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2D SESSION

H. R. 4347

IN THE SENATE OF THE UNITED STATES

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Read twice and referred to the Committee on Indian Affairs

AN ACT

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Department of the Interior Tribal Self-Governance Act
4 of 2010”.

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

Sec. 1. Short title; table of contents.

TITLE I—INDIAN SELF-DETERMINATION

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

Sec. 102. Contracts by Secretary of Interior.

Sec. 103. Administrative provisions.

Sec. 104. Contract funding and indirect costs.

Sec. 105. Contract or grant specifications.

TITLE II—TRIBAL SELF-GOVERNANCE

Sec. 201. Tribal self-governance.

7 **TITLE I—INDIAN SELF-**
8 **DETERMINATION**

9 **SEC. 101. DEFINITIONS; REPORTING AND AUDIT REQUIRE-**
10 **MENTS; APPLICATION OF PROVISIONS.**

11 (a) DEFINITIONS.—Section 4 of the Indian Self-De-
12 termination and Education Assistance Act (25 U.S.C.
13 450b) is amended by striking subsection (j) and inserting
14 the following:

15 “(j) ‘self-determination contract’ means a contract
16 entered into under title I (or a grant or cooperative agree-
17 ment used under section 9) between a tribal organization
18 and the appropriate Secretary for the planning, conduct,
19 and administration of programs or services that are other-

1 wise provided to Indian tribes and members of Indian
2 tribes pursuant to Federal law, subject to the condition
3 that, except as provided in section 105(a)(3), no contract
4 entered into under title I (or grant or cooperative agree-
5 ment used under section 9) shall be—

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

7 or

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

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

14 (1) by striking “after completion of the project
15 or undertaking referred to in the preceding sub-
16 section of this section” and inserting “after the re-
17 tention period for the report that is submitted to the
18 Secretary under subsection (a)”; and

19 (2) by adding at the end the following: “The re-
20 tention period shall be defined in regulations pro-
21 mulgated by the Secretary pursuant to section
22 415.”.

23 (c) APPLICATION OF OTHER PROVISIONS.—Sections
24 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111
25 of the Indian Self-Determination and Education Assist-

1 ance Act, as amended (25 U.S.C. 450 et seq.) (Public Law
 2 93–638; 88 Stat. 2203) and section 314 of the Depart-
 3 ment of the Interior and Related Agencies Appropriations
 4 Act, 1991 (Public Law 101–512; 104 Stat. 1959), apply
 5 to compacts and funding agreements entered into under
 6 title IV.

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

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

10 (1) in subsection (c)(2), by striking “economic
 11 enterprises” and all that follows through “except
 12 that” and inserting “economic enterprises (as de-
 13 fined in section 3 of the Indian Financing Act of
 14 1974 (25 U.S.C. 1452)), except that”; and

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

16 “(f) GOOD FAITH REQUIREMENT.—In the negotia-
 17 tion of contracts and funding agreements, the Secretary
 18 shall—

19 “(1) at all times negotiate in good faith to
 20 maximize implementation of the self-determination
 21 policy; and

22 “(2) carry out this Act in a manner that maxi-
 23 mizes the policy of tribal self-determination, in a
 24 manner consistent with the purposes specified in sec-
 25 tion 3.

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

6 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

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

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

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

14 “(m) INTERPRETATION BY SECRETARY.—Except as
15 otherwise provided by law, the Secretary shall interpret
16 all Federal laws (including regulations) and Executive or-
17 ders in a manner that facilitates, to the maximum extent
18 practicable—

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

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

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

1 “(2) the implementation of self-determination
 2 contracts and funding agreements; and
 3 “(3) the achievement of tribal health objec-
 4 tives.”.

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

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

9 (1) in subparagraph (A)—

10 (A) in clause (i), by striking “, and” and
 11 inserting “; and”; and

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

17 (2) by redesignating subparagraph (B) as sub-
 18 paragraph (C); and

19 (3) by inserting after subparagraph (A) the fol-
 20 lowing:

21 “(B) In calculating the reimbursement rate
 22 for expenses described in subparagraph (A)(ii),
 23 not less than 50 percent of the expenses de-
 24 scribed in subparagraph (A)(ii) that are in-
 25 curred by the governing body of an Indian tribe

1 or tribal organization relating to a Federal pro-
2 gram, function, service, or activity carried out
3 pursuant to the contract shall be considered to
4 be reasonable and allowable.”.

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

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

8 (1) in subsection (a)(2), by inserting “subject
9 to subsections (a) and (b) of section 102,” before
10 “contain”; and

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

17 **TITLE II—TRIBAL SELF-**
18 **GOVERNANCE**

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

20 Title IV of the Indian Self-Determination and Edu-
21 cation Assistance Act (25 U.S.C. 458aa et seq.) is amend-
22 ed 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; CONSTRUCTION PROJECT.—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.

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

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

8 “(B) under a compact or funding agree-
9 ment that results in a significant reduction of
10 funds available for the programs assumed by an
11 Indian tribe.

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

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

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

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

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

4 “(A) support any program within the Bu-
5 reau of Indian Affairs, the Office of Special
6 Trustee, or the Office of the Assistant Sec-
7 retary for Indian Affairs; and

8 “(B) are not required by the Secretary for
9 the performance of an inherent Federal func-
10 tion.

