

114TH CONGRESS  
1ST SESSION

# S. 286

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

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

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## A BILL

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

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Department of the Interior Tribal Self-Governance Act  
6       of 2015”.

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

Sec. 1. Short title; table of contents.

## TITLE I—INDIAN SELF-DETERMINATION

Sec. 101. Definitions; reporting and audit requirements; application of provisions.

Sec. 102. Contracts by Secretary of the Interior.

Sec. 103. Administrative provisions.

Sec. 104. Contract funding and indirect costs.

Sec. 105. Contract or grant specifications.

## TITLE II—TRIBAL SELF-GOVERNANCE

Sec. 201. Tribal self-governance.

Sec. 202. Effect of certain provisions.

1                   **TITLE I—INDIAN SELF-**  
 2                   **DETERMINATION**  
 3   **SEC. 101. DEFINITIONS; REPORTING AND AUDIT REQUIRE-**  
 4                   **MENTS; APPLICATION OF PROVISIONS.**

5           (a) DEFINITIONS.—Section 4 of the Indian Self-De-  
 6 termination and Education Assistance Act (25 U.S.C.  
 7 450b) is amended by striking subsection (j) and inserting  
 8 the following:

9           “(j) ‘self-determination contract’ means a contract  
 10 entered into under title I (or a grant or cooperative agree-  
 11 ment used under section 9) between a tribal organization  
 12 and the appropriate Secretary for the planning, conduct,  
 13 and administration of programs or services that are other-  
 14 wise provided to Indian tribes and members of Indian  
 15 tribes pursuant to Federal law, subject to the condition  
 16 that, except as provided in section 105(a)(3), no contract  
 17 entered into under title I (or grant or cooperative agree-  
 18 ment used under section 9) shall be—

1 “(1) considered to be a procurement contract;

2 or

3 “(2) except as provided in section 107(a)(1),

4 subject to any Federal procurement law (including

5 regulations);”.

6 (b) REPORTING AND AUDIT REQUIREMENTS.—Sec-

7 tion 5(b) of the Indian Self-Determination and Education

8 Assistance Act (25 U.S.C. 450c(b)) is amended—

9 (1) by striking “after completion of the project

10 or undertaking referred to in the preceding sub-

11 section of this section” and inserting “after the re-

12 tention period for the report that is submitted to the

13 Secretary under subsection (a)”; and

14 (2) by adding at the end the following: “The re-

15 tention period shall be defined in regulations pro-

16 mulgated by the Secretary pursuant to section

17 414.”.

18 (c) APPLICATION OF OTHER PROVISIONS.—Sections

19 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111

20 of the Indian Self-Determination and Education Assist-

21 ance Act, as amended (25 U.S.C. 450 et seq.) (Public Law

22 93–638; 88 Stat. 2203) and section 314 of the Depart-

23 ment of the Interior and Related Agencies Appropriations

24 Act, 1991 (Public Law 101–512; 104 Stat. 1959), apply

1 to compacts and funding agreements entered into under  
2 title IV.

3 **SEC. 102. CONTRACTS BY SECRETARY OF THE INTERIOR.**

4 Section 102 of the Indian Self-Determination and  
5 Education Assistance Act (25 U.S.C. 450f) is amended—

6 (1) in subsection (c)(2), by striking “economic  
7 enterprises” and all that follows through “except  
8 that” and inserting “economic enterprises (as de-  
9 fined in section 3 of the Indian Financing Act of  
10 1974 (25 U.S.C. 1452)), except that”; and

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

12 “(f) GOOD FAITH REQUIREMENT.—In the negotia-  
13 tion of contracts and funding agreements, the Secretary  
14 shall—

15 “(1) at all times negotiate in good faith to  
16 maximize implementation of the self-determination  
17 policy; and

18 “(2) carry out this Act in a manner that maxi-  
19 mizes the policy of tribal self-determination, in a  
20 manner consistent with—

21 “(A) the purposes specified in section 3;

22 and

23 “(B) the Department of the Interior Tribal  
24 Self-Governance Act of 2015.

1       “(g) RULE OF CONSTRUCTION.—Subject to section  
 2 202 of the Department of the Interior Tribal Self-Govern-  
 3 ance Act of 2015, each provision of this Act and each pro-  
 4 vision of a contract or funding agreement shall be liberally  
 5 construed for the benefit of the Indian tribe participating  
 6 in self-determination, and any ambiguity shall be resolved  
 7 in favor of the Indian tribe.”.

8 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

9       Section 105 of the Indian Self-Determination and  
 10 Education Assistance Act (25 U.S.C. 450j) is amended—

11           (1) in subsection (b), in the first sentence, by  
 12 striking “pursuant to” and all that follows through  
 13 “of this Act” and inserting “pursuant to sections  
 14 102 and 103”; and

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

16       “(p) INTERPRETATION BY SECRETARY.—Except as  
 17 otherwise provided by law (including section 202 of the  
 18 Department of the Interior Tribal Self-Governance Act of  
 19 2015), the Secretary shall interpret all Federal laws (in-  
 20 cluding regulations) and Executive orders in a manner  
 21 that facilitates, to the maximum extent practicable—

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

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

1           “(B) funds associated with those pro-  
 2           grams, services, functions, and activities;  
 3           “(2) the implementation of self-determination  
 4           contracts and funding agreements; and  
 5           “(3) the achievement of tribal health objec-  
 6           tives.”.

7 **SEC. 104. CONTRACT FUNDING AND INDIRECT COSTS.**

8           Section 106(a)(3) of the Indian Self-Determination  
 9           and Education Assistance Act (25 U.S.C. 450j–1(a)(3))  
 10          is amended—

11           (1) in subparagraph (A)—

12                   (A) in clause (i), by striking “, and” and  
 13                   inserting “; and”; and

14                   (B) in clause (ii), by striking “expense re-  
 15                   lated to the overhead incurred” and inserting  
 16                   “expense incurred by the governing body of the  
 17                   Indian tribe or tribal organization and any  
 18                   overhead expense incurred”;

19           (2) by redesignating subparagraph (B) as sub-  
 20           paragraph (C); and

21           (3) by inserting after subparagraph (A) the fol-  
 22           lowing:

23                   “(B) In calculating the reimbursement rate  
 24                   for expenses described in subparagraph (A)(ii),  
 25                   not less than 50 percent of the expenses de-

1           scribed in subparagraph (A)(ii) that are in-  
 2           curred by the governing body of an Indian tribe  
 3           or tribal organization relating to a Federal pro-  
 4           gram, function, service, or activity carried out  
 5           pursuant to the contract shall be considered to  
 6           be reasonable and allowable.”.

