

116TH CONGRESS
1ST SESSION

S. 209

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

JANUARY 24, 2019

Mr. HOEVEN (for himself, Mr. BARRASSO, Mr. UDALL, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Practical Reforms and Other Goals To Reinforce the Ef-
6 fectiveness of Self-Governance and Self-Determination for
7 Indian Tribes Act of 2019” or the “PROGRESS for In-
8 dian Tribes Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—TRIBAL SELF-GOVERNANCE

Sec. 101. Tribal self-governance.

TITLE II—INDIAN SELF-DETERMINATION

Sec. 201. Definitions; reporting and audit requirements; application of provisions.

Sec. 202. Contracts by Secretary of the Interior.

Sec. 203. Administrative provisions.

Sec. 204. Contract funding and indirect costs.

Sec. 205. Contract or grant specifications.

3 **TITLE I—TRIBAL SELF-** 4 **GOVERNANCE**

5 **SEC. 101. TRIBAL SELF-GOVERNANCE.**

6 (a) EFFECT OF PROVISIONS.—Nothing in this Act,
 7 or the amendments made by this Act, shall be construed—

8 (1) to modify, limit, expand, or otherwise af-
 9 fect—

10 (A) the authority of the Secretary of the
 11 Interior, as provided for under the Indian Self-
 12 Determination and Education Assistance Act
 13 (as in effect on the day before the date of en-
 14 actment of this Act), regarding—

15 (i) the inclusion of any non-BIA pro-
 16 gram (as defined in section 401 of the In-
 17 dian Self-Determination and Education
 18 Assistance Act) in a self-determination
 19 contract or funding agreement under sec-

1 tion 403(c) of such Act (as so in effect);
2 or

3 (ii) the implementation of any con-
4 tract or agreement described in clause (i)
5 that is in effect on the day described in
6 subparagraph (A);

7 (B) the meaning, application, or effect of
8 any Tribal water rights settlement, including
9 the performance required of a party thereto or
10 any payment or funding obligation thereunder;

11 (C) the authority, jurisdiction, or responsi-
12 bility of a State to manage, control, or regulate
13 fish and wildlife under State law (including reg-
14 ulations) on land or water in the State, includ-
15 ing Federal public land;

16 (D) except for the authority provided to
17 the Secretary as described in subparagraph (A),
18 the applicability or effect of any Federal law re-
19 lated to the protection or management of fish
20 or wildlife; or

21 (E) any treaty-reserved right or other right
22 of any Indian Tribe as recognized by any other
23 means, including treaties or agreements with
24 the United States, Executive orders, statutes,
25 regulations, or case law; or

1 (2) to authorize any provision of a contract or
2 agreement that is not consistent with the terms of
3 a Tribal water rights settlement.

4 (b) DEFINITIONS.—Section 401 of the Indian Self-
5 Determination and Education Assistance Act (25 U.S.C.
6 5361) is amended to read as follows:

7 **“SEC. 401. DEFINITIONS.**

8 “In this title:

9 “(1) COMPACT.—The term ‘compact’ means a
10 self-governance compact entered into under section
11 404.

12 “(2) CONSTRUCTION PROGRAM; CONSTRUCTION
13 PROJECT.—The term ‘construction program’ or ‘con-
14 struction project’ means a Tribal undertaking relat-
15 ing to the administration, planning, environmental
16 determination, design, construction, repair, improve-
17 ment, or expansion of roads, bridges, buildings,
18 structures, systems, or other facilities for purposes
19 of housing, law enforcement, detention, sanitation,
20 water supply, education, administration, community,
21 health, irrigation, agriculture, conservation, flood
22 control, transportation, or port facilities, or for other
23 Tribal purposes.

24 “(3) DEPARTMENT.—The term ‘Department’
25 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 for a
9 program administered by an Indian Tribe under a
10 compact or funding agreement.

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

15 “(7) NON-BIA PROGRAM.—The term ‘non-BIA
16 program’ means all or a portion of a program, func-
17 tion, service, or activity that is administered by any
18 bureau, service, office, or agency of the Department
19 of the Interior other than—

20 “(A) the Bureau of Indian Affairs;

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

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

1 “(8) PROGRAM.—The term ‘program’ means
2 any program, function, service, or activity (or por-
3 tion thereof) within the Department that is included
4 in a funding agreement.

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

7 “(10) SELF-DETERMINATION CONTRACT.—The
8 term ‘self-determination contract’ means a self-de-
9 termination contract entered into under section 102.

10 “(11) SELF-GOVERNANCE.—The term ‘self-gov-
11 ernance’ means the Tribal Self-Governance Program
12 established under section 402.

13 “(12) TRIBAL SHARE.—The term ‘Tribal share’
14 means the portion of all funds and resources of an
15 Indian Tribe that—

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

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

23 “(13) TRIBAL WATER RIGHTS SETTLEMENT.—
24 The term ‘Tribal water rights settlement’ means any

1 settlement, compact, or other agreement expressly
 2 ratified or approved by an Act of Congress that—

3 “(A) includes an Indian Tribe and the
 4 United States as parties; and

5 “(B) quantifies or otherwise defines any
 6 water right of the Indian Tribe.”.

7 (c) ESTABLISHMENT.—Section 402 of the Indian
 8 Self-Determination and Education Assistance Act (25
 9 U.S.C. 5362) is amended to read as follows:

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

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

14 “(b) SELECTION OF PARTICIPATING INDIAN
 15 TRIBES.—

16 “(1) IN GENERAL.—

17 “(A) ELIGIBILITY.—The Secretary, acting
 18 through the Director of the Office of Self-Gov-
 19 ernance, may select not more than 50 new In-
 20 dian Tribes per year from those tribes eligible
 21 under subsection (c) to participate in self-gov-
 22 ernance.