11 **“SEC. 402. ESTABLISHMENT.**

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

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

16 “(a) IN GENERAL.—

17 “(1) PARTICIPANTS.—

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

23 “(B) JOINT PARTICIPATION.—On the re-
24 quest of each participating Indian tribe, 2 or
25 more otherwise eligible Indian tribes may be

1 treated as a single Indian tribe for the purpose
2 of participating in self-governance.

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

11 “(3) JOINT PARTICIPATION.—2 or more Indian
12 tribes that are not otherwise eligible under sub-
13 section (b) may be treated as a single Indian tribe
14 for the purpose of participating in self-governance as
15 a tribal organization if—

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

17 “(B) the tribal organization itself, or at
18 least 1 of the Indian tribes participating in the
19 tribal organization, is eligible under subsection
20 (b).

21 “(4) TRIBAL WITHDRAWAL FROM A TRIBAL OR-
22 GANIZATION.—

23 “(A) IN GENERAL.—An Indian tribe that
24 withdraws from participation in a tribal organi-
25 zation, in whole or in part, shall be entitled to

1 participate in self-governance if the Indian tribe
2 is eligible under subsection (b).

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

10 “(C) PARTICIPATION IN SELF-GOVERN-
11 ANCE.—The withdrawal of an Indian tribe from
12 a tribal organization shall not affect the eligi-
13 bility of the tribal organization to participate in
14 self-governance on behalf of 1 or more other In-
15 dian tribes, if the tribal organization still quali-
16 fies under subsection (b).

17 “(D) WITHDRAWAL PROCESS.—

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

23 “(ii) NOTIFICATION.—The Indian
24 tribe shall provide a copy of the tribal reso-

1 lution described in clause (i) to the Sec-
2 retary.

3 “(iii) EFFECTIVE DATE.—

4 “(I) IN GENERAL.—A withdrawal
5 under clause (i) shall become effective
6 on the date that is specified in the
7 tribal resolution and mutually agreed
8 upon by the Secretary, the with-
9 drawing Indian tribe, and the tribal
10 organization that signed the compact
11 and funding agreement on behalf of
12 the withdrawing Indian tribe or tribal
13 organization.

14 “(II) NO SPECIFIED DATE.—In
15 the absence of a date specified in the
16 resolution, the withdrawal shall be-
17 come effective on—

18 “(aa) the earlier of—

19 “(AA) 1 year after the
20 date of submission of the re-
21 quest; and

22 “(BB) the date on
23 which the funding agree-
24 ment expires; or

1 “(bb) such date as may be
2 mutually agreed upon by the Sec-
3 retary, the withdrawing Indian
4 tribe, and the tribal organization
5 that signed the compact and
6 funding agreement on behalf of
7 the withdrawing Indian tribe or
8 tribal organization.

9 “(E) DISTRIBUTION OF FUNDS.—If an In-
10 dian tribe or tribal organization eligible to enter
11 into a self-determination contract under title I
12 or a compact or funding agreement under this
13 title fully or partially withdraws from a partici-
14 pating tribal organization, the withdrawing In-
15 dian tribe—

16 “(i) may elect to enter into a self-de-
17 termination contract or compact, in which
18 case—

19 “(I) the withdrawing Indian tribe
20 or tribal organization shall be entitled
21 to its tribal share of unexpended
22 funds and resources supporting the
23 programs that the Indian tribe will be
24 carrying out under its own self-deter-
25 mination contract or compact and

1 funding agreement (calculated on the
2 same basis as the funds were initially
3 allocated to the funding agreement of
4 the tribal organization); and

5 “(II) the funds referred to in
6 subclause (I) shall be withdrawn by
7 the Secretary from the funding agree-
8 ment of the tribal organization and
9 transferred to the withdrawing Indian
10 tribe, on the condition that sections
11 102 and 105(i), as appropriate, shall
12 apply to the withdrawing Indian tribe;
13 or

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

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

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

13 “(1) successfully complete the planning phase
14 described in subsection (c);

15 “(2) request participation in self-governance by
16 resolution or other official action by the tribal gov-
17 erning body; and

18 “(3) demonstrate, for the 3 fiscal years pre-
19 ceding the date on which the Indian tribe requests
20 participation, financial stability and financial man-
21 agement capability as evidenced by the Indian tribe
22 having no uncorrected significant and material audit
23 exceptions in the required annual audit of its self-
24 determination or self-governance agreements with
25 any Federal agency.

1 “(c) PLANNING PHASE.—

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

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

6 “(A) be conducted to the satisfaction of
7 the Indian tribe; and

8 “(B) include—

9 “(i) legal and budgetary research; and

10 “(ii) internal tribal government plan-
11 ning, training, and organizational prepara-
12 tion.

13 “(d) GRANTS.—

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

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

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

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

4 **“SEC. 404. COMPACTS.**

5 “(a) IN GENERAL.—The Secretary shall negotiate
6 and enter into a written compact with each Indian tribe
7 participating in self-governance in a manner consistent
8 with the trust responsibility of the Federal Government,
9 treaty obligations, and the government-to-government re-
10 lationship between Indian tribes and the United States.

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

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

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

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

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

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

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

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

3 “(1) for so long as permitted by Federal law;
4 or

5 “(2) until termination by written agreement,
6 retrocession, or reassumption.