7   **SEC. 105. CONTRACT OR GRANT SPECIFICATIONS.**

8           Section 108 of the Indian Self-Determination and  
 9   Education Assistance Act (25 U.S.C. 450l) is amended—  
 10          (1) in subsection (a)(2), by inserting “subject  
 11          to subsections (a) and (b) of section 102,” before  
 12          “contain”; and

13          (2) in subsection (f)(2)(A)(ii) of the model  
 14          agreement contained in subsection (c), by inserting  
 15          “subject to subsections (a) and (b) of section 102 of  
 16          the Indian Self-Determination and Education Assist-  
 17          ance Act (25 U.S.C. 450f),” before “such other pro-  
 18          visions”.

19                   **TITLE II—TRIBAL SELF-**  
 20                   **GOVERNANCE**

21   **SEC. 201. TRIBAL SELF-GOVERNANCE.**

22          (a) DEFINITIONS.—Section 401 of the Indian Self-  
 23   Determination and Education Assistance Act (25 U.S.C.  
 24   458aa) is amended to read as follows:

1 **“SEC. 401. DEFINITIONS.**

2 “In this title:

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

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

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

20 “(4) FUNDING AGREEMENT.—The term ‘fund-  
21 ing agreement’ means a funding agreement entered  
22 into under section 403.

23 “(5) GROSS MISMANAGEMENT.—The term  
24 ‘gross mismanagement’ means a significant viola-  
25 tion, shown by a preponderance of the evidence, of



1 a compact, funding agreement, or statutory or regu-  
 2 latory requirement applicable to Federal funds—

3 “(A) for a program administered by an In-  
 4 dian tribe; or

5 “(B) under a compact or funding agree-  
 6 ment that results in a significant reduction of  
 7 funds available for the programs assumed by an  
 8 Indian tribe.

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

13 “(7) PROGRAM.—The term ‘program’ means  
 14 any program, function, service, or activity (or por-  
 15 tion thereof) within the Department that is included  
 16 in a funding agreement.

17 “(8) SECRETARY.—The term ‘Secretary’ means  
 18 the Secretary of the Interior.

19 “(9) SELF-GOVERNANCE.—The term ‘self-gov-  
 20 ernance’ means the Tribal Self-Governance Program  
 21 established under section 402.

22 “(10) TRIBAL SHARE.—The term ‘tribal share’  
 23 means the portion of all funds and resources of an  
 24 Indian tribe that—

1           “(A) support any program within the Bu-  
 2           reau of Indian Affairs, the Office of the Special  
 3           Trustee, or the Office of the Assistant Sec-  
 4           retary for Indian Affairs; and

5           “(B) are not required by the Secretary for  
 6           the performance of an inherent Federal func-  
 7           tion.”.

8           (b) ESTABLISHMENT.—Section 402 of the Indian  
 9           Self-Determination and Education Assistance Act (25  
 10          U.S.C. 458bb) is amended to read as follows:

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

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

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

17           “(1) IN GENERAL.—

18           “(A) ELIGIBILITY.—The Secretary, acting  
 19          through the Director of the Office of Self-Gov-  
 20          ernance, may select up to 50 new Indian tribes  
 21          per year from those eligible under subsection  
 22          (c) to participate in self-governance.

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

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

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

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

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

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

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

23                 “(A) IN GENERAL.—An Indian tribe that  
24          withdraws from participation in a tribal organi-  
25          zation, in whole or in part, shall be entitled to

1           participate in self-governance if the Indian tribe  
2           is eligible under subsection (c).

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

10                   “(C) PARTICIPATION IN SELF-GOVERN-  
11           ANCE.—The withdrawal of an Indian tribe from  
12           a tribal organization shall not affect the eligi-  
13           bility of the tribal organization to participate in  
14           self-governance on behalf of one or more other  
15           Indian tribes, if the tribal organization still  
16           qualifies under subsection (c).

17                   “(D) WITHDRAWAL PROCESS.—

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

23                           “(ii) NOTIFICATION.—The Indian  
24                   tribe shall provide a copy of the tribal reso-

lution described in clause (i) to the Secretary.

“(iii) EFFECTIVE DATE.—

“(I) IN GENERAL.—A withdrawal under clause (i) shall become effective on the date that is specified in the tribal resolution and mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian tribe or tribal organization.

“(II) NO SPECIFIED DATE.—In the absence of a date specified in the resolution, the withdrawal shall become effective on—

“(aa) the earlier of—

“(AA) 1 year after the date of submission of the request; and

“(BB) the date on which the funding agreement expires; or

1                   “(bb) such date as may be  
2                   mutually agreed upon by the Sec-  
3                   retary, the withdrawing Indian  
4                   tribe, and the tribal organization  
5                   that signed the compact and  
6                   funding agreement on behalf of  
7                   the withdrawing Indian tribe or  
8                   tribal organization.

9                   “(E) DISTRIBUTION OF FUNDS.—If an In-  
10                  dian tribe or tribal organization eligible to enter  
11                  into a self-determination contract under title I  
12                  or a compact or funding agreement under this  
13                  title fully or partially withdraws from a partici-  
14                  pating tribal organization, the withdrawing In-  
15                  dian tribe—

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

19                   “(I) the withdrawing Indian tribe  
20                  or tribal organization shall be entitled  
21                  to its tribal share of unexpended  
22                  funds and resources supporting the  
23                  programs that the Indian tribe will be  
24                  carrying out under its own self-deter-  
25                  mination contract or compact and

1 funding agreement (calculated on the  
2 same basis as the funds were initially  
3 allocated to the funding agreement of  
4 the tribal organization); and

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

14 “(ii) may elect not to enter into a self-  
15 determination contract or compact, in  
16 which case all unexpended funds and re-  
17 sources associated with the withdrawing  
18 Indian tribe’s returned programs (cal-  
19 culated on the same basis as the funds  
20 were initially allocated to the funding  
21 agreement of the tribal organization) shall  
22 be returned by the tribal organization to  
23 the Secretary for operation of the pro-  
24 grams included in the withdrawal.

