

108TH CONGRESS  
1ST SESSION

# S. 1696

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

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2003

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Health  
5 and Human Services Tribal Self-Governance Amendments  
6 Act of 2003”.

7 **SEC. 2. AMENDMENT.**

8 The Indian Self-Determination and Education Assist-  
9 ance Act is amended by striking title VI (25 U.S.C. 450f  
10 note; Public Law 93–638) and inserting the following:

1 **“TITLE VI—TRIBAL SELF-GOV-**  
2 **ERNANCE DEMONSTRATION**  
3 **PROJECT FOR THE DEPART-**  
4 **MENT OF HEALTH AND**  
5 **HUMAN SERVICES**

6 **“SEC. 601. DEFINITIONS.**

7 “In this title:

8 “(1) COMPACT.—The term ‘compact’ means a  
9 compact under section 604.

10 “(2) CONSTRUCTION PROJECT.—The term ‘con-  
11 struction project’ has the meaning given the term in  
12 section 501.

13 “(3) DEMONSTRATION PROJECT.—The term  
14 ‘demonstration project’ means the demonstration  
15 project under this title.

16 “(4) FUNDING AGREEMENT.—The term ‘fund-  
17 ing agreement’ means a funding agreement under  
18 section 604.

19 “(5) INCLUDED PROGRAM.—The term ‘included  
20 program’ means a program that is eligible for inclu-  
21 sion under a funding agreement under section  
22 604(c) (including any portion of such a program and  
23 any function, service, or activity performed under  
24 such a program).

1           “(6) INDIAN TRIBE.—The term ‘Indian tribe’,  
2           in a case in which an Indian tribe authorizes an-  
3           other Indian tribe, an inter-tribal consortium, or a  
4           tribal organization to plan for or carry out an in-  
5           cluded program on its behalf in accordance with sec-  
6           tion 603(a)(3), includes the other authorized Indian  
7           tribe, inter-tribal consortium, or tribal organization.

8           “(7) INTER-TRIBAL CONSORTIUM.—The term  
9           ‘inter-tribal consortium’ has the meaning given the  
10          term in section 501.

11          “(8) SECRETARY.—The term ‘Secretary’ means  
12          the Secretary of Health and Human Services.

13          “(9) SELF-GOVERNANCE.—The term ‘self-gov-  
14          ernance’ has the meaning given the term in section  
15          501.

16          “(10) TRIBAL SHARE.—The term ‘tribal share’  
17          has the meaning given the term in section 501.

18   **“SEC. 602. ESTABLISHMENT OF DEMONSTRATION PROJECT.**

19          “(a) DEMONSTRATION.—For a period of not more  
20          than 5 years after the date of enactment of the Depart-  
21          ment of Health and Human Services Tribal Self-Govern-  
22          ance Amendments Act of 2003, the Secretary shall carry  
23          out a project to demonstrate the effectiveness of tribal op-  
24          eration of the included programs under self-governance  
25          principles and authorities.

1       “(b) ADMINISTRATION.—The management and ad-  
2 ministration of the demonstration project shall be in the  
3 Office of the Secretary.

4 **“SEC. 603. SELECTION OF PARTICIPATING INDIAN TRIBES.**

5       “(a) IN GENERAL.—

6           “(1) CONTINUING PARTICIPATION.—Not more  
7 than 50 Indian tribes that meet the eligibility cri-  
8 teria specified in subsection (b) shall be entitled to  
9 participate in the demonstration project.

10          “(2) ADDITIONAL PARTICIPANTS.—If more  
11 than 50 eligible Indian tribes request participation,  
12 the Secretary may select additional Indian tribes to  
13 participate in the demonstration project.

14          “(3) OTHER AUTHORIZED INDIAN TRIBE,  
15 INTER-TRIBAL CONSORTIUM, OR TRIBAL GOVERN-  
16 MENT.—If an Indian tribe authorizes another Indian  
17 tribe, an inter-tribal consortium, or a tribal organi-  
18 zation to plan for or carry out an included program  
19 on its behalf under this title, the authorized Indian  
20 tribe, inter-tribal consortium, or tribal organization  
21 shall have the rights and responsibilities of the au-  
22 thORIZING Indian tribe (except as otherwise provided  
23 in the authorizing resolution).

