

hero. I ask my colleagues to keep his family and friends in their thoughts and prayers during this very difficult time.

#### ALZHEIMER'S AWARENESS DAY

(Mr. THOMPSON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of Pennsylvania. Mr. Speaker, there is a thief abroad in this country stealing the cognitive powers of more than 5.3 million Americans. It costs \$172 billion annually, but the money is not the true loss.

The loss is a son who can still take his father to a ball game, but only the shell of a man remains in the bleacher seat beside him. The loss is a wife who sits at the dinner table with her husband but knows there will be no reciprocal conversation. The loss is a grandchild whose best friend can no longer play games with him.

The robber who steals our relatives is Alzheimer's disease. There is no felony that can be charged against this killer, even though it is the seventh leading cause of death in this country. And most discouraging is that there is no known cure.

The disease afflicts African Americans and Hispanics at a higher rate than others, and those with a family history of Alzheimer's are also more at risk. But regardless, every 70 seconds, someone in this country will develop this disease.

September 21 was Alzheimer's Awareness Day. It is worth the time to think about ways to support the fight against this disease.

#### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, September 22, 2010.

Hon. NANCY PELOSI,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on September 22, 2010 at 12:25 p.m.:

That the Senate passed S. 3814.

That the Senate passed S. 3717.

With best wishes, I am

Sincerely,

LORRAINE C. MILLER.

#### AUTHORIZING THE SPEAKER TO ENTERTAIN MOTIONS TO SUSPEND THE RULES ON TOMORROW

Mrs. CHRISTENSEN. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to entertain motions to suspend the rules on the legislative day of Thursday, Sept. 23, 2010, relating to the following measures:

S. 1674; H.R. 5307; House Resolution 1545; House Resolution 1560; House Resolution 1582; a bill to renew the authority of the Secretary of Health and Human Services to approve demonstration projects designed to test innovative strategies in state child welfare programs; and a bill to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the Virgin Islands?

There was no objection.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken after 6 p.m. today.

#### DEPARTMENT OF THE INTERIOR TRIBAL SELF-GOVERNANCE ACT OF 2010

Mrs. CHRISTENSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4347) to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4347

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### 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 2010".

(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 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.

#### 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

"(2) except as provided in section 107(a)(1), subject to any Federal procurement law (including regulations);".

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

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

(2) by adding at the end the following: "The retention period shall be defined in regulations promulgated by the Secretary pursuant to section 415."

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

#### SEC. 102. CONTRACTS BY SECRETARY OF INTERIOR.

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

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

(2) by adding at the end the following:

"(f) GOOD FAITH REQUIREMENT.—In the negotiation of contracts and funding agreements, the Secretary shall—

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

"(2) carry out this Act in a manner that maximizes the policy of tribal self-determination, in a manner consistent with the purposes specified in section 3.

"(g) RULE OF CONSTRUCTION.—Each provision of this Act and each provision of a contract or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-determination, and any ambiguity shall be resolved in favor of the Indian tribe."

#### SEC. 103. ADMINISTRATIVE PROVISIONS.

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

(1) in subsection (b), in the first sentence, by striking "pursuant to" and all that follows through "of this Act" and inserting "pursuant to sections 102 and 103"; and

(2) by adding at the end the following:

"(m) INTERPRETATION BY SECRETARY.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws (including regulations) and Executive orders in a manner that facilitates, to the maximum extent practicable—

"(1) the inclusion in self-determination contracts and funding agreements of—

"(A) applicable programs, services, functions, and activities (or portions thereof); and

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

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

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

#### SEC. 104. CONTRACT FUNDING AND INDIRECT COSTS.

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

(1) in subparagraph (A)—

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

(B) in clause (ii), by striking “expense related to the overhead incurred” and inserting “expense incurred by the governing body of the Indian tribe or tribal organization and any overhead expense incurred”;

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

“(B) In calculating the reimbursement rate for expenses described in subparagraph (A)(ii), not less than 50 percent of the expenses described in subparagraph (A)(ii) that are incurred by the governing body of an Indian tribe or tribal organization relating to a Federal program, function, service, or activity carried out pursuant to the contract shall be considered to be reasonable and allowable.”.

#### SEC. 105. CONTRACT OR GRANT SPECIFICATIONS.

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

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

(2) in subsection (f)(2)(A)(ii) of the model agreement contained in subsection (c), by inserting “subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f),” before “such other provisions”.

