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113TH CONGRESS
2D SESSION

S. 919

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

IN THE SENATE OF THE UNITED STATES

MAY 9, 2013

Ms. CANTWELL (for herself, Mr. BARRASSO, Mrs. MURRAY, Mr. BAUCUS, Mr. TESTER, Mr. UDALL of New Mexico, Mr. HEINRICH, Mr. SCHATZ, Mr. WYDEN, Mr. CRAPO, Ms. MURKOWSKI, Mr. BEGICH, Ms. WARREN, and Mr. WALSH) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

AUGUST 26, 2014

Reported, under authority of the order of the Senate of August 5 (legislative day, August 1), 2014, by Mr. TESTER, with an amendment

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

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,*

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 2013”.

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 the 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.

Sec. 202. Effect of certain provisions.

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
 22 414.”.

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 THE 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.—Subject to sec-
 17 tion 202 of the Department of the Interior Tribal Self-
 18 Governance Act of 2013, in the negotiation of contracts
 19 and funding agreements, the Secretary shall—

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

23 “(2) carry out this Act in a manner that maxi-
 24 mizes the policy of tribal self-determination, in a

1 manner consistent with the purposes specified in sec-
 2 tion 3.

3 “(g) **RULE OF CONSTRUCTION.**—Subject to section
 4 202 of the Department of the Interior Tribal Self-Govern-
 5 ance Act of 2013, each provision of this Act and each pro-
 6 vision of a contract or funding agreement shall be liberally
 7 construed for the benefit of the Indian tribe participating
 8 in self-determination, and any ambiguity shall be resolved
 9 in favor of the Indian tribe.”.

10 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

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

13 (1) in subsection (b), in the first sentence, by
 14 striking “pursuant to” and all that follows through
 15 “of this Act” and inserting “pursuant to sections
 16 102 and 103”; and

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

18 “(p) **INTERPRETATION BY SECRETARY.**—Except as
 19 otherwise provided by law (including section 202 of the
 20 Department of the Interior Tribal Self-Governance Act of
 21 2013), the Secretary shall interpret all Federal laws (in-
 22 cluding regulations) and Executive orders in a manner
 23 that facilitates, to the maximum extent practicable—

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

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

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

5 “(2) the implementation of self-determination
6 contracts and funding agreements; and

7 “(3) the achievement of tribal health objec-
8 tives.”.

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

10 Section 106(a)(3) of the Indian Self-Determination
11 and Education Assistance Act (25 U.S.C. 450j-1(a)(3))
12 is amended—

13 (1) in subparagraph (A)—

14 (A) in clause (i), by striking “, and” and
15 inserting “; and”; and

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

21 (2) by redesignating subparagraph (B) as sub-
22 paragraph (C); and

23 (3) by inserting after subparagraph (A) the fol-
24 lowing:

1 “(B) In calculating the reimbursement rate
 2 for expenses described in subparagraph (A)(ii),
 3 not less than 50 percent of the expenses de-
 4 scribed in subparagraph (A)(ii) that are in-
 5 curred by the governing body of an Indian tribe
 6 or tribal organization relating to a Federal pro-
 7 gram, function, service, or activity carried out
 8 pursuant to the contract shall be considered to
 9 be reasonable and allowable.”.

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

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

13 (1) in subsection (a)(2), by inserting “subject
 14 to subsections (a) and (b) of section 102,” before
 15 “contain”; and

16 (2) in subsection (f)(2)(A)(ii) of the model
 17 agreement contained in subsection (e), by inserting
 18 “subject to subsections (a) and (b) of section 102 of
 19 the Indian Self-Determination and Education Assist-
 20 ance Act (25 U.S.C. 450f),” before “such other pro-
 21 visions”.

TITLE II—TRIBAL SELF- GOVERNANCE

SEC. 201. TRIBAL SELF-GOVERNANCE.

(a) DEFINITIONS.—Section 401 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa) is amended to read as follows:

“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.

1 “(4) FUNDING AGREEMENT.—The term ‘fund-
2 ing agreement’ means a funding agreement entered
3 into under section 403.

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

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

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

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

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

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

1 “(9) ~~SELF-GOVERNANCE.~~—The term ‘self-gov-
 2 ernance’ means the Tribal Self-Governance Program
 3 established under section 402.

4 “(10) ~~TRIBAL SHARE.~~—The term ‘tribal share’
 5 means the portion of all funds and resources of an
 6 Indian tribe that—

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

11 “(B) are not required by the Secretary for
 12 the performance of an inherent Federal func-
 13 tion.”.

14 (b) ~~ESTABLISHMENT.~~—Section 402 of the Indian
 15 Self-Determination and Education Assistance Act (25
 16 U.S.C. 458bb) is amended to read as follows:

17 **“SEC. 402. TRIBAL SELF-GOVERNANCE PROGRAM.**

18 “(a) ~~ESTABLISHMENT.~~—The Secretary shall estab-
 19 lish and carry out a program within the Department to
 20 be known as the ‘Tribal Self-Governance Program’.

21 “(b) ~~SELECTION OF PARTICIPATING INDIAN~~
 22 TRIBES.—

23 “(1) ~~IN GENERAL.~~—

24 “(A) ~~ELIGIBILITY.~~—The Secretary, acting
 25 through the Director of the Office of Self-Gov-

ernance, may select up to 50 new Indian tribes
per year from those eligible under subsection
(c) to participate in self-governance.

“(B) JOINT PARTICIPATION.—On the re-
quest of each participating Indian tribe, two or
more otherwise eligible Indian tribes may be
treated as a single Indian tribe for the purpose
of participating in self-governance.

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

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

“(A) each Indian tribe so requests; and

“(B) the tribal organization itself, or at
least one of the Indian tribes participating in

1 the tribal organization, is eligible under sub-
 2 section (c).

3 ~~“(4) TRIBAL WITHDRAWAL FROM A TRIBAL OR-~~
 4 ~~GANIZATION.—~~

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

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

17 ~~“(C) PARTICIPATION IN SELF-GOVERN-~~
 18 ~~ANCE.—The withdrawal of an Indian tribe from~~
 19 ~~a tribal organization shall not affect the eligi-~~
 20 ~~bility of the tribal organization to participate in~~
 21 ~~self-governance on behalf of one or more other~~
 22 ~~Indian tribes, if the tribal organization still~~
 23 ~~qualifies under subsection (c).~~

24 ~~“(D) WITHDRAWAL PROCESS.—~~

1 “(i) IN GENERAL.—An Indian tribe
2 may, by tribal resolution, fully or partially
3 withdraw its tribal share of any program
4 in a funding agreement from a partici-
5 pating tribal organization.

6 “(ii) NOTIFICATION.—The Indian
7 tribe shall provide a copy of the tribal reso-
8 lution described in clause (i) to the Sec-
9 retary.

10 “(iii) EFFECTIVE DATE.—

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

21 “(II) NO SPECIFIED DATE.—In
22 the absence of a date specified in the
23 resolution, the withdrawal shall be-
24 come effective on—

25 “(aa) the earlier of—

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

4 “(BB) the date on
5 which the funding agree-
6 ment expires; or

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

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

22 “(i) may elect to enter into a self-de-
23 termination contract or compact, in which
24 ease—

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

12 “(H) the funds referred to in
13 subclause (I) shall be withdrawn by
14 the Secretary from the funding agree-
15 ment of the tribal organization and
16 transferred to the withdrawing Indian
17 tribe, on the condition that sections
18 102 and 105(i), as appropriate, shall
19 apply to the withdrawing Indian tribe;
20 or

21 “(ii) may elect not to enter into a self-
22 determination contract or compact, in
23 which case all unexpended funds and re-
24 sources associated with the withdrawing
25 Indian tribe’s returned programs (cal-

1 culated on the same basis as the funds
 2 were initially allocated to the funding
 3 agreement of the tribal organization) shall
 4 be returned by the tribal organization to
 5 the Secretary for operation of the pro-
 6 grams included in the withdrawal.

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

17 ~~“(e) ELIGIBILITY.—To be eligible to participate in~~
 18 ~~self-governance, an Indian tribe shall—~~

19 ~~“(1) successfully complete the planning phase~~
 20 ~~described in subsection (d);~~

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

24 ~~“(3) demonstrate, for the 3 fiscal years pre-~~
 25 ~~ceding the date on which the Indian tribe requests~~

1 participation, financial stability and financial man-
 2 agement capability as evidenced by the Indian tribe
 3 having no uncorrected significant and material audit
 4 exceptions in the required annual audit of its self-
 5 determination or self-governance agreements with
 6 any Federal agency.

7 “(d) PLANNING PHASE.—

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

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

12 “(A) be conducted to the satisfaction of
 13 the Indian tribe; and

14 “(B) include—

15 “(i) legal and budgetary research; and

16 “(ii) internal tribal government plan-
 17 ning, training, and organizational prepara-
 18 tion.

19 “(e) GRANTS.—

20 “(1) IN GENERAL.—Subject to the availability
 21 of appropriations, an Indian tribe or tribal organiza-
 22 tion that meets the requirements of paragraphs (2)
 23 and (3) of subsection (c) shall be eligible for
 24 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 ~~(c) FUNDING AGREEMENTS.—Section 403 of the In-~~
11 ~~dian Self-Determination and Education Assistance Act~~
12 ~~(25 U.S.C. 458cc) is amended—~~

13 ~~(1) by striking subsection (a) and inserting the~~
14 ~~following:~~

15 ~~“(a) AUTHORIZATION.—The Secretary shall, on the~~
16 ~~request of any Indian tribe or tribal organization, enter~~
17 ~~into a written funding agreement with the governing body~~
18 ~~of the Indian tribe or the tribal organization in a manner~~
19 ~~consistent with—~~

20 ~~“(1) the trust responsibility of the Federal Gov-~~
21 ~~ernment, treaty obligations, and the government-to-~~
22 ~~government relationship between Indian tribes and~~
23 ~~the United States; and~~

24 ~~“(2) subsection (b).”;~~

25 ~~(2) in subsection (b)—~~

1 (A) in paragraph (1)—

2 (i) in the matter preceding subpara-
3 graph (A), by striking “without regard to
4 the agency or office of the Bureau of In-
5 dian Affairs” and inserting “the Office of
6 the Assistant Secretary for Indian Affairs,
7 and the Office of the Special Trustee,
8 without regard to the agency or office of
9 that Bureau or those Offices”;

10 (ii) in subparagraph (B), by striking
11 “and”;

12 (iii) in subparagraph (C), by inserting
13 “and” after the semicolon at the end; and

14 (iv) by adding at the end the fol-
15 lowing:

16 “(D) any other programs, services, func-
17 tions, or activities (or portions thereof) that are
18 provided through the Bureau of Indian Affairs,
19 the Office of the Assistant Secretary for Indian
20 Affairs, or the Office of the Special Trustee
21 with respect to which Indian tribes or Indians
22 are primary or significant beneficiaries;”;

23 (B) in paragraph (2)—

24 (i) by striking “section 405(c)” and
25 inserting “section 413(c)”; and

1 (ii) by inserting “and” after the semi-
 2 colon at the end;

3 (C) in paragraph (3), by striking the semi-
 4 colon at the end and inserting a period; and

5 (D) by striking paragraphs (4) through
 6 (9); and

7 (3) by adding at the end the following:

8 “(m) OTHER PROVISIONS.—

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

13 “(A) is provided under the Tribally Con-
 14 trolled Colleges and Universities Assistance Act
 15 of 1978 (25 U.S.C. 1801 et seq.); and

16 “(B) is provided for elementary and sec-
 17 ondary schools under the formula developed
 18 under section 1127 of the Education Amend-
 19 ments of 1978 (25 U.S.C. 2007).

20 “(2) SERVICES, FUNCTIONS, AND RESPONSIBIL-
 21 ITIES.—A funding agreement shall specify—

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

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

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

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

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

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

22 “(o) EFFECTIVE DATE.—A funding agreement shall
23 become effective on the date specified in the funding
24 agreement.

1 “(p) EXISTING AND SUBSEQUENT FUNDING AGREE-
2 MENTS.—

3 “(1) SUBSEQUENT FUNDING AGREEMENTS.—

4 Absent notification from an Indian tribe that the In-
5 dian tribe is withdrawing or retroceding the oper-
6 ation of one or more programs identified in a fund-
7 ing agreement, or unless otherwise agreed to by the
8 parties to the funding agreement or by the nature
9 of any noncontinuing program, service, function, or
10 activity contained in a funding agreement—

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

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

21 “(2) DISPUTES.—Disputes over the implemen-
22 tation of paragraph (1)(A) shall be subject to section
23 406(e).

24 “(3) EXISTING FUNDING AGREEMENTS.—An
25 Indian tribe that was participating in self-govern-

1 ance under this title on the date of enactment of the
 2 Department of the Interior Tribal Self-Governance
 3 Act of 2013 shall have the option at any time after
 4 that date—

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

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

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

16 (d) ~~GENERAL REVISIONS.—~~Title IV of the Indian
 17 Self-Determination and Education Assistance Act (25
 18 U.S.C. 450aa et seq.) is amended by striking sections 404
 19 through 408 and inserting the following:

20 ~~“SEC. 404. COMPACTS.~~

21 ~~“(a) IN GENERAL.—~~The Secretary shall negotiate
 22 and enter into a written compact with each Indian tribe
 23 participating in self-governance in a manner consistent
 24 with the trust responsibility of the Federal Government,

1 treaty obligations, and the government-to-government re-
 2 lationship between Indian tribes and the United States.

