

104TH CONGRESS
2D SESSION

H. R. 4151

To establish a National Indian Bonding Authority Pilot Project to oversee the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1996

Mr. JOHNSON of South Dakota (for himself, Mr. FALEOMAVAEGA, Mr. KILDEE, Mr. MILLER of California, and Mr. RICHARDSON) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

A BILL

To establish a National Indian Bonding Authority Pilot Project to oversee the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, 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 “National Indian Bond-
5 ing Authority Pilot Project Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

3 (1) There exists a unique political and legal re-
4 lationship between the Government of the United
5 States and governments of Indian tribes. Indian
6 tribes have a legal relationship with the United
7 States Government which is set forth in the Con-
8 stitution of the United States, treaties, Federal stat-
9 utes, and judicial decisions.

10 (2) The Constitution of the United States gives
11 the Congress plenary power over Indian affairs; and
12 through treaties, statutes, executive orders, course of
13 dealing, and custom, the United States has under-
14 taken a trust obligation to protect Indian tribes and
15 tribal resources.

16 (3) The trust responsibility includes the duty to
17 protect, preserve, and enhance tribal assets and re-
18 sources, and to assist Indian tribes in improving the
19 socioeconomic status of tribes and their members in
20 an effort to encourage economic development and
21 strengthen powers of self-government.

22 (4) By fostering the development of accom-
23 modative financial markets and tribal access to cap-
24 ital, the Federal Government can assist in providing
25 fundamental tools to greater economic development
26 and powers of self government.

1 (5) The need for financial capital by Indian
2 tribal governments is acute, and the Federal Govern-
3 ment should work to facilitate capital creation and
4 those mechanisms that will permit the Federal Gov-
5 ernment to issue debt instruments as a means of fi-
6 nancing tribal government needs.

7 (6) For the benefit of Indian people across the
8 United States, to increase their commerce welfare
9 and prosperity, and the improvement of their health
10 and living conditions, it is essential that this and fu-
11 ture generations of youth be given the fullest oppor-
12 tunity to learn and to develop their intellectual and
13 mental capacities.

14 (7) It is essential that institutions of education
15 be provided with appropriate additional means to as-
16 sist such youth in achieving the required levels of
17 learning and development of their intellectual and
18 mental capacities.

19 (8) Institutions should be enabled to refinance
20 outstanding indebtedness incurred to provide exist-
21 ing facilities and to preserve and enhance the facili-
22 ties for the purposes of education.

23 (9) There are approximately 16,600,000 square
24 feet of space in Indian schools nationwide.

1 (10) There exists a backlog in Grant School
2 and Bureau School facility improvement, repair, and
3 new construction needs of \$850,000,000. Assuming
4 a 3 percent inflation rate, the cost of the
5 \$850,000,000 in deferred maintenance grows by
6 \$25,500,000 per year due to inflation, and approxi-
7 mately \$55,000,000 per year due to natural aging
8 and deterioration for a total of \$80,000,000 per
9 year.

10 (11) The replacement value of these facilities is
11 \$1,830,000,000.

12 (12) The magnitude of the dollars and number
13 of projects has risen to a level where these projects
14 cannot be funded by current facility improvement
15 and repair and new construction program funds.

16 (13) With the physical condition of grant and
17 bureau schools deteriorating, and with the popu-
18 lation within these schools increasing, there is an
19 immediate need for funding of these projects.

20 (14) The schools propose, through actions taken
21 by Congress, to be allowed to bond for project need
22 using existing education program money sources and
23 reserve funds as the repayment source and security
24 for the bonds.

1 (15) The program would establish a national
2 pilot project with the power to issue bonds, utilizing
3 the municipal finance market established to serve
4 school districts and local governments.

5 (16) Instead of funding the project directly, a
6 portion of Tribal Education Construction funds cur-
7 rently appropriated for these types of projects would
8 be leveraged through the bonds to fund substantially
9 more projects.