### TITLE II—TRIBAL SELF-GOVERNANCE

#### SEC. 201. TRIBAL SELF-GOVERNANCE.

Title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.) is amended to read as follows:

#### “TITLE IV—TRIBAL SELF-GOVERNANCE

##### “SEC. 401. DEFINITIONS.

“In this title:

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

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

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

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

“(5) GROSS MISMANAGEMENT.—The term ‘gross mismanagement’ means a significant violation, shown by a preponderance of the evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds—

“(A) for a program administered by an Indian tribe; or

“(B) under a compact or funding agreement that results in a significant reduction

of funds available for the programs assumed by an Indian tribe.

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

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

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

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

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

“(A) support any program within the Bureau of Indian Affairs, the Office of Special Trustee, or the Office of the Assistant Secretary for Indian Affairs; and

“(B) are not required by the Secretary for the performance of an inherent Federal function.

#### “SEC. 402. ESTABLISHMENT.

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

#### “SEC. 403. SELECTION OF PARTICIPATING INDIAN TRIBES.

“(a) IN GENERAL.—

“(1) PARTICIPANTS.—

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

“(B) JOINT PARTICIPATION.—On the request of each participating Indian tribe, 2 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 authorizes 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 organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution).

“(3) JOINT PARTICIPATION.—2 or more Indian tribes that are not otherwise eligible under subsection (b) 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 1 of the Indian tribes participating in the tribal organization, is eligible under subsection (b).

“(4) TRIBAL WITHDRAWAL FROM A TRIBAL ORGANIZATION.—

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

“(B) EFFECT OF WITHDRAWAL.—If an Indian tribe withdraws from participation in a tribal organization, the Indian tribe shall be entitled to its tribal share of funds and resources supporting the programs that the Indian tribe is entitled to carry out under the compact and funding agreement of the Indian tribe.

“(C) PARTICIPATION IN SELF-GOVERNANCE.—The withdrawal of an Indian tribe from a tribal organization shall not affect the eligibility of the tribal organization to participate in self-governance on behalf of 1 or more other Indian tribes, if the tribal organization still qualifies under subsection (b).

“(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.

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

“(aa) the earlier of—

“(AA) 1 year after the date of submission of the request; and

“(BB) the date on which the funding agreement expires; or

“(bb) such date as may be 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.

“(E) DISTRIBUTION OF FUNDS.—If an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I or a compact or funding agreement under this title fully or partially withdraws from a participating tribal organization, the withdrawing Indian tribe—

“(i) may elect to enter into a self-determination contract or compact, in which case—

“(I) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of unexpended funds and resources supporting the programs that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated to the funding agreement of the tribal organization); and

“(II) the funds referred to in subclause (I) shall be withdrawn by the Secretary from the funding agreement of the tribal organization and transferred to the withdrawing Indian tribe, on the condition that sections 102 and 105(i), as appropriate, shall apply to the withdrawing Indian tribe; or

“(ii) may elect not to enter into a self-determination contract or compact, in which case all unexpended funds and resources associated with the withdrawing Indian tribe’s returned programs (calculated on the same basis as the funds were initially allocated to the funding agreement of the tribal organization) shall be returned by the tribal organization to the Secretary for operation of the programs included in the withdrawal.

“(F) RETURN TO MATURE CONTRACT STATUS.—If an Indian tribe elects to operate all or some programs carried out under a compact or funding agreement under this title through a self-determination contract under title I, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract as long as the Indian tribe meets the requirements set forth in section 4(h).

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

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

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

“(3) demonstrate, for the 3 fiscal years preceding the date on which the Indian tribe requests participation, financial stability and financial management capability as evidenced by the Indian tribe having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

“(c) PLANNING PHASE.—

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

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

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

“(B) include—

“(i) legal and budgetary research; and

“(ii) internal tribal government planning, training, and organizational preparation.