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

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

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

11 “(3) JOINT PARTICIPATION AS ORGANIZA-
12 TION.—Two or more Indian Tribes that are not oth-
13 erwise eligible under subsection (c) may be treated
14 as a single Indian Tribe for the purpose of partici-
15 pating in self-governance as a Tribal organization
16 if—

17 “(A) each Indian Tribe so requests; and

18 “(B) the Tribal organization itself, or at
19 least one of the Indian Tribes participating in
20 the Tribal organization, is eligible under sub-
21 section (c).

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

24 “(A) IN GENERAL.—An Indian Tribe that
25 withdraws from participation in a Tribal orga-

nization, in whole or in part, shall be entitled to participate in self-governance if the Indian Tribe is eligible under subsection (c).

“(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 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.

1 “(ii) NOTIFICATION.—The Indian
2 Tribe shall provide a copy of the Tribal
3 resolution described in clause (i) to the
4 Secretary.

5 “(iii) EFFECTIVE DATE.—

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

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

20 “(aa) the earlier of—

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

1 “(BB) the date on
2 which the funding agree-
3 ment expires; or

4 “(bb) such date as may be
5 mutually agreed upon by the Sec-
6 retary, the withdrawing Indian
7 Tribe, and the Tribal organiza-
8 tion that signed the compact and
9 funding agreement on behalf of
10 the withdrawing Indian Tribe or
11 Tribal organization.

12 “(E) DISTRIBUTION OF FUNDS.—If an In-
13 dian Tribe or Tribal organization eligible to
14 enter into a self-determination contract or a
15 compact or funding agreement fully or partially
16 withdraws from a participating Tribal organiza-
17 tion, the withdrawing Indian Tribe—

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

21 “(I) the withdrawing Indian
22 Tribe or Tribal organization shall be
23 entitled to its Tribal share of unex-
24 pended funds and resources sup-
25 porting the programs that the Indian

1 Tribe will be carrying out under its
2 own self-determination contract or
3 compact and funding agreement (cal-
4 culated on the same basis as the
5 funds were initially allocated to the
6 funding agreement of the Tribal orga-
7 nization); and

8 “(II) the funds referred to in
9 subclause (I) shall be withdrawn by
10 the Secretary from the funding agree-
11 ment of the Tribal organization and
12 transferred to the withdrawing Indian
13 Tribe, on the condition that sections
14 102 and 105(i), as appropriate, shall
15 apply to the withdrawing Indian
16 Tribe; or

17 “(ii) may elect not to enter into a self-
18 determination contract or compact, in
19 which case all unexpended funds and re-
20 sources associated with the withdrawing
21 Indian Tribe’s returned programs (cal-
22 culated on the same basis as the funds
23 were initially allocated to the funding
24 agreement of the Tribal organization) shall
25 be returned by the Tribal organization to

1 the Secretary for operation of the pro-
 2 grams included in the withdrawal.

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

13 “(c) ELIGIBILITY.—To be eligible to participate in
 14 self-governance, an Indian Tribe shall—

15 “(1) successfully complete the planning phase
 16 described in subsection (d);

17 “(2) request participation in self-governance by
 18 resolution or other official action by the Tribal gov-
 19 erning body; and

20 “(3) demonstrate, for the 3 fiscal years pre-
 21 ceding the date on which the Indian Tribe requests
 22 participation, financial stability and financial man-
 23 agement capability as evidenced by the Indian Tribe
 24 having no uncorrected significant and material audit
 25 exceptions in the required annual audit of its self-

1 determination or self-governance agreements with
 2 any Federal agency.

3 “(d) PLANNING PHASE.—

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

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

8 “(A) be conducted to the satisfaction of
 9 the Indian Tribe; and

10 “(B) include—

11 “(i) legal and budgetary research; and

12 “(ii) internal Tribal government plan-
 13 ning, training, and organizational prepara-
 14 tion.

15 “(e) GRANTS.—

16 “(1) IN GENERAL.—Subject to the availability
 17 of appropriations, an Indian Tribe or Tribal organi-
 18 zation that meets the requirements of paragraphs
 19 (2) and (3) of subsection (c) shall be eligible for
 20 grants—

21 “(A) to plan for participation in self-gov-
 22 ernance; and

23 “(B) to negotiate the terms of participa-
 24 tion by the Indian Tribe or Tribal organization

1 in self-governance, as set forth in a compact
2 and a funding agreement.

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

6 (d) FUNDING AGREEMENTS.—Section 403 of the In-
7 dian Self-Determination and Education Assistance Act
8 (25 U.S.C. 5363) is amended—

9 (1) by striking subsection (a) and inserting the
10 following:

11 “(a) AUTHORIZATION.—The Secretary shall, on the
12 request of any Indian Tribe or Tribal organization, nego-
13 tiate and enter into a written funding agreement with the
14 governing body of the Indian Tribe or the Tribal organiza-
15 tion in a manner consistent with—

16 “(1) the trust responsibility of the Federal Gov-
17 ernment, treaty obligations, and the government-to-
18 government relationship between Indian Tribes and
19 the United States; and

20 “(2) subsection (b).”;

21 (2) in subsection (b)—

22 (A) in paragraph (1)—

23 (i) in the matter preceding subpara-
24 graph (A), by striking “without regard to
25 the agency or office of the Bureau of In-

dian Affairs” and inserting “the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee for American Indians, without regard to the agency or office of that Bureau or those Offices”;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting the margins of such clauses accordingly;

(iii) by striking “including any program” and inserting the following: “including—

“(A) any program”;

(iv) in subparagraph (A)—

(I) in clause (i), as redesignated by clause (ii), by striking the semicolon at the end and inserting “; and”; and

(II) in clause (ii), as so redesignated, by striking “and” after the semicolon;

