

SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Employment, Training and Related Services Consolidation Act of 2010.” [or “Indian Workforce Development Act of 2010”]

SEC. 2. FINDINGS.

[to be filled in]

SEC. 3. STATEMENT OF PURPOSE.

The purpose of this Act is to facilitate the ability of Indian tribes to integrate the employment, training and related services they provide from diverse federal sources in order to improve the effectiveness of those services, reduce joblessness, in Indian communities and serve tribally determined goals consistent with the policy of self-determination.

SEC. 4. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) Federal agency

The term “federal agency” has the same meaning given the term “agency” in section 551 (1) of title 5.

(2) Indian tribe

The terms “Indian tribe” and “tribe” shall have the meaning given the term “Indian tribe” in section 450b(e) of title 25, United States Code.

(3) Indian

The term “Indian” shall have the meaning given such term in section 450b(d) of title 25, United States Code.

(4) Secretary

Except where otherwise provided, the term “Secretary” means the Secretary of the Interior.

(5) Tribal organization

The term “tribal organization” shall have the same meaning set forth in section 450b(l) of title 25, United States Code.

SEC. 5. INTEGRATION OF SERVICES AUTHORIZED.

(a) Authorization. The Secretary, in cooperation with the Secretaries of Labor, Health and Human Services, Education, Commerce, Transportation, Housing and Urban Development,

Energy, Justice, Homeland Security, Veterans Affairs and Agriculture shall, upon approval of a plan submitted by an Indian tribe or tribal organization under section 8 of this Act, authorize the Indian tribe, or tribal organization to coordinate, in accordance with such plan, its federally funded employment, training, and related services programs in a manner that integrates such programs into a single, coordinated, comprehensive program.

(b) Single Integrated Plan. Consistent with the requirements of section ____, upon approval by the Secretary of a plan submitted by an Indian tribe or tribal organization, the covered programs shall be fully integrated into a single, coordinated, comprehensive program which shall not obligate the Indian tribe or tribal organization to submit to any additional budgets, reports, audits and audit guidelines, supplemental audits or other documentation.

(c) Tribal Consultation requirement. Consistent with this section, any changes to OMB single audit requirements affecting operations under this statute must be subject to tribal consultation before implementation.

SEC. 6. PROGRAMS AFFECTED AND TRANSFER OF FUNDS.

(a) In general. The programs that may be integrated into a project covered by this Act shall include

(1) any program under which an Indian tribe or tribal organization is eligible for receipt of funds under a statutory or administrative formula,;

(2) any funds an Indian tribe, tribal organization or its members may be entitled to under Federal law;

(3) any funds an Indian tribe or tribal organization may secure as a result of a competitive process, a noncompetitive process or a specific designation;

(4) any program under which block grant funds may be provided to a tribe or tribal organization, irrespective of whether the block grant is for the benefit of the tribe or tribal organization because of its status, or the status of the beneficiaries it serves, as Indians, that are made available for the purposes of job training, welfare to work and tribal work experience, creating or enhancing employment opportunities, higher education, skill development, assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing individual participants with the world of work, facilitating the creation of job opportunities, and any services related to these activities.

(b) Transfer of funds. Notwithstanding any other provision of law, all funds for programs and services covered by an approved plan shall, at the request of the Indian tribe or tribal organization, be transferred to the Indian tribe or tribal organization pursuant to an existing contract, compact or funding agreement awarded pursuant to the titles I or IV of the Indian Self-Determination and Education Assistance Act, as amended.

SEC. 7. PLAN REVIEW; WAIVER AUTHORITY; AND DISPUTE RESOLUTION.

(a) In general. Upon receipt of a plan from an Indian tribe or tribal organization, the Secretary shall consult with both the Secretary of each Federal agency providing funds to be used to implement the plan and with the Indian tribe or tribal organization submitting the plan.

(1) Identification of Waivers. The objective of the parties' consultation shall be to identify any waivers of applicable statutory, regulatory or administrative requirements, or of Federal agency policies or procedures, the waiver of which is necessary to enable the Indian tribe or tribal organization to efficiently implement its plan.