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

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

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

18 **“SEC. 405. FUNDING AGREEMENTS.**

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

1 “(b) INCLUDED PROGRAMS.—

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

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

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

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

22 “(iii) the Secretary administers for
23 the benefit of Indians with appropriations
24 made to agencies other than the Depart-
25 ment of the Interior; or

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

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

7 “(2) DISCRETIONARY PROGRAMS OF SPECIAL
8 SIGNIFICANCE.—

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

18 “(B) GOVERNING PROVISIONS.—A funding
19 agreement described in subparagraph (A), in-
20 cluding the additional terms, shall be governed
21 by this title, except that, subject to the discre-
22 tion of the Secretary—

23 “(i) in accordance with section
24 406(d), the Indian tribe may have realloca-
25 tion, consolidation, and redesign authority

1 over any program assumed under this
2 paragraph;

3 “(ii) notwithstanding section 408, the
4 Secretary may require special terms and
5 conditions regarding a construction pro-
6 gram or project assumed under this para-
7 graph;

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

19 “(iv) a stable base budget, as de-
20 scribed in paragraph (7)(B), may be pro-
21 vided for any program assumed under this
22 paragraph.

23 “(3) PROGRAMS OTHERWISE AVAILABLE.—A
24 funding agreement shall, as determined by the In-
25 dian tribe, authorize the Indian tribe to plan, con-

duct, consolidate, administer, and receive full tribal share funding for any program administered by the Department other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee, that the Secretary has determined is otherwise available to Indian tribes or Indians under section 102. Nothing in this paragraph may be construed to provide any Indian tribe with a preference with respect to the opportunity of that Indian tribe to administer programs, services, functions, or activities, or portions thereof, unless that preference is otherwise provided for by law.

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

“(A) supersedes any express statutory requirement for competitive bidding; or

“(B) prohibits the inclusion in a funding agreement of a program in which non-Indians have an incidental or legally identifiable interest.

“(5) EXCLUDED FUNDING.—A funding agreement shall not authorize an Indian tribe to plan, conduct, administer, or receive tribal share funding under any program that—

“(A) is provided under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.); and

“(B) is provided for elementary and secondary schools under the formula developed under section 1127 of the Education Amendments of 1978 (25 U.S.C. 2007).

“(6) SERVICES, FUNCTIONS, AND RESPONSIBILITIES.—A funding agreement shall specify—

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

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

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

“(7) BASE BUDGET.—

“(A) IN GENERAL.—A funding agreement pursuant to paragraphs (1) and (3) shall, at the option of the Indian tribe, provide for a stable base budget specifying the recurring funds (which may include funds available under section 106(a)) to be transferred to the Indian tribe, for such period as the Indian tribe specifies in the funding agreement, subject to annual

1 adjustment only to reflect changes in congres-
2 sional appropriations.

3 “(B) DISCRETIONARY PROGRAMS OF SPE-
4 CIAL SIGNIFICANCE.—Upon agreement by the
5 Secretary, a funding agreement under para-
6 graph (2) may also provide for a stable base
7 budget.

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

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

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 the In-

1 dian tribe is withdrawing or retroceding the oper-
2 ation of 1 or more programs identified in a funding
3 agreement under paragraph (1) or (3) of subsection
4 (b), or unless otherwise agreed to by the parties to
5 the funding agreement or by the nature of any non-
6 continuing program, service, function, or activity
7 contained in a funding agreement—

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

13 “(B) the term of the subsequent funding
14 agreement shall be retroactive to the end of the
15 term of the preceding funding agreement for
16 the purposes of calculating the amount of fund-
17 ing to which the Indian tribe is entitled.

18 “(2) DISPUTES.—Disputes over the implemen-
19 tation of paragraph (1)(A) shall be subject to section
20 407(c).

21 “(3) EXISTING FUNDING AGREEMENTS.—An
22 Indian tribe that was participating in self-govern-
23 ance under this title on the date of enactment of the
24 Department of the Interior Tribal Self-Governance

1 Act of 2010 shall have the option at any time after
2 that date—

3 “(A) to retain its existing funding agree-
4 ment (in whole or in part) to the extent that
5 the provisions of that funding agreement are
6 not directly contrary to any express provision of
7 this title; or

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

10 “(4) MULTIYEAR FUNDING AGREEMENTS.—An
11 Indian tribe may, at the discretion of the Indian
12 tribe, negotiate with the Secretary for a funding
13 agreement with a term that exceeds 1 year.

14 **“SEC. 406. GENERAL PROVISIONS.**

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

18 “(b) CONFLICTS OF INTEREST.—An Indian tribe
19 participating in self-governance shall ensure that internal
20 measures are in place to address, pursuant to tribal law
21 and procedures, conflicts of interest in the administration
22 of programs.

23 “(c) AUDITS.—

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

4 “(2) COST PRINCIPLES.—An Indian tribe shall
5 apply cost principles under the applicable Office of
6 Management and Budget circular, except as modi-
7 fied by—

8 “(A) any provision of law, including section
9 106; or

10 “(B) any exemptions to applicable Office
11 of Management and Budget circulars subse-
12 quently granted by the Office of Management
13 and Budget.

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

19 “(d) REDESIGN AND CONSOLIDATION.—An Indian
20 tribe may redesign or consolidate programs or reallocate
21 funds for programs in any manner that the Indian tribe
22 determines to be in the best interest of the Indian commu-
23 nity being served, so long as that the redesign or consoli-
24 dation does not have the effect of denying eligibility for
25 services to population groups otherwise eligible to be

1 served under applicable Federal law, except that, with re-
2 spect to the reallocation, consolidation, and redesign of
3 programs described in section 405(b)(2), a joint agree-
4 ment between the Secretary and the Indian tribe shall be
5 required.