24       “(b) ELIGIBILITY.—An Indian tribe shall be eligible  
25 to participate in the demonstration project if the Indian

1 tribe, as of the date of enactment of the Department of  
2 Health and Human Services Tribal Self-Governance  
3 Amendments Act of 2003, is a party to a compact or fund-  
4 ing agreement under this Act.

5 “(c) SELECTION.—The Secretary shall select Indian  
6 tribes that request participation in the demonstration  
7 project by resolution or other official action by the gov-  
8 erning body of each Indian tribe to be served.

9 “(d) PLANNING AND NEGOTIATION GRANTS.—

10 “(1) IN GENERAL.—Subject to the availability  
11 of appropriations, the Secretary shall establish a  
12 program to allow Indian tribes that meet the eligi-  
13 bility requirements of this title to be awarded a  
14 planning grant or negotiation grant, or both.

15 “(2) RECEIPT OF GRANT NOT REQUIRED.—Re-  
16 ceipt of a grant under paragraph (1) by an Indian  
17 tribe is not a requirement for the Indian tribe to  
18 participate in the demonstration project.

19 **“SEC. 604. COMPACTS AND FUNDING AGREEMENTS.**

20 “(a) IN GENERAL.—

21 “(1) NEW COMPACT AND FUNDING AGREE-  
22 MENT.—Not later than 60 days after the date of  
23 submission by an Indian tribe of a request to par-  
24 ticipate in the demonstration project, the Secretary  
25 shall negotiate and enter into a written compact and

1 funding agreement with the Indian tribe in a man-  
2 ner that is consistent with the trust responsibility  
3 of the Federal Government, treaty and statutory ob-  
4 ligations, and the government-to-government rela-  
5 tionship between Indian tribes and the United  
6 States.

7 “(2) EXISTING COMPACT.—Rather than enter  
8 into a new compact under paragraph (1), an Indian  
9 tribe may use an existing compact negotiated under  
10 title V for purposes of the demonstration project.

11 “(b) COMPACTS.—

12 “(1) CONTENTS.—A compact under subsection  
13 (a) shall designate—

14 “(A) congressional policies regarding tribal  
15 self-governance;

16 “(B) the intent of the demonstration  
17 project;

18 “(C) such terms as shall control from year  
19 to year; and

20 “(D) any provisions of this title that are  
21 requested by the Indian tribe.

22 “(2) EFFECTIVE DATE.—The effective date of a  
23 compact shall be the date of execution by the Indian  
24 tribe and the Secretary or another date agreed on by  
25 the parties.

1           “(3) DURATION.—A compact shall remain in  
2 effect so long as permitted by Federal law or until  
3 terminated by agreement of the parties.

4           “(4) AMENDMENT.—A compact may be amend-  
5 ed only by agreement of the parties.

6           “(c) FUNDING AGREEMENTS.—

7           “(1) SCOPE.—A funding agreement under sub-  
8 section (a) shall, at the option of the Indian tribe,  
9 authorize the Indian tribe to plan, conduct, and ad-  
10 minister included programs administered by the Sec-  
11 retary through an agency of the Department of  
12 Health and Human Services, set forth in paragraphs  
13 (2) through (4).

14           “(2) INITIAL INCLUDED PROGRAMS.—The fol-  
15 lowing programs are eligible for inclusion in a fund-  
16 ing agreement under this title:

17           “(A) ADMINISTRATION ON AGING.—Grants  
18 for Native Americans under title VI of the  
19 Older Americans Act of 1965 (42 U.S.C. 3057  
20 et seq.).

21           “(B) ADMINISTRATION FOR CHILDREN  
22 AND FAMILIES.—

23           “(i) The tribal temporary assistance  
24 for needy families program under section

1 412(a)(1) of the Social Security Act (42  
2 U.S.C. 612(a)(1) et seq.).

3 “(ii) The Low-Income Home Energy  
4 Assistance Program under the Low-Income  
5 Home Energy Assistance Act of 1981 (42  
6 U.S.C. 8621 et seq.).