10 (17) The use of funds in this manner will allow
11 the appropriations to go much further to alleviate
12 the construction problems facing the schools and will
13 reduce the deficit by building the schools faster and
14 decreasing the inflation buildup currently estimated
15 at \$80,000,000 per year.

16 (18) It is the purpose of this Act to provide a
17 measure of assistance and an alternative method of
18 financing to enable tribal institutions of education to
19 provide the facilities and structure which are sorely
20 needed to accomplish the purposes of this Act.

21 (19) True self-determination in any society of
22 people is dependent upon an educational process
23 which will ensure the development of qualified people
24 to fulfill meaningful leadership roles. This Act will
25 incorporate the commitment and support of tribal

1 self-determination by utilizing section 102 of Public
2 Law 93–638 and Public Law 100–297 to allow
3 tribes to manage their own construction projects.

4 **SEC. 3. DEFINITIONS.**

5 As used in this Act:

6 (1) **AUTHORITY.**—The term “Authority” means
7 the National Indian Bonding Pilot Project Authority
8 established by section 101 of this Act.

9 (2) **CERTIFICATES OF PARTICIPATION.**—The
10 term “certificates of participation” means revenue
11 bonds of the Authority issued under title II of this
12 Act.

13 (3) **COST.**—The term “cost” as applied to a
14 project or any portion thereof financed under the
15 provisions of the Act means all or any part of the
16 cost of construction, acquisition, alteration, enlarge-
17 ment, reconstruction, and remodeling of a project in-
18 cluding all lands, structures, real or personal prop-
19 erty, rights, rights-of-way, franchises, easements,
20 and interests acquired or used for or in connection
21 with a project, the cost of demolishing or removing
22 any buildings or structures on land so acquired; the
23 cost of all machinery and equipment, financing
24 charges, interest prior to, during, and for a period
25 after completion of such construction and acquisi-

1 tion, provisions for reserves for principal and inter-
2 est, and for extensions, enlargements, additions, and
3 improvements, the cost of architectural, engineering,
4 financial, and legal services, plans, specifications,
5 studies, surveys, estimates of cost and of revenues,
6 administrative expenses, necessary or incident to de-
7 termining the feasibility or practicability of con-
8 structing the project and such other expenses as
9 may be necessary or incident to the construction and
10 acquisition of the project.

11 (4) PROJECT.—The term “project” means a
12 structure or structures available for use as an ad-
13 ministration building, academic building, library,
14 classroom, athletic facility, dormitory, or other stu-
15 dent housing facility, maintenance, storage, em-
16 ployee housing, or utility facility, and other struc-
17 tures or facilities related thereto or required or use-
18 ful for the instruction of students whether proposed,
19 under construction, or completed. Parking and other
20 facilities or structures essential or convenient for the
21 orderly conduct of such institution, including land-
22 scaping and site preparation, shall also be included.

23 (5) SECRETARY.—The term “Secretary” means
24 the Secretary of the Interior.

1 (6) TRIBAL SCHOOL.—The term “tribal school”
2 means a school that is operated by a tribal organiza-
3 tion for the education of Indian children with finan-
4 cial assistance under a Public Law 100–297 grant
5 or Public Law 93–638 contract with the Bureau of
6 Indian Affairs.

7 **TITLE I—ESTABLISHMENT OF**
8 **NATIONAL INDIAN BONDING**
9 **PILOT PROJECT AUTHORITY**

10 **SEC. 101. ESTABLISHMENT.**

11 (a) IN GENERAL.—There is established a commission
12 to be known as the National Indian Bonding Pilot Project
13 Authority.

14 (b) MEMBERSHIP.—

15 (1) COMPOSITION.—The Authority shall be
16 composed of 7 members appointed by the Secretary
17 of the Interior as follows:

18 (A) One member shall be designated by the
19 Authority as chairperson of the Authority.

20 (B) One member shall be designated by
21 the Authority as the vice chairperson of the Au-
22 thority.

23 (C) At least 1 member shall be a person
24 having a favorable reputation for skill, knowl-

1 edge, and experience in the field of public fi-
2 nance.