6 “(e) RETROCESSION.—

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

10 “(2) EFFECTIVE DATE.—

11 “(A) AGREEMENT.—Unless an Indian
12 tribe rescinds a request for retrocession under
13 paragraph (1), the retrocession shall become ef-
14 fective on the date specified by the parties in
15 the compact or funding agreement.

16 “(B) NO AGREEMENT.—In the absence of
17 a specification of an effective date in the com-
18 pact or funding agreement, the retrocession
19 shall become effective on—

20 “(i) the earlier of—

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

23 “(II) the date on which the fund-
24 ing agreement expires; or

1 “(ii) such date as may be mutually
2 agreed upon by the Secretary and the In-
3 dian tribe.

4 “(f) NONDUPLICATION.—A funding agreement shall
5 provide that, for the period for which, and to the extent
6 to which, funding is provided to an Indian tribe under this
7 title, the Indian tribe—

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

12 “(2) shall be responsible for the administration
13 of programs in accordance with the compact or
14 funding agreement.

15 “(g) RECORDS.—

16 “(1) IN GENERAL.—Unless an Indian tribe
17 specifies otherwise in the compact or funding agree-
18 ment, records of an Indian tribe shall not be consid-
19 ered to be Federal records for purposes of chapter
20 5 of title 5, United States Code.

21 “(2) RECORDKEEPING SYSTEM.—An Indian
22 tribe shall—

23 “(A) maintain a recordkeeping system; and

24 “(B) on a notice period of not less than 30
25 days, provide the Secretary with reasonable ac-

1 cess to the records to enable the Department to
2 meet the requirements of sections 3101 through
3 3106 of title 44, United States Code.

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

5 “(a) TRUST EVALUATIONS.—A funding agreement
6 shall include a provision to monitor the performance of
7 trust functions by the Indian tribe through the annual
8 trust evaluation.

9 “(b) REASSUMPTION.—

10 “(1) IN GENERAL.—A compact or funding
11 agreement shall include provisions for the Secretary
12 to reassume a program and associated funding if
13 there is a specific finding relating to that program
14 of—

15 “(A) imminent jeopardy to a trust asset,
16 natural resources, or public health and safety
17 that—

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

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

22 “(B) gross mismanagement with respect to
23 funds transferred to an Indian tribe under a
24 compact or funding agreement, as determined

1 by the Secretary in consultation with the In-
2 spector General, as appropriate.

3 “(2) PROHIBITION.—The Secretary shall not
4 reassume operation of a program, in whole or part,
5 unless—

6 “(A) the Secretary first provides written
7 notice and a hearing on the record to the In-
8 dian tribe; and

9 “(B) the Indian tribe does not take correc-
10 tive action to remedy the mismanagement of
11 the funds or programs, or the imminent jeop-
12 ardy to a trust asset, natural resource, or pub-
13 lic health and safety.

14 “(3) EXCEPTION.—

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

19 “(i) the Secretary makes a finding of
20 imminent and substantial jeopardy and ir-
21 reparable harm to a trust asset, a natural
22 resource, or the public health and safety
23 caused by an act or omission of the Indian
24 tribe; and

1 “(ii) the imminent and substantial
2 jeopardy, and irreparable harm to the trust
3 asset, natural resource, or public health
4 and safety arises out of a failure by the In-
5 dian tribe to carry out the terms of an ap-
6 plicable compact or funding agreement.

7 “(B) REASSUMPTION.—If the Secretary re-
8 assumes operation of a program under subpara-
9 graph (A), the Secretary shall provide the In-
10 dian tribe with a hearing on the record not
11 later than 10 days after the date of reassump-
12 tion.

13 “(c) INABILITY TO AGREE ON COMPACT OR FUNDING
14 AGREEMENT.—

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

20 “(2) DETERMINATION.—Not more than 60
21 days after the date of delivery of a final offer to the
22 designated officials under paragraph (4), the Sec-
23 retary shall review and make a determination with
24 respect to the final offer.

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

5 “(4) DESIGNATED OFFICIALS.—The Secretary
6 shall designate 1 or more appropriate officials in the
7 Department to receive a copy of the final offer de-
8 scribed in paragraph (1).

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

14 “(6) REJECTION OF FINAL OFFER.—

15 “(A) IN GENERAL.—If the Secretary re-
16 jects a final offer (or 1 or more provisions or
17 funding levels in a final offer), the Secretary
18 shall—

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

24 “(I) the amount of funds pro-
25 posed in the final offer exceeds the

1 applicable funding level to which the
2 Indian tribe is entitled under this title
3 because the final offer would reduce
4 the funds that any other Indian tribe
5 or tribal organization is entitled to re-
6 ceive under Federal law;

7 “(II) the program that is the
8 subject of the final offer is an inher-
9 ent Federal function or is subject to
10 the discretion of the Secretary under
11 section 405(b)(2);

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

16 “(IV) the Indian tribe is not eli-
17 gible to participate in self-governance
18 under section 403(b); or

19 “(V) the funding agreement
20 would violate a Federal statute or reg-
21 ulation;