“(d) GRANTS.—

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

“(A) to plan for participation in self-governance; and

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

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

**“SEC. 404. COMPACTS.**

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

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

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

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

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

“(d) EFFECTIVE DATE.—The effective date of a compact under subsection (a) shall be—

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

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

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

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

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

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

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

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

**“SEC. 405. FUNDING AGREEMENTS.**

“(a) IN GENERAL.—The Secretary shall negotiate and enter into a written funding

agreement with the governing body of an Indian tribe or tribal organization in a manner consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

“(b) INCLUDED PROGRAMS.—

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

“(A) IN GENERAL.—A funding agreement shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding for all programs carried out by the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee, without regard to the agency or office within which the program is performed (including funding for agency, area, and central office functions in accordance with section 409(c)), that—

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

“(ii) the Secretary administers for the benefit of Indians under the Act of November 2, 1921 (25 U.S.C. 13), or any subsequent Act;

“(iii) the Secretary administers for the benefit of Indians with appropriations made to agencies other than the Department of the Interior; or

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

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

“(2) DISCRETIONARY PROGRAMS OF SPECIAL SIGNIFICANCE.—

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

“(B) GOVERNING PROVISIONS.—A funding agreement described in subparagraph (A), including the additional terms, shall be governed by this title, except that, subject to the discretion of the Secretary—

“(i) in accordance with section 406(d), the Indian tribe may have reallocation, consolidation, and redesign authority over any program assumed under this paragraph;

“(ii) notwithstanding section 408, the Secretary may require special terms and conditions regarding a construction program or project assumed under this paragraph;

“(iii) all Federal regulations that otherwise govern the operation of any program assumed under this paragraph apply to the Indian tribe, unless a specific regulation is waived by the Secretary under the procedures set forth in section 410(b)(2), which waiver request may be denied upon a specific finding by the Secretary that the waiver is prohibited by Federal law or is inconsistent with the express provisions of the funding agreement; and

“(iv) a stable base budget, as described in paragraph (7)(B), may be provided for any program assumed under this paragraph.

“(3) PROGRAMS OTHERWISE AVAILABLE.—A funding agreement shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding for any program administered by the Department other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee, that the Secretary has determined is otherwise available to Indian tribes

or Indians under section 102. Nothing in this paragraph may be construed to provide any Indian tribe with a preference with respect to the opportunity of that Indian tribe to administer programs, services, functions, or activities, or portions thereof, unless that preference is otherwise provided for by law.

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

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

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

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

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

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

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

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

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

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

“(7) BASE BUDGET.—

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

“(B) DISCRETIONARY PROGRAMS OF SPECIAL SIGNIFICANCE.—Upon agreement by the Secretary, a funding agreement under paragraph (2) may also provide for a stable base budget.

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

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

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

“(e) EXISTING AND SUBSEQUENT FUNDING AGREEMENTS.—

“(1) SUBSEQUENT FUNDING AGREEMENTS.—Absent notification from an Indian tribe that the Indian tribe is withdrawing or retroceding the operation of 1 or more programs identified in a funding agreement under paragraph (1) or (3) of subsection (b), or unless otherwise agreed to by the parties to the funding agreement or by the nature of any noncontinuing program, service, function, or activity contained in a funding agreement—

“(A) a funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, with funding paid annually for each fiscal year the agreement is in effect; and

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

“(2) DISPUTES.—Disputes over the implementation of paragraph (1)(A) shall be subject to section 407(c).

“(3) EXISTING FUNDING AGREEMENTS.—An Indian tribe that was participating in self-governance under this title on the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2010 shall have the option at any time after that date—

“(A) to retain its existing funding agreement (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

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

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

#### **“SEC. 406. GENERAL PROVISIONS.**

“(a) APPLICABILITY.—An Indian tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this title.

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

“(c) AUDITS.—

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

“(2) COST PRINCIPLES.—An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

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

“(B) any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget.

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

“(d) REDESIGN AND CONSOLIDATION.—An Indian tribe may redesign or consolidate programs or reallocate funds for programs in any manner that the Indian tribe determines to be in the best interest of the Indian community being served, so long as that the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law, except that, with respect to the reallocation, consolidation, and redesign of programs described in section 405(b)(2), a joint agreement between the Secretary and the Indian tribe shall be required.

“(e) RETROCESSION.—

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

“(2) EFFECTIVE DATE.—

“(A) AGREEMENT.—Unless an Indian tribe rescinds a request for retrocession under paragraph (1), the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

“(B) NO AGREEMENT.—In the absence of a specification of an effective date in the compact or funding agreement, the retrocession shall become effective on—

“(i) the earlier of—

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

“(II) the date on which the funding agreement expires; or

“(ii) such date as may be mutually agreed upon by the Secretary and the Indian tribe.