(v) by redesignating subparagraph (C) as subparagraph (B);

1 (vi) in subparagraph (B), as redesign-
 2 nated by clause (v), by striking the semi-
 3 colon and inserting “; and”; and

4 (vii) by adding at the end the fol-
 5 lowing:

6 “(C) any other program, service, function,
 7 or activity (or portion thereof) that is provided
 8 through the Bureau of Indian Affairs, the Of-
 9 fice of the Assistant Secretary for Indian Af-
 10 fairs, or the Office of the Special Trustee for
 11 American Indians with respect to which Indian
 12 Tribes or Indians are primary or significant
 13 beneficiaries;”;

14 (B) in paragraph (2)—

15 (i) by striking “section 405(c)” and
 16 inserting “section 412(c)”; and

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

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

21 (D) by striking paragraphs (4) through
 22 (9);

23 (3) in subsection (f)—

24 (A) in the subsection heading, by striking
 25 “FOR REVIEW”;

1 (B) by striking “such agreement to—” and
 2 all that follows through “Indian tribe” and in-
 3 serting “such agreement to each Indian Tribe”;

4 (C) by striking “agreement;” and inserting
 5 “agreement.”; and

6 (D) by striking paragraphs (2) and (3);

7 (4) in subsection (k), by striking “section
 8 405(c)(1)” and inserting “section 412(c)”;

9 (5) by adding at the end the following:

10 “(m) OTHER PROVISIONS.—

11 “(1) EXCLUDED FUNDING.—A funding agree-
 12 ment shall not authorize an Indian Tribe to plan,
 13 conduct, administer, or receive Tribal share funding
 14 under any program that—

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

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

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

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

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

3 “(C) the responsibilities of the Indian
4 Tribe and the Secretary under the funding
5 agreement.

6 “(3) BASE BUDGET.—

7 “(A) IN GENERAL.—A funding agreement
8 shall, at the option of the Indian Tribe, provide
9 for a stable base budget specifying the recur-
10 ring funds (which may include funds available
11 under section 106(a)) to be transferred to the
12 Indian Tribe, for such period as the Indian
13 Tribe specifies in the funding agreement, sub-
14 ject to annual adjustment only to reflect
15 changes in congressional appropriations.

16 “(B) LIMITATIONS.—Notwithstanding sub-
17 paragraph (A), a funding agreement shall not
18 specify funding associated with a program de-
19 scribed in subsection (b)(2) or (c) unless the
20 Secretary agrees.

21 “(4) NO WAIVER OF TRUST RESPONSIBILITY.—
22 A funding agreement shall prohibit the Secretary
23 from waiving, modifying, or diminishing in any way
24 the trust responsibility of the United States with re-
25 spect to Indian Tribes and individual Indians that

1 exists under treaties, Executive orders, court deci-
 2 sions, and other laws.

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

7 “(o) EFFECTIVE DATE.—A funding agreement shall
 8 become effective on the date specified in the funding
 9 agreement.

10 “(p) EXISTING AND SUBSEQUENT FUNDING AGREE-
 11 MENTS.—

12 “(1) SUBSEQUENT FUNDING AGREEMENTS.—
 13 Absent notification from an Indian Tribe that the
 14 Indian Tribe is withdrawing or retroceding the oper-
 15 ation of one or more programs identified in a fund-
 16 ing agreement, or unless otherwise agreed to by the
 17 parties to the funding agreement or by the nature
 18 of any noncontinuing program, service, function, or
 19 activity contained in a funding agreement—

20 “(A) a funding agreement shall remain in
 21 full force and effect until a subsequent funding
 22 agreement is executed, with funding paid annu-
 23 ally for each fiscal year the agreement is in ef-
 24 fect; and

1 “(B) the term of the subsequent funding
2 agreement shall be retroactive to the end of the
3 term of the preceding funding agreement for
4 the purposes of calculating the amount of fund-
5 ing to which the Indian Tribe is entitled.

6 “(2) DISPUTES.—Disputes over the implemen-
7 tation of paragraph (1)(A) shall be subject to section
8 406(c).

9 “(3) EXISTING FUNDING AGREEMENTS.—An
10 Indian Tribe that was participating in self-govern-
11 ance under this title on the date of enactment of the
12 PROGRESS for Indian Tribes Act shall have the
13 option at any time after that date—

14 “(A) to retain its existing funding agree-
15 ment (in whole or in part) to the extent that
16 the provisions of that funding agreement are
17 not directly contrary to any express provision of
18 this title; or

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

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

1 (e) GENERAL REVISIONS.—Title IV of the Indian
2 Self-Determination and Education Assistance Act (25
3 U.S.C. 5361 et seq.) is amended by striking sections 404
4 through 408 and inserting the following:

5 **“SEC. 404. COMPACTS.**

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

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

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

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

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

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

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

1 “(2) such date as is mutually agreed upon by
2 the parties.

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

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

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

9 “(f) EXISTING COMPACTS.—An Indian Tribe partici-
10 pating in self-governance under this title, as in effect on
11 the date of enactment of the PROGRESS for Indian
12 Tribes Act, shall have the option at any time after that
13 date—

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

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

20 **“SEC. 405. GENERAL PROVISIONS.**

21 “(a) APPLICABILITY.—An Indian Tribe and the Sec-
22 retary shall include in any compact or funding agreement
23 provisions that reflect the requirements of this title.

24 “(b) CONFLICTS OF INTEREST.—An Indian Tribe
25 participating in self-governance shall ensure that internal

1 measures are in place to address, pursuant to Tribal law
2 and procedures, conflicts of interest in the administration
3 of programs.