(2) Tribal Request to Waive. In consultation with the Secretary, a participating Indian tribe or tribal organization may request the Secretary of an affected agency to waive any statutory, regulatory or administrative requirement, policy or procedure identified in subsection (1).

(3) Waiver Authority. Notwithstanding any other provision of law, the Secretary of each affected agency shall waive any applicable statutory, regulatory, administrative requirement, regulation, policy or procedure promulgated by that agency that has been identified by the parties pursuant to subparagraph (1), unless such waiver(s) is inconsistent with the purposes of this Act.

(4) Declination of Waiver Request. The affected Secretary shall make a decision on any waiver request within 90 days of receipt of said request. If the Secretary of an affected agency declines to grant the waiver request, then within that 90 day period that Secretary shall provide the requesting tribe or tribal organization, and the Secretary of Interior, with written notice of the decision and the reasons therefore. Any waiver request not acted upon within 90 days of receipt shall be deemed granted by operation of law.

(b) Secretarial Review. In the event of a declination as provided in subsection (a)(4), the Secretary of the Interior shall within 10 days of receipt of a declination decision review the decision and determine whether granting the waiver

(1) would be inconsistent with the provisions of the Act, or

(2) would prevent the lead agency from fulfilling its obligations under the Act.

(c) Inter-agency Dispute Resolution. If the Secretary determines that granting the waiver would not be inconsistent with the provisions of the Act and would not prevent the lead agency from fulfilling its obligations under the Act, the Secretary shall within 20 days establish inter-agency dispute resolution procedures involving the Secretary, the participating tribe or tribal organization, and the affected agency. Such interagency dispute resolution procedures shall be concluded within 30 days.

(d) Final Authority. In the event the dispute resolution procedures fail to resolve the impasse between a participating Indian tribe or tribal organization and an affected agency, final authority to resolve the dispute shall reside with the appropriate Secretary.

(e) Final Decision. In the event of a failure of the dispute resolution procedures described above, the Secretary shall inform the requesting tribe or tribal organization of his final decision

on the waiver request not later than 10 days after the conclusion of all inter-agency dispute resolution procedures, together with notice of the tribe's or tribal organization's right to appeal such final decision under section 110 of the Indian Self-Determination and Education Assistance Act.

SEC. 8. PLAN APPROVAL; SECRETARIAL AUTHORITY; REVIEW OF DECISION.

(a) Plan requirements. A plan submitted to the Secretary for approval under this Act shall

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this Act;

(3) describe a comprehensive strategy identifying the full range of potential employment opportunities on and near the tribe's or tribal organization's service area, and the education, training and related services to be provided to assist individual Indians to access those employment opportunities;

(4) describe the way in which services are to be integrated and delivered, and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies of the tribe or tribal organization to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribe or tribal organization believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the tribe or tribal organization.

(b) Sole authority. Consistent with the provisions of section 7 of this Act, the Secretary shall have sole authority to approve or disapprove a plan submitted by a tribe or tribal organization.

(c) Approval process. The Secretary, within 90 days after the receipt of a plan, shall approve the plan, including any request for a waiver that is made as part of the plan, and authorize the transfer of funds pursuant to said plan, unless the Secretary provides written notification of disapproval of the plan that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that, the plan does not meet the requirements set forth in subsection (a). Any plan not acted upon within 90 days of receipt (or such extended time as may have been provided under subparagraph (d)) shall be deemed granted by operation of law.

(d) Extension of time. Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in subsection (c) above, if before the expiration of such period, the Secretary obtains the express written consent of the tribe or tribal organization to extend or alter such period for up to 90 additional days.

(e) Review of decision – applicable provisions. Upon a decision to disapprove a plan, the following sections of Title 1, P.L. 93-638, as amended, shall apply to the review of the decision:

- (1) Section 450f(b) of this title (declination process);
- (2) Section 450f(e) of this title (burden and finality);
- (3) Sections 450m-1(a) and (c) of this title (appeals).