3 “(b) CONTENTS.—A compact under subsection (a)
 4 shall—

5 “(1) specify and affirm the general terms of the
 6 government-to-government relationship between the
 7 Indian tribe and the Secretary; and

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

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

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

14 “(1) the date of the execution of the compact
 15 by the parties; or

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

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

19 “(1) for so long as permitted by Federal law;
 20 or

21 “(2) until termination by written agreement,
 22 retrocession, or reassumption.

23 “(f) EXISTING COMPACTS.—An Indian tribe partici-
 24 pating in self-governance under this title, as in effect on
 25 the date of enactment of the Department of the Interior

1 Tribal Self-Governance Act of 2013, shall have the option
 2 at any time after that date—

3 “(1) to retain its negotiated compact (in whole
 4 or in part) to the extent that the provisions of the
 5 compact are not directly contrary to any express
 6 provision of this title; or

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

9 **“SEC. 405. GENERAL PROVISIONS.**

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

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

18 “(c) **AUDITS.**—

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

22 “(2) **COST PRINCIPLES.**—An Indian tribe shall
 23 apply cost principles under the applicable Office of
 24 Management and Budget circular, except as modi-
 25 fied by—

1 “(A) any provision of law, including section
2 106; or

3 “(B) any exemptions to applicable Office
4 of Management and Budget circulars subse-
5 quently granted by the Office of Management
6 and Budget.

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

12 “(d) REDESIGN AND CONSOLIDATION.—Except as
13 provided in section 407, an Indian tribe may redesign or
14 consolidate programs or reallocate funds for programs in
15 any manner that the Indian tribe determines to be in the
16 best interest of the Indian community being served, so
17 long as that the redesign or consolidation does not have
18 the effect of denying eligibility for services to population
19 groups otherwise eligible to be served under applicable
20 Federal law, except that, with respect to the reallocation,
21 consolidation, and redesign of programs described in sub-
22 section (b)(2) or (c) of section 403, a joint agreement be-
23 tween the Secretary and the Indian tribe shall be required.

24 “(e) RETROCESSION.—

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

4 “(2) EFFECTIVE DATE.—

5 “(A) AGREEMENT.—Unless an Indian
6 tribe rescinds a request for retrocession under
7 paragraph (1), the retrocession shall become ef-
8 fective on the date specified by the parties in
9 the compact or funding agreement.

10 “(B) NO AGREEMENT.—In the absence of
11 a specification of an effective date in the com-
12 pact or funding agreement, the retrocession
13 shall become effective on—

14 “(i) the earlier of—

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

17 “(II) the date on which the fund-
18 ing agreement expires; or

19 “(ii) such date as may be mutually
20 agreed upon by the Secretary and the In-
21 dian tribe.

22 “(f) NONDUPLICATION.—A funding agreement shall
23 provide that, for the period for which, and to the extent
24 to which, funding is provided to an Indian tribe under this
25 title, the Indian tribe—

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

5 “(2) shall be responsible for the administration
6 of programs in accordance with the compact or
7 funding agreement.

8 “(g) RECORDS.—

9 “(1) IN GENERAL.—Unless an Indian tribe
10 specifies otherwise in the compact or funding agree-
11 ment, records of an Indian tribe shall not be consid-
12 ered to be Federal records for purposes of chapter
13 5 of title 5, United States Code.

14 “(2) RECORDKEEPING SYSTEM.—An Indian
15 tribe shall—

16 “(A) maintain a recordkeeping system; and

17 “(B) on a notice period of not less than 30
18 days, provide the Secretary with reasonable ac-
19 cess to the records to enable the Department to
20 meet the requirements of sections 3101 through
21 3106 of title 44, United States Code.

22 **“SEC. 406. PROVISIONS RELATING TO THE SECRETARY.**

23 “(a) TRUST EVALUATIONS.—A funding agreement
24 shall include a provision to monitor the performance of

1 trust functions by the Indian tribe through the annual
2 trust evaluation.

3 ~~“(b) REASSUMPTION.—~~

4 ~~“(1) IN GENERAL.—A compact or funding~~
5 ~~agreement shall include provisions for the Secretary~~
6 ~~to reassume a program and associated funding if~~
7 ~~there is a specific finding relating to that program~~
8 ~~of—~~

9 ~~“(A) imminent jeopardy to a trust asset,~~
10 ~~natural resources, or public health and safety~~
11 ~~that—~~

12 ~~“(i) is caused by an act or omission of~~
13 ~~the Indian tribe; and~~

14 ~~“(ii) arises out of a failure to carry~~
15 ~~out the compact or funding agreement; or~~

16 ~~“(B) gross mismanagement with respect to~~
17 ~~funds transferred to an Indian tribe under a~~
18 ~~compact or funding agreement, as determined~~
19 ~~by the Secretary in consultation with the In-~~
20 ~~spector General, as appropriate.~~

21 ~~“(2) PROHIBITION.—The Secretary shall not~~
22 ~~reassume operation of a program, in whole or part,~~
23 ~~unless—~~

1 “(A) the Secretary first provides written
2 notice and a hearing on the record to the In-
3 dian tribe; and

4 “(B) the Indian tribe does not take correc-
5 tive action to remedy the mismanagement of
6 the funds or programs; or the imminent jeop-
7 ardy to a trust asset, natural resource, or pub-
8 lic health and safety.

9 ~~“(3) EXCEPTION.—~~

10 ~~“(A) IN GENERAL.—~~Notwithstanding para-
11 graph (2), the Secretary may, on written notice
12 to the Indian tribe, immediately reassume oper-
13 ation of a program if—

14 ~~“(i) the Secretary makes a finding of~~
15 ~~imminent and substantial jeopardy and ir-~~
16 ~~reparable harm to a trust asset, a natural~~
17 ~~resource, or the public health and safety~~
18 ~~caused by an act or omission of the Indian~~
19 ~~tribe; and~~

20 ~~“(ii) the imminent and substantial~~
21 ~~jeopardy, and irreparable harm to the trust~~
22 ~~asset, natural resource, or public health~~
23 ~~and safety arises out of a failure by the In-~~
24 ~~dian tribe to carry out the terms of an ap-~~
25 ~~plicable compact or funding agreement.~~

1 “(B) REASSUMPTION.—If the Secretary re-
 2 assumes operation of a program under subpara-
 3 graph (A), the Secretary shall provide the In-
 4 dian tribe with a hearing on the record not
 5 later than 10 days after the date of reassump-
 6 tion.

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

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

14 “(2) DETERMINATION.—Not more than 60
 15 days after the date of receipt of a final offer by the
 16 one or more officials designated pursuant to para-
 17 graph (4), the Secretary shall review and make a de-
 18 termination with respect to the final offer.

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

23 “(4) DESIGNATED OFFICIALS.—

24 “(A) IN GENERAL.—The Secretary shall
 25 designate one or more appropriate officials in

1 the Department to receive a copy of the final
2 offer described in paragraph (1).

3 “(B) NO DESIGNATION.—If no official is
4 designated, the Executive Secretariat of the
5 Secretary shall be the designated official.

6 “(5) NO TIMELY DETERMINATION.—Except as
7 otherwise provided in section 202 of the Department
8 of the Interior Tribal Self-Governance Act of 2013,
9 if the Secretary fails to make a determination with
10 respect to a final offer within the period specified in
11 paragraph (2), the Secretary shall be deemed to
12 have agreed to the offer.

13 “(6) REJECTION OF FINAL OFFER.—

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

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

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

1 applicable funding level as determined
2 under section 106(a)(1);

3 “(II) the program that is the
4 subject of the final offer is an inher-
5 ent Federal function or is subject to
6 the discretion of the Secretary under
7 section 403(c);

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

14 “(IV) the Indian tribe is not eli-
15 gible to participate in self-governance
16 under section 402(c);

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

20 “(VI) with respect to a program
21 or portion of a program included in a
22 final offer pursuant to section
23 403(b)(2), the program or the portion
24 of the program is not otherwise avail-

1 able to Indian tribes or Indians under
2 section 102(a)(1)(E);

3 “(ii) provide technical assistance to
4 overcome the objections stated in the noti-
5 fication required by clause (i);

6 “(iii) provide the Indian tribe with—

7 “(I) a hearing on the record with
8 the right to engage in full discovery
9 relevant to any issue raised in the
10 matter; and

11 “(II) the opportunity for appeal
12 on the objections raised (except that
13 the Indian tribe may, in lieu of filing
14 such appeal, directly proceed to ini-
15 tiate an action in a United States dis-
16 trict court under section 110(a)); and

17 “(iv) provide the Indian tribe the op-
18 tion of entering into the severable portions
19 of a final proposed compact or funding
20 agreement (including a lesser funding
21 amount, if any); that the Secretary did not
22 reject, subject to any additional alterations
23 necessary to conform the compact or fund-
24 ing agreement to the severed provisions.

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

4 “(i) the Indian tribe shall retain the
5 right to appeal the rejection by the Sec-
6 retary under this section; and

7 “(ii) clauses (i), (ii), and (iii) of sub-
8 paragraph (A) shall apply only to the por-
9 tion of the proposed final compact or fund-
10 ing agreement that was rejected by the
11 Secretary.

12 “(d) BURDEN OF PROOF.—In any administrative ac-
13 tion, hearing, or appeal or civil action brought under this
14 section, the Secretary shall have the burden of proof—

15 “(1) of demonstrating, by a preponderance of
16 the evidence, the validity of the grounds for a re-
17 assumption under subsection (b); and

18 “(2) of clearly demonstrating the validity of the
19 grounds for rejecting a final offer made under sub-
20 section (c).

21 “(e) GOOD FAITH.—

22 “(1) IN GENERAL.—Subject to section 202 of
23 the Department of the Interior Tribal Self-Govern-
24 ance Act of 2013, in the negotiation of compacts
25 and funding agreements, the Secretary shall at all

1 times negotiate in good faith to maximize implemen-
 2 tation of the self-governance policy.

3 ~~“(2) POLICY.—~~Subject to section 202 of the
 4 Department of the Interior Tribal Self-Governance
 5 Act of 2013, the Secretary shall carry out this title
 6 in a manner that maximizes the policy of tribal self-
 7 governance.

8 ~~“(f) SAVINGS.—~~

9 ~~“(1) IN GENERAL.—~~To the extent that pro-
 10 grams carried out for the benefit of Indian tribes
 11 and tribal organizations under this title reduce the
 12 administrative or other responsibilities of the Sec-
 13 retary with respect to the operation of Indian pro-
 14 grams and result in savings that have not otherwise
 15 been included in the amount of tribal shares and
 16 other funds determined under section 408(c), except
 17 for funding agreements entered into for programs
 18 under section 403(c), the Secretary shall make such
 19 savings available to the Indian tribes or tribal orga-
 20 nizations for the provision of additional services to
 21 program beneficiaries in a manner equitable to di-
 22 rectly served, contracted, and compacted programs.

23 ~~“(2) DISCRETIONARY PROGRAMS OF SPECIAL~~
 24 ~~SIGNIFICANCE.—~~For any savings generated as a re-
 25 sult of the assumption of a program by an Indian

1 tribe under section 402(c), such savings shall be
2 made available to that Indian tribe.

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

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

12 “(1) an official of the Department who holds a
13 position at a higher organizational level within the
14 Department than the level of the departmental agen-
15 cy in which the decision that is the subject of the
16 appeal was made; or

17 “(2) an administrative law judge.

18 “(i) RULES OF CONSTRUCTION.—Subject to section
19 202 of the Department of the Interior Tribal Self-Govern-
20 ance Act of 2013, each provision of this title and each
21 provision of a compact or funding agreement shall be lib-
22 erally construed for the benefit of the Indian tribe partici-
23 pating in self-governance, and any ambiguity shall be re-
24 solved in favor of the Indian tribe.

1 **“SEC. 407. CONSTRUCTION PROGRAMS AND PROJECTS.**

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

5 “(b) TRIBAL OPTION TO CARRY OUT CERTAIN FED-
6 ERAL ENVIRONMENTAL ACTIVITIES.—In carrying out a
7 construction project under this title, an Indian tribe may,
8 subject to the agreement of the Secretary, elect to assume
9 some Federal responsibilities under the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the
11 National Historic Preservation Act (16 U.S.C. 470 et
12 seq.); and related provisions of law and regulations that
13 would apply if the Secretary were to undertake a construc-
14 tion project, by adopting a resolution—

15 “(1) designating a certifying tribal officer to
16 represent the Indian tribe and to assume the status
17 of a responsible Federal official under those Acts or
18 regulations; and

19 “(2) accepting the jurisdiction of the United
20 States courts for the purpose of enforcing the re-
21 sponsibilities of the certifying tribal officer assuming
22 the status of a responsible Federal official under
23 those Acts or regulations.

24 “(c) SAVINGS CLAUSE.—Notwithstanding subsection
25 (b), nothing in this section authorizes the Secretary to in-
26 clude in any compact or funding agreement duties of the

1 Secretary under the National Environmental Policy Act
 2 (42 U.S.C. 4321 et seq.), the National Historic Preserva-
 3 tion Act (16 U.S.C. 470 et seq.); and other related provi-
 4 sions of law that are inherent Federal functions.

5 “(d) CODES AND STANDARDS.—In carrying out a
 6 construction project under this title, an Indian tribe
 7 shall—

8 “(1) adhere to applicable Federal, State, local,
 9 and tribal building codes, architectural and engineer-
 10 ing standards, and applicable Federal guidelines re-
 11 garding design, space, and operational standards,
 12 appropriate for the particular project; and

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

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

16 “(B) certify that—

17 “(i) they are qualified to perform the
 18 work required by the specific construction
 19 involved; and

20 “(ii) upon completion of design, the
 21 plans and specifications meet or exceed the
 22 applicable construction and safety codes.