4 “(c) AUDITS.—

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

8 “(2) COST PRINCIPLES.—An Indian Tribe shall
9 apply cost principles under the applicable Office of
10 Management and Budget circular, except as modi-
11 fied by—

12 “(A) any provision of law, including section
13 106; or

14 “(B) any exemptions to applicable Office
15 of Management and Budget circulars subse-
16 quently granted by the Office of Management
17 and Budget.

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

23 “(d) REDESIGN AND CONSOLIDATION.—Except as
24 provided in section 407, an Indian Tribe may redesign or
25 consolidate programs, or reallocate funds for programs, in

1 a compact or funding agreement in any manner that the
 2 Indian Tribe determines to be in the best interest of the
 3 Indian community being served—

4 “(1) so long as the redesign or consolidation
 5 does not have the effect of denying eligibility for
 6 services to population groups otherwise eligible to be
 7 served under applicable Federal law; and

8 “(2) except that, with respect to the realloca-
 9 tion, consolidation, and redesign of programs de-
 10 scribed in subsection (b)(2) or (c) of section 403, a
 11 joint agreement between the Secretary and the In-
 12 dian Tribe shall be required.

13 “(e) RETROCESSION.—

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

17 “(2) EFFECTIVE DATE.—

18 “(A) AGREEMENT.—Unless an Indian
 19 Tribe rescinds a request for retrocession under
 20 paragraph (1), the retrocession shall become ef-
 21 fective on the date specified by the parties in
 22 the compact or funding agreement.

23 “(B) NO AGREEMENT.—In the absence of
 24 a specification of an effective date in the com-

1 pact or funding agreement, the retrocession
 2 shall become effective on—

3 “(i) the earlier of—

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

6 “(II) the date on which the fund-
 7 ing agreement expires; or

8 “(ii) such date as may be mutually
 9 agreed upon by the Secretary and the In-
 10 dian Tribe.

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

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

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

22 “(g) RECORDS.—

23 “(1) IN GENERAL.—Unless an Indian Tribe
 24 specifies otherwise in the compact or funding agree-
 25 ment, records of an Indian Tribe shall not be consid-

1 ered to be Federal records for purposes of chapter
2 5 of title 5, United States Code.

3 “(2) RECORDKEEPING SYSTEM.—An Indian
4 Tribe shall—

5 “(A) maintain a recordkeeping system; and

6 “(B) on a notice period of not less than 30
7 days, provide the Secretary with reasonable ac-
8 cess to the records to enable the Department to
9 meet the requirements of sections 3101 through
10 3106 of title 44, United States Code.

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

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

16 “(b) REASSUMPTION.—

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

22 “(A) imminent jeopardy to a trust asset, a
23 natural resource, or public health and safety
24 that—

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

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

5 “(B) gross mismanagement with respect to
6 funds transferred to an Indian Tribe under a
7 compact or funding agreement, as determined
8 by the Secretary in consultation with the In-
9 spector General, as appropriate.

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

13 “(A) the Secretary first provides written
14 notice and a hearing on the record to the In-
15 dian Tribe; and

16 “(B) the Indian Tribe does not take cor-
17 rective action to remedy the mismanagement of
18 the funds or programs, or the imminent jeop-
19 ardy to a trust asset, natural resource, or pub-
20 lic health and safety.

21 “(3) EXCEPTION.—

22 “(A) IN GENERAL.—Notwithstanding para-
23 graph (2), the Secretary may, on written notice
24 to the Indian Tribe, immediately reassume op-
25 eration of a program if—

1 “(i) the Secretary makes a finding of
 2 imminent and substantial jeopardy and ir-
 3 reparable harm to a trust asset, a natural
 4 resource, or the public health and safety
 5 caused by an act or omission of the Indian
 6 Tribe; and

7 “(ii) the imminent and substantial
 8 jeopardy and irreparable harm to the trust
 9 asset, natural resource, or public health
 10 and safety arises out of a failure by the In-
 11 dian Tribe to carry out the terms of an ap-
 12 plicable compact or funding agreement.

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

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

21 “(1) FINAL OFFER.—If the Secretary and a
 22 participating Indian Tribe are unable to agree, in
 23 whole or in part, on the terms of a compact or fund-
 24 ing agreement (including funding levels), the Indian
 25 Tribe may submit a final offer to the Secretary.

1 “(2) DETERMINATION.—Not more than 60
2 days after the date of receipt of a final offer by one
3 or more of the officials designated pursuant to para-
4 graph (4), the Secretary shall review and make a de-
5 termination with respect to the final offer, except
6 that the 60-day period may be extended for up to 30
7 days for circumstances beyond the control of the
8 Secretary, upon written request by the Secretary to
9 the Indian tribe.

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

14 “(4) DESIGNATED OFFICIALS.—

15 “(A) IN GENERAL.—The Secretary shall
16 designate one or more appropriate officials in
17 the Department to receive a copy of the final
18 offer described in paragraph (1).

19 “(B) NO DESIGNATION.—If no official is
20 designated, the Director of the Office of the Ex-
21 ecutive Secretariat and Regulatory Affairs shall
22 be the designated official.

23 “(5) NO TIMELY DETERMINATION.—If the Sec-
24 retary fails to make a determination with respect to
25 a final offer within the period specified in paragraph

(2), including any extension agreed to under paragraph (3), the Secretary shall be deemed to have agreed to the offer, except that with respect to any compact or funding agreement provision concerning a program described under section 403(c), the Secretary shall be deemed to have rejected the offer with respect to such provision and the terms of clauses (ii) through (iv) of paragraphs (6)(A) shall apply.