22 “(ii) provide technical assistance to
23 overcome the objections stated in the noti-
24 fication required by clause (i);

25 “(iii) provide the Indian tribe with—

1 “(I) a hearing on the record with
2 the right to engage in full discovery
3 relevant to any issue raised in the
4 matter; and

5 “(II) the opportunity for appeal
6 on the objections raised (except that
7 the Indian tribe may, in lieu of filing
8 such appeal, directly proceed to ini-
9 tiate an action in a United States dis-
10 trict court under section 110(a)); and

11 “(iv) provide the Indian tribe the op-
12 tion of entering into the severable portions
13 of a final proposed compact or funding
14 agreement (including a lesser funding
15 amount, if any), that the Secretary did not
16 reject, subject to any additional alterations
17 necessary to conform the compact or fund-
18 ing agreement to the severed provisions.

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

22 “(i) the Indian tribe shall retain the
23 right to appeal the rejection by the Sec-
24 retary under this section; and

1 “(ii) clauses (i), (ii), and (iii) of sub-
2 paragraph (A) shall apply only to the por-
3 tion of the proposed final compact or fund-
4 ing agreement that was rejected by the
5 Secretary.

6 “(d) BURDEN OF PROOF.—In any administrative ac-
7 tion, hearing, or appeal or civil action brought under this
8 section, the Secretary shall have the burden of dem-
9 onstrating—

10 “(1) by a preponderance of the evidence, the va-
11 lidity of the grounds for a reassumption under sub-
12 section (b); and

13 “(2) by clear and convincing evidence, the
14 grounds for rejecting a final offer made under sub-
15 section (c).

16 “(e) GOOD FAITH.—

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

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

24 “(f) SAVINGS.—

1 “(1) IN GENERAL.—To the extent that pro-
2 grams carried out for the benefit of Indian tribes
3 and tribal organizations under this title reduce the
4 administrative or other responsibilities of the Sec-
5 retary with respect to the operation of Indian pro-
6 grams and result in savings that have not otherwise
7 been included in the amount of tribal shares and
8 other funds determined under section 409(c), except
9 for funding agreements entered into for programs
10 under section 405(b)(2), the Secretary shall make
11 such savings available to the Indian tribes or tribal
12 organizations for the provision of additional services
13 to program beneficiaries in a manner equitable to di-
14 rectly served, contracted, and compacted programs.

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

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

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

5 “(1) an official of the Department who holds a
6 position at a higher organizational level within the
7 Department than the level of the departmental agency
8 in which the decision that is the subject of the
9 appeal was made; or

10 “(2) an administrative law judge.

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

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

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

20 “(b) TRIBAL OPTION TO CARRY OUT CERTAIN FED-
21 ERAL ENVIRONMENTAL ACTIVITIES.—In carrying out a
22 construction project under this title, an Indian tribe may,
23 subject to the agreement of the Secretary, elect to assume
24 some Federal responsibilities under the National Environ-
25 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the

1 National Historic Preservation Act (16 U.S.C. 470 et
2 seq.), and related provisions of law and regulations that
3 would apply if the Secretary were to undertake a construc-
4 tion project, by adopting a resolution—

5 “(1) designating a certifying tribal officer to
6 represent the Indian tribe and to assume the status
7 of a responsible Federal official under those Acts or
8 regulations; and

9 “(2) accepting the jurisdiction of the United
10 States courts for the purpose of enforcing the re-
11 sponsibilities of the certifying tribal officer assuming
12 the status of a responsible Federal official under
13 those Acts or regulations.

14 “(c) SAVINGS CLAUSE.—Notwithstanding subsection
15 (b), nothing in this Act authorizes the Secretary to include
16 in any compact or funding agreement duties of the Sec-
17 retary under the National Environmental Policy Act (42
18 U.S.C. 4321 et seq.), the National Historic Preservation
19 Act (16 U.S.C. 470 et seq.), and other related provisions
20 of law that are inherent Federal functions.

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

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

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

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

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

7 “(B) certify that—

8 “(i) they are qualified to perform the
9 work required by the specific construction
10 involved; and

11 “(ii) upon completion of design, the
12 plans and specifications meet or exceed the
13 applicable construction and safety codes.

14 “(e) TRIBAL ACCOUNTABILITY.—

15 “(1) IN GENERAL.—In carrying out a construc-
16 tion project under this title, an Indian tribe shall as-
17 sume responsibility for the successful completion of
18 the construction project and of a facility that is usa-
19 ble for the purpose for which the Indian tribe re-
20 ceived funding.

21 “(2) REQUIREMENTS.—For each construction
22 project carried out by an Indian tribe under this
23 title, the Indian tribe and the Secretary shall nego-
24 tiate a provision to be included in the funding agree-
25 ment that identifies—

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

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

7 “(C) the responsibilities of the Indian tribe
8 and the Secretary for the project;

9 “(D) how project-related environmental
10 considerations will be addressed;

11 “(E) the amount of funds provided for the
12 project;

13 “(F) the obligations of the Indian tribe to
14 comply with the codes referenced in subsection
15 (c)(1) and applicable Federal laws and regula-
16 tions;

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

21 “(H) the agreement of the Secretary to
22 issue a certificate of occupancy, if requested by
23 the Indian tribe, based upon the review and
24 verification by the Secretary, to the satisfaction
25 of the Secretary, that the Indian tribe has se-

1 cured upon completion the review and approval
2 of the plans and specifications, sufficiency of
3 design, life safety, and code compliance by
4 qualified, licensed, and independent architects
5 and engineers.