SEC. 9. JOB CREATION ACTIVITIES AUTHORIZED.

(a) In general.

The plan submitted by an Indian tribe or tribal organization may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of Indian tribes, tribal organizations or individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success, and **are consistent with any purposes specifically applicable to Indian programs** set forth in the statute under which the funds are authorized. Can we write this provision so that tribes and tribal organizations have broad ability unrestricted by the authorizing statute so that it doesn't need to be pulled out for example, for a capital project and accounted for separately?

(b) Job creation opportunities.

(1) In general

Notwithstanding any other provision of law, including any requirement of a program that is integrated under a plan under this chapter, an Indian tribe or tribal organization may use a percentage of the funds made available under this Act (as determined under paragraph (2)) for the creation of employment opportunities, including providing private sector training placement under section 10 of this Act.

(2) Determination of percentage

The percentage of funds that an Indian tribe or tribal organization may use under this subsection is the greater of—

(A) the rate of unemployment in the service area of the Indian tribe or tribal organization up to a maximum of 25 percent; or

(B) 10 percent.

SEC. 10. EMPLOYER TRAINING PLACEMENTS.

A participating tribe or tribal organization is authorized to utilize funds available under an approved plan to place participants in training positions with employers, and to pay such participants a training allowance or wage for a period not to exceed 12 months, provided the tribe or tribal organization obtains a written agreement from the employer (1) to provide on-the-

job training to such participants and, (2) upon satisfactory completion of the training period, to guarantee permanent employment to such participants for a minimum of 12 months.

SEC. 11. FEDERAL RESPONSIBILITIES.

(a) Responsibilities of Lead Agency.

(1) In general. Notwithstanding any other provision of law, the lead agency for a demonstration program under this chapter shall be the Bureau of Indian Affairs.

(2) Incorporate self-determination provisions. At the option of a participating tribe or tribal organization, any or all provisions of title I of the Indian Self-Determination and Education Assistance Act shall be made part of an approved plan. The Secretary is obligated to include such provisions at the option of the participating tribe or tribal organizations, and if such provision is incorporated it shall have the same force and effect as if set out in full in this Act.

(3) Within 1 year of enactment, the Secretary, and the Secretaries of Labor, Health and Human Services, Education, Commerce, Transportation, Housing and Urban Development, Energy, Justice, Homeland Security, Veterans Affairs and Agriculture shall enter into an interdepartmental memorandum of agreement providing for the implementation of this Act. The memorandum shall include provisions for, but not be limited to, the following elements:

(A) an annual meeting of participating Indian tribes, tribal organizations and Federal agencies, with the meeting co-chaired by a representative of the President and a representative of the participating Indian tribes and tribal organizations;

(B) an annual review of the achievements of the Act and of any statutory, regulatory, administrative, or policy obstacles that prevent participating tribes and tribal organizations from fully and efficiently carrying out the purposes of this Act; and

(C) a forum comprised of participating tribes, tribal organizations and Federal agencies to identify and resolve inter-agency or Federal-tribal conflicts in the administration of this Act.

(4) The responsibilities of the lead agency shall include ---

(A) the development and use of a model single report for each approved plan submitted by a tribe or tribal organization to report on the consolidated activities undertaken and joint expenditures made under the plan;

(B) the provision, either directly or through contract, of appropriate and voluntary technical assistance to participating tribes and tribal organizations;

(C) the development and use of a single monitoring and oversight system for the plan;

(D) the receipt of all funds covered by a plan and, in turn, the distribution of all such funds to the respective tribe or tribal organization within 20 days of receipt of such funds from the appropriate Secretary; and

(E) the performance of activities described in section ____ related to agency waivers and the establishment of an inter-agency dispute resolution process.

(b) Report requirements. A single report format shall be developed by the Secretary, consistent with the requirements of this chapter. Such report format, together with records maintained by each participating tribe or tribal organization, shall contain such information as will allow a determination that the tribe or tribal organization has complied with the requirements set forth in its approved plan and will provide assurances to each Secretary that the tribe or tribal organization has complied with all directly applicable statutory and regulatory requirements (to the extent such regulatory requirements have not been waived).