3 (D) At least 1 member shall be a person
4 having a favorable reputation for skill, knowl-
5 edge, and experience in the building construc-
6 tion field.

7 (E) At least 2 of the members shall be a
8 trustee, director, officer, or employee of a tribal
9 school.

10 The members may be from the public or private sec-
11 tor, and may include Federal or tribal officers or
12 employees, members of academia, nonprofit organi-
13 zations, or other interested individuals.

14 (2) DATE.—The appointments of the members
15 of the Authority shall be made no later than 3
16 months after the date of enactment of this Act.

17 (c) PERIOD OF APPOINTMENT; VACANCIES.—Two of
18 the initial members shall be appointed for a 2-year term,
19 3 of the initial members shall be appointed for a 4-year
20 term, and 2 of the initial members shall be appointed for
21 a 6-year term. Thereafter, all members shall be appointed
22 for a 6-year term. Any vacancy in the Authority shall not
23 affect its powers, but shall be filled in the same manner
24 as the original appointment.

1 (d) INITIAL MEETING.—No later than 30 days after
2 the date on which all members of the Authority have been
3 appointed, the Authority shall hold its first meeting.

4 (e) MEETINGS.—The Authority shall meet at the call
5 of the Chairperson.

6 (f) QUORUM.—A majority of the members of the Au-
7 thority shall constitute a quorum, but a lesser number of
8 members may hold hearings. Each member of the Author-
9 ity shall have 1 vote, and the vote of each member shall
10 be accorded the same weight.

11 **SEC. 102. DUTIES OF THE AUTHORITY.**

12 The Authority shall—

13 (1) enter into an agreement with a private un-
14 derwriter to provide for the issuance of certificates
15 of participation in accordance with title II; and

16 (2) promulgate regulations to carry out para-
17 graph (1).

18 **SEC. 103. POWERS OF THE AUTHORITY.**

19 (a) Purpose.—The purpose of the Authority shall be
20 to assist institutions in the construction, financing, and
21 refinancing of projects.

22 (b) RULES.—The Authority is authorized and em-
23 powered to adopt rules for the conduct of its business.

24 (c) LOCATION AND CHOICE OF PROJECTS.—The Au-
25 thority is authorized and empowered to determine the lo-

1 cation and character of any project to be financed under
2 the provisions of this Act. The Authority shall work with
3 the Department of the Interior to determine those schools
4 that are in critical need and eligible for the program out-
5 lined in this Act.

6 (d) INFORMATION FROM FEDERAL AGENCIES.—The
7 Authority may secure directly from the Department of the
8 Interior such information as the Authority considers nec-
9 essary to carry out the duties specified in section 102.
10 Upon request of the chairperson of the Authority, the head
11 of such department or agency shall furnish such informa-
12 tion to the Authority.

13 (e) POSTAL SERVICES.—The Authority may use the
14 United States mails in the same manner and under the
15 same conditions as other departments and agencies of the
16 Federal Government.

17 (f) ISSUE BONDS.—The Authority is authorized and
18 empowered to issue revenue bonds whose aggregate prin-
19 cipal amount at any time shall not exceed \$200,000,000
20 and to issue notes, bond anticipation notes, and revenue
21 refunding bonds of the authority under the provisions of
22 this Act to provide funds for acquiring, constructing, re-
23 constructing, enlarging, remodeling, renovating, improv-
24 ing, furnishing, or equipping 1 or more projects or parts
25 thereof.

1 (g) CONTRACTS.—The Authority is authorized and
2 empowered to enter into contracts and execute all instru-
3 ments necessary or appropriate to carry out the purposes
4 of this Act.

5 (h) USE OF REVENUES.—The Authority is author-
6 ized and empowered to pledge, assign, or otherwise encum-
7 ber as security for the bonds, the rentals, revenues, and
8 other income, charges, and moneys realized from the use,
9 lease, sale or other disposition of 1 or more projects or
10 parts thereof as may be designated in the bond proceed-
11 ings, and enter into trust agreements for the benefit of
12 bondholders.