“(6) REJECTION OF FINAL OFFER.—

“(A) IN GENERAL.—If the Secretary rejects a final offer (or one 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 as determined under section 106(a)(1);

“(II) the program that is the subject of the final offer is an inher-

1 ent Federal function or is subject to
2 the discretion of the Secretary under
3 section 403(c);

4 “(III) the Indian Tribe cannot
5 carry out the program in a manner
6 that would not result in significant
7 danger or risk to the public health or
8 safety, to natural resources, or to
9 trust resources;

10 “(IV) the Indian Tribe is not eli-
11 gible to participate in self-governance
12 under section 402(c);

13 “(V) the funding agreement
14 would violate a Federal statute or reg-
15 ulation; or

16 “(VI) with respect to a program
17 or portion of a program included in a
18 final offer pursuant to section
19 403(b)(2), the program or the portion
20 of the program is not otherwise avail-
21 able to Indian Tribes or Indians
22 under section 102(a)(1)(E);

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

1 “(iii) provide the Indian Tribe with a
 2 hearing on the record with the right to en-
 3 gage in full discovery relevant to any issue
 4 raised in the matter, and the opportunity
 5 for appeal on the objections raised, except
 6 that the Indian Tribe may, in lieu of filing
 7 such appeal, directly proceed to initiate an
 8 action in a United States district court
 9 under section 110(a); and

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

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

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

24 “(ii) clauses (i), (ii), and (iii) of sub-
 25 paragraph (A) shall apply only to the por-

1 tion of the proposed final compact or fund-
 2 ing agreement that was rejected by the
 3 Secretary.

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

7 “(1) of demonstrating, by a preponderance of
 8 the evidence, the validity of the grounds for a re-
 9 assumption under subsection (b); and

10 “(2) of clearly demonstrating the validity of the
 11 grounds for rejecting a final offer made under sub-
 12 section (c).

13 “(e) GOOD FAITH.—

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

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

21 “(f) SAVINGS.—

22 “(1) IN GENERAL.—To the extent that pro-
 23 grams carried out for the benefit of Indian Tribes
 24 and Tribal organizations under this title reduce the
 25 administrative or other responsibilities of the Sec-

1 retary with respect to the operation of Indian pro-
 2 grams and result in savings that have not otherwise
 3 been included in the amount of Tribal shares and
 4 other funds determined under section 408(c), except
 5 for funding agreements entered into for programs
 6 under section 403(c), the Secretary shall make such
 7 savings available to the Indian Tribes or Tribal or-
 8 ganizations for the provision of additional services to
 9 program beneficiaries in a manner equitable to di-
 10 rectly served, contracted, and compacted programs.

11 “(2) DISCRETIONARY PROGRAMS OF SPECIAL
 12 SIGNIFICANCE.—For any savings generated as a re-
 13 sult of the assumption of a program by an Indian
 14 Tribe under section 403(c), such savings shall be
 15 made available to that Indian Tribe.

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

21 “(h) DECISION MAKER.—A decision that constitutes
 22 final agency action and relates to an appeal within the
 23 Department conducted under subsection (c)(6)(A)(iii) may
 24 be made by—

1 “(1) an official of the Department who holds a
 2 position at a higher organizational level within the
 3 Department than the level of the departmental agen-
 4 cy in which the decision that is the subject of the
 5 appeal was made; or

6 “(2) an administrative law judge.

7 “(i) RULES OF CONSTRUCTION.—Subject to section
 8 101(a) of the PROGRESS for Indian Tribes Act, each
 9 provision of this title and each provision of a compact or
 10 funding agreement shall be liberally construed for the ben-
 11 efit of the Indian Tribe participating in self-governance,
 12 and any ambiguity shall be resolved in favor of the Indian
 13 Tribe.

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

15 “(a) IN GENERAL.—Indian Tribes participating in
 16 Tribal self-governance may carry out any construction
 17 project included in a compact or funding agreement under
 18 this title.

19 “(b) TRIBAL OPTION TO CARRY OUT CERTAIN FED-
 20 ERAL ENVIRONMENTAL ACTIVITIES.—In carrying out a
 21 construction project under this title, an Indian Tribe may,
 22 subject to the agreement of the Secretary, elect to assume
 23 some Federal responsibilities under the National Environ-
 24 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), divi-
 25 sion A of subtitle III of title 54, United States Code, and

1 related provisions of other law and regulations that would
2 apply if the Secretary were to undertake a construction
3 project, by adopting a resolution—

4 “(1) designating a certifying Tribal officer to
5 represent the Indian Tribe and to assume the status
6 of a responsible Federal official under those Acts,
7 laws, or regulations; and

8 “(2) accepting the jurisdiction of the United
9 States courts for the purpose of enforcing the re-
10 sponsibilities of the certifying Tribal officer assum-
11 ing the status of a responsible Federal official under
12 those Acts, laws, or regulations.

13 “(c) SAVINGS CLAUSE.—Notwithstanding subsection
14 (b), nothing in this section authorizes the Secretary to in-
15 clude in any compact or funding agreement duties of the
16 Secretary under the National Environmental Policy Act
17 of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle
18 III of title 54, United States Code, and other related pro-
19 visions of law that are inherent Federal functions.

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

23 “(1) adhere to applicable Federal, State, local,
24 and Tribal building codes, architectural and engi-
25 neering standards, and applicable Federal guidelines

1 regarding design, space, and operational standards,
 2 appropriate for the particular project; and

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

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

6 “(B) certify that—

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

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

13 “(e) TRIBAL ACCOUNTABILITY.—

14 “(1) IN GENERAL.—In carrying out a construc-
 15 tion project under this title, an Indian Tribe shall
 16 assume responsibility for the successful completion
 17 of the construction project and of a facility that is
 18 usable for the purpose for which the Indian Tribe
 19 received funding.

