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. INOUYE) 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 Representatives of the United States of America in Congress assembled,

2

SECTION 1. SHORT TITLE.

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

4

SEC. 2. AMENDMENT.

5 The Indian Self-Determination and Education Assistance Act is amended by striking title VI (25 U.S.C. 450f note; Public Law 93–638) and inserting the following:
“TITLE VI—TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

“SEC. 601. DEFINITIONS.

“In this title:

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

“(2) CONSTRUCTION PROJECT.—The term ‘construction project’ has the meaning given the term in section 501.

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

“(4) FUNDING AGREEMENT.—The term ‘funding agreement’ means a funding agreement under section 604.

“(5) INCLUDED PROGRAM.—The term ‘included program’ means a program that is eligible for inclusion under a funding agreement under section 604(e) (including any portion of such a program and any function, service, or activity performed under such a program).
“(6) INDIAN TRIBE.—The term ‘Indian tribe’, in a case in which an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf in accordance with section 603(a)(3), includes the other authorized Indian tribe, inter-tribal consortium, or tribal organization.

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

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

“(9) SELF-GOVERNANCE.—The term ‘self-governance’ has the meaning given the term in section 501.

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

“SEC. 602. ESTABLISHMENT OF DEMONSTRATION PROJECT.

“(a) DEMONSTRATION.—For a period of not more than 5 years after the date of enactment of the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003, the Secretary shall carry out a project to demonstrate the effectiveness of tribal operation of the included programs under self-governance principles and authorities.
“(b) Administration.—The management and administration of the demonstration project shall be in the Office of the Secretary.

“SEC. 603. SELECTION OF PARTICIPATING INDIAN TRIBES.

“(a) In General.—

“(1) Continuing participation.—Not more than 50 Indian tribes that meet the eligibility criteria specified in subsection (b) shall be entitled to participate in the demonstration project.

“(2) Additional participants.—If more than 50 eligible Indian tribes request participation, the Secretary may select additional Indian tribes to participate in the demonstration project.

“(3) Other authorized Indian tribe, inter-tribal consortium, or tribal government.—If an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf under this title, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution).

“(b) Eligibility.—An Indian tribe shall be eligible to participate in the demonstration project if the Indian
tribe, as of the date of enactment of the Department of Health and Human Services Tribal Self-Governance Amendments Act of 2003, is a party to a compact or funding agreement under this Act.

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

“(d) PLANNING AND NEGOTIATION GRANTS.—

“(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall establish a program to allow Indian tribes that meet the eligibility requirements of this title to be awarded a planning grant or negotiation grant, or both.

“(2) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under paragraph (1) by an Indian tribe is not a requirement for the Indian tribe to participate in the demonstration project.

“SEC. 604. COMPACTS AND FUNDING AGREEMENTS.

“(a) IN GENERAL.—

“(1) NEW COMPACT AND FUNDING AGREEMENT.—Not later than 60 days after the date of submission by an Indian tribe of a request to participate in the demonstration project, the Secretary shall negotiate and enter into a written compact and
funding agreement with the Indian tribe in a manner that is consistent with the trust responsibility of the Federal Government, treaty and statutory obligations, and the government-to-government relationship between Indian tribes and the United States.

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

“(b) COMPACTS.—

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

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

“(B) the intent of the demonstration project;

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

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

“(2) EFFECTIVE DATE.—The effective date of a compact shall be the date of execution by the Indian tribe and the Secretary or another date agreed on by the parties.
“(3) DURATION.—A compact shall remain in effect so long as permitted by Federal law or until terminated by agreement of the parties.

“(4) AMENDMENT.—A compact may be amended only by agreement of the parties.

“(c) FUNDING AGREEMENTS.—

“(1) SCOPE.—A funding agreement under subsection (a) shall, at the option of the Indian tribe, authorize the Indian tribe to plan, conduct, and administer included programs administered by the Secretary through an agency of the Department of Health and Human Services, set forth in paragraphs (2) through (4).

“(2) INITIAL INCLUDED PROGRAMS.—The following programs are eligible for inclusion in a funding agreement under this title:

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

“(B) ADMINISTRATION FOR CHILDREN AND FAMILIES.—

“(i) The tribal temporary assistance for needy families program under section
412(a)(1) of the Social Security Act (42 U.S.C. 612(a)(1) et seq.).


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

“(iv) The Child Care and Development Fund under the Child Care and Development Block Grant Act (42 U.S.C. 9858 et seq.).

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

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

“(vii) Child welfare services programs under part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.).

“(viii) The promoting safe and stable families program under part B of title IV
of the Social Security Act (42 U.S.C. 620 et seq.).

“(ix) Family violence prevention grants for battered women’s shelters under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.).

“(C) Substance abuse and mental health services administration.—Targeted capacity expansion program under title V of the Public Health Service Act (42 U.S.C. 290aa et seq.).

“(D) Block grants regarding mental health and substance abuse.—Mental health and substance abuse block grant programs under title XIX of the Public Health Services Act (42 U.S.C. 300x et seq.).

“(E) Health resources and services administration.—Community health center grants under section 330 of the Public Health Service Act (42 U.S.C. 254b).