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

11               “(c) ELIGIBILITY.—To be eligible to participate in  
 12 self-governance, an Indian tribe shall—

13               “(1) successfully complete the planning phase  
 14 described in subsection (d);

15               “(2) request participation in self-governance by  
 16 resolution or other official action by the tribal gov-  
 17 erning body; and

18               “(3) demonstrate, for the 3 fiscal years pre-  
 19 ceding the date on which the Indian tribe requests  
 20 participation, financial stability and financial man-  
 21 agement capability as evidenced by the Indian tribe  
 22 having no uncorrected significant and material audit  
 23 exceptions in the required annual audit of its self-  
 24 determination or self-governance agreements with  
 25 any Federal agency.



1 “(d) PLANNING PHASE.—

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

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

6 “(A) be conducted to the satisfaction of  
7 the Indian tribe; and

8 “(B) include—

9 “(i) legal and budgetary research; and

10 “(ii) internal tribal government plan-  
11 ning, training, and organizational prepara-  
12 tion.

13 “(e) GRANTS.—

14 “(1) IN GENERAL.—Subject to the availability  
15 of appropriations, an Indian tribe or tribal organiza-  
16 tion that meets the requirements of paragraphs (2)  
17 and (3) of subsection (c) shall be eligible for  
18 grants—

19 “(A) to plan for participation in self-gov-  
20 ernance; and

21 “(B) to negotiate the terms of participa-  
22 tion by the Indian tribe or tribal organization  
23 in self-governance, as set forth in a compact  
24 and a funding agreement.

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

4           (c) FUNDING AGREEMENTS.—Section 403 of the In-  
 5           dian Self-Determination and Education Assistance Act  
 6           (25 U.S.C. 458cc) is amended—

7                   (1) by striking subsection (a) and inserting the  
 8           following:

9           “(a) AUTHORIZATION.—The Secretary shall, on the  
 10          request of any Indian tribe or tribal organization, enter  
 11          into a written funding agreement with the governing body  
 12          of the Indian tribe or the tribal organization in a manner  
 13          consistent with—

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

18                   “(2) subsection (b).”;

19                   (2) in subsection (b)—

20                           (A) in paragraph (1)—

21                                   (i) in the matter preceding subpara-  
 22                                   graph (A), by striking “without regard to  
 23                                   the agency or office of the Bureau of In-  
 24                                   dian Affairs” and inserting “the Office of  
 25                                   the Assistant Secretary for Indian Affairs,

1 and the Office of the Special Trustee,  
 2 without regard to the agency or office of  
 3 that Bureau or those Offices”;

4 (ii) in subparagraph (B), by striking  
 5 “and”;

6 (iii) in subparagraph (C), by inserting  
 7 “and” after the semicolon at the end; and

8 (iv) by adding at the end the fol-  
 9 lowing:

10 “(D) any other programs, services, func-  
 11 tions, or activities (or portions thereof) that are  
 12 provided through the Bureau of Indian Affairs,  
 13 the Office of the Assistant Secretary for Indian  
 14 Affairs, or the Office of the Special Trustee  
 15 with respect to which Indian tribes or Indians  
 16 are primary or significant beneficiaries;”;

17 (B) in paragraph (2)—

18 (i) by striking “section 405(c)” and  
 19 inserting “section 413(c)”; and

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

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

24 (D) by striking paragraphs (4) through  
 25 (9); and

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

2 “(m) OTHER PROVISIONS.—

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

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

10 “(B) is provided for elementary and sec-  
11 ondary schools under the formula developed  
12 under section 1127 of the Education Amend-  
13 ments of 1978 (25 U.S.C. 2007).

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

16 “(A) the services to be provided under the  
17 funding agreement;

18 “(B) the functions to be performed under  
19 the funding agreement; and

20 “(C) the responsibilities of the Indian tribe  
21 and the Secretary under the funding agreement.

22 “(3) BASE BUDGET.—A funding agreement  
23 shall, at the option of the Indian tribe, provide for  
24 a stable base budget specifying the recurring funds  
25 (which may include funds available under section

1       106(a)) to be transferred to the Indian tribe, for  
 2       such period as the Indian tribe specifies in the fund-  
 3       ing agreement, subject to annual adjustment only to  
 4       reflect changes in congressional appropriations.

5           “(4) NO WAIVER OF TRUST RESPONSIBILITY.—

6       A funding agreement shall prohibit the Secretary  
 7       from waiving, modifying, or diminishing in any way  
 8       the trust responsibility of the United States with re-  
 9       spect to Indian tribes and individual Indians that ex-  
 10      ists under treaties, Executive orders, court decisions,  
 11      and other laws.

12       “(n) AMENDMENT.—The Secretary shall not revise,  
 13      amend, or require additional terms in a new or subsequent  
 14      funding agreement without the consent of the Indian tribe,  
 15      unless such terms are required by Federal law.

16       “(o) EFFECTIVE DATE.—A funding agreement shall  
 17      become effective on the date specified in the funding  
 18      agreement.

19       “(p) EXISTING AND SUBSEQUENT FUNDING AGREE-  
 20      MENTS.—

21           “(1) SUBSEQUENT FUNDING AGREEMENTS.—

22      Absent notification from an Indian tribe that the In-  
 23      dian tribe is withdrawing or retroceding the oper-  
 24      ation of one or more programs identified in a fund-  
 25      ing agreement, or unless otherwise agreed to by the

1 parties to the funding agreement or by the nature  
 2 of any noncontinuing program, service, function, or  
 3 activity contained in a funding agreement—

4 “(A) a funding agreement shall remain in  
 5 full force and effect until a subsequent funding  
 6 agreement is executed, with funding paid annu-  
 7 ally for each fiscal year the agreement is in ef-  
 8 fect; and

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

14 “(2) DISPUTES.—Disputes over the implemen-  
 15 tation of paragraph (1)(A) shall be subject to section  
 16 406(c).