6 “(f) FUNDING.—

7 “(1) IN GENERAL.—Funding appropriated for
8 construction projects carried out under this title
9 shall be included in funding agreements as annual or
10 semiannual advance payments at the option of the
11 Indian tribe.

12 “(2) ADVANCE PAYMENTS.—The Secretary
13 shall include all associated project contingency funds
14 with each advance payment, and the Indian tribe
15 shall be responsible for the management of such con-
16 tingency funds.

17 “(g) NEGOTIATIONS.—At the option of the Indian
18 tribe, construction project funding proposals shall be nego-
19 tiated pursuant to the statutory process in section 105,
20 and any resulting construction project agreement shall be
21 incorporated into the funding agreement as addenda.

22 “(h) FEDERAL REVIEW AND VERIFICATION.—

23 “(1) IN GENERAL.—The Secretary shall have—

24 “(A) at least 1 opportunity to review and
25 verify, to the satisfaction of the Secretary, that

1 project planning and design documents pre-
2 pared by the Indian tribe in advance of initial
3 construction are in conformity with the obliga-
4 tions of the Indian tribe under subsection (c);
5 and

6 “(B) before the project planning and de-
7 sign documents are implemented, at least 1 op-
8 portunity to review and verify to the satisfac-
9 tion of the Secretary that subsequent document
10 amendments which result in a significant
11 change in construction are in conformity with
12 the obligations of the Indian tribe under sub-
13 section (c).

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

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

21 “(i) APPLICATION OF OTHER LAWS.—Unless other-
22 wise agreed to by the Indian tribe and except as otherwise
23 provided in this Act, no provision of the Office of Federal
24 Procurement Policy Act (41 U.S.C. 401 et seq.), the Fed-
25 eral Acquisition Regulations issued pursuant to that Act,

1 or any other law or regulation pertaining to Federal pro-
2 curement (including Executive orders) shall apply to any
3 construction program or project carried out under this
4 title.

5 “(j) FUTURE FUNDING.—Upon completion of a facil-
6 ity constructed under this title, the Secretary shall include
7 the facility among those eligible for annual operation and
8 maintenance funding support comparable to that provided
9 for similar facilities funded by the Department as annual
10 appropriations are available and to the extent that the fa-
11 cility size and complexity and other factors do not exceed
12 the funding formula criteria for comparable buildings.

13 **“SEC. 409. PAYMENT.**

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

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

21 “(c) AMOUNT.—

22 “(1) IN GENERAL.—Subject to subsection (e)
23 and sections 405 and 406, the Secretary shall pro-
24 vide funds to the Indian tribe under a funding
25 agreement for programs in an amount that is equal

1 to the amount that the Indian tribe would have been
2 entitled to receive under contracts and grants under
3 this Act (including amounts for direct program and
4 contract support costs and, in addition, any funds
5 that are specifically or functionally related to the
6 provision by the Secretary of services and benefits to
7 the Indian tribe or its members) without regard to
8 the organization level within the Department at
9 which the programs are carried out.

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

13 “(d) TIMING.—

14 “(1) IN GENERAL.—Pursuant to the terms of
15 any compact or funding agreement entered into
16 under this title, the Secretary shall transfer to the
17 Indian tribe all funds provided for in the funding
18 agreement, pursuant to subsection (c), and provide
19 funding for periods covered by joint resolution
20 adopted by Congress making continuing appropria-
21 tions, to the extent permitted by such resolution.

22 “(2) TRANSFERS.—Not later than 1 year after
23 the date of enactment of the Department of the In-
24 terior Tribal Self-Governance Act of 2010, in any in-
25 stance in which a funding agreement requires an an-

1 nual transfer of funding to be made at the beginning
2 of a fiscal year or requires semiannual or other peri-
3 odic transfers of funding to be made commencing at
4 the beginning of a fiscal year, the first such transfer
5 shall be made not later than 10 days after the ap-
6 portionment of such funds by the Office of Manage-
7 ment and Budget to the Department, unless the
8 funding agreement provides otherwise.

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 title
21 for programs eligible under paragraph (1) or (3) of
22 section 405(b), except as required by Federal law;

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

1 “(3) reduce the amount of funds required under
2 this title—

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

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

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

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

14 “(iii) a tribal authorization;

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

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

21 “(C) to pay for Federal functions, includ-
22 ing—

23 “(i) Federal pay costs;

24 “(ii) Federal employee retirement ben-
25 efits;

1 “(iii) automated data processing;

2 “(iv) technical assistance; and

3 “(v) monitoring of activities under
4 this title; or

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

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

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

25 “(j) INTEREST OR OTHER INCOME.—

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

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

11 “(3) INVESTMENT STANDARD.—Funds trans-
12 ferred under this title shall be managed by the In-
13 dian tribe using the prudent investment standard,
14 provided that the Secretary shall not be liable for
15 any investment losses of funds managed by the In-
16 dian tribe that are not otherwise guaranteed or in-
17 sured by the Federal Government.

18 “(k) CARRYOVER OF FUNDS.—

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

23 “(2) EFFECT OF CARRYOVER.—If an Indian
24 tribe elects to carry over funding from 1 year to the
25 next, the carryover shall not diminish the amount of

1 funds the Indian tribe is entitled to receive under a
2 funding agreement in that fiscal year or any subse-
3 quent fiscal year.