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

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

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

“(g) RECORDS.—

“(1) IN GENERAL.—Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of an Indian tribe shall not be considered to be Federal records for purposes of chapter 5 of title 5, United States Code.

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

“(A) maintain a recordkeeping system; and

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

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

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

“(b) REASSUMPTION.—

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

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

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

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

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

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

“(A) the Secretary first provides written notice and a hearing on the record to the Indian tribe; and

“(B) the Indian tribe does not take corrective action to remedy the mismanagement of the funds or programs, or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

“(3) EXCEPTION.—

“(A) IN GENERAL.—Notwithstanding paragraph (2), the Secretary may, on written notice to the Indian tribe, immediately reassume operation of a program if—

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

“(ii) the imminent and substantial jeopardy, and irreparable harm to the trust asset, natural resource, or public health and safety arises out of a failure by the Indian tribe to carry out the terms of an applicable compact or funding agreement.

“(B) REASSUMPTION.—If the Secretary reassumes operation of a program under subparagraph (A), the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after the date of reassumption.

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

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

“(2) DETERMINATION.—Not more than 60 days after the date of delivery of a final offer to the designated officials under paragraph (4), the Secretary shall review and make a determination with respect to the final offer.

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

“(4) DESIGNATED OFFICIALS.—The Secretary shall designate 1 or more appropriate officials in the Department to receive a copy of the final offer described in paragraph (1).

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

“(6) REJECTION OF FINAL OFFER.—

“(A) IN GENERAL.—If the Secretary rejects a final offer (or 1 or more provisions or funding levels in a final offer), the Secretary shall—

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

“(I) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this title because the final offer would reduce the funds that any other Indian tribe or tribal organization is entitled to receive under Federal law;

“(II) the program that is the subject of the final offer is an inherent Federal function or is subject to the discretion of the Secretary under section 405(b)(2);

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

“(IV) the Indian tribe is not eligible to participate in self-governance under section 403(b); or

“(V) the funding agreement would violate a Federal statute or regulation;

“(ii) provide technical assistance to overcome the objections stated in the notification required by clause (i);

“(iii) provide the Indian tribe with—

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

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

“(iv) provide the Indian tribe the option of entering into the severable portions of a final proposed compact or funding agreement (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

“(B) EFFECT OF EXERCISING CERTAIN OPTION.—If an Indian tribe exercises the option specified in subparagraph (A)(iv)—

“(i) the Indian tribe shall retain the right to appeal the rejection by the Secretary under this section; and

“(ii) clauses (i), (ii), and (iii) of subparagraph (A) shall apply only to the portion of the proposed final compact or funding agreement that was rejected by the Secretary.

“(d) BURDEN OF PROOF.—In any administrative action, hearing, or appeal or civil action brought under this section, the Secretary shall have the burden of demonstrating—

“(1) by a preponderance of the evidence, the validity of the grounds for a reassumption under subsection (b); and

“(2) by clear and convincing evidence, the grounds for rejecting a final offer made under subsection (c).

“(e) GOOD FAITH.—

“(1) IN GENERAL.—In the negotiation of compacts and funding agreements, the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy.

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

“(f) SAVINGS.—

“(1) IN GENERAL.—To the extent that programs carried out for the benefit of Indian tribes and tribal organizations under this title reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under section 409(c), except for funding agreements entered into for programs under section 405(b)(2), the Secretary shall make such savings available to the Indian tribes or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

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

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

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

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

“(2) an administrative law judge.

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

#### “SEC. 408. CONSTRUCTION PROGRAMS AND PROJECTS.

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

“(b) TRIBAL OPTION TO CARRY OUT CERTAIN FEDERAL ENVIRONMENTAL ACTIVITIES.—In carrying out a construction project under this title, an Indian tribe may, subject to the agreement of the Secretary, elect to assume some Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law and regulations that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

“(1) designating a certifying tribal officer to represent the Indian tribe and to assume

the status of a responsible Federal official under those Acts or regulations; and

“(2) accepting the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying tribal officer assuming the status of a responsible Federal official under those Acts or regulations.

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

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

“(1) adhere to applicable Federal, State, local, and tribal building codes, architectural and engineering standards, and applicable Federal guidelines regarding design, space, and operational standards, appropriate for the particular project; and

“(2) use only architects and engineers who—

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

“(B) certify that—

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

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

“(e) TRIBAL ACCOUNTABILITY.—

“(1) IN GENERAL.—In carrying out a construction project under this title, an Indian tribe shall assume responsibility for the successful completion of the construction project and of a facility that is usable for the purpose for which the Indian tribe received funding.