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

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

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

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

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

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

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

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

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

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

6 “(f) FUNDING.—

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

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

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

22 “(h) FEDERAL REVIEW AND VERIFICATION.—

23 “(1) IN GENERAL.—On a schedule negotiated
24 by the Secretary and the Indian Tribe—

1 “(A) the Secretary shall review and verify,
2 to the satisfaction of the Secretary, that project
3 planning and design documents prepared by the
4 Indian Tribe in advance of initial construction
5 are in conformity with the obligations of the In-
6 dian Tribe under subsection (d); and

7 “(B) before the project planning and de-
8 sign documents are implemented, the Secretary
9 shall review and verify to the satisfaction of the
10 Secretary that subsequent document amend-
11 ments which result in a significant change in
12 construction are in conformity with the obliga-
13 tions of the Indian Tribe under subsection (d).

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

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

21 “(i) APPLICATION OF OTHER LAWS.—Unless other-
22 wise agreed to by the Indian Tribe and except as otherwise
23 provided in this Act, no provision of title 41, United States
24 Code, the Federal Acquisition Regulation, or any other law
25 or regulation pertaining to Federal procurement (includ-

ing 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. 408. 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 403 and 405, 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

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

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

12 “(d) TIMING.—

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

21 “(2) TRANSFERS.—Not later than 1 year after
22 the date of enactment of the PROGRESS for Indian
23 Tribes Act, in any instance in which a funding
24 agreement requires an annual transfer of funding to
25 be made at the beginning of a fiscal year or requires

1 semiannual or other periodic transfers of funding to
 2 be made commencing at the beginning of a fiscal
 3 year, the first such transfer shall be made not later
 4 than 10 days after the apportionment of such funds
 5 by the Office of Management and Budget to the De-
 6 partment, unless the funding agreement provides
 7 otherwise.

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

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

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

17 “(1) fail to transfer to an Indian Tribe its full
 18 share of any central, headquarters, regional, area, or
 19 service unit office or other funds due under this title
 20 for programs eligible under paragraph (1) or (2) of
 21 section 403(b), except as required by Federal law;

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

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

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

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

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

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

12 “(iii) a Tribal authorization;

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

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

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

21 “(i) Federal pay costs;

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

24 “(iii) automated data processing;

25 “(iv) technical assistance; and

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

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

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

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

23 “(j) INTEREST OR OTHER INCOME.—

24 “(1) IN GENERAL.—An Indian Tribe may re-
25 tain interest or income earned on any funds paid

1 under a compact or funding agreement to carry out
2 governmental purposes.

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

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

16 “(k) CARRYOVER OF FUNDS.—

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

21 “(2) EFFECT OF CARRYOVER.—If an Indian
22 Tribe elects to carry over funding from one year to
23 the next, the carryover shall not diminish the
24 amount of funds the Indian Tribe is entitled to re-

1 ceive under a funding agreement in that fiscal year
2 or any subsequent fiscal year.

3 “(l) LIMITATION OF COSTS.—

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

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

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

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

24 “(m) DISTRIBUTION OF FUNDS.—The Office of Self-
25 Governance shall be responsible for distribution of all Bu-

1 reau of Indian Affairs funds provided under this title un-
 2 less otherwise agreed by the parties to an applicable fund-
 3 ing agreement.

4 “(n) **APPLICABILITY.**—Notwithstanding any other
 5 provision of this section, section 101(a) of the
 6 **PROGRESS** for Indian Tribes Act applies to subsections
 7 (a) through (m).

8 **“SEC. 409. FACILITATION.**

9 “(a) **IN GENERAL.**—Except as otherwise provided by
 10 law (including section 101(a) of the **PROGRESS** for In-
 11 dian Tribes Act), the Secretary shall interpret each Fed-
 12 eral law and regulation in a manner that facilitates—

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

15 “(2) the implementation of funding agreements.

16 “(b) **REGULATION WAIVER.**—

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

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

22 “(B) the basis for the request.

23 “(2) **DETERMINATION BY THE SECRETARY.**—

24 Not later than 120 days after receipt by the Sec-
 25 retary and the designated officials under paragraph

1 (4) of a request under paragraph (1), the Secretary
2 shall approve or deny the requested waiver in writ-
3 ing to the Indian Tribe.

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

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

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

17 “(6) FAILURE TO MAKE DETERMINATION.—If
18 the Secretary fails to make a determination with re-
19 spect to a waiver request within the period specified
20 in paragraph (2) (including any extension agreed to
21 under paragraph (3)), the Secretary shall be deemed
22 to have agreed to the request, except that for a
23 waiver request relating to programs eligible under
24 section 403(b)(2) or section 403(c), the Secretary
25 shall be deemed to have denied the request.

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

3 **“SEC. 410. DISCRETIONARY APPLICATION OF OTHER SEC-**
4 **TIONS.**

5 “(a) IN GENERAL.—Except as otherwise provided in
6 section 201(d) of the PROGRESS for Indian Tribes Act,
7 at the option of a participating Indian Tribe or Indian
8 Tribes, any of the provisions of title I may be incorporated
9 in any compact or funding agreement under this title. The
10 inclusion of any such provision shall be subject to, and
11 shall not conflict with, section 101(a) of such Act.

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

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

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

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

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

23 “(1) be effective immediately; and

24 “(2) control the negotiation and resulting com-
25 pact and funding agreement.

1 **“SEC. 411. ANNUAL BUDGET LIST.**

2 “The Secretary shall list, in the annual budget re-
3 quest submitted to Congress under section 1105 of title
4 31, United States Code, any funds proposed to be included
5 in funding agreements authorized under this title.

6 **“SEC. 412. REPORTS.**

7 “(a) IN GENERAL.—

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

11 “(2) ANALYSIS.—Any Indian Tribe may submit
12 to the Office of Self-Governance and to the appro-
13 priate committees of Congress a detailed annual
14 analysis of unmet Tribal needs for funding agree-
15 ments under this title.