17 “(3) EXISTING FUNDING AGREEMENTS.—An  
 18 Indian tribe that was participating in self-govern-  
 19 ance under this title on the date of enactment of the  
 20 Department of the Interior Tribal Self-Governance  
 21 Act of 2015 shall have the option at any time after  
 22 that date—

23 “(A) to retain its existing funding agree-  
 24 ment (in whole or in part) to the extent that  
 25 the provisions of that funding agreement are

1 not directly contrary to any express provision of  
 2 this title; or

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

5 “(4) MULTIYEAR FUNDING AGREEMENTS.—An  
 6 Indian tribe may, at the discretion of the Indian  
 7 tribe, negotiate with the Secretary for a funding  
 8 agreement with a term that exceeds 1 year.”.

9 (d) GENERAL REVISIONS.—Title IV of the Indian  
 10 Self-Determination and Education Assistance Act (25  
 11 U.S.C. 458aa et seq.) is amended by striking sections 404  
 12 through 408 and inserting the following:

13 **“SEC. 404. COMPACTS.**

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

20 “(b) CONTENTS.—A compact under subsection (a)  
 21 shall—

22 “(1) specify and affirm the general terms of the  
 23 government-to-government relationship between the  
 24 Indian tribe and the Secretary; and

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

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

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

7                 “(1) the date of the execution of the compact  
8                 by the parties; or

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

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

13                 “(1) for so long as permitted by Federal law;  
14                 or

15                 “(2) until termination by written agreement,  
16                 retrocession, or reassumption.

17           “(f) EXISTING COMPACTS.—An Indian tribe partici-  
18           pating in self-governance under this title, as in effect on  
19           the date of enactment of the Department of the Interior  
20           Tribal Self-Governance Act of 2015, shall have the option  
21           at any time after that date—

22                 “(1) to retain its negotiated compact (in whole  
23                 or in part) to the extent that the provisions of the  
24                 compact are not directly contrary to any express  
25                 provision of this title; or



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

3   **“SEC. 405. GENERAL PROVISIONS.**

4           “(a) APPLICABILITY.—An Indian tribe and the Sec-  
5   retary shall include in any compact or funding agreement  
6   provisions that reflect the requirements of this title.

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

12          “(c) AUDITS.—

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

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

20                       “(A) any provision of law, including section  
21                       106; or

22                       “(B) any exemptions to applicable Office  
23   of Management and Budget circulars subse-  
24   quently granted by the Office of Management  
25   and Budget.

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

6           “(d) REDESIGN AND CONSOLIDATION.—Except as  
 7           provided in section 407, an Indian tribe may redesign or  
 8           consolidate programs or reallocate funds for programs in  
 9           any manner that the Indian tribe determines to be in the  
 10          best interest of the Indian community being served, so  
 11          long as that the redesign or consolidation does not have  
 12          the effect of denying eligibility for services to population  
 13          groups otherwise eligible to be served under applicable  
 14          Federal law, except that, with respect to the reallocation,  
 15          consolidation, and redesign of programs described in sub-  
 16          section (b)(2) or (c) of section 403, a joint agreement be-  
 17          tween the Secretary and the Indian tribe shall be required.

18          “(e) RETROCESSION.—

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

22                 “(2) EFFECTIVE DATE.—

23                         “(A) AGREEMENT.—Unless an Indian  
 24                         tribe rescinds a request for retrocession under  
 25                         paragraph (1), the retrocession shall become ef-

1           fective on the date specified by the parties in  
2           the compact or funding agreement.

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

7                       “(i) the earlier of—

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

10                              “(II) the date on which the fund-  
11                              ing agreement expires; or

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

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

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

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

1 “(g) RECORDS.—

2 “(1) IN GENERAL.—Unless an Indian tribe  
3 specifies otherwise in the compact or funding agree-  
4 ment, records of an Indian tribe shall not be consid-  
5 ered to be Federal records for purposes of chapter  
6 5 of title 5, United States Code.

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

9 “(A) maintain a recordkeeping system; and

10 “(B) on a notice period of not less than 30  
11 days, provide the Secretary with reasonable ac-  
12 cess to the records to enable the Department to  
13 meet the requirements of sections 3101 through  
14 3106 of title 44, United States Code.

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

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

20 “(b) REASSUMPTION.—

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

1           “(A) imminent jeopardy to a trust asset, a  
 2           natural resource, or public health and safety  
 3           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 the mismanagement of  
 21                   the funds or programs, or the imminent jeop-  
 22                   ardly to a trust asset, natural resource, or pub-  
 23                   lic health and safety.

24          “(3) EXCEPTION.—

“(A) IN GENERAL.—Notwithstanding paragraph (2), the Secretary may, on written notice to the Indian tribe, immediately reassume operation of a program if—

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

“(ii) the imminent and substantial jeopardy, and irreparable harm to the trust asset, natural resource, or public health and safety arises out of a failure by the Indian tribe to carry out the terms of an applicable compact or funding agreement.

“(B) REASSUMPTION.—If the Secretary reassumes operation of a program under subparagraph (A), the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after the date of reassumption.

“(c) INABILITY TO AGREE ON COMPACT OR FUNDING 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 60  
7       days after the date of receipt of a final offer by the  
8       one or more officials designated pursuant to para-  
9       graph (4), the Secretary shall review and make a de-  
10      termination with respect to the final offer.

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

15          “(4) DESIGNATED OFFICIALS.—

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

20              “(B) NO DESIGNATION.—If no official is  
21      designated, the Executive Secretariat of the  
22      Secretary shall be the designated official.

23          “(5) NO TIMELY DETERMINATION.—Except as  
24      otherwise provided in section 202 of the Department  
25      of the Interior Tribal Self-Governance Act of 2015,

1 if the Secretary fails to make a determination with  
 2 respect to a final offer within the period specified in  
 3 paragraph (2), the Secretary shall be deemed to  
 4 have agreed to the offer.