“(2) REQUIREMENTS.—For each construction project carried out by an Indian tribe under this title, the Indian tribe and the Secretary shall negotiate a provision to be included in the funding agreement that identifies—

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

“(B) a general description of the project, including the scope of work, references to design criteria, and other terms and conditions;

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

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

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

“(F) the obligations of the Indian tribe to comply with the codes referenced in subsection (c)(1) and applicable Federal laws and regulations;

“(G) the agreement of the parties over who will bear any additional costs necessary to meet changes in scope, or errors or omissions in design and construction; and

“(H) the agreement of the Secretary to issue a certificate of occupancy, if requested by the Indian tribe, based upon the review and verification by the Secretary, to the satisfaction of the Secretary, that the Indian tribe has secured upon completion the review and approval of the plans and specifications, sufficiency of design, life safety, and code compliance by qualified, licensed, and independent architects and engineers.

“(f) FUNDING.—

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

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

“(g) NEGOTIATIONS.—At the option of the Indian tribe, construction project funding proposals shall be negotiated pursuant to the statutory process in section 105, and any resulting construction project agreement shall be incorporated into the funding agreement as addenda.

“(h) FEDERAL REVIEW AND VERIFICATION.—

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

“(A) at least 1 opportunity to review and verify, to the satisfaction of the Secretary, that project planning and design documents prepared by the Indian tribe in advance of initial construction are in conformity with the obligations of the Indian tribe under subsection (c); and

“(B) before the project planning and design documents are implemented, at least 1 opportunity to review and verify to the satisfaction of the Secretary that subsequent document amendments which result in a significant change in construction are in conformity with the obligations of the Indian tribe under subsection (c).

“(2) REPORTS.—The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually.

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

“(i) APPLICATION OF OTHER LAWS.—Unless otherwise agreed to by the Indian tribe and except as otherwise provided in this Act, no provision of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), the Federal Acquisition Regulations issued pursuant to that Act, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project carried out under this title.

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

#### “SEC. 409. PAYMENT.

“(a) IN GENERAL.—At the request of the governing body of an Indian tribe and under the terms of an applicable funding agreement, the Secretary shall provide funding to the Indian tribe to carry out the funding agreement.

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

“(c) AMOUNT.—

“(1) IN GENERAL.—Subject to subsection (e) and sections 405 and 406, the Secretary shall provide funds to the Indian tribe under a funding agreement for programs in an amount that is equal to the amount that the Indian tribe would have been entitled to receive under contracts and grants under this Act (including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members) without regard to the organization level within the Department at which the programs are carried out.

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

“(d) TIMING.—

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

“(2) TRANSFERS.—Not later than 1 year after the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2010, in any instance in which a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

“(e) AVAILABILITY.—Funds for trust services to individual Indians shall be available under a funding agreement only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the Indian tribe.

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

“(g) LIMITATIONS ON AUTHORITY OF THE SECRETARY.—The Secretary shall not—

“(1) fail to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this title for programs eligible under paragraph (1) or (3) of section 405(b), except as required by Federal law;

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

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

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

“(B) in subsequent years, except as necessary as a result of—

“(i) a reduction in appropriations from the previous fiscal year for the program to be included in a compact or funding agreement;

“(ii) a congressional directive in legislation or an accompanying report;

“(iii) a tribal authorization;

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

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

“(C) to pay for Federal functions, including—

“(i) Federal pay costs;

“(ii) Federal employee retirement benefits;

“(iii) automated data processing;

“(iv) technical assistance; and

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

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

“(h) FEDERAL RESOURCES.—If an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation, including the use of inter-agency motor pool vehicles), or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall, as soon as practicable, acquire and transfer such personnel, sup-

plies, or resources to the Indian tribe under this title.

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

“(j) INTEREST OR OTHER INCOME.—

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

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

“(3) INVESTMENT STANDARD.—Funds transferred under this title shall be managed by the Indian tribe using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the Indian tribe that are not otherwise guaranteed or insured by the Federal Government.

“(k) CARRYOVER OF FUNDS.—

“(1) IN GENERAL.—Notwithstanding any provision of an appropriations Act, all funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended.

