

109TH CONGRESS
1ST SESSION

S. 672

To amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2005

Mr. SMITH (for himself, Mr. BAUCUS, Mr. MCCAIN, Mr. BINGAMAN, Mr. JOHNSON, Ms. CANTWELL, Mr. COCHRAN, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas.

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 “Indian and Alaska Na-
5 tive Foster Care and Adoption Services Amendments of
6 2005”.

1 **SEC. 2. AUTHORITY OF INDIAN TRIBES TO RECEIVE FED-**
2 **ERAL FUNDS FOR FOSTER CARE AND ADOP-**
3 **TION ASSISTANCE.**

4 (a) CHILDREN PLACED IN TRIBAL CUSTODY ELIGI-
5 BLE FOR FOSTER CARE FUNDING.—Section 472(a) of the
6 Social Security Act (42 U.S.C. 672(a)(2)) is amended by
7 striking paragraph (2) and inserting the following:

8 “(2) the placement and care of a child under
9 this section shall be the responsibility of—

10 “(A) the State agency administering the
11 State plan approved under section 471;

12 “(B) any other public agency with which
13 the State agency administering or supervising
14 the administration of the State plan approved
15 under section 471 has made an agreement that
16 is in effect; or

17 “(C) an Indian tribe (as defined in section
18 479B(e)) or an intertribal consortium, if the In-
19 dian tribe or intertribal consortium—

20 “(i) does not operate a program under
21 section 479B; and

22 “(ii)(I) has a cooperative agreement
23 with a State under section 479B(c); or

24 “(II) submits to the Secretary a de-
25 scription of the arrangements (jointly de-
26 veloped or developed in consultation with

1 the State) made by the Indian tribe or
2 intertribal consortium for the payment of
3 funds and the provision of the child wel-
4 fare services and protections required
5 under this title;”.

6 (b) PROGRAMS OPERATED BY INDIAN TRIBAL ORGA-
7 NIZATIONS.—Part E of title IV of the Social Security Act
8 (42 U.S.C. 670 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 479B. PROGRAMS OPERATED BY INDIAN TRIBAL OR-**
11 **GANIZATIONS.**

12 “(a) DEFINITIONS OF INDIAN TRIBE; TRIBAL ORGA-
13 NIZATION.—In this section, the terms ‘Indian tribe’ and
14 ‘tribal organization’ have the meanings given those terms
15 in section 4 of the Indian Self-Determination and Edu-
16 cation Assistance Act (25 U.S.C. 450b).

17 “(b) APPLICATION.—Except as provided in sub-
18 section (b), this part shall apply to an Indian tribe that
19 elects to operate a program under this part in the same
20 manner as this part applies to a State.

21 “(c) MODIFICATION OF PLAN REQUIREMENTS.—

22 “(1) IN GENERAL.—In the case of an Indian
23 tribe submitting a plan for approval under section
24 471, the plan shall—

1 “(A) in lieu of the requirement of section
2 471(a)(3), identify any service area and popu-
3 lation to be served by the Indian tribe; and

4 “(B) in lieu of the requirement of section
5 471(a)(10), provide for the approval of foster
6 homes in accordance with tribal standards and
7 in a manner that ensures the safety of, and ac-
8 countability for, children placed in foster care.

9 “(2) DETERMINATION OF FEDERAL SHARE.—

10 “(A) PER CAPITA INCOME.—

11 “(i) IN GENERAL.—For purposes of
12 determining the Federal medical assistance
13 percentage applicable to an Indian tribe
14 under paragraphs (1) and (2) of section
15 474(a), the calculation of the per capita in-
16 come of an Indian tribe shall be based on
17 the service population of the Indian tribe
18 as defined in the plan of the tribe, in ac-
19 cordance with paragraph (1)(A).

20 “(ii) CONSIDERATION OF OTHER IN-
21 FORMATION.—Before making a calculation
22 under clause (i), the Secretary shall con-
23 sider any information submitted by an In-
24 dian tribe that the Indian tribe considers

1 relevant to the calculation of the per capita
2 income of the Indian tribe.

3 “(B) ADMINISTRATIVE EXPENDITURES.—
4 The Secretary shall, by regulation, determine
5 the proportions to be paid to Indian tribes pur-
6 suant to section 474(a)(3), except that in no
7 case shall an Indian tribe receive a lesser pro-
8 portion than the corresponding amount speci-
9 fied for a State under that section.

10 “(C) SOURCES OF NON-FEDERAL
11 SHARE.—An Indian tribe may use Federal or
12 State funds to match payments for which the
13 Indian tribe is eligible under section 474.

14 “(3) MODIFICATION OF OTHER REQUIRE-
15 MENTS.—On the request of an Indian tribe, the Sec-
16 retary may modify any requirement under this part
17 if, after consulting with the Indian tribe, the Sec-
18 retary determines that modification of the require-
19 ment would advance the best interests and the safety
20 of children served by the Indian tribe.

21 “(4) CONSORTIUM.—The participating Indian
22 tribes of an intertribal consortium may develop and
23 submit a single plan under section 471 that meets
24 the requirements of this section.

25 “(d) COOPERATIVE AGREEMENTS.—

1 “(1) IN GENERAL.—An Indian tribe or inter-
2 tribal consortium and a State may enter into a coop-
3 erative agreement for the administration or payment
4 of funds under this part.

5 “(2) EFFECT OF SECTION ON AGREEMENTS.—
6 If an Indian tribe or intertribal consortium and a
7 State enter into a cooperative agreement that incor-
8 porates any of the provisions of this section, those
9 provisions shall be valid and enforceable.

10 “(3) PRIOR EXISTING AGREEMENTS.—A cooper-
11 ative agreement under paragraph (1) that is in ef-
12 fect as of the date of enactment of this section shall
13 remain in full force and effect, subject to the right
14 of either party to the agreement to revoke or modify
15 the agreement pursuant to the terms of the agree-
16 ment.

17 “(e) REGULATIONS.—Not later than 1 year after the
18 date of enactment of this section, the Secretary, in con-
19 sultation with Indian tribes and tribal organizations, shall
20 promulgate regulations to carry out this section.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section take effect on the date of enactment of this
23 Act, regardless of the date on which regulations are pro-
24 mulgated to carry out the amendments.

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