16 “(b) CONTENTS.—The report under subsection (a)(1)
17 shall—

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

22 “(2) identify—

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

25 “(B) with particularity, all funds that are
26 specifically or functionally related to the provi-

1 sion by the Secretary of services and benefits to
2 self-governance Indian Tribes and members of
3 Indian Tribes;

4 “(C) the funds transferred to each Indian
5 Tribe and the corresponding reduction in the
6 Federal employees and workload; and

7 “(D) the funding formula for individual
8 Tribal shares of all Central Office funds, to-
9 gether with the comments of affected Indian
10 Tribes, developed under subsection (d);

11 “(3) before being submitted to Congress, be dis-
12 tributed to the Indian Tribes for comment (with a
13 comment period of not less than 30 days);

14 “(4) include the separate views and comments
15 of each Indian Tribe or Tribal organization; and

16 “(5) include a list of—

17 “(A) all such programs that the Secretary
18 determines, in consultation with Indian Tribes
19 participating in self-governance, are eligible for
20 negotiation to be included in a funding agree-
21 ment at the request of a participating Indian
22 Tribe; and

23 “(B) all such programs which Indian
24 Tribes have formally requested to include in a
25 funding agreement under section 403(c) due to

1 the special geographic, historical, or cultural
2 significance of the program to the Indian Tribe,
3 indicating whether each request was granted or
4 denied, and stating the grounds for any denial.

5 “(c) REPORT ON NON-BIA PROGRAMS.—

6 “(1) IN GENERAL.—In order to optimize oppor-
7 tunities for including non-BIA programs in agree-
8 ments with Indian Tribes participating in self-gov-
9 ernance under this title, the Secretary shall review
10 all programs administered by the Department, other
11 than through the Bureau of Indian Affairs, the Of-
12 fice of the Assistant Secretary for Indian Affairs, or
13 the Office of the Special Trustee for American Indi-
14 ans, without regard to the agency or office con-
15 cerned.

16 “(2) PROGRAMMATIC TARGETS.—The Secretary
17 shall establish programmatic targets, after consulta-
18 tion with Indian Tribes participating in self-govern-
19 ance, to encourage bureaus of the Department to en-
20 sure that an appropriate portion of those programs
21 are available to be included in funding agreements.

22 “(3) PUBLICATION.—The lists under subsection
23 (b)(5) and targets under paragraph (2) shall be pub-
24 lished in the Federal Register and made available to
25 any Indian Tribe participating in self-governance.

1 “(4) ANNUAL REVIEW.—

2 “(A) IN GENERAL.—The Secretary shall
3 annually review and publish in the Federal Reg-
4 ister, after consultation with Indian Tribes par-
5 ticipating in self-governance, revised lists and
6 programmatic targets.

7 “(B) CONTENTS.—In preparing the revised
8 lists and programmatic targets, the Secretary
9 shall consider all programs that were eligible
10 for contracting in the original list published in
11 the Federal Register in 1995, except for pro-
12 grams specifically determined not to be con-
13 tractible as a matter of law.

14 “(d) REPORT ON CENTRAL OFFICE FUNDS.—Not
15 later than January 1, 2020, the Secretary shall, in con-
16 sultation with Indian Tribes, develop a funding formula
17 to determine the individual Tribal share of funds con-
18 trolled by the Central Office of the Bureau of Indian Af-
19 fairs and the Office of the Special Trustee for inclusion
20 in the compacts.

21 **“SEC. 413. REGULATIONS.**

22 “(a) IN GENERAL.—

23 “(1) PROMULGATION.—Not later than 90 days
24 after the date of enactment of the PROGRESS for
25 Indian Tribes Act, the Secretary shall initiate proce-

dures 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 21 months after the date of enactment of the PROGRESS for Indian Tribes Act.

“(3) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under paragraph (1) shall expire on the date that is 30 months after the date of enactment of the PROGRESS for Indian Tribes Act.

“(b) COMMITTEE.—

“(1) MEMBERSHIP.—A negotiated rulemaking 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.

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

6 “(d) EFFECT.—

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

9 “(2) CONFLICTING PROVISIONS.—Subject to
 10 section 101(a) of the PROGRESS for Indian Tribes
 11 Act and except with respect to programs described
 12 under section 403(c), this title shall supersede any
 13 conflicting provision of law (including any conflicting
 14 regulations).

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

19 **“SEC. 414. EFFECT OF CIRCULARS, POLICIES, MANUALS,**
 20 **GUIDANCE, AND RULES.**

21 “Unless expressly agreed to by a participating Indian
 22 Tribe in a compact or funding agreement, the partici-
 23 pating Indian Tribe shall not be subject to any agency
 24 circular, policy, manual, guidance, or rule adopted by the
 25 Department, except for—

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

3 “(2) regulations promulgated pursuant to sec-
4 tion 413.

5 **“SEC. 415. APPEALS.**

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

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

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

15 **“SEC. 416. APPLICATION OF OTHER PROVISIONS.**

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

20 **“SEC. 417. AUTHORIZATION OF APPROPRIATIONS.**

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

TITLE II—INDIAN SELF- DETERMINATION

SEC. 201. DEFINITIONS; REPORTING AND AUDIT REQUIRE- MENTS; APPLICATION OF PROVISIONS.

(a) DEFINITIONS.—

(1) IN GENERAL.—Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304) 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);”.

1 (2) TECHNICAL AMENDMENTS.—Section 4 of
 2 the Indian Self-Determination and Education Assist-
 3 ance Act (25 U.S.C. 5304), as amended by para-
 4 graph (1), is further amended—

5 (A) in subsection (e), by striking “‘Indian
 6 tribe’ means” and inserting “‘Indian tribe’ or
 7 ‘Indian Tribe’ means”; and

8 (B) in subsection (l), by striking “‘tribal
 9 organization’ means” and inserting “‘Tribal or-
 10 ganization’ or ‘tribal organization’ means”.