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

“(l) LIMITATION OF COSTS.—

“(1) IN GENERAL.—An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement.

“(2) NOTICE OF INSUFFICIENCY.—If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary.

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

“(4) SAVINGS CLAUSE.—Nothing in this section reduces any programs, services, or funds of, or provided to, another Indian tribe.

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

“SEC. 410. FACILITATION.

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

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

“(2) the implementation of funding agreements.

“(b) REGULATION WAIVER.—

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

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

“(B) the basis for the request.

“(2) DETERMINATION BY THE SECRETARY.—Not later than 120 days after receipt by the

Secretary and the designated officials under paragraph (4) of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing to the Indian tribe.

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

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

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

“(A) for a program eligible under paragraph (1) or (3) of section 405(b), only upon a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law; and

“(B) for a program eligible under section 405(b)(2), upon a specific finding by the Secretary that the waiver is prohibited by Federal law or is inconsistent with the express provisions of the funding agreement.

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

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

“SEC. 411. DISCLAIMERS.

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

“(1) with respect to an inherent Federal function;

“(2) in a case in which the law establishing a program explicitly prohibits the type of participation sought by the Indian tribe (without regard to whether 1 or more Indian tribes are identified in the authorizing law); or

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

“SEC. 412. DISCRETIONARY APPLICATION OF OTHER SECTIONS.

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

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

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

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

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

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

“(1) be effective immediately; and

“(2) control the negotiation and resulting compact and funding agreement.

“SEC. 413. FUNDING NEEDS.

“(a) REQUIREMENT OF ANNUAL BUDGET REQUEST.—

“(1) IN GENERAL.—The President shall identify in a report to accompany the annual budget request submitted to Congress under section 1105 of title 31, United States Code, all amounts necessary to fully fund all funding agreements entered into under this Act.

“(2) DUTY OF SECRETARY.—The Secretary shall identify in a report to accompany each



budget request the amount of funds that are sufficient for planning and negotiation grants and sufficient to cover any shortfall in funding identified under subsection (b).

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

“(b) **PRESENT FUNDING; SHORTFALLS.**—

“(1) **IN GENERAL.**—In each report described in subsection (a)(2), the Secretary shall identify the level of need presently funded and any shortfall in funding (including direct program costs, tribal shares, and contract support costs) for each Indian tribe, directly by the Secretary, under self-determination contracts, or compacts, or funding agreements.

“(2) **SCHEDULE.**—

“(A) **FIRST REPORT.**—The first report required under subsection (a)(1) shall be—

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

“(ii) due on February 1, 2012.

“(B) **SECOND REPORT.**—The second report required under subsection (a)(1) shall—

“(i) include all funding at the Bureau of Indian Affairs agency and regional offices; and

“(ii) due on February 1, 2013.

“(C) **SUBSEQUENT REPORT.**—Beginning with the third report required under subsection (a)(1), which shall be due on February 1, 2014, all reports required under subsection (a)(1) shall include all funding at the Bureau of Indian Affairs agency, regional, and central offices, the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee.

#### “SEC. 414. REPORTS.

“(a) **IN GENERAL.**—

“(1) **REQUIREMENT.**—Not later than February 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this title.

“(2) **ANALYSIS.**—A report under paragraph (1) shall include a detailed analysis of unmet need for each Indian tribe, regardless of whether the Indian tribe is served directly by the Secretary, under self-determination contracts under title I, or under compacts and funding agreements authorized under this title.

“(3) **NO ADDITIONAL REPORTING REQUIREMENTS.**—In preparing reports under paragraph (1), the Secretary may not impose any reporting requirements on participating Indian tribes not otherwise provided by this title.

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

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

“(2) identify—

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

“(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian tribes and members of Indian tribes;

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

“(D) the funding formula for individual tribal shares of all Central Office funds, together with the comments of affected Indian tribes, developed under subsection (d); and

“(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of inherent Federal functions;

“(3) contain a description of the methods used to determine the individual tribal share of funds controlled by all components of the Department (including funds assessed by any

other Federal agency) for inclusion in compacts or funding agreements;

“(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of not less than 30 days); and

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

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

“(1) **IN GENERAL.**—In order to optimize opportunities for Indian tribes participating in self-governance under this title, the Secretary shall—

“(A) review all programs administered by the Department, other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of Special Trustee, without regard to the agency or office concerned; and

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

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

“(ii) a list of all such programs for which Indian tribes have requested to include in a funding agreement under paragraph (2) or (3) of section 405(b), indicating whether each request was granted or denied, and stating the grounds for any denial.

