

110TH CONGRESS
1ST SESSION

S. 1956

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, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. BAUCUS (for himself, Mr. DOMENICI, Mr. BINGAMAN, Mr. SMITH, Ms. STABENOW, Mr. MCCAIN, Ms. CANTWELL, and Mr. LEVIN) 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, 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 “Tribal Foster Care
5 and Adoption Access Act of 2007”.

1 **SEC. 2. EQUITABLE ACCESS FOR FOSTER CARE AND ADOPT-**
2 **ION SERVICES FOR INDIAN CHILDREN IN**
3 **TRIBAL AREAS.**

4 (a) **AUTHORITY FOR INDIAN TRIBES TO RECEIVE**
5 **DIRECT FEDERAL TITLE IV-E FUNDS.**—Section
6 472(a)(2)(B) of the Social Security Act (42 U.S.C.
7 672(a)(2)(B)) is amended—

8 (1) in clause (i), by striking “or” at the end;

9 (2) in clause (ii), by striking “and” after the
10 semicolon and inserting “or”; and

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

12 “(iii) an Indian tribe or a tribal organiza-
13 tion (as defined in section 479B(a)) or
14 a tribal consortium, if the Indian tribe,
15 tribal organization, or tribal consortium—

16 “(I) operates a program under
17 section 479B;

18 “(II) has a cooperative agree-
19 ment with a State under section
20 479B(d); or

21 “(III) submits to the Secretary a
22 description of the arrangements
23 (jointly developed in consultation with
24 the State) made by the Indian tribe or
25 tribal consortium for the payment of
26 funds and the provision of the child

1 welfare services and protections re-
 2 quired by this title; and”.

3 (b) PROGRAMS OPERATED BY INDIAN TRIBAL ORGA-
 4 NIZATIONS.—Part E of title IV of the Social Security Act
 5 (42 U.S.C. 670 et seq.) is amended by adding at the end
 6 the following:

7 **“SEC. 479B. PROGRAMS OPERATED BY INDIAN TRIBAL OR-**
 8 **GANIZATIONS.**

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

14 “(b) APPLICATION.—Except as provided in sub-
 15 sections (c) and (e), this part shall apply to an Indian
 16 tribe, tribal organization, or a tribal consortium that elects
 17 to operate a program under this part in the same manner
 18 as this part applies to a State.

19 “(c) MODIFICATION OF PLAN AND OTHER REQUIRE-
 20 MENTS.—

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

1 “(A) in lieu of the requirements of section
2 471(a)(3), identify the service area or areas and
3 population to be served by the Indian tribe,
4 tribal organization, or tribal consortium;

5 “(B) in lieu of the requirements of section
6 471(a)(10), provide for the establishment and
7 application of standards for foster family homes
8 and child care institutions pursuant to tribal
9 standards and in a manner that ensures the
10 safety of, and accountability for, children placed
11 in foster care; and

12 “(C) in lieu of the requirements of section
13 471(a)(20), provide procedures for conducting
14 background checks in accordance with the re-
15 quirements of section 408 of the Indian Child
16 Protection and Family Violence Prevention Act
17 (25 U.S.C. 3207) and regulations issued there-
18 under, and for conducting checks of child abuse
19 and neglect registries maintained by the Fed-
20 eral government, by a State, and by an Indian
21 tribe, tribal organization, or tribal consortium
22 in a manner that ensures the safety of, and ac-
23 countability for, children placed in foster care
24 or who are being placed for adoption.

1 “(2) DETERMINATION OF FEDERAL SHARE;
2 SOURCES OF NON-FEDERAL SHARE.—

3 “(A) PER CAPITA INCOME.—

4 “(i) IN GENERAL.—For purposes of
5 determining the Federal medical assistance
6 percentage applicable to an Indian tribe, a
7 tribal organization, or a tribal consortium
8 under paragraphs (1) and (2) of section
9 474(a) (and for purposes of payments
10 made under an arrangement described in
11 section 472(a)(2)(B)(iii)(III)), the calcula-
12 tion of the per capita income of the Indian
13 tribe, tribal organization, or tribal consor-
14 tium shall be based upon the service popu-
15 lation of the Indian tribe, tribal organiza-
16 tion, or tribal consortium as defined in the
17 plan of the Indian tribe, tribal organiza-
18 tion, tribal consortium, in accordance with
19 paragraph (1)(A), except that in no case
20 shall an Indian tribe, a tribal organization,
21 or a tribal consortium receive less than the
22 Federal medical assistance percentage for
23 any State in which the tribe is located.

24 “(ii) CONSIDERATION OF OTHER IN-
25 FORMATION.—Before making a calculation

1 under clause (i), the Secretary shall con-
2 sider any information submitted by an In-
3 dian tribe, a tribal organization, or a tribal
4 consortium that the Indian tribe, tribal or-
5 ganization, or tribal consortium considers
6 relevant to making the calculation of the
7 per capita income of the Indian tribe, trib-
8 al organization, or tribal consortium.