7 “(iii) The Community Services Block  
8 Grant Program under the Community  
9 Services Block Grant Act (42 U.S.C. 9901  
10 et seq.).

11 “(iv) The Child Care and Develop-  
12 ment Fund under the Child Care and De-  
13 velopment Block Grant Act (42 U.S.C.  
14 9858 et seq.).

15 “(v) The native employment works  
16 program under section 412(a)(2) of the  
17 Social Security Act (42 U.S.C. 612(a)(2)).

18 “(vi) The Head Start Program under  
19 the Head Start Act (42 U.S.C. 9831 et  
20 seq.).

21 “(vii) Child welfare services programs  
22 under part B of title IV of the Social Secu-  
23 rity Act (42 U.S.C. 620 et seq.).

24 “(viii) The promoting safe and stable  
25 families program under part B of title IV



1 of the Social Security Act (42 U.S.C. 620  
2 et seq.).

3 “(ix) Family violence prevention  
4 grants for battered women’s shelters under  
5 the Family Violence Prevention and Serv-  
6 ices Act (42 U.S.C. 10401 et seq.).

7 “(C) SUBSTANCE ABUSE AND MENTAL  
8 HEALTH SERVICES ADMINISTRATION.—Tar-  
9 geted capacity expansion program under title V  
10 of the Public Health Service Act (42 U.S.C.  
11 290aa et seq.).

12 “(D) BLOCK GRANTS REGARDING MENTAL  
13 HEALTH AND SUBSTANCE ABUSE.—Mental  
14 health and substance abuse block grant pro-  
15 grams under title XIX of the Public Health  
16 Services Act (42 U.S.C. 300x et seq.).

17 “(E) HEALTH RESOURCES AND SERVICES  
18 ADMINISTRATION.—Community health center  
19 grants under section 330 of the Public Health  
20 Service Act (42 U.S.C. 254b).

21 “(3) ADDITIONAL INCLUDED PROGRAMS.—The  
22 Secretary may identify not more than 6 additional  
23 programs annually for inclusion in the demonstra-  
24 tion project, including—

1           “(A) all other programs in which Indian  
2 tribes are eligible to participate;

3           “(B) all other programs for which Indians  
4 are eligible beneficiaries; and

5           “(C) competitive grants for which an In-  
6 dian tribe receives an individual or cooperative  
7 award, on the condition that the Indian tribe  
8 agree in the funding agreement to restrictions  
9 regarding program redesign and budget re-  
10 allocation for any competitive awards.

11       “(4) CONTENTS.—A funding agreement—

12           “(A) shall specify—

13               “(i) the services to be provided;

14               “(ii) the functions to be performed;

15           and

16               “(iii) the responsibilities of the Indian  
17 tribe and the Secretary;

18           “(B) shall provide for payment by the Sec-  
19 retary to the Indian tribe of funds in accord-  
20 ance with section 605;

21           “(C) shall not allow the Secretary to waive,  
22 modify, or diminish in any way the trust re-  
23 sponsibility of the United States with respect to  
24 Indian tribes and individual Indians that exist

1 under treaties, Executive orders, and Acts of  
2 Congress; and

3 “(D) shall allow for retrocession of in-  
4 cluded programs under section 105(e).

5 **“SEC. 605. TRANSFER OF FUNDS.**

6 “(a) TRANSFER.—

7 “(1) IN GENERAL.—Under any compact or  
8 funding agreement entered into under this title, the  
9 Secretary shall transfer to the Indian tribe all funds  
10 provided for in the funding agreement.

11 “(2) TIMING.—Unless the funding agreement  
12 provides otherwise, at the request of the Indian  
13 tribe—

14 “(A) funding shall be paid in 1 annual  
15 lump sum payment; and

16 “(B) the transfer shall be made not later  
17 than 10 days after the apportionment of funds  
18 by the Office of Management and Budget to the  
19 Department of Health and Human Services.

20 “(b) AMOUNT OF FUNDING.—

21 “(1) FUNDING FORMULAS.—

22 “(A) IN GENERAL.—Any statutory funding  
23 formula for an included program—

24 “(i) shall be waived for the dem-  
25 onstration project under this title; and

1           “(ii) shall be used to determine the  
2           amount of funding provided to an Indian  
3           tribe.