“(2) **PROGRAMMATIC TARGETS.**—The Secretary shall establish programmatic targets, after consultation with Indian tribes participating in self-governance, to encourage bureaus of the Department to ensure that a significant portion of the programs identified in paragraph (1) are included in funding agreements.

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

“(A) published in the Federal Register; and

“(B) made available to Indian tribes.

“(4) **ANNUAL REVIEW.**—

“(A) **IN GENERAL.**—The Secretary shall annually review and publish in the Federal Register, after consultation with Indian tribes participating in self-governance, revised lists and programmatic targets.

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

“(d) **REPORT ON CENTRAL OFFICE FUNDS.**—Not later than February 1, 2012, the Secretary shall, in consultation with Indian tribes, develop a funding formula to determine the individual tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs, the Office of the Special Trustee, and the Office of the Assistant Secretary for Indian Affairs for inclusion in the compacts.

#### “SEC. 415. REGULATIONS.

“(a) **IN GENERAL.**—

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

“(2) **PUBLICATION OF PROPOSED REGULATIONS.**—Proposed regulations to implement this title shall be published in the Federal Register not later than 18 months after the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2010.

“(3) **EXPIRATION OF AUTHORITY.**—The authority to promulgate regulations under

paragraph (1) shall expire on the date that is 24 months after the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2010.

“(b) **COMMITTEE.**—

“(1) **MEMBERSHIP.**—A negotiated rule-making committee established pursuant to section 565 of title 5, United States Code, to carry out this section shall have as its members only representatives of the Federal Government and tribal government.

“(2) **LEAD AGENCY.**—Among the Federal representatives described in paragraph (1), the Office of Self-Governance shall be the lead agency for the Department.

“(c) **ADAPTATION OF PROCEDURES.**—The Secretary shall adapt the negotiated rule-making procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

“(d) **EFFECT.**—

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

“(2) **CONFLICTING PROVISIONS.**—This title shall supersede any conflicting provision of law (including any conflicting regulations).

“(3) **EFFECTIVENESS WITHOUT REGARD TO REGULATIONS.**—The lack of promulgated regulations on an issue shall not limit the effect or implementation of this title.

#### “SEC. 416. EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCES, AND RULES.

“Unless expressly agreed to by a participating Indian tribe in a compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

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

“(2) regulations promulgated pursuant to section 415.

#### “SEC. 417. APPEALS.

“Except as provided in section 407(d), in any administrative action, appeal, or civil action for judicial review of any decision made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by a preponderance of the evidence—

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

“(2) the consistency of the decision with the requirements and policies of this title.

#### “SEC. 418. APPLICATION OF OTHER PROVISIONS.

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

#### “SEC. 419. AUTHORIZATION OF APPROPRIATIONS.

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

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) and the gentleman from Washington (Mr. HASTINGS) each will control 20 minutes.

The Chair now recognizes the gentlewoman from the Virgin Islands.

GENERAL LEAVE

Mrs. CHRISTENSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from the Virgin Islands?

There was no objection.

Mrs. CHRISTENSEN. I yield myself such time as I may consume.

Mr. Speaker, under self-governance, Indian tribes assume the duties of the Federal Government for certain programs within the Department of the Interior and the Department of Health and Human Services. Self-governance empowers tribes to exercise their inherent sovereignty and make key decisions that will impact their nations. The widespread success of self-governance since its inception demonstrates that when tribes make the decisions that directly impact their tribal citizens, the outcomes are far greater.

Introduced by our colleague from Oklahoma (Mr. BOREN), H.R. 4347 would amend the self-determination contracting program to allow title 1 tribes to become familiar with the self-governance compacting program. This legislation would also amend the Department of the Interior self-governance program to make it consistent with the self-governance program at the Department of Health and Human Services. It allows Indian tribes to step into the shoes of the Federal Government to administer programs at the Department of the Interior using rules and procedures similar to those used at the Indian Health Service.

I would like to commend Mr. BOREN from Oklahoma for his leadership on this issue, and I urge my colleagues to support this measure.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill under consideration today is an amended version of the bill as reported, and I thank the chairman of the committee and the sponsor of the legislation for their willingness to engage the Republicans on a bipartisan basis in what is a rather complex body of law.