5 “(6) REJECTION OF FINAL OFFER.—

6 “(A) IN GENERAL.—If the Secretary re-  
 7 jects a final offer (or one or more provisions or  
 8 funding levels in a final offer), the Secretary  
 9 shall—

10 “(i) provide timely written notification  
 11 to the Indian tribe that contains a specific  
 12 finding that clearly demonstrates, or that  
 13 is supported by a controlling legal author-  
 14 ity, that—

15 “(I) the amount of funds pro-  
 16 posed in the final offer exceeds the  
 17 applicable funding level as determined  
 18 under section 106(a)(1);

19 “(II) the program that is the  
 20 subject of the final offer is an inher-  
 21 ent Federal function or is subject to  
 22 the discretion of the Secretary under  
 23 section 403(c);

24 “(III) the Indian tribe cannot  
 25 carry out the program in a manner



1 that would not result in significant  
2 danger or risk to the public health or  
3 safety, to natural resources, or to  
4 trust resources;

5 “(IV) the Indian tribe is not eli-  
6 gible to participate in self-governance  
7 under section 402(c);

8 “(V) the funding agreement  
9 would violate a Federal statute or reg-  
10 ulation; or

11 “(VI) with respect to a program  
12 or portion of a program included in a  
13 final offer pursuant to section  
14 403(b)(2), the program or the portion  
15 of the program is not otherwise avail-  
16 able to Indian tribes or Indians under  
17 section 102(a)(1)(E);

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

21 “(iii) provide the Indian tribe with—

22 “(I) a hearing on the record with  
23 the right to engage in full discovery  
24 relevant to any issue raised in the  
25 matter; and

1 “(II) the opportunity for appeal  
 2 on the objections raised (except that  
 3 the Indian tribe may, in lieu of filing  
 4 such appeal, directly proceed to ini-  
 5 tiate an action in a United States dis-  
 6 trict court under section 110(a)); and

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

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

18 “(i) the Indian tribe shall retain the  
 19 right to appeal the rejection by the Sec-  
 20 retary under this section; and

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

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

4 “(1) of demonstrating, by a preponderance of  
 5 the evidence, the validity of the grounds for a re-  
 6 assumption under subsection (b); and

7 “(2) of clearly demonstrating the validity of the  
 8 grounds for rejecting a final offer made under sub-  
 9 section (c).

10 “(e) GOOD FAITH.—

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

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

18 “(f) SAVINGS.—

19 “(1) IN GENERAL.—To the extent that pro-  
 20 grams carried out for the benefit of Indian tribes  
 21 and tribal organizations under this title reduce the  
 22 administrative or other responsibilities of the Sec-  
 23 retary with respect to the operation of Indian pro-  
 24 grams and result in savings that have not otherwise  
 25 been included in the amount of tribal shares and

1       other funds determined under section 408(c), except  
 2       for funding agreements entered into for programs  
 3       under section 403(c), the Secretary shall make such  
 4       savings available to the Indian tribes or tribal orga-  
 5       nizations for the provision of additional services to  
 6       program beneficiaries in a manner equitable to di-  
 7       rectly served, contracted, and compacted programs.

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

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

18           “(h) DECISIONMAKER.—A decision that constitutes  
 19      final agency action and relates to an appeal within the  
 20      Department conducted under subsection (c)(4) may be  
 21      made by—

22               “(1) an official of the Department who holds a  
 23      position at a higher organizational level within the  
 24      Department than the level of the departmental agen-

1 cy in which the decision that is the subject of the  
 2 appeal was made; or

3 “(2) an administrative law judge.

4 “(i) RULES OF CONSTRUCTION.—Subject to section  
 5 202 of the Department of the Interior Tribal Self-Govern-  
 6 ance Act of 2015, each provision of this title and each  
 7 provision of a compact or funding agreement shall be lib-  
 8 erally construed for the benefit of the Indian tribe partici-  
 9 pating in self-governance, and any ambiguity shall be re-  
 10 solved in favor of the Indian tribe.

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

12 “(a) IN GENERAL.—Indian tribes participating in  
 13 tribal self-governance may carry out construction projects  
 14 under this title.

15 “(b) TRIBAL OPTION TO CARRY OUT CERTAIN FED-  
 16 ERAL ENVIRONMENTAL ACTIVITIES.—In carrying out a  
 17 construction project under this title, an Indian tribe may,  
 18 subject to the agreement of the Secretary, elect to assume  
 19 some Federal responsibilities under the National Environ-  
 20 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the  
 21 National Historic Preservation Act (16 U.S.C. 470 et  
 22 seq.), and related provisions of law and regulations that  
 23 would apply if the Secretary were to undertake a construc-  
 24 tion project, by adopting a resolution—

1           “(1) designating a certifying tribal officer to  
2       represent the Indian tribe and to assume the status  
3       of a responsible Federal official under those Acts or  
4       regulations; and

5           “(2) accepting the jurisdiction of the United  
6       States courts for the purpose of enforcing the re-  
7       sponsibilities of the certifying tribal officer assuming  
8       the status of a responsible Federal official under  
9       those Acts or regulations.

10          “(c) SAVINGS CLAUSE.—Notwithstanding subsection  
11 (b), nothing in this section authorizes the Secretary to in-  
12 clude in any compact or funding agreement duties of the  
13 Secretary under the National Environmental Policy Act  
14 (42 U.S.C. 4321 et seq.), the National Historic Preserva-  
15 tion Act (16 U.S.C. 470 et seq.), and other related provi-  
16 sions of law that are inherent Federal functions.

17          “(d) CODES AND STANDARDS.—In carrying out a  
18 construction project under this title, an Indian tribe  
19 shall—

20           “(1) adhere to applicable Federal, State, local,  
21       and tribal building codes, architectural and engineer-  
22       ing standards, and applicable Federal guidelines re-  
23       garding design, space, and operational standards,  
24       appropriate for the particular project; and

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

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

3                   “(B) certify that—

4                   “(i) they are qualified to perform the  
5                   work required by the specific construction  
6                   involved; and

7                   “(ii) upon completion of design, the  
8                   plans and specifications meet or exceed the  
9                   applicable construction and safety codes.

10                  “(e) TRIBAL ACCOUNTABILITY.—

11                  “(1) IN GENERAL.—In carrying out a construc-  
12                  tion project under this title, an Indian tribe shall as-  
13                  sume responsibility for the successful completion of  
14                  the construction project and of a facility that is usa-  
15                  ble for the purpose for which the Indian tribe re-  
16                  ceived funding.