23 “(e) TRIBAL ACCOUNTABILITY.—

24 “(1) IN GENERAL.—In carrying out a construc-
 25 tion project under this title, an Indian tribe shall as-

1 some responsibility for the successful completion of
2 the construction project and of a facility that is usa-
3 ble for the purpose for which the Indian tribe re-
4 ceived funding.

5 “(2) REQUIREMENTS.—For each construction
6 project carried out by an Indian tribe under this
7 title, the Indian tribe and the Secretary shall nego-
8 tiate a provision to be included in the funding agree-
9 ment that identifies—

10 “(A) the approximate start and completion
11 dates for the project, which may extend over a
12 period of one or more years;

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

16 “(C) the responsibilities of the Indian tribe
17 and the Secretary for the project;

18 “(D) how project-related environmental
19 considerations will be addressed;

20 “(E) the amount of funds provided for the
21 project;

22 “(F) the obligations of the Indian tribe to
23 comply with the codes referenced in subsection
24 (c)(1) and applicable Federal laws and regula-
25 tions;

1 “(G) the agreement of the parties over who
 2 will bear any additional costs necessary to meet
 3 changes in scope, or errors or omissions in de-
 4 sign and construction; and

5 “(H) the agreement of the Secretary to
 6 issue a certificate of occupancy, if requested by
 7 the Indian tribe, based upon the review and
 8 verification by the Secretary, to the satisfaction
 9 of the Secretary, that the Indian tribe has se-
 10 cured upon completion the review and approval
 11 of the plans and specifications, sufficiency of
 12 design, life safety, and code compliance by
 13 qualified, licensed, and independent architects
 14 and engineers.

15 “(f) FUNDING.—

16 “(1) IN GENERAL.—Subject to section 202 of
 17 the Department of the Interior Tribal Self-Govern-
 18 ance Act of 2013, funding appropriated for con-
 19 struction projects carried out under this title shall
 20 be included in funding agreements as annual or
 21 semiannual advance payments at the option of the
 22 Indian tribe.

23 “(2) ADVANCE PAYMENTS.—Subject to section
 24 202 of the Department of the Interior Tribal Self-
 25 Governance Act of 2013, the Secretary shall include

1 all associated project contingency funds with each
 2 advance payment, and the Indian tribe shall be re-
 3 sponsible for the management of such contingency
 4 funds.

5 “(g) NEGOTIATIONS.—At the option of the Indian
 6 tribe, construction project funding proposals shall be nego-
 7 tiated pursuant to the statutory process in section 105,
 8 and any resulting construction project agreement shall be
 9 incorporated into the funding agreement as addenda.

10 “(h) FEDERAL REVIEW AND VERIFICATION.—

11 “(1) IN GENERAL.—On a schedule negotiated
 12 by the Secretary and the Indian tribe—

13 “(A) the Secretary shall review and verify,
 14 to the satisfaction of the Secretary, that project
 15 planning and design documents prepared by the
 16 Indian tribe in advance of initial construction
 17 are in conformity with the obligations of the In-
 18 dian tribe under subsection (c); and

19 “(B) before the project planning and de-
 20 sign documents are implemented, the Secretary
 21 shall review and verify to the satisfaction of the
 22 Secretary that subsequent document amend-
 23 ments which result in a significant change in
 24 construction are in conformity with the obliga-
 25 tions of the Indian tribe under subsection (c).

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

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

8 “(i) APPLICATION OF OTHER LAWS.—Unless other-
9 wise agreed to by the Indian tribe and except as otherwise
10 provided in this Act, no provision of the Office of Federal
11 Procurement Policy Act (41 U.S.C. 401 et seq.), the Fed-
12 eral Acquisition Regulations issued pursuant to that Act,
13 or any other law or regulation pertaining to Federal pro-
14 curement (including Executive orders) shall apply to any
15 construction program or project carried out under this
16 title.

17 “(j) FUTURE FUNDING.—Subject to section 202 of
18 the Department of the Interior Tribal Self-Governance Act
19 of 2013, upon completion of a facility constructed under
20 this title, the Secretary shall include the facility among
21 those eligible for annual operation and maintenance fund-
22 ing support comparable to that provided for similar facili-
23 ties funded by the Department as annual appropriations
24 are available and to the extent that the facility size and

1 complexity and other factors do not exceed the funding
2 formula criteria for comparable buildings.

3 **~~“SEC. 408. PAYMENT.~~**

4 ~~“(a) IN GENERAL.—At the request of the governing~~
5 ~~body of an Indian tribe and under the terms of an applica-~~
6 ~~ble funding agreement, the Secretary shall provide funding~~
7 ~~to the Indian tribe to carry out the funding agreement.~~

8 ~~“(b) ADVANCE ANNUAL PAYMENT.—At the option of~~
9 ~~the Indian tribe, a funding agreement shall provide for~~
10 ~~an advance annual payment to an Indian tribe.~~

11 ~~“(c) AMOUNT.—~~

12 ~~“(1) IN GENERAL.—Subject to subsection (c)~~
13 ~~and sections 403 and 405, the Secretary shall pro-~~
14 ~~vide funds to the Indian tribe under a funding~~
15 ~~agreement for programs in an amount that is equal~~
16 ~~to the amount that the Indian tribe would have been~~
17 ~~entitled to receive under contracts and grants under~~
18 ~~this Act (including amounts for direct program and~~
19 ~~contract support costs and, in addition, any funds~~
20 ~~that are specifically or functionally related to the~~
21 ~~provision by the Secretary of services and benefits to~~
22 ~~the Indian tribe or its members) without regard to~~
23 ~~the organization level within the Department at~~
24 ~~which the programs are carried out.~~

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

4 ~~“(d) TIMING.—~~

5 ~~“(1) IN GENERAL.—~~Pursuant to the terms of
 6 any compact or funding agreement entered into
 7 under this title, the Secretary shall transfer to the
 8 Indian tribe all funds provided for in the funding
 9 agreement, pursuant to subsection (c), and provide
 10 funding for periods covered by joint resolution
 11 adopted by Congress making continuing appropri-
 12 ations, to the extent permitted by such resolution.

13 ~~“(2) TRANSFERS.—~~Not later than 1 year after
 14 the date of enactment of the Department of the In-
 15 terior Tribal Self-Governance Act of 2013, in any in-
 16 stance in which a funding agreement requires an an-
 17 nual transfer of funding to be made at the beginning
 18 of a fiscal year or requires semiannual or other peri-
 19 odic transfers of funding to be made commencing at
 20 the beginning of a fiscal year, the first such transfer
 21 shall be made not later than 10 days after the ap-
 22 portionment of such funds by the Office of Manage-
 23 ment and Budget to the Department, unless the
 24 funding agreement provides otherwise.

1 “(e) AVAILABILITY.—Funds for trust services to indi-
 2 vidual Indians shall be available under a funding agree-
 3 ment only to the extent that the same services that would
 4 have been provided by the Secretary are provided to indi-
 5 vidual Indians by the Indian tribe.

6 “(f) MULTIYEAR FUNDING.—A funding agreement
 7 may provide for multiyear funding.

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

10 “(1) fail to transfer to an Indian tribe its full
 11 share of any central, headquarters, regional, area, or
 12 service unit office or other funds due under this title
 13 for programs eligible under paragraph (1) or (2) of
 14 section 403(b), except as required by Federal law;

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

17 “(3) reduce the amount of funds required under
 18 this title—

19 “(A) to make funding available for self-
 20 governance monitoring or administration by the
 21 Secretary;

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

24 “(i) a reduction in appropriations
 25 from the previous fiscal year for the pro-

1 gram to be included in a compact or fund-
2 ing agreement;

3 ~~“(ii) a congressional directive in legis-~~
4 ~~lation or an accompanying report;~~

5 ~~“(iii) a tribal authorization;~~

6 ~~“(iv) a change in the amount of pass-~~
7 ~~through funds subject to the terms of the~~
8 ~~funding agreement; or~~

9 ~~“(v) completion of an activity under a~~
10 ~~program for which the funds were pro-~~
11 ~~vided;~~

12 ~~“(C) to pay for Federal functions, includ-~~
13 ~~ing—~~

14 ~~“(i) Federal pay costs;~~

15 ~~“(ii) Federal employee retirement ben-~~
16 ~~efits;~~

17 ~~“(iii) automated data processing;~~

18 ~~“(iv) technical assistance; and~~

19 ~~“(v) monitoring of activities under~~
20 ~~this title; or~~

21 ~~“(D) to pay for costs of Federal personnel~~
22 ~~displaced by self-determination contracts under~~
23 ~~this Act or self-governance under this title.~~

24 ~~“(h) FEDERAL RESOURCES.—If an Indian tribe~~
25 ~~elects to carry out a compact or funding agreement with~~

1 the use of Federal personnel, Federal supplies (including
 2 supplies available from Federal warehouse facilities), Fed-
 3 eral supply sources (including lodging, airline transpor-
 4 tation, and other means of transportation, including the
 5 use of interagency motor pool vehicles), or other Federal
 6 resources (including supplies, services, and resources
 7 available to the Secretary under any procurement con-
 8 tracts in which the Department is eligible to participate),
 9 the Secretary shall, as soon as practicable, acquire and
 10 transfer such personnel, supplies, or resources to the In-
 11 dian tribe under this title.

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

16 “(j) INTEREST OR OTHER INCOME.—

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

21 “(2) NO EFFECT ON OTHER AMOUNTS.—The
 22 retention of interest or income under paragraph (1)
 23 shall not diminish the amount of funds an Indian
 24 tribe is entitled to receive under a funding agree-

1 ment in the year the interest or income is earned or
2 in any subsequent fiscal year.

3 ~~“(3)~~ INVESTMENT STANDARD.—Funds trans-
4 ferred under this title shall be managed by the In-
5 dian tribe using the prudent investment standard,
6 provided that the Secretary shall not be liable for
7 any investment losses of funds managed by the In-
8 dian tribe that are not otherwise guaranteed or in-
9 sured by the Federal Government.

10 ~~“(k)~~ CARRYOVER OF FUNDS.—

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

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

21 ~~“(l)~~ LIMITATION OF COSTS.—

22 ~~“(1)~~ IN GENERAL.—An Indian tribe shall not
23 be obligated to continue performance that requires
24 an expenditure of funds in excess of the amount of

1 funds transferred under a compact or funding agree-
 2 ment.

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

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

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

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

23 “(n) APPLICABILITY.—Section 202 of the Depart-
 24 ment of the Interior Tribal Self-Governance Act of 2013
 25 applies to subsections (a) through (m).

1 **~~“SEC. 409. FACILITATION.~~**

2 ~~“(a) IN GENERAL.—Except as otherwise provided by~~
 3 ~~law (including section 202 of the Department of the Inte-~~
 4 ~~rior Tribal Self-Governance Act of 2013), the Secretary~~
 5 ~~shall interpret each Federal law and regulation in a man-~~
 6 ~~ner that facilitates—~~

7 ~~“(1) the inclusion of programs in funding~~
 8 ~~agreements; and~~

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

10 **~~“(b) REGULATION WAIVER.—~~**

11 ~~“(1) REQUEST.—An Indian tribe may submit~~
 12 ~~to the Secretary a written request for a waiver of~~
 13 ~~applicability of a Federal regulation, including—~~

14 ~~“(A) an identification of the specific text in~~
 15 ~~the regulation sought to be waived; and~~

16 ~~“(B) the basis for the request.~~

17 **~~“(2) DETERMINATION BY THE SECRETARY.—~~**

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

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

1 “(4) DESIGNATED OFFICIALS.—The Secretary
 2 shall designate one or more appropriate officials in
 3 the Department to receive a copy of the waiver re-
 4 quest described in paragraph (1).

5 “(5) GROUNDS FOR DENIAL.—The Secretary
 6 may deny a request under paragraph (1)—

7 “(A) for a program eligible under para-
 8 graph (1) or (2) of section 403(b), only upon a
 9 specific finding by the Secretary that the identi-
 10 fied text in the regulation may not be waived
 11 because such a waiver is prohibited by Federal
 12 law; and

13 “(B) for a program eligible under section
 14 403(e), upon a specific finding by the Secretary
 15 that the waiver is prohibited by Federal law or
 16 is inconsistent with the express provisions of
 17 the funding agreement.

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

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

1 **~~“SEC. 410. DISCLAIMERS.~~**

2 ~~“Nothing in this title expands or alters any statutory~~
 3 ~~authority of the Secretary in a manner that authorizes the~~
 4 ~~Secretary to enter into any agreement under section~~
 5 ~~403—~~

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) that limits or reduces in any way the serv-~~
 14 ~~ices, contracts, or funds that any other Indian tribe~~
 15 ~~or tribal organization is eligible to receive under sec-~~
 16 ~~tion 102 or any other applicable Federal law.~~

17 **~~“SEC. 411. DISCRETIONARY APPLICATION OF OTHER SEC-~~**
 18 **~~TIONS.~~**

19 ~~“(a) IN GENERAL.—Except as otherwise provided in~~
 20 ~~section 101(e), at the option of a participating Indian tribe~~
 21 ~~or Indian tribes, any of the provisions of title I may be~~
 22 ~~incorporated in any compact or funding agreement under~~
 23 ~~this title.~~

24 ~~“(b) EFFECT.—Each incorporated provision under~~
 25 ~~subsection (a) shall—~~

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

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

5 “(3) apply to any agency otherwise governed by
6 this title.

7 “(c) **EFFECTIVE DATE.**—If an Indian tribe requests
8 incorporation at the negotiation stage of a compact or
9 funding agreement, the incorporation shall—

10 “(1) be effective immediately; and

11 “(2) control the negotiation and resulting com-
12 pact and funding agreement.

