  
21               tribe and the corresponding reduction in the  
22               Federal employees and workload;

23               “(D) the funding formula for individual  
24               tribal shares of all Central Office funds, to-

1           gether with the comments of affected Indian  
2           tribes, developed under subsection (d); and

3           “(E) amounts expended in the preceding  
4           fiscal year to carry out inherent Federal func-  
5           tions, including an identification of inherent  
6           Federal functions by type and location;

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

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

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

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

18          “(1) IN GENERAL.—In order to optimize oppor-  
19          tunities for including non-Bureau of Indian Affairs  
20          programs in agreements with Indian tribes partici-  
21          pating in self-governance under this title, the Sec-  
22          retary shall—

23                  “(A) review all programs administered by  
24                  the Department, other than through the Bu-

reau of Indian Affairs, without regard to the agency or office concerned; and

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

“(i) a list of all such programs that the Secretary determines, with the concurrence of Indian tribes participating in self-governance under this title, are eligible to be included in a funding agreement at the request of a participating Indian tribe; and

“(ii) a list of all such programs for which Indian tribes have requested to include in a funding agreement under section 405(b)(3) due to the special geographic, historical, or cultural significance of the program to the Indian tribe, indicating whether each request was granted or denied, and stating the grounds for any denial.

“(2) PROGRAMMATIC TARGETS.—The Secretary shall establish programmatic targets, after consultation with Indian tribes participating in self-governance, to encourage bureaus of the Department to ensure that a significant portion of those programs are included in funding agreements.

1           “(3) PUBLICATION.—The lists and targets  
2           under paragraphs (1) and (2) shall be published in  
3           the Federal Register and made available to any In-  
4           dian tribe participating in self-governance.

5           “(4) ANNUAL REVIEW.—

6                   “(A) IN GENERAL.—The Secretary shall  
7                   annually review and publish in the Federal Reg-  
8                   ister, after consultation with Indian tribes par-  
9                   ticipating in self-governance, revised lists and  
10                  programmatic targets.

11                  “(B) CONTENTS.—The revised lists and  
12                  programmatic targets shall include all programs  
13                  that were eligible for contracting in the original  
14                  list published in the Federal Register in 1995,  
15                  except for programs specifically determined not  
16                  to be contractible as a matter of law.

17           “(d) REPORT ON CENTRAL OFFICE FUNDS.—Not  
18           later than January 1, 2010, the Secretary shall, in con-  
19           sultation with Indian tribes, develop a funding formula to  
20           determine the individual tribal share of funds controlled  
21           by the Central Office of the Bureau of Indian Affairs for  
22           inclusion in the compacts.

23   **“SEC. 415. REGULATIONS.**

24           “(a) IN GENERAL.—



1           “(1) PROMULGATION.—Not later than 90 days  
2           after the date of the enactment of the Department  
3           of the Interior Tribal Self-Governance Act of 2007,  
4           the Secretary shall initiate procedures under sub-  
5           chapter III of chapter 5, of title 5, United States  
6           Code, to negotiate and promulgate such regulations  
7           as are necessary to carry out the amendments made  
8           by this title.

9           “(2) PUBLICATION OF PROPOSED REGULA-  
10          TIONS.—Proposed regulations to implement the  
11          amendments shall be published in the Federal Reg-  
12          ister not later than 1 year after the date of the en-  
13          actment of this title.

14          “(3) EXPIRATION OF AUTHORITY.—The author-  
15          ity to promulgate regulations under paragraph (1)  
16          shall expire on the date that is 18 months after the  
17          date of the enactment of this title.

18          “(b) COMMITTEE.—

19                 “(1) MEMBERSHIP.—A negotiated rulemaking  
20                 committee established pursuant to section 565 of  
21                 title 5, United States Code, to carry out this section  
22                 shall have as its members only Federal and tribal  
23                 government representatives.

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

4           “(c) ADAPTATION OF PROCEDURES.—The Secretary  
 5           shall adapt the negotiated rulemaking procedures to the  
 6           unique context of self-governance and the government-to-  
 7           government relationship between the United States and  
 8           Indian tribes.

9           “(d) EFFECT.—

10           “(1) REPEAL.—All regulatory provisions under  
 11           part 1000 of title 25, Code of Federal Regulations,  
 12           inconsistent with this title are repealed on the date  
 13           of the enactment of the Department of the Interior  
 14           Tribal Self-Governance Act of 2007.

15           “(2) EFFECTIVENESS WITHOUT REGARD TO  
 16           REGULATIONS.—The lack of promulgated regula-  
 17           tions shall not limit the effect of this title.

18           **“SEC. 416. EFFECT OF CIRCULARS, POLICIES, MANUALS,**  
 19           **GUIDANCES, AND RULES.**

20           “Unless expressly agreed to by a participating Indian  
 21           tribe in the compact or funding agreement, the partici-  
 22           pating Indian tribe shall not be subject to any agency cir-  
 23           cular, policy, manual, guidance, or rule adopted by the De-  
 24           partment, except for—

1           “(1) the eligibility provisions of section 105(g);  
2           and

3           “(2) regulations promulgated under section  
4           415.

5   **“SEC. 417. APPEALS.**

6           “In any administrative appeal or civil action for judi-  
7   cial review of any decision made by the Secretary under  
8   this title, the Secretary shall have the burden of proof of  
9   demonstrating by clear and convincing evidence—

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

12           “(2) the consistency of the decision with the  
13           provisions and policies of this title.

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

15           “There are authorized to be appropriated such sums  
16   as may be necessary to carry out this title.”.

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