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

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

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

4           “(C) the responsibilities of the Indian tribe  
5 and the Secretary for the project;

6           “(D) how project-related environmental  
7 considerations will be addressed;

8           “(E) the amount of funds provided for the  
9 project;

10           “(F) the obligations of the Indian tribe to  
11 comply with the codes referenced in subsection  
12 (d)(1) and applicable Federal laws and regula-  
13 tions;

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

18           “(H) the agreement of the Secretary to  
19 issue a certificate of occupancy, if requested by  
20 the Indian tribe, based upon the review and  
21 verification by the Secretary, to the satisfaction  
22 of the Secretary, that the Indian tribe has se-  
23 cured upon completion the review and approval  
24 of the plans and specifications, sufficiency of  
25 design, life safety, and code compliance by



1           qualified, licensed, and independent architects  
2           and engineers.

3           “(f) FUNDING.—

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

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

14          “(g) NEGOTIATIONS.—At the option of the Indian  
15          tribe, construction project funding proposals shall be nego-  
16          tiated pursuant to the statutory process in section 105,  
17          and any resulting construction project agreement shall be  
18          incorporated into the funding agreement as addenda.

19          “(h) FEDERAL REVIEW AND VERIFICATION.—

20                 “(1) IN GENERAL.—On a schedule negotiated  
21          by the Secretary and the Indian tribe—

22                         “(A) the Secretary shall review and verify,  
23           to the satisfaction of the Secretary, that project  
24           planning and design documents prepared by the  
25           Indian tribe in advance of initial construction

1           are in conformity with the obligations of the In-  
2           dian tribe under subsection (d); and

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

10          “(2) REPORTS.—The Indian tribe shall provide  
11          the Secretary with project progress and financial re-  
12          ports not less than semiannually.

13          “(3) OVERSIGHT VISITS.—The Secretary may  
14          conduct onsite project oversight visits semiannually  
15          or on an alternate schedule agreed to by the Sec-  
16          retary and the Indian tribe.

17          “(i) APPLICATION OF OTHER LAWS.—Unless other-  
18          wise agreed to by the Indian tribe and except as otherwise  
19          provided in this Act, no provision of the Office of Federal  
20          Procurement Policy Act (41 U.S.C. 401 et seq.), the Fed-  
21          eral Acquisition Regulations issued pursuant to that Act,  
22          or any other law or regulation pertaining to Federal pro-  
23          curement (including Executive orders) shall apply to any  
24          construction program or project carried out under this  
25          title.

1       “(j) FUTURE FUNDING.—Upon completion of a facil-  
 2   ity constructed under this title, the Secretary shall include  
 3   the facility among those eligible for annual operation and  
 4   maintenance funding support comparable to that provided  
 5   for similar facilities funded by the Department as annual  
 6   appropriations are available and to the extent that the fa-  
 7   cility size and complexity and other factors do not exceed  
 8   the funding formula criteria for comparable buildings.

9       “(k) APPLICABILITY.—Notwithstanding any other  
 10   provision of this section, section 202 of the Department  
 11   of the Interior Tribal Self-Governance Act of 2015 applies  
 12   to subsections (a) through (j).

13   **“SEC. 408. PAYMENT.**

14       “(a) IN GENERAL.—At the request of the governing  
 15   body of an Indian tribe and under the terms of an applica-  
 16   ble funding agreement, the Secretary shall provide funding  
 17   to the Indian tribe to carry out the funding agreement.

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

21       “(c) AMOUNT.—

22           “(1) IN GENERAL.—Subject to subsection (e)  
 23       and sections 403 and 405, the Secretary shall pro-  
 24       vide funds to the Indian tribe under a funding  
 25       agreement for programs in an amount that is equal

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

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

13 “(d) TIMING.—

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

22 “(2) TRANSFERS.—Not later than 1 year after  
23 the date of enactment of the Department of the In-  
24 terior Tribal Self-Governance Act of 2015, in any in-  
25 stance in which a funding agreement requires an an-

1        nual transfer of funding to be made at the beginning  
2        of a fiscal year or requires semiannual or other peri-  
3        odic transfers of funding to be made commencing at  
4        the beginning of a fiscal year, the first such transfer  
5        shall be made not later than 10 days after the ap-  
6        portionment of such funds by the Office of Manage-  
7        ment and Budget to the Department, unless the  
8        funding agreement provides otherwise.

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 title  
21        for programs eligible under paragraph (1) or (2) of  
22        section 403(b), except as required by Federal law;

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

1           “(3) reduce the amount of funds required under  
2       this title—

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

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

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

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

14          “(iii) a tribal authorization;

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

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

21          “(C) to pay for Federal functions, includ-  
22      ing—

23          “(i) Federal pay costs;

24          “(ii) Federal employee retirement ben-  
25      efits;

1 “(iii) automated data processing;

2 “(iv) technical assistance; and

3 “(v) monitoring of activities under  
4 this title; or

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

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

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

25 “(j) INTEREST OR OTHER INCOME.—

1           “(1) IN GENERAL.—An Indian tribe may retain  
2           interest or income earned on any funds paid under  
3           a compact or funding agreement to carry out gov-  
4           ernmental purposes.

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

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

18          “(k) CARRYOVER OF FUNDS.—

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

23               “(2) EFFECT OF CARRYOVER.—If an Indian  
24               tribe elects to carry over funding from 1 year to the  
25               next, the carryover shall not diminish the amount of



1 funds the Indian tribe is entitled to receive under a  
2 funding agreement in that fiscal year or any subse-  
3 quent fiscal year.

4 “(1) LIMITATION OF COSTS.—

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

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

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

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

1       “(m) DISTRIBUTION OF FUNDS.—The Office of Self-  
 2 Governance shall be responsible for distribution of all Bu-  
 3 reau of Indian Affairs funds provided under this title un-  
 4 less otherwise agreed by the parties to an applicable fund-  
 5 ing agreement.

6       “(n) APPLICABILITY.—Notwithstanding any other  
 7 provision of this section, section 202 of the Department  
 8 of the Interior Tribal Self-Governance Act of 2015 applies  
 9 to subsections (a) through (m).

10 **“SEC. 409. FACILITATION.**

11       “(a) IN GENERAL.—Except as otherwise provided by  
 12 law (including section 202 of the Department of the Inte-  
 13 rior Tribal Self-Governance Act of 2015), the Secretary  
 14 shall interpret each Federal law and regulation in a man-  
 15 ner that facilitates—

16               “(1) the inclusion of programs in funding  
 17 agreements; and

18               “(2) the implementation of funding agreements.