13 **“SEC. 412. ANNUAL BUDGET LIST.**

14 “The Secretary shall list, in the annual budget re-
15 quest submitted to Congress under section 1105 of title
16 31, United States Code, any funds proposed to be included
17 in funding agreements authorized under this Act.

18 **“SEC. 413. REPORTS.**

19 “(a) **IN GENERAL.**—

20 “(1) **REQUIREMENT.**—On January 1 of each
21 year, the Secretary shall submit to Congress a re-
22 port regarding the administration of this title.

23 “(2) **ANALYSIS.**—Any Indian tribe may submit
24 to the Office of Self-Governance and to the appro-
25 priate Committees of Congress a detailed annual

1 analysis of unmet tribal needs for funding agree-
2 ments under this title.

3 ~~“(b) CONTENTS.—The report under subsection (a)(1)~~
4 ~~shall—~~

5 ~~“(1) be compiled from information contained in~~
6 ~~funding agreements, annual audit reports, and data~~
7 ~~of the Secretary regarding the disposition of Federal~~
8 ~~funds;~~

9 ~~“(2) identify—~~

10 ~~“(A) the relative costs and benefits of self-~~
11 ~~governance;~~

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

17 ~~“(C) the funds transferred to each Indian~~
18 ~~tribe and the corresponding reduction in the~~
19 ~~Federal employees and workload; and~~

20 ~~“(D) the funding formula for individual~~
21 ~~tribal shares of all Central Office funds, to-~~
22 ~~gether with the comments of affected Indian~~
23 ~~tribes, developed under subsection (d);~~

1 ~~“(3) before being submitted to Congress, be dis-~~
 2 ~~tributed to the Indian tribes for comment (with a~~
 3 ~~comment period of no less than 30 days);~~

4 ~~“(4) include the separate views and comments~~
 5 ~~of each Indian tribe or tribal organization; and~~

6 ~~“(5) include a list of—~~

7 ~~“(A) all such programs that the Secretary~~
 8 ~~determines, in consultation with Indian tribes~~
 9 ~~participating in self-governance, are eligible for~~
 10 ~~negotiation to be included in a funding agree-~~
 11 ~~ment at the request of a participating Indian~~
 12 ~~tribe; and~~

13 ~~“(B) all such programs which Indian tribes~~
 14 ~~have formally requested to include in a funding~~
 15 ~~agreement under section 403(c) due to the spe-~~
 16 ~~cial geographic, historical, or cultural signifi-~~
 17 ~~cance of the program to the Indian tribe, indi-~~
 18 ~~cating whether each request was granted or de-~~
 19 ~~nied; and stating the grounds for any denial.~~

20 ~~“(e) REPORT ON NON-BIA, NON-OST PROGRAMS.—~~

21 ~~“(1) IN GENERAL.—In order to optimize oppor-~~
 22 ~~tunities for including non-Bureau of Indian Affairs~~
 23 ~~and non-Office of Special Trustee programs in~~
 24 ~~agreements with Indian tribes participating in self-~~
 25 ~~governance under this title, the Secretary shall re-~~

1 view all programs administered by the Department,
 2 other than through the Bureau of Indian Affairs or
 3 Office of the Special Trustee, without regard to the
 4 agency or office concerned.

5 “(2) PROGRAMMATIC TARGETS.—The Secretary
 6 shall establish programmatic targets, after consulta-
 7 tion with Indian tribes participating in self-govern-
 8 ance, to encourage bureaus of the Department to en-
 9 sure that an appropriate portion of those programs
 10 are available to be included in funding agreements.

11 “(3) PUBLICATION.—The lists under subsection
 12 (b)(5) and targets under paragraph (2) shall be pub-
 13 lished in the Federal Register and made available to
 14 any Indian tribe participating in self-governance.

15 “(4) ANNUAL REVIEW.—

16 “(A) IN GENERAL.—The Secretary shall
 17 annually review and publish in the Federal Reg-
 18 ister, after consultation with Indian tribes par-
 19 ticipating in self-governance, revised lists and
 20 programmatic targets.

21 “(B) CONTENTS.—In preparing the revised
 22 lists and programmatic targets, the Secretary
 23 shall consider all programs that were eligible
 24 for contracting in the original list published in
 25 the Federal Register in 1995, except for pro-

1 grams specifically determined not to be
2 contractible as a matter of law.

3 ~~“(d) REPORT ON CENTRAL OFFICE FUNDS.—Not~~
4 ~~later than January 1, 2013, the Secretary shall, in con-~~
5 ~~sultation with Indian tribes, develop a funding formula to~~
6 ~~determine the individual tribal share of funds controlled~~
7 ~~by the Central Office of the Bureau of Indian Affairs and~~
8 ~~the Office of the Special Trustee for inclusion in the com-~~
9 ~~pacts.~~

10 **~~“SEC. 414. REGULATIONS.~~**

11 ~~“(a) IN GENERAL.—~~

12 ~~“(1) PROMULGATION.—Not later than 90 days~~
13 ~~after the date of enactment of the Department of~~
14 ~~the Interior Tribal Self-Governance Act of 2013, the~~
15 ~~Secretary shall initiate procedures under subchapter~~
16 ~~III of chapter 5 of title 5, United States Code, to~~
17 ~~negotiate and promulgate such regulations as are~~
18 ~~necessary to carry out this title.~~

19 ~~“(2) PUBLICATION OF PROPOSED REGULA-~~
20 ~~TIONS.—Proposed regulations to implement this title~~
21 ~~shall be published in the Federal Register not later~~
22 ~~than 21 months after the date of enactment of the~~
23 ~~Department of the Interior Tribal Self-Governance~~
24 ~~Act of 2013.~~

1 ~~“(3) EXPIRATION OF AUTHORITY.—The author-~~
 2 ~~ity to promulgate regulations under paragraph (1)~~
 3 ~~shall expire on the date that is 30 months after the~~
 4 ~~date of enactment of the Department of the Interior~~
 5 ~~Tribal Self-Governance Act of 2013.~~

6 ~~“(b) COMMITTEE.—~~

7 ~~“(1) MEMBERSHIP.—A negotiated rulemaking~~
 8 ~~committee established pursuant to section 565 of~~
 9 ~~title 5, United States Code, to carry out this section~~
 10 ~~shall have as its members only representatives of the~~
 11 ~~Federal Government and tribal government.~~

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

16 ~~“(c) ADAPTATION OF PROCEDURES.—The Secretary~~
 17 ~~shall adapt the negotiated rulemaking procedures to the~~
 18 ~~unique context of self-governance and the government-to-~~
 19 ~~government relationship between the United States and~~
 20 ~~Indian tribes.~~

21 ~~“(d) EFFECT.—~~

22 ~~“(1) REPEAL.—The Secretary may repeal any~~
 23 ~~regulation that is inconsistent with this Act.~~

24 ~~“(2) CONFLICTING PROVISIONS.—Subject to~~
 25 ~~section 202 of the Department of the Interior Tribal~~

1 Self-Governance Act of 2013, this title shall super-
 2 cede any conflicting provision of law (including any
 3 conflicting regulations).

4 “(3) EFFECTIVENESS WITHOUT REGARD TO
 5 REGULATIONS.—The lack of promulgated regula-
 6 tions on an issue shall not limit the effect or imple-
 7 mentation of this title.

8 **“SEC. 415. EFFECT OF CIRCULARS, POLICIES, MANUALS,**
 9 **GUIDANCE, AND RULES.**

10 “Unless expressly agreed to by a participating Indian
 11 tribe in a compact or funding agreement, the participating
 12 Indian tribe shall not be subject to any agency circular,
 13 policy, manual, guidance, or rule adopted by the Depart-
 14 ment, except for—

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

17 “(2) regulations promulgated pursuant to sec-
 18 tion 414.

19 **“SEC. 416. APPEALS.**

20 “Except as provided in section 406(d), in any admin-
 21 istrative action, appeal, or civil action for judicial review
 22 of any decision made by the Secretary under this title,
 23 the Secretary shall have the burden of proof of dem-
 24 onstrating by a preponderance of the evidence—

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

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

5 **“SEC. 417. APPLICATION OF OTHER PROVISIONS.**

6 “Section 314 of the Department of the Interior and
7 Related Agencies Appropriations Act, 1991 (Public Law
8 101–512; 104 Stat. 1959), shall apply to compacts and
9 funding agreements entered into under this title.

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

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

13 **SEC. 202. EFFECT OF CERTAIN PROVISIONS.**

14 (a) DEFINITIONS.—In this section:

15 (1) FUNDING AGREEMENT.—The term “fund-
16 ing agreement” means a funding agreement entered
17 into under section 403 of the ISDEAA (25 U.S.C.
18 458ee).

19 (2) ISDEAA.—The term “ISDEAA” means
20 the Indian Self-Determination and Education Assist-
21 ance Act (25 U.S.C. 450 et seq.).

22 (3) NON-BIA PROGRAM.—The term “non-BIA
23 program” means all or a portion of a program, func-
24 tion, service, or activity that is administered by any

bureau, service, office, or agency of the Department of the Interior other than through—

(A) the Bureau of Indian Affairs;

(B) the Office of the Assistant Secretary for Indian Affairs; or

(C) the Office of the Special Trustee for American Indians.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) SELF-DETERMINATION CONTRACT.—The term “self-determination contract” means a self-determination contract entered into under section 102 of the ISDEAA (25 U.S.C. 450f).

(6) TRIBAL WATER SETTLEMENT.—The term “tribal water settlement” means any settlement, compact, or other agreement entered into by an Indian tribe and the United States, or by an Indian tribe, the United States, and one or more parties that—

(A) settles or quantifies any Federal reserved water rights or any claims relating to those rights of the Indian tribe; and

(B) has been authorized by an Act of Congress.

1 (b) EFFECT OF PROVISIONS.—Nothing in this Act
 2 (including this section) or any amendment made by this
 3 Act (including section 414 of the ISDEAA (relating to
 4 regulations); as added by section 201)—

5 (1) modifies or affects the meaning, application,
 6 or effect of—

7 (A) section 102(a)(1)(E) of the ISDEAA
 8 (25 U.S.C. 450f(a)(1)(E)), as in effect on the
 9 day before the date of enactment of this Act; or
 10 (B) paragraph (2) or (3) of subsection (b)
 11 or subsection (c) of section 403 of the ISDEAA
 12 (25 U.S.C. 458cc); as in effect on the day be-
 13 fore the date of enactment of this Act;

14 (2) increases, limits, modifies, or otherwise af-
 15 fects any authority of the Secretary that the Sec-
 16 retary held on the day before the date of enactment
 17 of this Act under section 403(c) of the ISDEAA (25
 18 U.S.C. 458cc(c));

19 (3) authorizes the inclusion of any non-BIA
 20 program in—

21 (A) a self-determination contract as a pro-
 22 gram under section 102(a)(1)(E) of the
 23 ISDEAA (25 U.S.C. 450f(a)(1)(E)) if the in-
 24 clusion of that non-BIA program in a self-de-
 25 termination contract as a program under that

1 section would not have been authorized under
 2 the ISDEAA on the day before the date of en-
 3 actment of this Act;

4 (B) a funding agreement as a program
 5 under section 403(b)(2) of the ISDEAA (25
 6 U.S.C. 458cc(b)(2)) if the inclusion of that non-
 7 BIA program in a funding agreement as a pro-
 8 gram under that section would not have been
 9 authorized on the day before the date of enact-
 10 ment of this Act; or

11 (C) a funding agreement as a program
 12 under section 403(e) of the ISDEAA (25
 13 U.S.C. 458cc(e)) if the inclusion of that non-
 14 BIA program in a funding agreement as a pro-
 15 gram under that section would not have been
 16 authorized under the ISDEAA on the day be-
 17 fore the date of enactment of this Act;

18 (4) modifies or otherwise affects the meaning,
 19 application, or effect of any provision of law that—

20 (A) is not contained in the ISDEAA; and

21 (B) expressly authorizes or prohibits con-
 22 tracting or compacting under title I or title IV
 23 of the ISDEAA with respect to a specific pro-
 24 gram or project that is identified or otherwise
 25 referred to in that provision of law;

(5) modifies or otherwise affects the meaning, application, or effect of, or the performance required of a party, or any payment or funding under—

(A) a tribal water settlement; or

(B) any Act of Congress approving, authorizing, or ratifying a tribal water settlement; or

(6) authorizes any self-determination contract or funding agreement or approval of any self-determination contract or funding agreement under the ISDEAA (as amended by section 201) that would authorize an Indian tribe to plan, conduct, consolidate, administer, or receive funding for any program, project, or activity that is required, authorized, or funded by a tribal water settlement or an Act of Congress approving, authorizing, or ratifying a tribal water settlement in a manner that is inconsistent with the terms of that tribal water settlement or that Act of Congress.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “Department of the Interior Tribal Self-Governance Act of 2014”.

(b) *TABLE OF CONTENTS.*—The table of contents of 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 the 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.

Sec. 202. Effect of certain provisions.

TITLE I—INDIAN SELF-DETERMINATION

SEC. 101. DEFINITIONS; REPORTING AND AUDIT REQUIREMENTS; APPLICATION OF PROVISIONS.

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

“(j) ‘self-determination contract’ means a contract entered into under title I (or a grant or cooperative agreement used under section 9) between a tribal organization and the appropriate Secretary for the planning, conduct, and administration of programs or services that are otherwise provided to Indian tribes and members of Indian tribes pursuant to Federal law, subject to the condition that, except as provided in section 105(a)(3), no contract entered into under title I (or grant or cooperative agreement used under section 9) shall be—

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

1 “(2) except as provided in section 107(a)(1), sub-
 2 ject to any Federal procurement law (including regu-
 3 lations);”.