9 “(B) ADMINISTRATIVE, TRAINING, AND
10 DATA COLLECTION EXPENDITURES.—The Sec-
11 retary shall, by regulation, determine the pro-
12 portions to be paid to Indian tribes, tribal orga-
13 nizations, and tribal consortiums pursuant to
14 section 474(a)(3) for purposes of this section
15 (and for purposes of payments made under an
16 arrangement described in section
17 472(a)(2)(B)(iii)(III)), except that in no case
18 shall an Indian tribe, a tribal organization, or
19 a tribal consortium receive a lesser proportion
20 than the corresponding amount specified for a
21 State in that section.

22 “(C) SOURCES OF NON-FEDERAL
23 SHARE.—An Indian tribe, tribal organization,
24 or tribal consortium may use Federal, State,
25 tribal, or private funds, which may be in kind,

1 fairly evaluated, including plant, equipment, ad-
2 ministration, and services, to match payments
3 for which the tribe, organization, or consortium
4 is eligible under section 474.

5 “(3) MODIFICATION OF OTHER REQUIRE-
6 MENTS.—On the request of an Indian tribe, tribal
7 organization, or a tribal consortium, the Secretary
8 may modify any requirement under this part if, after
9 consulting with the Indian tribe, tribal organization,
10 or tribal consortium, the Secretary determines that
11 modification of the requirement would advance the
12 best interests and the safety of children served by
13 the Indian tribe, tribal organization, or tribal con-
14 sortium.

15 “(4) CONSORTIUM.—The participating Indian
16 tribes or tribal organizations of a tribal consortium
17 may develop and submit a single plan under section
18 471 that meets the requirements of this section.

19 “(d) COOPERATIVE AGREEMENTS.—

20 “(1) IN GENERAL.—An Indian tribe, a tribal
21 organization, or a tribal consortium and a State may
22 enter into a cooperative agreement for the adminis-
23 tration or payment of funds under this part.

24 “(2) APPLICATION AND ENFORCEMENT OF IN-
25 CORPORATED PROVISIONS OF THIS SECTION.—If an

1 Indian tribe, a tribal organization, or a tribal con-
 2 sortium and a State enter into a cooperative agree-
 3 ment that incorporates any of the provisions of this
 4 section, those provisions shall be valid and enforce-
 5 able.

6 “(3) PRIOR AGREEMENTS IN EFFECT.—Any co-
 7 operative agreement described in paragraph (1) that
 8 is in effect as of the date of enactment of this sec-
 9 tion, shall remain in full force and effect subject to
 10 the right of either party to the agreement to revoke
 11 or modify the agreement pursuant to the terms of
 12 the agreement.

13 “(e) JOHN H. CHAFEE FOSTER CARE INDEPEND-
 14 ENCE PROGRAM.—Except as provided in section 477(j),
 15 subsection (b) shall not apply with respect to the John
 16 H. Chafee Foster Care Independence Program established
 17 under section 477 (or with respect to payments made
 18 under section 474(a)(4) or grants made under section
 19 474(e)).”.

20 (c) APPLICATION OF FEDERAL MATCHING RATE
 21 THAT WOULD APPLY TO INDIAN TRIBES, TRIBAL ORGA-
 22 NIZATIONS, OR TRIBAL CONSORTIA TO EXPENDITURES
 23 UNDER STATE AGREEMENTS OR AN AGREEMENT WITH
 24 THE SECRETARY.—

1 (1) FOSTER CARE MAINTENANCE AND ADOPT-
2 TION ASSISTANCE PAYMENTS.—Paragraphs (1) and
3 (2) of section 474(a) of the Social Security Act (42
4 U.S.C. 674(a)) are each amended by inserting “(or,
5 with respect to such payments made during such
6 quarter under an agreement entered into by the
7 State and an Indian tribe, tribal organization, or
8 tribal consortium, or under an arrangement de-
9 scribed in section 472(a)(2)(B)(iii)(III), an amount
10 equal to the Federal medical assistance percentage
11 that would apply under subsection (c)(2)(A) of sec-
12 tion 479B (in this paragraph referred to as the ‘trib-
13 al FMAP’) if such Indian tribe, tribal organization,
14 or tribal consortium made such payments under a
15 program operated under that section, unless the
16 tribal FMAP is less than the Federal medical assist-
17 ance percentage that applies to the State)” before
18 the semicolon.