The Republicans hope this bill accomplishes its primary goal, which is to increase the outsourcing to tribes of programs and functions of the Department of the Interior that are provided to Indians because of their status as Indians.

At the core of H.R. 4347 is the principle that Washington, DC, is not capable of managing tribal programs as effectively as the governments of Indian people—the Indian tribes. This bill could be a template for proposals to outsource Federal programs, where appropriate, to States, tribes, and the private sector.

I must say, Mr. Speaker, I'm disappointed that the Obama administration has not provided a formal statement on the position of H.R. 4347, as amended.

□ 1430

Bipartisan staff sought to address concerns expressed by the Department of the Interior in its testimony on the bill as introduced. For this reason, I

think the House is owed something in writing from the Department clarifying its views on the amended bill. Regardless, I do not see this silence from the administration as a reason to hold up the progress on the bill.

Ms. RICHARDSON. Mr. Speaker, I rise today in support of H.R. 4347, which authorizes the Secretary of the Department of the Interior to select up to 50 new Indian tribes per year to participate in self-governance programs. I am proud to co-sponsor the Department of the Interior Tribal Self-Governance Act, and I thank my colleague, Congressman BOREN for introducing this legislation.

As a member of the Native American Caucus, I have worked with my colleagues in Congress to address the needs of Native Americans. This legislation will allow eligible tribes to assume the duties of the Federal Government for certain programs within the Department of the Interior and the Department of Health and Human Services.

Mr. Speaker, the Government Accounting Office has shown that tribes that participate in self-governance have seen greater gains in employment than tribes that do not. The passage of this legislation will allow more tribes to participate in self-governance programs and increase the financial prospects for its members.

California is home to over 100 federally recognized tribes. These tribes deserve the opportunity to participate in self-governance programs should they desire to do so.

Mr. Speaker, I urge my colleagues to join me in supporting H.R. 4347 and allow Native American tribes the opportunity to enter into self-governance agreements. Native Americans should be afforded the opportunity to administer their programs and increase employment among its members.

Mr. HASTINGS of Washington. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) that the House suspend the rules and pass the bill, H.R. 4347, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### ALLOWING YSLETA DEL SUR PUEBLO TRIBE TO DETERMINE BLOOD REQUIREMENT FOR MEMBERSHIP

Mrs. CHRISTENSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5811) to amend the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirement for membership in that tribe.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5811

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. BLOOD QUANTUM REQUIREMENT DETERMINED BY TRIBE.

Section 108(a)(2) of the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act (25 U.S.C. 1300g-7(a)(2)) is amended to read as follows:

“(2) any person of Tigua Ysleta del Sur Pueblo Indian blood enrolled by the tribe.”.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) and the gentleman from Washington (Mr. HASTINGS) each will control 20 minutes.

The Chair recognizes the gentlewoman from the Virgin Islands.

#### GENERAL LEAVE

Mrs. CHRISTENSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from the Virgin Islands?

There was no objection.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

One of the greatest exercises of tribe sovereignty is the ability of a tribe to determine its tribal membership. This measure would allow a Texas tribe to determine the blood quantum requirement for membership in that tribe.

My colleague, the gentleman from Texas (Mr. REYES), introduced H.R. 5811 to restore the tribe's right to determine its own membership requirements by deleting a blood quantum requirement specified in a 1987 law. Passage of this legislation would extend to the tribe the same sovereign right possessed by all other Indian tribes: The ability to determine who is and who is not a member of that tribe.

This measure is long overdue. I commend my colleague for introducing it. Similar legislation passed the House last Congress by unanimous consent. I urge Members to support this measure.

I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, the gentlelady from the Virgin Islands has adequately described this legislation.

I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield such time as he may consume to the sponsor of this legislation, the gentleman from Texas (Mr. REYES).

Mr. REYES. Mr. Speaker, I want to thank the gentlelady for yielding me this time, and the ranking member and the chairman for supporting this bill. It is a very important bill for us, for the Ysleta del Sur Pueblo Tribe and Alabama and Coshatta Indian Tribes.

Mr. Speaker, I rise to support H.R. 5811, a bill I introduced to amend the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act of 1987 to allow the Ysleta del Sur Pueblo Tigua tribe the authority to determine the blood quantum requirement for membership in their tribe. Since