4 **(b) REPORTING AND AUDIT REQUIREMENTS.**—Section
 5 5(b) of the Indian Self-Determination and Education As-
 6 sistance Act (25 U.S.C. 450c(b)) is amended—

7 (1) by striking “after completion of the project or
 8 undertaking referred to in the preceding subsection of
 9 this section” and inserting “after the retention period
 10 for the report that is submitted to the Secretary under
 11 subsection (a)”; and

12 (2) by adding at the end the following: “The re-
 13 tention period shall be defined in regulations promul-
 14 gated by the Secretary pursuant to section 414.”.

15 **(c) APPLICATION OF OTHER PROVISIONS.**—Sections 4,
 16 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111 of the
 17 Indian Self-Determination and Education Assistance Act,
 18 as amended (25 U.S.C. 450 et seq.) (Public Law 93–638;
 19 88 Stat. 2203) and section 314 of the Department of the
 20 Interior and Related Agencies Appropriations Act, 1991
 21 (Public Law 101–512; 104 Stat. 1959), apply to compacts
 22 and funding agreements entered into under title IV.

23 **SEC. 102. CONTRACTS BY SECRETARY OF THE INTERIOR.**

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

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

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

7 “(f) *GOOD FAITH REQUIREMENT.*—In the negotiation
8 of contracts and funding agreements, the Secretary shall—
9 “(1) at all times negotiate in good faith to maxi-
10 mize implementation of the self-determination policy;
11 and

12 “(2) carry out this Act in a manner that maxi-
13 mizes the policy of tribal self-determination, in a
14 manner consistent with—

15 “(A) the purposes specified in section 3; and

16 “(B) the Department of the Interior Tribal
17 Self-Governance Act of 2014.

18 “(g) *RULE OF CONSTRUCTION.*—Subject to section 202
19 of the Department of the Interior Tribal Self-Governance
20 Act of 2014, each provision of this Act and each provision
21 of a contract or funding agreement shall be liberally con-
22 strued for the benefit of the Indian tribe participating in
23 self-determination, and any ambiguity shall be resolved in
24 favor of the Indian tribe.”.

1 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

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

4 *(1) in subsection (b), in the first sentence, by*
 5 *striking “pursuant to” and all that follows through*
 6 *“of this Act” and inserting “pursuant to sections 102*
 7 *and 103”; and*

8 *(2) by adding at the end the following:*

9 *“(p) INTERPRETATION BY SECRETARY.—Except as*
 10 *otherwise provided by law (including section 202 of the De-*
 11 *partment of the Interior Tribal Self-Governance Act of*
 12 *2014), the Secretary shall interpret all Federal laws (in-*
 13 *cluding regulations) and Executive orders in a manner that*
 14 *facilitates, to the maximum extent practicable—*

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

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

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

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

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

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

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

5 *(1) in subparagraph (A)—*

6 *(A) in clause (i), by striking “, and” and*
 7 *inserting “; and”; and*

8 *(B) in clause (ii), by striking “expense re-*
 9 *lated to the overhead incurred” and inserting*
 10 *“expense incurred by the governing body of the*
 11 *Indian tribe or tribal organization and any*
 12 *overhead expense incurred”;*

13 *(2) by redesignating subparagraph (B) as sub-*
 14 *paragraph (C); and*

15 *(3) by inserting after subparagraph (A) the fol-*
 16 *lowing:*

17 *“(B) In calculating the reimbursement rate*
 18 *for expenses described in subparagraph (A)(ii),*
 19 *not less than 50 percent of the expenses described*
 20 *in subparagraph (A)(ii) that are incurred by the*
 21 *governing body of an Indian tribe or tribal orga-*
 22 *nization relating to a Federal program, function,*
 23 *service, or activity carried out pursuant to the*
 24 *contract shall be considered to be reasonable and*
 25 *allowable.”.*

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

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

4 *(1) in subsection (a)(2), by inserting “subject to*
 5 *subsections (a) and (b) of section 102,” before “con-*
 6 *tain”; and*

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

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

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

15 *(a) DEFINITIONS.—Section 401 of the Indian Self-De-*
 16 *termination and Education Assistance Act (25 U.S.C.*
 17 *458aa) is amended to read as follows:*

18 **“SEC. 401. DEFINITIONS.**

19 *“In this title:*

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

23 *“(2) CONSTRUCTION PROGRAM; CONSTRUCTION*
 24 *PROJECT.—The term ‘construction program’ or ‘con-*
 25 *struction project’ means a tribal undertaking relating*
 26 *to the administration, planning, environmental deter-*

1 *mination, design, construction, repair, improvement,*
2 *or expansion of roads, bridges, buildings, structures,*
3 *systems, or other facilities for purposes of housing,*
4 *law enforcement, detention, sanitation, water supply,*
5 *education, administration, community, health, irriga-*
6 *tion, agriculture, conservation, flood control, trans-*
7 *portation, or port facilities, or for other tribal pur-*
8 *poses.*

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

11 “(4) *FUNDING AGREEMENT.*—*The term ‘funding*
12 *agreement’ means a funding agreement entered into*
13 *under section 403.*

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

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

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

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

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

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

10 “(9) *SELF-GOVERNANCE*.—*The term ‘self-govern-*
 11 *ance’ means the Tribal Self-Governance Program es-*
 12 *tablished under section 402.*

13 “(10) *TRIBAL SHARE*.—*The term ‘tribal share’*
 14 *means the portion of all funds and resources of an In-*
 15 *Indian tribe that—*

16 “(A) *support any program within the Bu-*
 17 *reau of Indian Affairs, the Office of the Special*
 18 *Trustee, or the Office of the Assistant Secretary*
 19 *for Indian Affairs; and*

20 “(B) *are not required by the Secretary for*
 21 *the performance of an inherent Federal func-*
 22 *tion.’.*

23 (b) *ESTABLISHMENT*.—*Section 402 of the Indian Self-*
 24 *Determination and Education Assistance Act (25 U.S.C.*
 25 *458bb) is amended to read as follows:*

1 **“SEC. 402. TRIBAL SELF-GOVERNANCE PROGRAM.**

2 “(a) *ESTABLISHMENT.*—*The Secretary shall establish*
 3 *and carry out a program within the Department to be*
 4 *known as the ‘Tribal Self-Governance Program’.*

5 “(b) *SELECTION OF PARTICIPATING INDIAN TRIBES.*—

6 “(1) *IN GENERAL.*—

7 “(A) *ELIGIBILITY.*—*The Secretary, acting*
 8 *through the Director of the Office of Self-Govern-*
 9 *ance, may select up to 50 new Indian tribes per*
 10 *year from those eligible under subsection (c) to*
 11 *participate in self-governance.*

12 “(B) *JOINT PARTICIPATION.*—*On the re-*
 13 *quest of each participating Indian tribe, two or*
 14 *more otherwise eligible Indian tribes may be*
 15 *treated as a single Indian tribe for the purpose*
 16 *of participating in self-governance.*

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

25 “(3) *JOINT PARTICIPATION.*—*Two or more In-*
 26 *dian tribes that are not otherwise eligible under sub-*

1 *section (c) may be treated as a single Indian tribe for*
 2 *the purpose of participating in self-governance as a*
 3 *tribal organization if—*

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

5 *“(B) the tribal organization itself, or at*
 6 *least one of the Indian tribes participating in*
 7 *the tribal organization, is eligible under sub-*
 8 *section (c).*

9 *“(4) TRIBAL WITHDRAWAL FROM A TRIBAL OR-*
 10 *GANIZATION.—*

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

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

23 *“(C) PARTICIPATION IN SELF-GOVERN-*
 24 *ANCE.—The withdrawal of an Indian tribe from*
 25 *a tribal organization shall not affect the eligi-*

bility of the tribal organization to participate in self-governance on behalf of one or more other Indian tribes, if the tribal organization still qualifies under subsection (c).

“(D) *WITHDRAWAL PROCESS.*—

“(i) *IN GENERAL.*—An Indian tribe may, by tribal resolution, fully or partially withdraw its tribal share of any program in a funding agreement from a participating tribal organization.

“(ii) *NOTIFICATION.*—The Indian tribe shall provide a copy of the tribal resolution described in clause (i) to the Secretary.

“(iii) *EFFECTIVE DATE.*—

“(I) *IN GENERAL.*—A withdrawal under clause (i) shall become effective on the date that is specified in the tribal resolution and mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian tribe or tribal organization.

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

5 “(aa) *the earlier of—*

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

9 “(BB) *the date on which*
 10 *the funding agreement ex-*
 11 *pires; 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 fund-*
 17 *ing agreement on behalf of the*
 18 *withdrawing Indian tribe or trib-*
 19 *al 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 into 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 funds*
 9 *and resources supporting the programs*
 10 *that the Indian tribe will be carrying*
 11 *out under its own self-determination*
 12 *contract or compact and funding*
 13 *agreement (calculated on the same*
 14 *basis as the funds were initially allo-*
 15 *cated to the funding agreement of the*
 16 *tribal organization); and*

17 *“(II) the funds referred to in sub-*
 18 *clause (I) shall be withdrawn by the*
 19 *Secretary from the funding agreement*
 20 *of the tribal organization and trans-*
 21 *ferred to the withdrawing Indian tribe,*
 22 *on the condition that sections 102 and*
 23 *105(i), as appropriate, shall apply to*
 24 *the withdrawing Indian tribe; or*

1 “(ii) may elect not to enter into a self-
 2 determination contract or compact, in
 3 which case all unexpended funds and re-
 4 sources associated with the withdrawing In-
 5 dian tribe’s returned programs (calculated
 6 on the same basis as the funds were ini-
 7 tially allocated to the funding agreement of
 8 the tribal organization) shall be returned by
 9 the tribal organization to the Secretary for
 10 operation of the programs included in the
 11 withdrawal.

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

21 “(c) ELIGIBILITY.—To be eligible to participate in self-
 22 governance, an Indian tribe shall—

23 “(1) successfully complete the planning phase de-
 24 scribed in subsection (d);

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

4 “(3) demonstrate, for the 3 fiscal years preceding
5 the date on which the Indian tribe requests participa-
6 tion, financial stability and financial management
7 capability as evidenced by the Indian tribe having no
8 uncorrected significant and material audit exceptions
9 in the required annual audit of its self-determination
10 or self-governance agreements with any Federal agen-
11 cy.

12 “(d) *PLANNING PHASE.*—

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

16 “(2) *ACTIVITIES.*—The planning phase shall—

17 “(A) be conducted to the satisfaction of the
18 Indian tribe; and

19 “(B) include—

20 “(i) legal and budgetary research; and

21 “(ii) internal tribal government plan-
22 ning, training, and organizational prepara-
23 tion.

24 “(e) *GRANTS.*—

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

5 “(A) to plan for participation in self-gov-
 6 ernance; and

7 “(B) to negotiate the terms of participation
 8 by the Indian tribe or tribal organization in self-
 9 governance, as set forth in a compact and a
 10 funding agreement.

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

14 “(c) *FUNDING AGREEMENTS.*—Section 403 of the In-
 15 dian Self-Determination and Education Assistance Act (25
 16 U.S.C. 458cc) is amended—

17 (1) by striking subsection (a) and inserting the
 18 following:

19 “(a) *AUTHORIZATION.*—The Secretary shall, on the re-
 20 quest of any Indian tribe or tribal organization, enter into
 21 a written funding agreement with the governing body of the
 22 Indian tribe or the tribal organization in a manner con-
 23 sistent with—

24 “(1) the trust responsibility of the Federal Gov-
 25 ernment, treaty obligations, and the government-to-

1 *government relationship between Indian tribes and*
 2 *the United States; and*

3 “(2) subsection (b).”;

4 (2) in subsection (b)—

5 (A) in paragraph (1)—

6 (i) in the matter preceding subpara-
 7 graph (A), by striking “without regard to
 8 the agency or office of the Bureau of Indian
 9 Affairs” and inserting “the Office of the As-
 10 sistant Secretary for Indian Affairs, and
 11 the Office of the Special Trustee, without re-
 12 gard to the agency or office of that Bureau
 13 or those Offices”;

14 (ii) in subparagraph (B), by striking
 15 “and”;

16 (iii) in subparagraph (C), by inserting
 17 “and” after the semicolon at the end; and

18 (iv) by adding at the end the following:

19 “(D) any other programs, services, func-
 20 tions, or activities (or portions thereof) that are
 21 provided through the Bureau of Indian Affairs,
 22 the Office of the Assistant Secretary for Indian
 23 Affairs, or the Office of the Special Trustee with
 24 respect to which Indian tribes or Indians are
 25 primary or significant beneficiaries;”;

1 (B) in paragraph (2)—

2 (i) by striking “section 405(c)” and in-
3 serting “section 413(c)”; and

4 (ii) by inserting “and” after the semi-
5 colon at the end;

6 (C) in paragraph (3), by striking the semi-
7 colon at the end and inserting a period; and

8 (D) by striking paragraphs (4) through (9);
9 and

10 (3) by adding at the end the following:

11 “(m) *OTHER PROVISIONS.*—

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

16 “(A) is provided under the Tribally Con-
17 trolled Colleges and Universities Assistance Act
18 of 1978 (25 U.S.C. 1801 et seq.); or

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

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

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

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

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

7 “(3) *BASE BUDGET*.—A funding agreement shall,
8 at the option of the Indian tribe, provide for a stable
9 base budget specifying the recurring funds (which
10 may include funds available under section 106(a)) to
11 be transferred to the Indian tribe, for such period as
12 the Indian tribe specifies in the funding agreement,
13 subject to annual adjustment only to reflect changes
14 in congressional appropriations.