19 (2) ADMINISTRATIVE EXPENDITURES.—Section
20 474(a)(3) of such Act (42 U.S.C. 674(a)(3)) is
21 amended—

22 (A) in the matter preceding subparagraph
23 (A), by striking “section 472(i)” and inserting
24 “subparagraph (E) and section 472(i)”;

1 (B) in subparagraph (D), by striking
2 “and” at the end;

3 (C) by redesignating subparagraph (E) as
4 subparagraph (F); and

5 (D) by inserting after subparagraph (D),
6 the following new subparagraph:

7 “(E) in the case of a State that has en-
8 tered into an agreement with an Indian tribe,
9 tribal organization, or tribal consortium (or an
10 Indian tribe, tribal organization, or tribal con-
11 sortium with an arrangement described in sec-
12 tion 472(a)(2)(B)(iii)(III)), an amount equal to
13 the proportions that would be paid to such
14 tribe, organization, or consortium pursuant to
15 regulations issued under section 479B(c)(2)(B)
16 if the tribe, organization, or consortium oper-
17 ated a program under that section; and”.

18 (d) HOLD HARMLESS FOR INDIAN FAMILIES RE-
19 CEIVING FOSTER CARE MAINTENANCE PAYMENTS OR
20 ADOPTION ASSISTANCE.—Nothing in the amendments
21 made by this Act shall be construed as authorization to
22 terminate funding to any Indian or Indian family cur-
23 rently receiving foster care maintenance payments or
24 adoption assistance on behalf of a child and for which the
25 State receives Federal matching payments under para-

1 graph (1) or (2) of section 474(a) of the Social Security
2 Act (42 U.S.C. 674(a)), regardless of whether a coopera-
3 tive agreement between the State and an Indian tribe,
4 tribal organization, or tribal consortium is in effect pursu-
5 ant to subsection (d) of section 479B of such Act, or an
6 Indian tribe, tribal organization, or tribal consortium
7 elects to operate a foster care and adoption assistance pro-
8 gram directly under such section 479B.

9 (e) NONAPPLICATION OF CERTAIN ELIGIBILITY RE-
10 QUIREMENTS FOR INDIAN CHILDREN.—Section 472(a) of
11 the Social Security Act (42 U.S.C. 672(a)) is amended
12 by adding at the end the following new paragraph:

13 “(5) NONAPPLICATION OF CERTAIN REQUIRE-
14 MENTS FOR INDIAN CHILDREN.—In the case of an
15 Indian tribe, tribal organization, or tribal consortium
16 that assumes responsibility for administering the
17 program under this part through a cooperative
18 agreement with the State under subsection (d) of
19 section 479B, or that elects to operate a foster care
20 and adoption assistance program directly under sec-
21 tion 479B, the following rules shall apply:

22 “(A) USE OF AFFIDAVITS, ETC.—The re-
23 quirement in paragraph (1) shall not be inter-
24 preted so as to prohibit the use of affidavits or
25 nunc pro tunc orders as verification documents

1 in support of the reasonable efforts and con-
 2 trary to the welfare of the child judicial deter-
 3 minations required under such paragraph.

4 “(B) RESIDENCY REQUIREMENT IMPOSED
 5 UNDER AFDC STATE PLAN.—Notwithstanding
 6 paragraph (3)(A), any residency requirement
 7 imposed under the State plan referred to in
 8 such paragraph shall not apply with respect to
 9 a child for whom an Indian tribe, tribal organi-
 10 zation, or tribal consortium assumes responsi-
 11 bility.”.

12 (f) AUTHORITY TO RECEIVE PORTION OF STATE AL-
 13 LOTMENT AS PART OF AN AGREEMENT TO OPERATE THE
 14 JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PRO-
 15 GRAM.—

16 (1) IN GENERAL.—Section 477 of such Act (42
 17 U.S.C. 677) is amended by adding at the end the
 18 following new subsection:

19 “(j) AUTHORITY FOR AN INDIAN TRIBE, TRIBAL OR-
 20 GANIZATION, OR TRIBAL CONSORTIUM TO RECEIVE AN
 21 ALLOTMENT.—

22 “(1) IN GENERAL.—An Indian tribe, tribal or-
 23 ganization, or tribal consortium with a plan ap-
 24 proved under section 479B, which is receiving fund-
 25 ing to provide foster care under this part pursuant

1 to a cooperative agreement with a State, or that pro-
2 vides child welfare services and protections in ac-
3 cordance with an arrangement submitted to the Sec-
4 retary under section 472(a)(2)(B)(iii)(III), may
5 apply for an allotment out of any funds authorized
6 by paragraph (1) or (2) (or both) of subsection (h).

7 “(2) APPLICATION.—An Indian tribe, tribal or-
8 ganization, or tribal consortium desiring an allot-
9 ment under paragraph (1) shall submit an applica-
10 tion to the Secretary to directly receive such allot-
11 ment that includes a plan that satisfies such require-
12 ments of paragraphs (2) and (3) of subsection (b)
13 as the Secretary determines are appropriate.