19       “(b) REGULATION WAIVER.—

20               “(1) REQUEST.—An Indian tribe may submit  
 21 to the Secretary a written request for a waiver of  
 22 applicability of a Federal regulation, including—

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

25                       “(B) the basis for the request.

1           “(2) DETERMINATION BY THE SECRETARY.—  
 2       Not later than 120 days after receipt by the Sec-  
 3       retary and the designated officials under paragraph  
 4       (4) of a request under paragraph (1), the Secretary  
 5       shall approve or deny the requested waiver in writ-  
 6       ing to the Indian tribe.

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

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

15          “(5) GROUNDS FOR DENIAL.—The Secretary  
 16      may deny a request under paragraph (1)—

17               “(A) for a program eligible under para-  
 18              graph (1) or (2) of section 403(b), only upon a  
 19              specific finding by the Secretary that the identi-  
 20              fied text in the regulation may not be waived  
 21              because such a waiver is prohibited by Federal  
 22              law; and

23               “(B) for a program eligible under section  
 24              403(c), upon a specific finding by the Secretary  
 25              that the waiver is prohibited by Federal law or

1 is inconsistent with the express provisions of  
2 the funding agreement.

3 “(6) FAILURE TO MAKE DETERMINATION.—If  
4 the Secretary fails to approve or deny a waiver re-  
5 quest within the period required under paragraph  
6 (2), the Secretary shall be deemed to have approved  
7 the request.

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

10 **“SEC. 410. DISCLAIMERS.**

11 “Nothing in this title expands or alters any statutory  
12 authority of the Secretary in a manner that authorizes the  
13 Secretary to enter into any agreement under section  
14 403—

15 “(1) with respect to an inherent Federal func-  
16 tion;

17 “(2) in a case in which the law establishing a  
18 program explicitly prohibits the type of participation  
19 sought by the Indian tribe (without regard to wheth-  
20 er one or more Indian tribes are identified in the au-  
21 thorizing law); or

22 “(3) that limits or reduces in any way the serv-  
23 ices, contracts, or funds that any other Indian tribe  
24 or tribal organization is eligible to receive under sec-  
25 tion 102 or any other applicable Federal law.

1 **“SEC. 411. DISCRETIONARY APPLICATION OF OTHER SEC-**  
2 **TIONS.**

3 “(a) IN GENERAL.—Except as otherwise provided in  
4 section 101(c), at the option of a participating Indian tribe  
5 or Indian tribes, any of the provisions of title I may be  
6 incorporated in any compact or funding agreement under  
7 this title.

8 “(b) EFFECT.—Each incorporated provision under  
9 subsection (a) shall—

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

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

14 “(3) apply to any agency otherwise governed by  
15 this title.

16 “(c) EFFECTIVE DATE.—If an Indian tribe requests  
17 incorporation at the negotiation stage of a compact or  
18 funding agreement, the incorporation shall—

19 “(1) be effective immediately; and

20 “(2) control the negotiation and resulting com-  
21 pact and funding agreement.

22 **“SEC. 412. ANNUAL BUDGET LIST.**

23 “The Secretary shall list, in the annual budget re-  
24 quest submitted to Congress under section 1105 of title  
25 31, United States Code, any funds proposed to be included  
26 in funding agreements authorized under this Act.

1 **“SEC. 413. REPORTS.**

2 “(a) IN GENERAL.—

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

6 “(2) ANALYSIS.—Any Indian tribe may submit  
7 to the Office of Self-Governance and to the appro-  
8 priate Committees of Congress a detailed annual  
9 analysis of unmet tribal needs for funding agree-  
10 ments under this title.

11 “(b) CONTENTS.—The report under subsection (a)(1)  
12 shall—

13 “(1) be compiled from information contained in  
14 funding agreements, annual audit reports, and data  
15 of the Secretary regarding the disposition of Federal  
16 funds;

17 “(2) identify—

18 “(A) the relative costs and benefits of self-  
19 governance;

20 “(B) with particularity, all funds that are  
21 specifically or functionally related to the provi-  
22 sion by the Secretary of services and benefits to  
23 self-governance Indian tribes and members of  
24 Indian tribes;

1           “(C) the funds transferred to each Indian  
2           tribe and the corresponding reduction in the  
3           Federal employees and workload; and

4           “(D) the funding formula for individual  
5           tribal shares of all Central Office funds, to-  
6           gether with the comments of affected Indian  
7           tribes, developed under subsection (d);

8           “(3) before being submitted to Congress, be dis-  
9           tributed to the Indian tribes for comment (with a  
10          comment period of no less than 30 days);

11          “(4) include the separate views and comments  
12          of each Indian tribe or tribal organization; and

13          “(5) include a list of—

14               “(A) all such programs that the Secretary  
15               determines, in consultation with Indian tribes  
16               participating in self-governance, are eligible for  
17               negotiation to be included in a funding agree-  
18               ment at the request of a participating Indian  
19               tribe; and

20               “(B) all such programs which Indian tribes  
21               have formally requested to include in a funding  
22               agreement under section 403(c) due to the spe-  
23               cial geographic, historical, or cultural signifi-  
24               cance of the program to the Indian tribe, indi-

1           cating whether each request was granted or de-  
2           nied, and stating the grounds for any denial.

3           “(c) REPORT ON NON-BIA, NON-OST PROGRAMS.—

4           “(1) IN GENERAL.—In order to optimize oppor-  
5           tunities for including non-Bureau of Indian Affairs  
6           and non-Office of Special Trustee programs in  
7           agreements with Indian tribes participating in self-  
8           governance under this title, the Secretary shall re-  
9           view all programs administered by the Department,  
10          other than through the Bureau of Indian Affairs or  
11          Office of the Special Trustee, without regard to the  
12          agency or office concerned.

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

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

23          “(4) ANNUAL REVIEW.—

24                 “(A) IN GENERAL.—The Secretary shall  
25                 annually review and publish in the Federal Reg-



1           ister, after consultation with Indian tribes par-  
 2           ticipating in self-governance, revised lists and  
 3           programmatic targets.