15 “(4) *NO WAIVER OF TRUST RESPONSIBILITY*.—A
16 funding agreement shall prohibit the Secretary from
17 waiving, modifying, or diminishing in any way the
18 trust responsibility of the United States with respect
19 to Indian tribes and individual Indians that exists
20 under treaties, Executive orders, court decisions, and
21 other laws.

22 “(n) *AMENDMENT*.—The Secretary shall not revise,
23 amend, or require additional terms in a new or subsequent
24 funding agreement without the consent of the Indian tribe,
25 unless such terms are required by Federal law.

1 “(o) *EFFECTIVE DATE.*—A funding agreement shall
 2 become effective on the date specified in the funding agree-
 3 ment.

4 “(p) *EXISTING AND SUBSEQUENT FUNDING AGREE-*
 5 *MENTS.*—

6 “(1) *SUBSEQUENT FUNDING AGREEMENTS.*—Ab-
 7 sent notification from an Indian tribe that the Indian
 8 tribe is withdrawing or retroceding the operation of
 9 one or more programs identified in a funding agree-
 10 ment, or unless otherwise agreed to by the parties to
 11 the funding agreement or by the nature of any non-
 12 continuing program, service, function, or activity
 13 contained in a funding agreement—

14 “(A) a funding agreement shall remain in
 15 full force and effect until a subsequent funding
 16 agreement is executed, with funding paid annu-
 17 ally for each fiscal year the agreement is in ef-
 18 fect; and

19 “(B) the term of the subsequent funding
 20 agreement shall be retroactive to the end of the
 21 term of the preceding funding agreement for the
 22 purposes of calculating the amount of funding to
 23 which the Indian tribe is entitled.

1 “(2) *DISPUTES*.—*Disputes over the implementa-*
 2 *tion of paragraph (1)(A) shall be subject to section*
 3 *406(c).*

4 “(3) *EXISTING FUNDING AGREEMENTS*.—*An In-*
 5 *dian tribe that was participating in self-governance*
 6 *under this title on the date of enactment of the De-*
 7 *partment of the Interior Tribal Self-Governance Act*
 8 *of 2014 shall have the option at any time after that*
 9 *date—*

10 “(A) *to retain its existing funding agree-*
 11 *ment (in whole or in part) to the extent that the*
 12 *provisions of that funding agreement are not di-*
 13 *rectly contrary to any express provision of this*
 14 *title; or*

15 “(B) *to negotiate a new funding agreement*
 16 *in a manner consistent with this title.*

17 “(4) *MULTIYEAR FUNDING AGREEMENTS*.—*An*
 18 *Indian tribe may, at the discretion of the Indian*
 19 *tribe, negotiate with the Secretary for a funding*
 20 *agreement with a term that exceeds 1 year.”.*

21 “(d) *GENERAL REVISIONS*.—*Title IV of the Indian Self-*
 22 *Determination and Education Assistance Act (25 U.S.C.*
 23 *458aa et seq.) is amended by striking sections 404 through*
 24 *408 and inserting the following:*

1 **“SEC. 404. COMPACTS.**

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

8 “(b) *CONTENTS.*—*A compact under subsection (a)*
 9 *shall—*

10 “(1) *specify and affirm the general terms of the*
 11 *government-to-government relationship between the*
 12 *Indian tribe and the Secretary; and*

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

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

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

19 “(1) *the date of the execution of the compact by*
 20 *the parties; or*

21 “(2) *such date as is mutually agreed upon by the*
 22 *parties.*

23 “(e) *DURATION.*—*A compact under subsection (a) shall*
 24 *remain in effect—*

25 “(1) *for so long as permitted by Federal law; or*

1 “(2) until termination by written agreement, ret-
2 rocession, or reassumption.

3 “(f) *EXISTING COMPACTS.*—An Indian tribe partici-
4 pating in self-governance under this title, as in effect on
5 the date of enactment of the Department of the Interior
6 Tribal Self-Governance Act of 2014, shall have the option
7 at any time after that date—

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

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

14 **“SEC. 405. 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 par-
19 ticipating 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 of
 2 *title 31, United States Code, shall apply to a funding*
 3 *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 modified*
 7 *by—*

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

10 “(B) *any exemptions to applicable Office of*
 11 *Management and Budget circulars subsequently*
 12 *granted by the Office of Management and Budg-*
 13 *et.*

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 sec-*
 18 *tion 106(f).*

19 “(d) *REDESIGN AND CONSOLIDATION.*—Except as pro-
 20 *vided in section 407, an Indian tribe may redesign or con-*
 21 *solidate programs or reallocate funds for programs in any*
 22 *manner that the Indian tribe determines to be in the best*
 23 *interest of the Indian community being served, so long as*
 24 *that the redesign or consolidation does not have the effect*
 25 *of denying eligibility for services to population groups oth-*

1 *erwise eligible to be served under applicable Federal law,*
 2 *except that, with respect to the reallocation, consolidation,*
 3 *and redesign of programs described in subsection (b)(2) or*
 4 *(c) of section 403, a joint agreement between the Secretary*
 5 *and the Indian tribe shall be 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 tribe*
 12 *rescinds a request for retrocession under para-*
 13 *graph (1), the retrocession shall become effective*
 14 *on the date specified by the parties in the com-*
 15 *pact or funding agreement.*

16 “(B) *NO AGREEMENT.*—*In the absence of a*
 17 *specification of an effective date in the compact*
 18 *or funding agreement, the retrocession shall be-*
 19 *come 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 the
10 Indian tribe shall be eligible for new programs on the
11 same basis as other Indian tribes; and

12 “(2) shall be responsible for the administration
13 of programs in accordance with the compact or fund-
14 ing 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 5
20 of title 5, United States Code.

21 “(2) *RECORDKEEPING SYSTEM*.—An Indian tribe
22 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. 406. PROVISIONS RELATING 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 trust*
 8 *evaluation.*

9 “(b) *REASSUMPTION.*—

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

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

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

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

21 “(B) *gross mismanagement with respect to*
 22 *funds transferred to an Indian tribe under a*
 23 *compact or funding agreement, as determined by*
 24 *the Secretary in consultation with the Inspector*
 25 *General, as appropriate.*

1 “(2) *PROHIBITION.*—*The Secretary shall not re-*
 2 *assume operation of a program, in whole or part, un-*
 3 *less—*

4 “(A) *the Secretary first provides written no-*
 5 *tice and a hearing on the record to the Indian*
 6 *tribe; and*

7 “(B) *the Indian tribe does not take correc-*
 8 *tive action to remedy the mismanagement of the*
 9 *funds or programs, or the imminent jeopardy to*
 10 *a trust asset, natural resource, or public health*
 11 *and safety.*

12 “(3) *EXCEPTION.*—

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

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

23 “(ii) *the imminent and substantial*
 24 *jeopardy, and irreparable harm to the trust*
 25 *asset, natural resource, or public health and*

1 *safety arises out of a failure by the Indian*
 2 *tribe to carry out the terms of an applicable*
 3 *compact or funding agreement.*

4 “(B) *REASSUMPTION.*—*If the Secretary re-*
 5 *assumes operation of a program under subpara-*
 6 *graph (A), the Secretary shall provide the Indian*
 7 *tribe with a hearing on the record not later than*
 8 *10 days after the date of reassumption.*

9 “(c) *INABILITY TO AGREE ON COMPACT OR FUNDING*
 10 *AGREEMENT.*—

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

16 “(2) *DETERMINATION.*—*Not more than 60 days*
 17 *after the date of receipt of a final offer by the one or*
 18 *more officials designated pursuant to paragraph (4),*
 19 *the Secretary shall review and make a determination*
 20 *with respect to the final offer.*

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

25 “(4) *DESIGNATED OFFICIALS.*—

1 “(A) *IN GENERAL.*—*The Secretary shall*
 2 *designate one or more appropriate officials in*
 3 *the Department to receive a copy of the final*
 4 *offer described in paragraph (1).*

5 “(B) *NO DESIGNATION.*—*If no official is*
 6 *designated, the Executive Secretariat of the Sec-*
 7 *retary shall be the designated official.*

8 “(5) *NO TIMELY DETERMINATION.*—*Except as*
 9 *otherwise provided in section 202 of the Department*
 10 *of the Interior Tribal Self-Governance Act of 2014, if*
 11 *the Secretary fails to make a determination with re-*
 12 *spect to a final offer within the period specified in*
 13 *paragraph (2), the Secretary shall be deemed to have*
 14 *agreed to the offer.*

15 “(6) *REJECTION OF FINAL OFFER.*—

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

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

24 “(I) *the amount of funds proposed*
 25 *in the final offer exceeds the applicable*

1 *funding level as determined under sec-*
2 *tion 106(a)(1);*

3 “(II) *the program that is the sub-*
4 *ject of the final offer is an inherent*
5 *Federal function or is subject to the*
6 *discretion of the Secretary under sec-*
7 *tion 403(c);*

8 “(III) *the Indian tribe cannot*
9 *carry out the program in a manner*
10 *that would not result in significant*
11 *danger or risk to the public health or*
12 *safety, to natural resources, or to trust*
13 *resources;*

14 “(IV) *the Indian tribe is not eligi-*
15 *ble to participate in self-governance*
16 *under section 402(c);*

17 “(V) *the funding agreement would*
18 *violate a Federal statute or regulation;*
19 *or*

20 “(VI) *with respect to a program*
21 *or portion of a program included in a*
22 *final offer pursuant to section*
23 *403(b)(2), the program or the portion*
24 *of the program is not otherwise avail-*

1 *able to Indian tribes or Indians under*
2 *section 102(a)(1)(E);*

3 “(ii) *provide technical assistance to*
4 *overcome the objections stated in the notifi-*
5 *cation required by clause (i);*

6 “(iii) *provide the Indian tribe with—*
7 “(I) *a hearing on the record with*
8 *the right to engage in full discovery*
9 *relevant to any issue raised in the*
10 *matter; and*

11 “(II) *the opportunity for appeal*
12 *on the objections raised (except that the*
13 *Indian tribe may, in lieu of filing such*
14 *appeal, directly proceed to initiate an*
15 *action in a United States district court*
16 *under section 110(a)); and*

17 “(iv) *provide the Indian tribe the op-*
18 *tion of entering into the severable portions*
19 *of a final proposed compact or funding*
20 *agreement (including a lesser funding*
21 *amount, if any), that the Secretary did not*
22 *reject, subject to any additional alterations*
23 *necessary to conform the compact or fund-*
24 *ing agreement to the severed provisions.*

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

4 “(i) *the Indian tribe shall retain the*
 5 *right to appeal the rejection by the Sec-*
 6 *retary under this section; and*

7 “(ii) *clauses (i), (ii), and (iii) of sub-*
 8 *paragraph (A) shall apply only to the por-*
 9 *tion of the proposed final compact or fund-*
 10 *ing agreement that was rejected by the Sec-*
 11 *retary.*

12 “(d) *BURDEN OF PROOF.—In any administrative ac-*
 13 *tion, hearing, or appeal or civil action brought under this*
 14 *section, the Secretary shall have the burden of proof—*

15 “(1) *of demonstrating, by a preponderance of the*
 16 *evidence, the validity of the grounds for a reassump-*
 17 *tion under subsection (b); and*

18 “(2) *of clearly demonstrating the validity of the*
 19 *grounds for rejecting a final offer made under sub-*
 20 *section (c).*

21 “(e) *GOOD FAITH.—*

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

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

4 “(f) *SAVINGS.*—

5 “(1) *IN GENERAL.*—*To the extent that programs*
 6 *carried out for the benefit of Indian tribes and tribal*
 7 *organizations under this title reduce the administra-*
 8 *tive or other responsibilities of the Secretary with re-*
 9 *spect to the operation of Indian programs and result*
 10 *in savings that have not otherwise been included in*
 11 *the amount of tribal shares and other funds deter-*
 12 *mined under section 408(c), except for funding agree-*
 13 *ments entered into for programs under section 403(c),*
 14 *the Secretary shall make such savings available to the*
 15 *Indian tribes or tribal organizations for the provision*
 16 *of additional services to program beneficiaries in a*
 17 *manner equitable to directly served, contracted, and*
 18 *compacted programs.*

19 “(2) *DISCRETIONARY PROGRAMS OF SPECIAL*
 20 *SIGNIFICANCE.*—*For any savings generated as a re-*
 21 *sult of the assumption of a program by an Indian*
 22 *tribe under section 403(c), such savings shall be made*
 23 *available to that Indian tribe.*

24 “(g) *TRUST RESPONSIBILITY.*—*The Secretary may not*
 25 *waive, modify, or diminish in any way the trust responsi-*

1 *bility of the United States with respect to Indian tribes and*
 2 *individual Indians that exists under treaties, Executive or-*
 3 *ders, other laws, or court decisions.*

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

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

13 “(2) *an administrative law judge.*

14 “(i) *RULES OF CONSTRUCTION.*—*Subject to section*
 15 *202 of the Department of the Interior Tribal Self-Govern-*
 16 *ance Act of 2014, each provision of this title and each provi-*
 17 *sion of a compact or funding agreement shall be liberally*
 18 *construed for the benefit of the Indian tribe participating*
 19 *in self-governance, and any ambiguity shall be resolved in*
 20 *favor of the Indian tribe.*