13 (i) USE OF CONSULTANTS.—The Authority is au-
14 thorized and empowered to employ consulting engineers,
15 architects, attorneys, accountants, construction and finan-
16 cial experts, superintendents, managers, and such other
17 employees and agents as may be necessary in its judg-
18 ment, and to fix their compensation.

19 (j) RECEIPT OF GRANTS.—The Authority is author-
20 ized and empowered to receive and accept from any public
21 agency loans or grants for or in aid of the acquisition,
22 construction, or refinancing of a project or any portion
23 thereof, and to receive and accept loans, grants, aid, or
24 contributions from any source of either money, property,
25 labor, or other things of value to be held, used and applied

1 only for the purposes for which such loans, grants, aid,
2 and contributions are made.

3 (k) STATE AND LOCAL AGREEMENTS.—The Author-
4 ity is authorized and empowered to enter into appropriate
5 arrangements with any Federal or State department or
6 agency, county, township, municipal corporation, or other
7 political subdivision, taxing district, or public body or
8 agency for the planning and installation of streets, roads,
9 alleys, water supply and distribution facilities, storm and
10 sanitary sewage collection and disposal facilities, and other
11 necessary appurtenances to a project.

12 (l) INSURANCE.—The Authority is authorized and
13 empowered to purchase fire and extended coverage and li-
14 ability insurance for a project, and any other insurance
15 the Authority may agree to provide under the bond pro-
16 ceedings.

17 **SEC. 104. AUTHORITY PERSONNEL MATTERS.**

18 (a) COMPENSATION OF MEMBERS.—Each member of
19 the Authority who is not an officer or employee of the Fed-
20 eral Government shall be compensated at a rate equal to
21 the daily equivalent of the annual rate of basic pay pre-
22 scribed for level IV of the Executive Schedule under sec-
23 tion 5315 of title 5, United States Code, for each day (in-
24 cluding travel time) during which such member is engaged
25 in the performance of the duties of the Authority. All

1 members of the Authority who are officers or employees
2 of the United States shall serve without compensation in
3 addition to that received for their services as officers or
4 employees of the United States.

5 (b) TRAVEL EXPENSES.—The members of the Au-
6 thority shall be allowed travel expenses, including per diem
7 in lieu of subsistence, at rates authorized for employees
8 of agencies under subchapter I of chapter 57 of title 5,
9 United States Code, while away from their homes or regu-
10 lar places of business in the performance of services for
11 the Authority.

12 (c) STAFF.—

13 (1) IN GENERAL.—The chairperson of the Au-
14 thority may, without regard to the civil service laws
15 and regulations, appoint and terminate an executive
16 director and such other additional personnel as may
17 be necessary to enable the Authority to perform its
18 duties. The employment and termination of an execu-
19 tive director shall be subject to confirmation by the
20 Authority.

21 (2) COMPENSATION.—The chairperson of the
22 Authority may fix the compensation of the executive
23 director and other personnel without regard to the
24 provisions of chapter 51 and subchapter III of chap-
25 ter 53 of title 5, United Stated Code, relating to

1 classification of positions and General Schedule pay
2 rates, except that the rate of pay for such personnel
3 may not exceed the rate payable for level V of the
4 Executive Schedule under section 5316 of such title.

5 (d) **DETAIL OF GOVERNMENT EMPLOYEES.**—Any
6 Federal Government employee may be detailed to the Au-
7 thority without reimbursement, and such detail shall be
8 without interruption or loss of civil service status or privi-
9 lege.

10 (e) **PROCUREMENT OF TEMPORARY AND INTERMIT-**
11 **TENT SERVICES.**—The chairperson of the Authority may
12 procure temporary and intermittent services under section
13 3109(b) of title 5, United States Code, at rates for individ-
14 ual which do not exceed the daily equivalent of the annual
15 rate of basic pay prescribed for level V of the Executive
16 Schedule under section 5316 of such title.