11 (b) REPORTING AND AUDIT REQUIREMENTS.—Sec-
 12 tion 5 of the Indian Self-Determination and Education As-
 13 sistance Act (25 U.S.C. 5305) is amended—

14 (1) in subsection (b)—

15 (A) by striking “after completion of the
 16 project or undertaking referred to in the pre-
 17 ceding subsection of this section” and inserting
 18 “after the retention period for the report that
 19 is submitted to the Secretary under subsection
 20 (a)”; and

21 (B) by adding at the end the following:
 22 “The retention period shall be defined in regu-
 23 lations promulgated by the Secretary pursuant
 24 to section 413.”; and

1 (2) in subsection (f)(1), by inserting “if the In-
 2 dian Tribal organization expends \$500,000 or more
 3 in Federal awards during such fiscal year” after
 4 “under this Act,”.

5 (c) EFFECTIVE DATE.—The amendment made by
 6 subsection (b)(2) shall not take effect until 14 months
 7 after the date of enactment of this Act.

8 (d) APPLICATION OF OTHER PROVISIONS.—Sections
 9 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111
 10 of the Indian Self-Determination and Education Assist-
 11 ance Act (25 U.S.C. 5304, 5305, 5306, 5307, 5321(c),
 12 5323, 5324(a)(1), 5324(f), 5331, and 5332) and section
 13 314 of the Department of the Interior and Related Agen-
 14 cies Appropriations Act, 1991 (Public Law 101–512; 104
 15 Stat. 1959), apply to compacts and funding agreements
 16 entered into under title IV of the Indian Self-Determina-
 17 tion and Education Assistance Act (25 U.S.C. 5361 et
 18 seq.).

19 **SEC. 202. CONTRACTS BY SECRETARY OF THE INTERIOR.**

20 Section 102 of the Indian Self-Determination and
 21 Education Assistance Act (25 U.S.C. 5321) is amended—

22 (1) in subsection (c)(2), by striking “economic
 23 enterprises” and all that follows through “except
 24 that” and inserting “economic enterprises (as de-

1 fined in section 3 of the Indian Financing Act of
2 1974 (25 U.S.C. 1452)), except that”; and

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

4 “(f) GOOD FAITH REQUIREMENT.—In the negotia-
5 tion of contracts and funding agreements, the Secretary
6 shall—

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

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

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

15 “(B) the PROGRESS for Indian Tribes
16 Act.

17 “(g) RULE OF CONSTRUCTION.—Subject to section
18 101(a) of the PROGRESS for Indian Tribes Act, each
19 provision of this Act and each provision of a contract or
20 funding agreement shall be liberally construed for the ben-
21 efit of the Indian Tribe participating in self-determination,
22 and any ambiguity shall be resolved in favor of the Indian
23 Tribe.”.

1 **SEC. 203. ADMINISTRATIVE PROVISIONS.**

2 Section 105 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 5324) 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
7 102 and 103”; and

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

9 “(p) INTERPRETATION BY SECRETARY.—Except as
10 otherwise provided by law, the Secretary shall interpret
11 all Federal laws (including regulations) and Executive or-
12 ders in a manner that facilitates, to the maximum extent
13 practicable—

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

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

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

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

22 “(3) the achievement of Tribal health objec-
23 tives.

24 “(q)(1) TECHNICAL ASSISTANCE FOR INTERNAL
25 CONTROLS.—In considering proposals for, amendments
26 to, or in the course of, a contract under this title and com-

1 pacts under titles IV and V of this Act, if the Secretary
2 determines that the Indian Tribe lacks adequate internal
3 controls necessary to manage the contracted program or
4 programs, the Secretary shall, as soon as practicable, pro-
5 vide the necessary technical assistance to assist the Indian
6 Tribe in developing adequate internal controls. As part of
7 that technical assistance, the Secretary and the Tribe shall
8 develop a plan for assessing the subsequent effectiveness
9 of such technical assistance. The inability of the Secretary
10 to provide technical assistance or lack of a plan under this
11 subsection shall not result in the reassumption of an exist-
12 ing agreement, contract, or compact, or declination or re-
13 jection of a new agreement, contract, or compact.

14 “(2) The Secretary shall prepare a report to be in-
15 cluded in the information required for the reports under
16 sections 412(b)(2)(A) and 514(b)(2)(A). The Secretary
17 shall include in this report, in the aggregate, a description
18 of the internal controls that were inadequate, the technical
19 assistance provided, and a description of Secretarial ac-
20 tions taken to address any remaining inadequate internal
21 controls after the provision of technical assistance and im-
22 plementation of the plan required by paragraph (1).”.

1 **SEC. 204. CONTRACT FUNDING AND INDIRECT COSTS.**

2 Section 106(a)(3) of the Indian Self-Determination
3 and Education Assistance Act (25 U.S.C. 5325(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 de-
20 scribed in subparagraph (A)(ii) that are in-
21 curred by the governing body of an Indian
22 Tribe or Tribal organization relating to a Fed-
23 eral program, function, service, or activity car-
24 ried out pursuant to the contract shall be con-
25 sidered to be reasonable and allowable.”.

1 **SEC. 205. CONTRACT OR GRANT SPECIFICATIONS.**

2 Section 108 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 5329) is amended—

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

7 (2) in subsection (f)(2)(A)(ii) of the model
8 agreement contained in subsection (c), by inserting
9 “subject to subsections (a) and (b) of section 102 of
10 the Indian Self-Determination and Education Assist-
11 ance Act (25 U.S.C. 5321),” before “such other pro-
12 visions”; and

13 (3) in subsection (b)(7)(C) of the model agree-
14 ment contained in subsection (c), in the second sen-
15 tence of the matter preceding clause (i), by striking
16 “one performance monitoring visit” and inserting
17 “two performance monitoring visits”.

○