21 **“SEC. 407. CONSTRUCTION PROGRAMS AND PROJECTS.**

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

1 “(b) *TRIBAL OPTION TO CARRY OUT CERTAIN FED-*
 2 *ERAL ENVIRONMENTAL ACTIVITIES.*—*In carrying out a*
 3 *construction project under this title, an Indian tribe may,*
 4 *subject to the agreement of the Secretary, elect to assume*
 5 *some Federal responsibilities under the National Environ-*
 6 *mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Na-*
 7 *tional Historic Preservation Act (16 U.S.C. 470 et seq.),*
 8 *and related provisions of law and regulations that would*
 9 *apply if the Secretary were to undertake a construction*
 10 *project, by adopting a resolution—*

11 “(1) *designating a certifying tribal officer to rep-*
 12 *resent the Indian tribe and to assume the status of a*
 13 *responsible Federal official under those Acts or regu-*
 14 *lations; and*

15 “(2) *accepting the jurisdiction of the United*
 16 *States courts for the purpose of enforcing the respon-*
 17 *sibilities of the certifying tribal officer assuming the*
 18 *status of a responsible Federal official under those*
 19 *Acts or regulations.*

20 “(c) *SAVINGS CLAUSE.*—*Notwithstanding subsection*
 21 *(b), nothing in this section authorizes the Secretary to in-*
 22 *clude in any compact or funding agreement duties of the*
 23 *Secretary under the National Environmental Policy Act*
 24 *(42 U.S.C. 4321 et seq.), the National Historic Preservation*

1 *Act (16 U.S.C. 470 et seq.), and other related provisions*
 2 *of law that are inherent Federal functions.*

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

5 “(1) *adhere to applicable Federal, State, local,*
 6 *and tribal building codes, architectural and engineer-*
 7 *ing standards, and applicable Federal guidelines re-*
 8 *garding design, space, and operational standards, ap-*
 9 *propriate for the particular project; and*

10 “(2) *use only architects and engineers who—*

11 “(A) *are licensed to practice in the State in*
 12 *which the facility will be built; and*

13 “(B) *certify that—*

14 “(i) *they are qualified to perform the*
 15 *work required by the specific construction*
 16 *involved; and*

17 “(ii) *upon completion of design, the*
 18 *plans and specifications meet or exceed the*
 19 *applicable construction and safety codes.*

20 “(e) *TRIBAL ACCOUNTABILITY.*—

21 “(1) *IN GENERAL.*—*In carrying out a construc-*
 22 *tion project under this title, an Indian tribe shall as-*
 23 *sume responsibility for the successful completion of*
 24 *the construction project and of a facility that is usa-*

1 *ble for the purpose for which the Indian tribe received*
 2 *funding.*

3 “(2) *REQUIREMENTS.—For each construction*
 4 *project carried out by an Indian tribe under this*
 5 *title, the Indian tribe and the Secretary shall nego-*
 6 *tiate a provision to be included in the funding agree-*
 7 *ment that identifies—*

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

11 “(B) *a general description of the project, in-*
 12 *cluding the scope of work, references to design*
 13 *criteria, and other terms and conditions;*

14 “(C) *the responsibilities of the Indian tribe*
 15 *and the Secretary for the project;*

16 “(D) *how project-related environmental con-*
 17 *siderations will be addressed;*

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

20 “(F) *the obligations of the Indian tribe to*
 21 *comply with the codes referenced in subsection*
 22 *(d)(1) and applicable Federal laws and regula-*
 23 *tions;*

24 “(G) *the agreement of the parties over who*
 25 *will bear any additional costs necessary to meet*

1 *changes in scope, or errors or omissions in de-*
 2 *sign and construction; and*

3 *“(H) the agreement of the Secretary to issue*
 4 *a certificate of occupancy, if requested by the In-*
 5 *dian tribe, based upon the review and*
 6 *verification by the Secretary, to the satisfaction*
 7 *of the Secretary, that the Indian tribe has se-*
 8 *cured upon completion the review and approval*
 9 *of the plans and specifications, sufficiency of de-*
 10 *sign, life safety, and code compliance by quali-*
 11 *fied, licensed, and independent architects and en-*
 12 *gineers.*

13 *“(f) FUNDING.—*

14 *“(1) IN GENERAL.—Funding appropriated for*
 15 *construction projects carried out under this title shall*
 16 *be included in funding agreements as annual or semi-*
 17 *annual advance payments at the option of the Indian*
 18 *tribe.*

19 *“(2) ADVANCE PAYMENTS.—The Secretary shall*
 20 *include all associated project contingency funds with*
 21 *each advance payment, and the Indian tribe shall be*
 22 *responsible for the management of such contingency*
 23 *funds.*

24 *“(g) NEGOTIATIONS.—At the option of the Indian*
 25 *tribe, construction project funding proposals shall be nego-*

1 *tiated pursuant to the statutory process in section 105, and*
 2 *any resulting construction project agreement shall be incor-*
 3 *porated into the funding agreement as addenda.*

4 *“(h) FEDERAL REVIEW AND VERIFICATION.—*

5 *“(1) IN GENERAL.—On a schedule negotiated by*
 6 *the Secretary and the Indian tribe—*

7 *“(A) the Secretary shall review and verify,*
 8 *to the satisfaction of the Secretary, that project*
 9 *planning and design documents prepared by the*
 10 *Indian tribe in advance of initial construction*
 11 *are in conformity with the obligations of the In-*
 12 *Indian tribe under subsection (d); and*

13 *“(B) before the project planning and design*
 14 *documents are implemented, the Secretary shall*
 15 *review and verify to the satisfaction of the Sec-*
 16 *retary that subsequent document amendments*
 17 *which result in a significant change in construc-*
 18 *tion are in conformity with the obligations of the*
 19 *Indian tribe under subsection (d).*

20 *“(2) REPORTS.—The Indian tribe shall provide*
 21 *the Secretary with project progress and financial re-*
 22 *ports not less than semiannually.*

23 *“(3) OVERSIGHT VISITS.—The Secretary may*
 24 *conduct onsite project oversight visits semiannually or*

1 *on an alternate schedule agreed to by the Secretary*
 2 *and the Indian tribe.*

3 “(i) *APPLICATION OF OTHER LAWS.*—*Unless otherwise*
 4 *agreed to by the Indian tribe and except as otherwise pro-*
 5 *vided in this Act, no provision of the Office of Federal Pro-*
 6 *curement Policy Act (41 U.S.C. 401 et seq.), the Federal*
 7 *Acquisition Regulations issued pursuant to that Act, or any*
 8 *other law or regulation pertaining to Federal procurement*
 9 *(including Executive orders) shall apply to any construc-*
 10 *tion program or project carried out under this title.*

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

19 “(k) *APPLICABILITY.*—*Notwithstanding any other pro-*
 20 *vision of this section, section 202 of the Department of the*
 21 *Interior Tribal Self-Governance Act of 2014 applies to sub-*
 22 *sections (a) through (j).*

23 **“SEC. 408. PAYMENT.**

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

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

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

6 “(c) *AMOUNT.*—

7 “(1) *IN GENERAL.*—*Subject to subsection (e) and*
 8 *sections 403 and 405, the Secretary shall provide*
 9 *funds to the Indian tribe under a funding agreement*
 10 *for programs in an amount that is equal to the*
 11 *amount that the Indian tribe would have been entitled*
 12 *to receive under contracts and grants under this Act*
 13 *(including amounts for direct program and contract*
 14 *support costs and, in addition, any funds that are*
 15 *specifically or functionally related to the provision by*
 16 *the Secretary of services and benefits to the Indian*
 17 *tribe or its members) without regard to the organiza-*
 18 *tion level within the Department at which the pro-*
 19 *grams are carried out.*

20 “(2) *SAVINGS CLAUSE.*—*Nothing in this section*
 21 *reduces programs, services, or funds of, or provided to,*
 22 *another Indian tribe.*

23 “(d) *TIMING.*—

24 “(1) *IN GENERAL.*—*Pursuant to the terms of any*
 25 *compact or funding agreement entered into under this*

1 *title, the Secretary shall transfer to the Indian tribe*
2 *all funds provided for in the funding agreement, pur-*
3 *suant to subsection (c), and provide funding for peri-*
4 *ods covered by joint resolution adopted by Congress*
5 *making continuing appropriations, to the extent per-*
6 *mitted by such resolution.*

7 “(2) *TRANSFERS.*—Not later than 1 year after
8 *the date of enactment of the Department of the Inte-*
9 *rior Tribal Self-Governance Act of 2014, in any in-*
10 *stance in which a funding agreement requires an an-*
11 *nual transfer of funding to be made at the beginning*
12 *of a fiscal year or requires semiannual or other peri-*
13 *odic transfers of funding to be made commencing at*
14 *the beginning of a fiscal year, the first such transfer*
15 *shall be made not later than 10 days after the appor-*
16 *tionment of such funds by the Office of Management*
17 *and Budget to the Department, unless the funding*
18 *agreement provides otherwise.*

19 “(e) *AVAILABILITY.*—Funds for trust services to indi-
20 *vidual Indians shall be available under a funding agree-*
21 *ment only to the extent that the same services that would*
22 *have been provided by the Secretary are provided to indi-*
23 *vidual Indians by the Indian tribe.*

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

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

3 “(1) *fail to transfer to an Indian tribe its full*
 4 *share of any central, headquarters, regional, area, or*
 5 *service unit office or other funds due under this title*
 6 *for programs eligible under paragraph (1) or (2) of*
 7 *section 403(b), except as required by Federal law;*

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

10 “(3) *reduce the amount of funds required under*
 11 *this title—*

12 “(A) *to make funding available for self-gov-*
 13 *ernance monitoring or administration by the*
 14 *Secretary;*

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

17 “(i) *a reduction in appropriations*
 18 *from the previous fiscal year for the pro-*
 19 *gram to be included in a compact or fund-*
 20 *ing agreement;*

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

23 “(iii) *a tribal authorization;*

1 “(iv) a change in the amount of pass-
 2 through funds subject to the terms of the
 3 funding agreement; or

4 “(v) completion of an activity under a
 5 program for which the funds were provided;

6 “(C) to pay for Federal functions, includ-
 7 ing—

8 “(i) Federal pay costs;

9 “(ii) Federal employee retirement bene-
 10 fits;

11 “(iii) automated data processing;

12 “(iv) technical assistance; and

13 “(v) monitoring of activities under this
 14 title; or

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

18 “(h) *FEDERAL RESOURCES*.—If an Indian tribe elects
 19 to carry out a compact or funding agreement with the use
 20 of Federal personnel, Federal supplies (including supplies
 21 available from Federal warehouse facilities), Federal supply
 22 sources (including lodging, airline transportation, and
 23 other means of transportation, including the use of inter-
 24 agency motor pool vehicles), or other Federal resources (in-
 25 cluding supplies, services, and resources available to the

1 *Secretary under any procurement contracts in which the*
 2 *Department is eligible to participate), the Secretary shall,*
 3 *as soon as practicable, acquire and transfer such personnel,*
 4 *supplies, or resources to the Indian tribe under this title.*

5 “(i) *PROMPT PAYMENT ACT.*—Chapter 39 of title 31,
 6 *United States Code, shall apply to the transfer of funds due*
 7 *under a compact or funding agreement authorized under*
 8 *this title.*

9 “(j) *INTEREST OR OTHER INCOME.*—

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

14 “(2) *NO EFFECT ON OTHER AMOUNTS.*—The re-
 15 *tention of interest or income under paragraph (1)*
 16 *shall not diminish the amount of funds an Indian*
 17 *tribe is entitled to receive under a funding agreement*
 18 *in the year the interest or income is earned or in any*
 19 *subsequent fiscal year.*

20 “(3) *INVESTMENT STANDARD.*—Funds trans-
 21 *ferred under this title shall be managed by the Indian*
 22 *tribe using the prudent investment standard, provided*
 23 *that the Secretary shall not be liable for any invest-*
 24 *ment losses of funds managed by the Indian tribe that*

1 *are not otherwise guaranteed or insured by the Fed-*
2 *eral Government.*

3 “(k) *CARRYOVER OF FUNDS.*—

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

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

14 “(l) *LIMITATION OF COSTS.*—

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

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

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

7 “(4) *SAVINGS CLAUSE.*—Nothing in this section
 8 reduces any programs, services, or funds of, or pro-
 9 vided to, another Indian tribe.

10 “(m) *DISTRIBUTION OF FUNDS.*—The Office of Self-
 11 Governance shall be responsible for distribution of all Bu-
 12 reau of Indian Affairs funds provided under this title unless
 13 otherwise agreed by the parties to an applicable funding
 14 agreement.

15 “(n) *APPLICABILITY.*—Notwithstanding any other pro-
 16 vision of this section, section 202 of the Department of the
 17 Interior Tribal Self-Governance Act of 2014 applies to sub-
 18 sections (a) through (m).

19 **“SEC. 409. FACILITATION.**

20 “(a) *IN GENERAL.*—Except as otherwise provided by
 21 law (including section 202 of the Department of the Interior
 22 Tribal Self-Governance Act of 2014), the Secretary shall in-
 23 terpret each Federal law and regulation in a manner that
 24 facilitates—

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

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

4 “(b) *REGULATION WAIVER.—*

5 “(1) *REQUEST.—An Indian tribe may submit to*
6 *the Secretary a written request for a waiver of appli-*
7 *cability of a Federal regulation, including—*

8 “(A) *an identification of the specific text in*
9 *the regulation sought to be waived; and*

10 “(B) *the basis for the request.*

11 “(2) *DETERMINATION BY THE SECRETARY.—Not*
12 *later than 120 days after receipt by the Secretary and*
13 *the designated officials under paragraph (4) of a re-*
14 *quest under paragraph (1), the Secretary shall ap-*
15 *prove or deny the requested waiver in writing to the*
16 *Indian tribe.*

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

21 “(4) *DESIGNATED OFFICIALS.—The Secretary*
22 *shall designate one or more appropriate officials in*
23 *the Department to receive a copy of the waiver request*
24 *described in paragraph (1).*

1 “(5) *GROUND*S FOR DENIAL.—The Secretary
2 may deny a request under paragraph (1)—

3 “(A) for a program eligible under para-
4 graph (1) or (2) of section 403(b), only upon a
5 specific finding by the Secretary that the identi-
6 fied text in the regulation may not be waived be-
7 cause such a waiver is prohibited by Federal
8 law; and

9 “(B) for a program eligible under section
10 403(c), upon a specific finding by the Secretary
11 that the waiver is prohibited by Federal law or
12 is inconsistent with the express provisions of the
13 funding agreement.