SEC. 12. NO REDUCTION IN AMOUNTS.

In no case shall the amount of Federal funds available to a participating tribe or tribal organization be reduced as a result of the enactment of this Act or the approval or implementation of a plan under this Act.

SEC. 13. INTERAGENCY FUND TRANSFERS AUTHORIZED.

Notwithstanding any other provision of law the Secretary of the Interior, and the Secretaries of Labor, Health and Human Services, Education, Commerce, Transportation, and Agriculture, Housing and Urban Development, Energy, Justice, Homeland Security, and Veterans Affairs, as appropriate, are authorized to take such actions as may be necessary to provide for an interagency transfer of funds otherwise available to an Indian tribe or tribal organization, in order to further the purposes of this Act, provided that such funds shall be transferred to the lead agency within 20 days of apportionment to the appropriate Secretary.

SEC. 14. ADMINISTRATION OF FUNDS: CARRYOVER; OVERAGE.

(a) ADMINISTRATION OF FUNDS.--

(1) IN GENERAL.--Program funds shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount contributed by each program) are spent on allowable activities authorized under such program.

(2) SEPARATE RECORDS AND AUDITS NOT REQUIRED.-- Notwithstanding any other provision of law, including any regulation or circular of any agency (including OMB Circular A-133) a participating Indian tribe or tribal organization shall not be required to maintain separate records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized or transferred, nor shall the Indian tribe be required to

(A) allocate expenditures among such individual programs; or

(B) audit expenditures by original program source.

(b) CARRYOVER.— Any funds transferred to a tribe or tribal organization pursuant to this Act which are not obligated or expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation or expenditure without fiscal year limitation, provided such funds are obligated or expended consistent the tribe's or tribal organization's plan, and no additional justification or documentation of such purposes need be provided by the tribe or tribal organization as a condition of receiving or expending such funds.

(c) INDIRECT COSTS.—Notwithstanding any other provision of law, a tribe or tribal organization shall be entitled to recover its full indirect costs associated with any funds transferred to the tribe or tribal organization pursuant to this Act, pursuant to the tribe's or tribal organization's applicable indirect cost rate approved by the tribe's or tribal organization's cognizant agency.

(d) OVERAGE.—All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department's regulations). The overage (defined as the difference between the amount of the commingled funds and the actual administrative cost of the programs) shall be considered to be properly spent for Federal audit purposes, if the overage is used for the purposes provided for under this Act.

SEC. 15. LABOR MARKET INFORMATION ON THE INDIAN WORK FORCE.

(a) Report.

The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner, develop, maintain and publish, not less than biennially, a report on the population eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs service area, and tribal level for the—

- (1) total service population;
- (2) the service population under age 16 and over 64;
- (3) the population available for work, including those not considered to be actively seeking work;
- (4) the employed population, including those employed with annual earnings below the poverty line; and
- (5) the numbers employed in private sector positions and in public sector positions.

(b) Indian demographic information.

The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development

authorized by Public Law 101-301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the Indian population throughout the United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes, tribal organizations and other organizations serving Indians in nonreservation areas. The report shall be submitted to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources and the Committee on Education and Labor of the House of Representatives not later than October 30, 2011.

SEC. 16. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ECONOMIC DEVELOPMENT PROGRAMS.

Any State with an economic development program targeted to Indian tribes or tribal organizations shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970, may deem appropriate to help ensure the success of such program.

SEC. 17. EFFECTIVE DATE AND REPEAL.---This Act shall become effective on enactment. Upon the effective date of this Act, Public Law 92-477 shall be repealed, provided that such repeal shall not affect any plan already approved pursuant to such law, no tribe or tribal organization shall be required to resubmit a plan approved pursuant to such law for approval pursuant to this Act, and such plan shall remain in effect for the period specified in such plan.

SEC. 18. OTHER LAWS.---[to be filled in]