4           “(B) ADEQUACY.—Subject to the avail-  
5           ability of appropriations—

6           “(i) the funding amount shall be ade-  
7           quate to permit the successful implementa-  
8           tion of the demonstration project; and

9           “(ii) the Secretary and the partici-  
10          pating Indian tribe shall determine the  
11          funding amount through negotiation.

12          “(2) MATCHING REQUIREMENT.—An Indian  
13          tribe may request a waiver of any matching require-  
14          ment applicable to an included program, and the  
15          Secretary shall liberally grant such reasonable waiv-  
16          er requests.

17          “(3) CONTRACT SUPPORT COSTS.—There shall  
18          be added to the amount required by paragraph (1)  
19          contract support costs as specified in paragraphs  
20          (2), (3), (5), and (6) of section 106(a).

21          “(4) ADMINISTRATIVE FUND SHARES.—

22          “(A) IN GENERAL.—An Indian tribe may  
23          negotiate for a tribal share of administrative  
24          funds without regard to the organizational level  
25          at which the included programs are carried out.

1           “(B) INCLUSION.—A tribal share under  
2           subparagraph (A) shall include a share for  
3           training and technical assistance services per-  
4           formed by a contractor.

5 **“SEC. 606. GENERAL PROVISIONS.**

6           “(a) REDESIGN, CONSOLIDATION, AND REALLOCA-  
7           TION.—

8           “(1) IN GENERAL.—To the extent allowed  
9           under the statutory provisions of the included pro-  
10          grams included in the funding agreement, and sub-  
11          ject to the terms of the funding agreement, an In-  
12          dian tribe may—

13           “(A) redesign or consolidate the included  
14           programs under the funding agreement if the  
15           Indian tribe agrees to abide by the statutory  
16           purposes of the program; and

17           “(B) reallocate or redirect funds for the in-  
18           cluded programs, among the included programs  
19           under the funding agreement, so long as all  
20           demonstration project costs using those funds  
21           meet allowable cost standards as required by  
22           section 506(c).

23           “(2) WAIVERS.—

24           “(A) IN GENERAL.—At the request of an  
25           Indian tribe, if the Secretary determines that a

1 waiver would further the purposes of this Act,  
2 the Secretary shall grant a waiver of program  
3 requirements for the duration of the demonstra-  
4 tion project to facilitate the ability of an Indian  
5 tribe to redesign included programs or reallo-  
6 cate funds under paragraph (1).

7 “(B) DOCUMENTATION.—The Secretary  
8 shall document all requests for a waiver under  
9 subparagraph (A), including a description of—

10 “(i) the reasons for each request;

11 “(ii) the effect of the waiver on the  
12 Indian tribe making the request; and

13 “(iii) the views of the Indian tribe re-  
14 garding the requested waiver.

15 “(b) INABILITY TO AGREE ON COMPACT OR FUND-  
16 ING AGREEMENT.—

17 “(1) FINAL OFFER.—If the Secretary and an  
18 Indian tribe are unable to agree, in whole or in part,  
19 on the terms of a compact or funding agreement (in-  
20 cluding funding levels), the Indian tribe may submit  
21 a final offer to the Secretary.

22 “(2) DETERMINATION.—Not later than 45 days  
23 after the date of submission of a final offer, or as  
24 otherwise agreed to by the Indian tribe, the Sec-

1       retary shall review and make a determination with  
2       respect to the final offer.

3               “(3) NO TIMELY DETERMINATION.—If the Sec-  
4       retary fails to make a determination with respect to  
5       a final offer within the time specified in paragraph  
6       (2), the Secretary shall be deemed to have agreed to  
7       the final offer.

8               “(4) REJECTION OF FINAL OFFER.—

9                       “(A) IN GENERAL.—If the Secretary re-  
10       jects a final offer, the Secretary shall—

11                               “(i) submit to the Indian tribe a writ-  
12       ten statement clearly setting forth the rea-  
13       sons for rejecting the final offer; and

14                               “(ii) provide the Indian tribe with a  
15       hearing on the record (except that the In-  
16       dian tribe may, in lieu of such a hearing,  
17       file an appeal of the rejection to the Intra-  
18       Departmental Council on Native American  
19       Affairs, the decision of which shall be final  
20       and not subject to judicial review).