14 “(6) *FAILURE TO MAKE DETERMINATION*.—If the
15 Secretary fails to approve or deny a waiver request
16 within the period required under paragraph (2), the
17 Secretary shall be deemed to have approved the re-
18 quest.

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

21 **“SEC. 410. DISCLAIMERS.**

22 “Nothing in this title expands or alters any statutory
23 authority of the Secretary in a manner that authorizes the
24 Secretary to enter into any agreement under section 403—

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

3 “(2) *in a case in which the law establishing a*
4 *program explicitly prohibits the type of participation*
5 *sought by the Indian tribe (without regard to whether*
6 *one or more Indian tribes are identified in the au-*
7 *thorizing law); or*

8 “(3) *that limits or reduces in any way the serv-*
9 *ices, contracts, or funds that any other Indian tribe*
10 *or tribal organization is eligible to receive under sec-*
11 *tion 102 or any other applicable Federal law.*

12 **“SEC. 411. DISCRETIONARY APPLICATION OF OTHER SEC-**
13 **TIONS.**

14 “(a) *IN GENERAL.—Except as otherwise provided in*
15 *section 101(c), at the option of a participating Indian tribe*
16 *or Indian tribes, any of the provisions of title I may be*
17 *incorporated in any compact or funding agreement under*
18 *this title.*

19 “(b) *EFFECT.—Each incorporated provision under*
20 *subsection (a) shall—*

21 “(1) *have the same force and effect as if set out*
22 *in full in this title;*

23 “(2) *supplement or replace any related provision*
24 *in this title; and*

1 “(3) *apply to any agency otherwise governed by*
2 *this title.*

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

6 “(1) *be effective immediately; and*

7 “(2) *control the negotiation and resulting com-*
8 *pact and funding agreement.*

9 **“SEC. 412. ANNUAL BUDGET LIST.**

10 *“The Secretary shall list, in the annual budget request*
11 *submitted to Congress under section 1105 of title 31, United*
12 *States Code, any funds proposed to be included in funding*
13 *agreements authorized under this Act.*

14 **“SEC. 413. REPORTS.**

15 “(a) *IN GENERAL.—*

16 “(1) *REQUIREMENT.—On January 1 of each*
17 *year, the Secretary shall submit to Congress a report*
18 *regarding the administration of this title.*

19 “(2) *ANALYSIS.—Any Indian tribe may submit*
20 *to the Office of Self-Governance and to the appro-*
21 *priate Committees of Congress a detailed annual*
22 *analysis of unmet tribal needs for funding agreements*
23 *under this title.*

24 “(b) *CONTENTS.—The report under subsection (a)(1)*
25 *shall—*

1 “(1) be compiled from information contained in
2 *funding agreements, annual audit reports, and data*
3 *of the Secretary regarding the disposition of Federal*
4 *funds;*

5 “(2) identify—

6 “(A) *the relative costs and benefits of self-*
7 *governance;*

8 “(B) *with particularity, all funds that are*
9 *specifically or functionally related to the provi-*
10 *sion by the Secretary of services and benefits to*
11 *self-governance Indian tribes and members of In-*
12 *dian tribes;*

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

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

20 “(3) *before being submitted to Congress, be dis-*
21 *tributed to the Indian tribes for comment (with a*
22 *comment period of no less than 30 days);*

23 “(4) *include the separate views and comments of*
24 *each Indian tribe or tribal organization; and*

25 “(5) *include a list of—*

1 “(A) all such programs that the Secretary
 2 determines, in consultation with Indian tribes
 3 participating in self-governance, are eligible for
 4 negotiation to be included in a funding agree-
 5 ment at the request of a participating Indian
 6 tribe; and

7 “(B) all such programs which Indian tribes
 8 have formally requested to include in a funding
 9 agreement under section 403(c) due to the special
 10 geographic, historical, or cultural significance of
 11 the program to the Indian tribe, indicating
 12 whether each request was granted or denied, and
 13 stating the grounds for any denial.

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

15 “(1) *IN GENERAL.*—In order to optimize oppor-
 16 tunities for including non-Bureau of Indian Affairs
 17 and non-Office of Special Trustee programs in agree-
 18 ments with Indian tribes participating in self-govern-
 19 ance under this title, the Secretary shall review all
 20 programs administered by the Department, other than
 21 through the Bureau of Indian Affairs or Office of the
 22 Special Trustee, without regard to the agency or office
 23 concerned.

24 “(2) *PROGRAMMATIC TARGETS.*—The Secretary
 25 shall establish programmatic targets, after consulta-

1 *tion with Indian tribes participating in self-govern-*
 2 *ance, to encourage bureaus of the Department to en-*
 3 *sure that an appropriate portion of those programs*
 4 *are available to be included in funding agreements.*

5 *“(3) PUBLICATION.—The lists under subsection*
 6 *(b)(5) and targets under paragraph (2) shall be pub-*
 7 *lished in the Federal Register and made available to*
 8 *any Indian tribe participating in self-governance.*

9 *“(4) ANNUAL REVIEW.—*

10 *“(A) IN GENERAL.—The Secretary shall an-*
 11 *nually review and publish in the Federal Reg-*
 12 *ister, after consultation with Indian tribes par-*
 13 *ticipating in self-governance, revised lists and*
 14 *programmatic targets.*

15 *“(B) CONTENTS.—In preparing the revised*
 16 *lists and programmatic targets, the Secretary*
 17 *shall consider all programs that were eligible for*
 18 *contracting in the original list published in the*
 19 *Federal Register in 1995, except for programs*
 20 *specifically determined not to be contractible as*
 21 *a matter of law.*

22 *“(d) REPORT ON CENTRAL OFFICE FUNDS.—Not later*
 23 *than January 1, 2015, the Secretary shall, in consultation*
 24 *with Indian tribes, develop a funding formula to determine*
 25 *the individual tribal share of funds controlled by the Cen-*

1 *tral Office of the Bureau of Indian Affairs and the Office*
 2 *of the Special Trustee for inclusion in the compacts.*

3 **“SEC. 414. REGULATIONS.**

4 “(a) *IN GENERAL.*—

5 “(1) *PROMULGATION.*—Not later than 90 days
 6 after the date of enactment of the Department of the
 7 Interior Tribal Self-Governance Act of 2014, the Sec-
 8 retary shall initiate procedures under subchapter III
 9 of chapter 5 of title 5, United States Code, to nego-
 10 tiate and promulgate such regulations as are nec-
 11 essary to carry out this title.

12 “(2) *PUBLICATION OF PROPOSED REGULA-*
 13 *TIONS.*—Proposed regulations to implement this title
 14 shall be published in the Federal Register not later
 15 than 21 months after the date of enactment of the De-
 16 partment of the Interior Tribal Self-Governance Act
 17 of 2014.

18 “(3) *EXPIRATION OF AUTHORITY.*—The author-
 19 ity to promulgate regulations under paragraph (1)
 20 shall expire on the date that is 30 months after the
 21 date of enactment of the Department of the Interior
 22 Tribal Self-Governance Act of 2014.

23 “(b) *COMMITTEE.*—

24 “(1) *MEMBERSHIP.*—A negotiated rulemaking
 25 committee established pursuant to section 565 of title

1 5, *United States Code*, to carry out this section shall
 2 have as its members only representatives of the *Fed-*
 3 *eral Government and tribal government.*

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

8 “(c) *ADAPTATION OF PROCEDURES.*—The *Secretary*
 9 *shall adapt the negotiated rulemaking procedures to the*
 10 *unique context of self-governance and the government-to-*
 11 *government relationship between the United States and In-*
 12 *dian tribes.*

13 “(d) *EFFECT.*—

14 “(1) *REPEAL.*—The *Secretary may repeal any*
 15 *regulation that is inconsistent with this Act.*

16 “(2) *CONFLICTING PROVISIONS.*—Subject to *sec-*
 17 *tion 202 of the Department of the Interior Tribal*
 18 *Self-Governance Act of 2014, this title shall supersede*
 19 *any conflicting provision of law (including any con-*
 20 *flicting regulations).*

21 “(3) *EFFECTIVENESS WITHOUT REGARD TO REG-*
 22 *ULATIONS.*—The *lack of promulgated regulations on*
 23 *an issue shall not limit the effect or implementation*
 24 *of this title.*

1 **“SEC. 415. EFFECT OF CIRCULARS, POLICIES, MANUALS,**
2 **GUIDANCE, AND RULES.**

3 *“Unless expressly agreed to by a participating Indian*
4 *tribe in a compact or funding agreement, the participating*
5 *Indian tribe shall not be subject to any agency circular,*
6 *policy, manual, guidance, or rule adopted by the Depart-*
7 *ment, except for—*

8 *“(1) the eligibility provisions of section 105(g);*
9 *and*

10 *“(2) regulations promulgated pursuant to section*
11 *414.*

12 **“SEC. 416. APPEALS.**

13 *“Except as provided in section 406(d), in any admin-*
14 *istrative action, appeal, or civil action for judicial review*
15 *of any decision made by the Secretary under this title, the*
16 *Secretary shall have the burden of proof of demonstrating*
17 *by a preponderance of the evidence—*

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

20 *“(2) the consistency of the decision with the re-*
21 *quirements and policies of this title.*

22 **“SEC. 417. APPLICATION OF OTHER PROVISIONS.**

23 *“Section 314 of the Department of the Interior and*
24 *Related Agencies Appropriations Act, 1991 (Public Law*
25 *101–512; 104 Stat. 1959), shall apply to compacts and*
26 *funding agreements entered into under this title.*

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

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

4 **SEC. 202. EFFECT OF CERTAIN PROVISIONS.**

5 (a) *DEFINITIONS.—In this section:*

6 (1) *FUNDING AGREEMENT.—The term “funding*
 7 *agreement” means a funding agreement entered into*
 8 *under section 403 of the ISDEAA (25 U.S.C. 458cc).*

9 (2) *ISDEAA.—The term “ISDEAA” means the*
 10 *Indian Self-Determination and Education Assistance*
 11 *Act (25 U.S.C. 450 et seq.).*

12 (3) *NON-BIA PROGRAM.—The term “non-BIA*
 13 *program” means all or a portion of a program, func-*
 14 *tion, service, or activity that is administered by any*
 15 *bureau, service, office, or agency of the Department of*
 16 *the Interior other than through—*

17 (A) *the Bureau of Indian Affairs;*

18 (B) *the Office of the Assistant Secretary for*
 19 *Indian Affairs; or*

20 (C) *the Office of the Special Trustee for*
 21 *American Indians.*

22 (4) *SECRETARY.—The term “Secretary” means*
 23 *the Secretary of the Interior.*

24 (5) *SELF-DETERMINATION CONTRACT.—The term*
 25 *“self-determination contract” means a self-determina-*

1 *tion contract entered into under section 102 of the*
 2 *ISDEAA (25 U.S.C. 450f).*

3 (6) *TRIBAL WATER RIGHTS SETTLEMENT.—The*
 4 *term “tribal water rights settlement” means any set-*
 5 *tlement, compact, or other agreement expressly rati-*
 6 *fied or approved by an Act of Congress that—*

7 (A) *includes an Indian tribe and the United*
 8 *States as parties; and*

9 (B) *quantifies or otherwise defines any*
 10 *water right of the Indian tribe.*

11 (b) *EFFECT OF PROVISIONS.—Nothing in this Act—*

12 (1) *modifies, limits, expands, or otherwise af-*
 13 *fects—*

14 (A) *the authority of the Secretary, as pro-*
 15 *vided for under the ISDEAA on the day before*
 16 *the date of enactment of this Act, to include any*
 17 *non-BIA program in a self-determination con-*
 18 *tract under section 102(a)(1)(E) of the ISDEAA*
 19 *(25 U.S.C. 450f(a)(1)(E)) or a funding agree-*
 20 *ment under section 403(b)(2) or 403(c) of the*
 21 *ISDEAA (25 U.S.C. 458cc(b)(2), 458cc(c)); or*

22 (B) *the implementation of any contract or*
 23 *agreement described in subparagraph (A) that is*
 24 *in effect on the day before the date of enactment*
 25 *of this Act;*

1 (2) *modifies or otherwise affects the meaning,*
2 *application, or effect of any provision of law that—*

3 (A) *is not contained in the ISDEAA; and*

4 (B) *expressly authorizes or prohibits con-*
5 *tracting or compacting under title I or title IV*
6 *of the ISDEAA with respect to a specific pro-*
7 *gram or project that is identified or otherwise re-*
8 *ferred to in that provision of law;*

9 (3) *modifies or otherwise affects the meaning,*
10 *application, or effect of, or the performance required*
11 *of a party to, or any payment or funding under a*
12 *tribal water rights settlement; or*

13 (4) *authorizes any self-determination contract or*
14 *funding agreement that contains one or more provi-*
15 *sions that are inconsistent with the terms of a tribal*
16 *water rights settlement.*

Calendar No. 533

113TH CONGRESS
2^D Session

S. 919

A BILL

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

AUGUST 26, 2014

Reported with an amendment