17 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) **IN GENERAL.**—There are authorized to be appro-
19 priated to the Authority to carry out the purposes of this
20 Act, \$13,500,000 for fiscal years 1998 through 2000 to
21 begin the pilot project. The rate at which the amount shall
22 be appropriated is \$2,250,000 for fiscal year 1998,
23 \$4,500,000 for fiscal year 1999, and \$6,750,000 for fiscal
24 year 2000. These funds shall be used to supplement the

1 security pool and to make annual debt service payments.

2 The funds shall also be used to operate the Commission.

3 (b) AVAILABILITY.—Any sums appropriated under
4 this section shall remain available, without fiscal year limi-
5 tation, until expended.

6 **TITLE II—PRIVATE BONDS**

7 **SEC. 201. ISSUANCE OF BONDS.**

8 (a) IN GENERAL.—The Authority shall, by regula-
9 tion, establish a program to provide for the issuance of
10 certificates of participation and other debt instruments
11 pursuant to an agreement that the Authority shall enter
12 into with a private underwriter to provide funding for fa-
13 cility improvement, repair, and new construction of schools
14 of the Bureau of Indian Affairs under part B of title XI
15 of the Education Amendments Act of 1978 (25 U.S.C.
16 2001 et seq.) including section 1126(d) of that Act (25
17 U.S.C. 2005 and 2006(d)).

18 (b) TRANSFER OF FUNDS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, for each fiscal year, the Secretary
21 of the Interior shall transfer to the Secretary of the
22 Treasury \$10,000,000 of unobligated funds made
23 available to the Secretary of the Interior by appro-
24 priations for advanced planning and design, facility
25 improvement and repair, employee housing construc-

1 tion, and new construction of schools of the Bureau
2 of Indian Affairs pursuant to the authorities speci-
3 fied in subsection (a), including any such funds in
4 the accounts of the Bureau of Indian Affairs com-
5 monly known as the “X” accounts.

6 (2) DEBT SERVICE PAYMENTS.—The Secretary
7 of the Treasury shall use any amounts transferred
8 pursuant to paragraph (1) as well as additional fu-
9 ture appropriations to make debt service payments
10 to the Authority with respect to the certificates of
11 participation issued under this section. The Author-
12 ity shall deposit any amount of debt service payment
13 made by the Secretary of the Treasury in an account
14 established by the trustee appointed under sub-
15 section (d).

16 (c) ISSUANCE OF CERTIFICATES OF PARTICIPA-
17 TION.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, the Authority shall, subject to the
20 availability of funds referred to in subsection (b),
21 enter into an agreement with a private underwriter
22 to sell certificates of participation issued by the Au-
23 thority in such forms and denominations, bearing
24 such maturities, and subject to such terms and con-
25 ditions as may be prescribed by the Authority.

1 (2) SUBJECT TO TAXES.—Any Certificate of
2 Participation issued under this section shall be sub-
3 ject to Federal taxes under the Internal Revenue
4 Code of 1986.

5 (3) CERTIFICATES OF PARTICIPATION ARE NOT
6 FEDERAL OBLIGATIONS; MORAL OBLIGATIONS.—

7 (A) Certificates of participation issued pur-
8 suant to this Act do not—

9 (i) represent or constitute a debt or
10 pledge of the faith and credit of the Fed-
11 eral Government; or

12 (ii) grant to the owners or holders
13 thereof any right to have the Federal Gov-
14 ernment levy any taxes or appropriate any
15 funds for the payment of the principal
16 thereof or interest thereon.

17 (B) Certificates of participation are pay-
18 able solely from such funds as are pledged for
19 the payment of the certificates in accordance
20 with certificate proceedings.

21 (C)(i) Certificates of participation are con-
22 sidered moral obligations of the Federal Gov-
23 ernment in that the Federal Government has a
24 trust responsibility to continue to fund tribal
25 education.

