

110TH CONGRESS
1ST SESSION

H. R. 3994

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2007

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

1 **“TITLE IV—TRIBAL SELF-**
2 **GOVERNANCE**

3 **“SEC. 401. DEFINITIONS.**

4 “In this title:

5 “(1) COMPACT.—The term ‘compact’ means a
6 self-governance compact entered into under section
7 404.

8 “(2) CONSTRUCTION PROGRAM.—The term
9 ‘construction program’ or ‘construction project’
10 means a tribal undertaking relating to the adminis-
11 tration, planning, environmental determination, de-
12 sign, construction, repair, improvement, or expan-
13 sion of roads, bridges, buildings, structures, systems
14 or other facilities for purposes of housing, law en-
15 forcement, detention, sanitation, water supply, edu-
16 cation, administration, community, health, irriga-
17 tion, agriculture, conservation, flood control, trans-
18 portation, or port facilities, or for other tribal pur-
19 poses.

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

22 “(4) FUNDING AGREEMENT.—The term ‘fund-
23 ing agreement’ means a funding agreement entered
24 into under section 405(b).

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

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

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

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

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

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

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

9 **“SEC. 402. ESTABLISHMENT.**

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

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

14 “(a) IN GENERAL.—

15 “(1) PARTICIPANTS.—

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

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

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

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

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

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

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

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

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

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

14 “(D) WITHDRAWAL PROCESS.—

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

20 “(ii) EFFECTIVE DATE.—

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

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

5 “(aa) the earlier of—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(c) PLANNING PHASE.—

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

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

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

16 “(B) shall include—

17 “(i) legal and budgetary research; and

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

20 “(d) GRANTS.—

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

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

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

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

10 **“SEC. 404. COMPACTS.**

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

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

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

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

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

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

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

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

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

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

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

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

21 **“SEC. 405. FUNDING AGREEMENTS.**

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

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

4 “(b) INCLUDED PROGRAMS.—

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

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

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

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

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

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

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

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

9 “(2) OTHER AGENCIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **“SEC. 406. GENERAL PROVISIONS.**

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

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

14 “(c) AUDITS.—

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

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

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

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

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

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

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

16 “(e) RETROCESSION.—

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

20 “(2) EFFECTIVE DATE.—

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

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

5 “(i) the earlier of—

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

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

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

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

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

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

24 “(g) RECORDS.—

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

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

8 “(A) maintain a recordkeeping system; and

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

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

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

19 “(b) REASSUMPTION.—

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

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

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

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

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

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

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

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

24 “(3) EXCEPTION.—

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

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

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

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

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

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

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

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

16 “(4) REJECTION OF FINAL OFFER.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(e) GOOD FAITH.—

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

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

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

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

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

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

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

12 “(2) by an administrative law judge.

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

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

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

25 “(b) **NEGOTIATIONS.**—

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

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

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

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

12 “(D) describes—

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

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

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

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

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

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

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

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

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

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

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

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

3 “(e) FUNDING.—

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

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

21 “(3) REALLOCATION OF SAVINGS.—

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

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

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

8 “(f) APPROVAL.—

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

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

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

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

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

10 “(g) WAGES.—

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

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

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

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

10 **“SEC. 409. PAYMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(iii) a tribal authorization;

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

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

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

21 “(i) Federal pay costs;

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

24 “(iii) automated data processing;

25 “(iv) technical assistance; and

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

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

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

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

22 “(j) INTEREST OR OTHER INCOME.—

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

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

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

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

12 “(k) CARRYOVER OF FUNDS.—

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

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

23 “(l) LIMITATION OF COSTS.—

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

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

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

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

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

20 **“SEC. 410. FACILITATION.**

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

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

1 “(2) the implementation of funding agreements.

2 “(b) REGULATION WAIVER.—

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

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

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

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

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

1 **“SEC. 411. DISCLAIMERS.**

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

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

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

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

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

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

21 “(b) DISCRETIONARY APPLICATION.—

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

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

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

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

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

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

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

14 **“SEC. 413. BUDGET REQUEST.**

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

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

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

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

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

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

15 **“SEC. 414. REPORTS.**

16 “(a) IN GENERAL.—

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

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

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

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

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

12 “(2) identify—

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

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

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

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

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

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

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

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

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

17 “(c) REPORT ON NON-BIA PROGRAMS.—

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

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

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

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

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

11 “(ii) a list of all such programs for
12 which Indian tribes have requested to in-
13 clude in a funding agreement under section
14 405(b)(3) due to the special geographic,
15 historical, or cultural significance of the
16 program to the Indian tribe, indicating
17 whether each request was granted or de-
18 nied, and stating the grounds for any de-
19 nial.

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

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

5 “(4) ANNUAL REVIEW.—

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

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

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

23 **“SEC. 415. REGULATIONS.**

24 “(a) IN GENERAL.—

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

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

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

18 “(b) COMMITTEE.—

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

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

2 and

3 “(2) regulations promulgated under section

4 415.

5 **“SEC. 417. APPEALS.**

6 “In any administrative appeal or civil action for judi-

7 cial review of any decision made by the Secretary under

8 this title, the Secretary shall have the burden of proof of

9 demonstrating by clear and convincing evidence—

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

11 and

12 “(2) the consistency of the decision with the

13 provisions and policies of this title.

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

15 “There are authorized to be appropriated such sums

16 as may be necessary to carry out this title.”.

○