4 “(1) LIMITATION OF COSTS.—

5 “(1) IN GENERAL.—An Indian tribe shall not
6 be obligated to continue performance that requires
7 an expenditure of funds in excess of the amount of
8 funds transferred under a compact or funding agree-
9 ment.

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

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

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

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

6 **“SEC. 410. FACILITATION.**

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

10 “(1) the inclusion of programs in funding
11 agreements; and

12 “(2) the implementation of funding agreements.

13 “(b) REGULATION WAIVER.—

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

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

19 “(B) the basis for the request.

20 “(2) DETERMINATION BY THE SECRETARY.—

21 Not later than 120 days after receipt by the Sec-
22 retary and the designated officials under paragraph
23 (4) of a request under paragraph (1), the Secretary
24 shall approve or deny the requested waiver in writ-
25 ing to the Indian tribe.

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

5 “(4) DESIGNATED OFFICIALS.—The Secretary
6 shall designate 1 or more appropriate officials in the
7 Department to receive a copy of the waiver request
8 described in paragraph (1).

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

11 “(A) for a program eligible under para-
12 graph (1) or (3) of section 405(b), only upon a
13 specific finding by the Secretary that the identi-
14 fied text in the regulation may not be waived
15 because such a waiver is prohibited by Federal
16 law; and

17 “(B) for a program eligible under section
18 405(b)(2), upon a specific finding by the Sec-
19 retary that the waiver is prohibited by Federal
20 law or is inconsistent with the express provi-
21 sions of the funding agreement.

22 “(6) FAILURE TO MAKE DETERMINATION.—If
23 the Secretary fails to approve or deny a waiver re-
24 quest within the period required under paragraph

1 (2), the Secretary shall be deemed to have approved
2 the request.

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

5 **“SEC. 411. DISCLAIMERS.**

6 “Nothing in this title expands or alters any statutory
7 authority of the Secretary in a manner that authorizes the
8 Secretary to enter into any agreement under section
9 405—

10 “(1) with respect to an inherent Federal func-
11 tion;

12 “(2) in a case in which the law establishing a
13 program explicitly prohibits the type of participation
14 sought by the Indian tribe (without regard to wheth-
15 er 1 or more Indian tribes are identified in the au-
16 thorizing law); or

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

21 **“SEC. 412. DISCRETIONARY APPLICATION OF OTHER SEC-**
22 **TIONS.**

23 “(a) IN GENERAL.—Except as otherwise provided in
24 section 101(c), at the option of a participating Indian tribe
25 or Indian tribes, any of the provisions of title I may be

1 incorporated in any compact or funding agreement under
2 this title.

3 “(b) EFFECT.—Each incorporated provision under
4 subsection (a) shall—

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

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

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

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

14 “(1) be effective immediately; and

15 “(2) control the negotiation and resulting com-
16 pact and funding agreement.

17 **“SEC. 413. FUNDING NEEDS.**

18 “(a) REQUIREMENT OF ANNUAL BUDGET RE-
19 QUEST.—

20 “(1) IN GENERAL.—The President shall iden-
21 tify in a report to accompany the annual budget re-
22 quest submitted to Congress under section 1105 of
23 title 31, United States Code, all amounts necessary
24 to fully fund all funding agreements entered into
25 under this Act.

1 “(2) DUTY OF SECRETARY.—The Secretary
2 shall identify in a report to accompany each budget
3 request the amount of funds that are sufficient for
4 planning and negotiation grants and sufficient to
5 cover any shortfall in funding identified under sub-
6 section (b).

7 “(3) RULE OF CONSTRUCTION.—Nothing in
8 this subsection authorizes the Secretary to reduce
9 the programs, services, or funds to an Indian tribe.

10 “(b) PRESENT FUNDING; SHORTFALLS.—

11 “(1) IN GENERAL.—In each report described in
12 subsection (a)(2), the Secretary shall identify the
13 level of need presently funded and any shortfall in
14 funding (including direct program costs, tribal
15 shares, and contract support costs) for each Indian
16 tribe, directly by the Secretary, under self-deter-
17 mination contracts, or compacts, or funding agree-
18 ments.

19 “(2) SCHEDULE.—

20 “(A) FIRST REPORT.—The first report re-
21 quired under subsection (a)(1) shall be—

22 “(i) limited to the Bureau of Indian
23 Affairs agency office; and

24 “(ii) due on February 1, 2012.

1 “(B) SECOND REPORT.—The second re-
 2 port required under subsection (a)(1) shall—

3 “(i) include all funding at the Bureau
 4 of Indian Affairs agency and regional of-
 5 fices; and

6 “(ii) due on February 1, 2013.

7 “(C) SUBSEQUENT REPORT.—Beginning
 8 with the third report required under subsection
 9 (a)(1), which shall be due on February 1, 2014,
 10 all reports required under subsection (a)(1)
 11 shall include all funding at the Bureau of In-
 12 dian Affairs agency, regional, and central of-
 13 fices, the Office of the Assistant Secretary for
 14 Indian Affairs, and the Office of the Special
 15 Trustee.