21                       “(B) BURDEN OF PROOF.—In a hearing or  
22       appeal under subparagraph (A)(ii), the Sec-  
23       retary shall have the burden of proving by clear  
24       and convincing evidence the validity of the  
25       grounds for rejecting the final offer.

1       “(c) OTHER FUNDING.—Participation by an Indian  
2 tribe in the demonstration project under this title shall  
3 not affect the amount of funding that the Indian tribe  
4 would receive under the laws (including regulations) gov-  
5 erning the included programs if the Indian tribe did not  
6 participate.

7       “(d) DUPLICATION OF ELIGIBILITY.—To the max-  
8 imum extent practicable, an Indian tribe shall make ef-  
9 forts to coordinate with appropriate States to identify du-  
10 ally eligible individuals to address the potential for the  
11 provision of duplicate benefits.

12       “(e) APPEALS.—Except as provided in subsection  
13 (b)(2), a compact or funding agreement under this title  
14 shall be considered to be a contract for the purposes of  
15 section 110.

16       “(f) REGULATIONS; OTHER AGENCY STATEMENTS.—

17               “(1) REGULATIONS.—An Indian tribe shall  
18 comply with final regulations for the included pro-  
19 grams in connection with the demonstration project.

20               “(2) OTHER AGENCY STATEMENTS.—Unless ex-  
21 pressly agreed to by an Indian tribe in a compact or  
22 funding agreement, the Indian tribe shall not be  
23 subject to any agency circular, policy, manual, guid-  
24 ance, or rule that is promulgated by regulation.



1       “(g) APPLICABILITY OF OTHER PROVISIONS.—The  
2 following provisions of this Act shall apply to a compact  
3 or funding agreements entered into under this title:

4           “(1) Section 102(d).

5           “(2) Section 506(b) (conflicts of interest).

6           “(3) Section 506(c)(1) (Single Agency Audit  
7 Act).

8           “(4) Section 506(c)(2) (cost principles).

9           “(5) Section 506(c) (records).

10          “(6) Section 507(c)(1)(A) (grounds for reject-  
11 ing a final offers).

12          “(7) Section 508(g) (prompt payment).

13          “(8) Section 506(h) (nonduplication).

14          “(9) Section 508(h) (interest or other income  
15 on transfers).

16          “(10) Section 508(i) (carryover of funds).

17          “(11) Section 509 (construction projects).

18          “(12) Section 510 (Federal procurement laws).

19          “(13) Section 512(b) (regulation waivers).

20 **“SEC. 607. REPORT.**

21          “(a) IN GENERAL.—The Secretary shall annually  
22 submit to Congress a report on the relative costs and bene-  
23 fits of the demonstration project using evaluation and re-  
24 porting data provided by participating Indian tribes.

25          “(b) BASELINE MEASUREMENTS.—

1           “(1) IN GENERAL.—A report under subsection  
2 (a) shall be based on baseline measurements devel-  
3 oped jointly by the Secretary and participating In-  
4 dian tribes.

5           “(2) FINANCIAL ASSISTANCE.—The Secretary  
6 shall provide financial assistance to Indian tribes to  
7 assist Indian tribes in evaluating and reporting on  
8 the demonstration project.

9           “(c) CONTENTS.—A report under subsection (a)  
10 shall—

11           “(1) verify that the participating Indian tribes  
12 met the statutory purposes of the included pro-  
13 grams;

14           “(2) confirm that key self-governance principles  
15 were carried out as Indian tribes operated the in-  
16 cluded programs; and

17           “(3) separately include Federal and tribal view-  
18 points regarding—

19           “(A) the merger of included programs op-  
20 erated under this title and self-governance prin-  
21 ciples; and

22           “(B) the impact on program beneficiaries.

1 **“SEC. 608. AUTHORIZATION OF APPROPRIATIONS.**

2       “There are authorized to be appropriated such sums  
3 as are necessary to carry out this title, to remain available  
4 until expended.”.

○