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

11          “(d) REPORT ON CENTRAL OFFICE FUNDS.—Not  
 12         later than January 1, 2016, the Secretary shall, in con-  
 13         sultation with Indian tribes, develop a funding formula to  
 14         determine the individual tribal share of funds controlled  
 15         by the Central Office of the Bureau of Indian Affairs and  
 16         the Office of the Special Trustee for inclusion in the com-  
 17         pacts.

18         **“SEC. 414. REGULATIONS.**

19           “(a) IN GENERAL.—

20           “(1) PROMULGATION.—Not later than 90 days  
 21         after the date of enactment of the Department of  
 22         the Interior Tribal Self-Governance Act of 2015, the  
 23         Secretary shall initiate procedures under subchapter  
 24         III of chapter 5 of title 5, United States Code, to

1 negotiate and promulgate such regulations as are  
 2 necessary to carry out this title.

3 “(2) PUBLICATION OF PROPOSED REGULA-  
 4 TIONS.—Proposed regulations to implement this title  
 5 shall be published in the Federal Register not later  
 6 than 21 months after the date of enactment of the  
 7 Department of the Interior Tribal Self-Governance  
 8 Act of 2015.

9 “(3) EXPIRATION OF AUTHORITY.—The author-  
 10 ity to promulgate regulations under paragraph (1)  
 11 shall expire on the date that is 30 months after the  
 12 date of enactment of the Department of the Interior  
 13 Tribal Self-Governance Act of 2015.

14 “(b) COMMITTEE.—

15 “(1) MEMBERSHIP.—A negotiated rulemaking  
 16 committee established pursuant to section 565 of  
 17 title 5, United States Code, to carry out this section  
 18 shall have as its members only representatives of the  
 19 Federal Government and tribal government.

20 “(2) LEAD AGENCY.—Among the Federal rep-  
 21 resentatives described in paragraph (1), the Office of  
 22 Self-Governance shall be the lead agency for the De-  
 23 partment.

24 “(c) ADAPTATION OF PROCEDURES.—The Secretary  
 25 shall adapt the negotiated rulemaking procedures to the

1 unique context of self-governance and the government-to-  
 2 government relationship between the United States and  
 3 Indian tribes.

4 “(d) EFFECT.—

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

7 “(2) CONFLICTING PROVISIONS.—Subject to  
 8 section 202 of the Department of the Interior Tribal  
 9 Self-Governance Act of 2015, this title shall super-  
 10 sede any conflicting provision of law (including any  
 11 conflicting regulations).

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

16 **“SEC. 415. EFFECT OF CIRCULARS, POLICIES, MANUALS,**  
 17 **GUIDANCE, AND RULES.**

18 “Unless expressly agreed to by a participating Indian  
 19 tribe in a compact or funding agreement, the participating  
 20 Indian tribe shall not be subject to any agency circular,  
 21 policy, manual, guidance, or rule adopted by the Depart-  
 22 ment, except for—

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

1           “(2) regulations promulgated pursuant to sec-  
2           tion 414.

3   **“SEC. 416. APPEALS.**

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

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

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

13   **“SEC. 417. APPLICATION OF OTHER PROVISIONS.**

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

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

19          “There are authorized to be appropriated such sums  
20   as are necessary to carry out this title.”.

21   **SEC. 202. EFFECT OF CERTAIN PROVISIONS.**

22          (a) DEFINITIONS.—In this section:

23                  (1) FUNDING AGREEMENT.—The term “fund-  
24          ing agreement” means a funding agreement entered

1 into under section 403 of the ISDEAA (25 U.S.C.  
2 458cc).

3 (2) ISDEAA.—The term “ISDEAA” means  
4 the Indian Self-Determination and Education Assist-  
5 ance Act (25 U.S.C. 450 et seq.).

6 (3) NON-BIA PROGRAM.—The term “non-BIA  
7 program” means all or a portion of a program, func-  
8 tion, service, or activity that is administered by any  
9 bureau, service, office, or agency of the Department  
10 of the Interior other than through—

11 (A) the Bureau of Indian Affairs;

12 (B) the Office of the Assistant Secretary  
13 for Indian Affairs; or

14 (C) the Office of the Special Trustee for  
15 American Indians.

16 (4) SECRETARY.—The term “Secretary” means  
17 the Secretary of the Interior.

18 (5) SELF-DETERMINATION CONTRACT.—The  
19 term “self-determination contract” means a self-de-  
20 termination contract entered into under section 102  
21 of the ISDEAA (25 U.S.C. 450f).

22 (6) TRIBAL WATER RIGHTS SETTLEMENT.—The  
23 term “tribal water rights settlement” means any set-  
24 tlement, compact, or other agreement expressly rati-  
25 fied or approved by an Act of Congress that—

1 (A) includes an Indian tribe and the  
 2 United States as parties; and

3 (B) quantifies or otherwise defines any  
 4 water right of the Indian tribe.

5 (b) EFFECT OF PROVISIONS.—Nothing in this Act—

6 (1) modifies, limits, expands, or otherwise af-  
 7 fects—

8 (A) the authority of the Secretary, as pro-  
 9 vided for under the ISDEAA on the day before  
 10 the date of enactment of this Act, to include  
 11 any non-BIA program in a self-determination  
 12 contract under section 102(a)(1)(E) of the  
 13 ISDEAA (25 U.S.C. 450f(a)(1)(E)) or a fund-  
 14 ing agreement under section 403(b)(2) or  
 15 403(c) of the ISDEAA (25 U.S.C. 458cc(b)(2),  
 16 458cc(c)); or

17 (B) the implementation of any contract or  
 18 agreement described in subparagraph (A) that  
 19 is in effect on the day before the date of enact-  
 20 ment of this Act;

21 (2) modifies or otherwise affects the meaning,  
 22 application, or effect of any provision of law that—

23 (A) is not contained in the ISDEAA; and

24 (B) expressly authorizes or prohibits con-  
 25 tracting or compacting under title I or title IV

1           of the ISDEAA with respect to a specific pro-  
2           gram or project that is identified or otherwise  
3           referred to in that provision of law;

4           (3) modifies or otherwise affects the meaning,  
5           application, or effect of, or the performance required  
6           of a party to, or any payment or funding under a  
7           tribal water rights settlement; or

8           (4) authorizes any self-determination contract  
9           or funding agreement that contains one or more pro-  
10          visions that are inconsistent with the terms of a trib-  
11          al water rights settlement.

○