16 **“SEC. 414. REPORTS.**

17 “(a) IN GENERAL.—

18 “(1) REQUIREMENT.—Not later than February
 19 1 of each year, the Secretary shall submit to Con-
 20 gress a report regarding the administration of this
 21 title.

22 “(2) ANALYSIS.—A report under paragraph (1)
 23 shall include a detailed analysis of unmet need for
 24 each Indian tribe, regardless of whether the Indian
 25 tribe is served directly by the Secretary, under self-

1 determination contracts under title I, or under com-
2 pacts and funding agreements authorized under this
3 title.

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

9 “(b) CONTENTS.—Each report under subsection
10 (a)(1) shall—

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

15 “(2) identify—

16 “(A) the relative costs and benefits of self-
17 governance;

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

23 “(C) the funds transferred to each Indian
24 tribe and the corresponding reduction in the
25 Federal employees and workload;

1 “(D) the funding formula for individual
2 tribal shares of all Central Office funds, to-
3 gether with the comments of affected Indian
4 tribes, developed under subsection (d); and

5 “(E) amounts expended in the preceding
6 fiscal year to carry out inherent Federal func-
7 tions, including an identification of inherent
8 Federal functions;

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

14 “(4) before being submitted to Congress, be dis-
15 tributed to the Indian tribes for comment (with a
16 comment period of not less than 30 days); and

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

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

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

23 “(A) review all programs administered by
24 the Department, other than through the Bu-
25 reau of Indian Affairs, the Office of the Assist-

1 ant Secretary for Indian Affairs, or the Office
2 of Special Trustee, without regard to the agen-
3 cy or office concerned; and

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

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

12 “(ii) a list of all such programs for
13 which Indian tribes have requested to in-
14 clude in a funding agreement under para-
15 graph (2) or (3) of section 405(b), indi-
16 cating whether each request was granted
17 or denied, and stating the grounds for any
18 denial.

19 “(2) PROGRAMMATIC TARGETS.—The Secretary
20 shall establish programmatic targets, after consulta-
21 tion with Indian tribes participating in self-govern-
22 ance, to encourage bureaus of the Department to en-
23 sure that a significant portion of the programs iden-
24 tified in paragraph (1) are included in funding
25 agreements.

1 “(3) PUBLICATION.—The lists and targets
2 under paragraphs (1) and (2) shall be—

3 “(A) published in the Federal Register;
4 and

5 “(B) made available to Indian tribes.

6 “(4) ANNUAL REVIEW.—

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

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

18 “(d) REPORT ON CENTRAL OFFICE FUNDS.—Not
19 later than February 1, 2012, the Secretary shall, in con-
20 sultation with Indian tribes, develop a funding formula to
21 determine the individual tribal share of funds controlled
22 by the Central Office of the Bureau of Indian Affairs, the
23 Office of the Special Trustee, and the Office of the Assist-
24 ant Secretary for Indian Affairs for inclusion in the com-
25 pacts.

1 **“SEC. 415. REGULATIONS.**

2 “(a) IN GENERAL.—

3 “(1) PROMULGATION.—Not later than 90 days
4 after the date of enactment of the Department of
5 the Interior Tribal Self-Governance Act of 2010, the
6 Secretary shall initiate procedures under subchapter
7 III of chapter 5 of title 5, United States Code, to
8 negotiate and promulgate such regulations as are
9 necessary to carry out this title.

10 “(2) PUBLICATION OF PROPOSED REGULA-
11 TIONS.—Proposed regulations to implement this title
12 shall be published in the Federal Register not later
13 than 18 months after the date of enactment of the
14 Department of the Interior Tribal Self-Governance
15 Act of 2010.

16 “(3) EXPIRATION OF AUTHORITY.—The author-
17 ity to promulgate regulations under paragraph (1)
18 shall expire on the date that is 24 months after the
19 date of enactment of the Department of the Interior
20 Tribal Self-Governance Act of 2010.

21 “(b) COMMITTEE.—

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

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

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

10 “(d) EFFECT.—

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

13 “(2) CONFLICTING PROVISIONS.—This title
14 shall supersede any conflicting provision of law (in-
15 cluding any conflicting regulations).

16 “(3) EFFECTIVENESS WITHOUT REGARD TO
17 REGULATIONS.—The lack of promulgated regula-
18 tions on an issue shall not limit the effect or imple-
19 mentation of this title.

20 **“SEC. 416. EFFECT OF CIRCULARS, POLICIES, MANUALS,**
21 **GUIDANCES, AND RULES.**

22 “Unless expressly agreed to by a participating Indian
23 tribe in a compact or funding agreement, the participating
24 Indian tribe shall not be subject to any agency circular,

1 policy, manual, guidance, or rule adopted by the Depart-
2 ment, except for—

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

5 “(2) regulations promulgated pursuant to sec-
6 tion 415.

7 **“SEC. 417. APPEALS.**

8 “Except as provided in section 407(d), in any admin-
9 istrative action, appeal, or civil action for judicial review
10 of any decision made by the Secretary under this title,
11 the Secretary shall have the burden of proof of dem-
12 onstrating by a preponderance of the evidence—

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

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

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

18 “Section 314 of the Department of the Interior and
19 Related Agencies Appropriations Act, 1991 (Public Law
20 101–512; 104 Stat. 1959), shall apply to compacts and
21 funding agreements entered into under this title.

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

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

Passed the House of Representatives September 22,
2010.

Attest: LORRAINE C. MILLER,
Clerk.