14 “(3) PAYMENTS.—The Secretary shall pay an
15 Indian tribe, tribal organization, or tribal consortium
16 with an application and plan approved under this
17 subsection from the allotment determined for the
18 tribe, organization, or consortium under paragraph
19 (4) in the same manner as is provided in section
20 474(a)(4) (and, where requested, and if funds are
21 appropriated, section 474(e)) with respect to a
22 State, or in such other manner as is determined ap-
23 propriate by the Secretary, except that in no case
24 shall an Indian tribe, tribal organization, or a tribal
25 consortium receive a lesser proportion of such funds

1 than a State is authorized to receive under those
2 sections.

3 “(4) ALLOTMENT.—From the amounts allotted
4 to a State under subsection (c) for a fiscal year, the
5 Secretary shall allot to each Indian tribe, tribal or-
6 ganization, or tribal consortium with an application
7 and plan approved under this subsection for that fis-
8 cal year an amount equal to the tribal foster care
9 ratio determined under paragraph (5) for such tribe,
10 organization, or consortium multiplied by the allot-
11 ment amount of the State within which such tribe,
12 organization, or consortium is located. The allotment
13 determined under this paragraph shall be deemed to
14 be a part of the allotment determined under section
15 477(c) for the State in which the Indian tribal orga-
16 nization, or tribal consortium is located.

17 “(5) TRIBAL FOSTER CARE RATIO.—For pur-
18 poses of paragraph (4), the tribal foster care ratio
19 means, with respect to an Indian tribe, tribal organi-
20 zation, or tribal consortium, the ratio of—

21 “(A) the number of children in foster care
22 under the responsibility of the Indian tribe,
23 tribal organization, or tribal consortium (either
24 directly or under supervision of the State), in

1 the most recent fiscal year for which the infor-
 2 mation is available; to

3 “(B) the sum of—

4 “(i) the total number of children in
 5 foster care under the responsibility of the
 6 State within which the Indian tribe, tribal
 7 organization, or tribal consortium is lo-
 8 cated; and

9 “(ii) the number of children in foster
 10 care under the responsibility of the Indian
 11 tribe, tribal organization, or tribal consor-
 12 tium (either directly or under supervision
 13 of the State).”.

14 (2) AUTHORITY TO RECEIVE PORTION OF
 15 STATE ALLOTMENT AS PART OF A COOPERATIVE
 16 AGREEMENT ENTERED INTO WITH RESPECT TO THE
 17 CHAFEE PROGRAM.—Section 477(b)(3)(G) of such
 18 Act (42 U.S.C. 677(b)(3)(G)) is amended—

19 (A) by striking “and that” and inserting
 20 “that”; and

21 (B) by striking the period and inserting “;
 22 and that each Indian tribe, tribal organization,
 23 or tribal consortium in the State that does not
 24 receive an allotment under subsection (j)(4) for
 25 a fiscal year may enter into a cooperative agree-

1 ment or contract with the State to administer,
2 supervise, or oversee the programs to be carried
3 out under the plan with respect to the Indian
4 children who are eligible for such programs and
5 who are under the authority of the Indian tribe
6 and to receive from the State an appropriate
7 portion of the State allotment under subsection
8 (c) for the cost of such administration, super-
9 vision, or oversight.”.

10 (g) RULE OF CONSTRUCTION.—Nothing in the
11 amendments made by this Act shall be construed as affect-
12 ing the responsibility of a State—

13 (1) as part of the plan approved under section
14 471 of the Social Security Act (42 U.S.C. 671), to
15 provide foster care maintenance payments and adop-
16 tion assistance for Indian children who are eligible
17 for such payments or assistance and who are not
18 otherwise being served by an Indian tribe, tribal or-
19 ganization, or tribal consortium pursuant to a foster
20 care and adoption assistance program operated
21 under section 479B of such Act; or

22 (2) as part of the plan approved under section
23 477 of such Act (42 U.S.C. 677) to administer, su-
24 pervise, or oversee programs carried out under that
25 plan on behalf of Indian children who are eligible for

1 such programs if such children are not otherwise
2 being served by an Indian tribe, tribal organization,
3 or tribal consortium pursuant to an approved plan
4 under section 477(j) or a cooperative agreement or
5 contract entered into under section 477(b)(3)(G) of
6 such Act.

7 (h) REGULATIONS.—Not later than 1 year after the
8 date of enactment of this section, the Secretary, in con-
9 sultation with Indian tribes, tribal organizations, tribal
10 consortia, and affected States, shall promulgate regula-
11 tions to carry out the amendments made by this Act.

12 (i) EFFECTIVE DATE.—The amendments made by
13 this section take effect on the date of enactment of this
14 Act.

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