1 (ii) In the event Congress fails to appro-
2 priate sufficient money to pay the annual debt
3 service on the certificates of participation, and
4 there is a need to deplete the security pool to
5 pay the annual debt service, the Secretary of
6 the Interior shall request in the next year's
7 budget request funds equal to the amount of
8 the depletion.

9 (d) BOND TRUSTEE.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, any certificate of participation is-
12 sued by the Authority shall be secured by a trust
13 agreement between the Authority and a trustee.

14 (2) TRUSTEE.—Any bank or trust company
15 that meets requirements established by the Author-
16 ity by regulation may be designated as a trustee
17 under paragraph (1).

18 (3) CONTENT OF TRUST AGREEMENT.—A trust
19 agreement entered into by the Authority under this
20 subsection shall specify that the trustee, with respect
21 to bonds issued under this section shall—

22 (A) act as a repository for the proceeds of
23 the certificates of participation sold pursuant to
24 this section;

25 (B) make payments to certificate holders;

1 (C) invest such amounts of the proceeds as
2 the trustee determines not to be necessary to
3 make payments under subparagraph (A); and

4 (D) from any amounts in excess of the
5 amounts necessary to make payments to bond-
6 holders, in accordance with the requirements of
7 paragraph (4), make direct payments to con-
8 tractors with the Secretary, the governing body
9 of an Indian tribe, or the appropriate official of
10 a school of the Bureau of Indian Affairs for fa-
11 cility improvement, repair, or new construction
12 pursuant to an authority specified in subsection
13 (a).

14 (4) REQUIREMENTS FOR MAKING DIRECT PAY-
15 MENTS.—

16 (A) IN GENERAL.—Notwithstanding any
17 other provision of law, only the trustee shall
18 make the direct payments referred to in para-
19 graph (3)(D) in accordance with requirements
20 that the Authority shall prescribe in the agree-
21 ment entered into under paragraph (3). The
22 Authority shall require the trustee, prior to
23 making a payment to a contractor under para-
24 graph (3)(D), to inspect the project that is the
25 subject of the contract, or provide for an in-

1 specification of that project by a local financial in-
2 stitution to ensure the completion of the
3 project.

4 (B) **CONTRACTS.**—Each contract referred
5 to in paragraph (3)(D) shall specify, or be re-
6 negotiated to specify, that payments under the
7 contract shall be made in accordance with this
8 subsection.

9 **TITLE III—MISCELLANEOUS** 10 **PROVISIONS**

11 **SEC. 301. ANNUAL REPORT.**

12 The Authority shall keep an accurate account of all
13 of its activities and all of its receipts and expenditures and
14 shall annually make a report thereof to the Secretary of
15 the Interior. The Secretary of the Interior shall review and
16 comment upon the report and make such recommenda-
17 tions as the Secretary deems necessary to the Congress
18 of the United States and Indian nations.

19 **SEC. 302. SOVEREIGN IMMUNITY.**

20 This Act shall not be construed so as to impact, limit,
21 or affect the current sovereign immunity of the tribal,
22 State or Federal governments.

1 **SEC. 303. COORDINATION WITH BUREAU OF INDIAN AF-**
2 **FAIRS.**

3 This pilot project shall coordinate with the Bureau
4 of Indian Affairs by utilizing Public Law 93–638, section
5 102 authority, or Public Law 100–297 which allow tribes
6 to assume direct management over school construction
7 projects. The funding package developed in this Act shall
8 be used for all projects within the National Indian Bond-
9 ing Pilot Project. The pilot project will focus on critical
10 need projects within the grant and contract schools across
11 the country. Nothing in these regulations shall be con-
12 strued to:

13 (1) Mandate a tribe to apply for a contract or
14 contract with the Bureau of Indian Affairs to plan,
15 conduct, and administer all or parts of any Bureau
16 program. Such applications under these regulations
17 are strictly voluntary.

18 (2) Authorize or require the termination of any
19 trust responsibility of the United States with respect
20 to the Indian people.

21 (3) Permit significant reduction in services to
22 Indian people as a result of this Act.

○