“(3) Additional included programs.—The Secretary may identify not more than 6 additional programs annually for inclusion in the demonstration project, including—
“(A) all other programs in which Indian tribes are eligible to participate;

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

“(C) competitive grants for which an Indian tribe receives an individual or cooperative award, on the condition that the Indian tribe agree in the funding agreement to restrictions regarding program redesign and budget reallocation for any competitive awards.

“(4) CONTENTS.—A funding agreement—

“(A) shall specify—

“(i) the services to be provided;

“(ii) the functions to be performed;

and

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

“(B) shall provide for payment by the Secretary to the Indian tribe of funds in accordance with section 605;

“(C) shall not allow the Secretary to waive, modify, or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exist
under treaties, Executive orders, and Acts of Congress; and

“(D) shall allow for retrocession of included programs under section 105(e).

SEC. 605. TRANSFER OF FUNDS.

“(a) TRANSFER.—

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

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

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

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

“(b) AMOUNT OF FUNDING.—

“(1) FUNDING FORMULAS.—

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

“(i) shall be waived for the demonstration project under this title; and
“(ii) shall be used to determine the amount of funding provided to an Indian tribe.

“(B) ADEQUACY.—Subject to the availability of appropriations—

“(i) the funding amount shall be adequate to permit the successful implementation of the demonstration project; and

“(ii) the Secretary and the participating Indian tribe shall determine the funding amount through negotiation.

“(2) MATCHING REQUIREMENT.—An Indian tribe may request a waiver of any matching requirement applicable to an included program, and the Secretary shall liberally grant such reasonable waiver requests.

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

“(4) ADMINISTRATIVE FUND SHARES.—

“(A) IN GENERAL.—An Indian tribe may negotiate for a tribal share of administrative funds without regard to the organizational level at which the included programs are carried out.
“(B) INCLUSION.—A tribal share under subparagraph (A) shall include a share for training and technical assistance services performed by a contractor.

“SEC. 606. GENERAL PROVISIONS.

“(a) REDESIGN, CONSOLIDATION, AND REALLOCATION.—

“(1) IN GENERAL.—To the extent allowed under the statutory provisions of the included programs included in the funding agreement, and subject to the terms of the funding agreement, an Indian tribe may—

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

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

“(2) WAIVERS.—

“(A) IN GENERAL.—At the request of an Indian tribe, if the Secretary determines that a
waiver would further the purposes of this Act, the Secretary shall grant a waiver of program requirements for the duration of the demonstration project to facilitate the ability of an Indian tribe to redesign included programs or reallocate funds under paragraph (1).

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

“(i) the reasons for each request;

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

“(iii) the views of the Indian tribe regarding the requested waiver.

“(b) INABILITY TO AGREE ON COMPACT OR FUNDING AGREEMENT.—

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

“(2) DETERMINATION.—Not later than 45 days after the date of submission of a final offer, or as otherwise agreed to by the Indian tribe, the Sec-
retary shall review and make a determination with respect to the final offer.

“(3) NO TIMELY DETERMINATION.—If the Sec-

retary fails to make a determination with respect to a final offer within the time specified in paragraph (2), the Secretary shall be deemed to have agreed to the final offer.

“(4) REJECTION OF FINAL OFFER.—

“(A) IN GENERAL.—If the Secretary re-

jects a final offer, the Secretary shall—

“(i) submit to the Indian tribe a writ-

ten statement clearly setting forth the rea-

sons for rejecting the final offer; and

“(ii) provide the Indian tribe with a hearing on the record (except that the In-

dian tribe may, in lieu of such a hearing, file an appeal of the rejection to the Intra-

Departmental Council on Native American Affairs, the decision of which shall be final and not subject to judicial review).

“(B) BURDEN OF PROOF.—In a hearing or appeal under subparagraph (A)(ii), the Sec-

retary shall have the burden of proving by clear and convincing evidence the validity of the grounds for rejecting the final offer.
“(c) Other Funding.—Participation by an Indian tribe in the demonstration project under this title shall not affect the amount of funding that the Indian tribe would receive under the laws (including regulations) governing the included programs if the Indian tribe did not participate.

“(d) Duplication of Eligibility.—To the maximum extent practicable, an Indian tribe shall make efforts to coordinate with appropriate States to identify dually eligible individuals to address the potential for the provision of duplicate benefits.

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

“(f) Regulations; Other Agency Statements.—

“(1) Regulations.—An Indian tribe shall comply with final regulations for the included programs in connection with the demonstration project.

“(2) Other agency statements.—Unless expressly agreed to by an Indian tribe in a compact or funding agreement, the Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule that is promulgated by regulation.
“(g) Applicability of Other Provisions.—The following provisions of this Act shall apply to a compact or funding agreements entered into under this title:

“(1) Section 102(d).

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

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

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

“(5) Section 506(e) (records).

“(6) Section 507(c)(1)(A) (grounds for rejecting a final offers).

“(7) Section 508(g) (prompt payment).

“(8) Section 506(h) (nonduplication).

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

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

“(11) Section 509 (construction projects).

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

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

“SEC. 607. REPORT.

“(a) In General.—The Secretary shall annually submit to Congress a report on the relative costs and benefits of the demonstration project using evaluation and reporting data provided by participating Indian tribes.

“(b) Baseline Measurements.—
“(1) IN GENERAL.—A report under subsection (a) shall be based on baseline measurements developed jointly by the Secretary and participating Indian tribes.

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

“(e) CONTENTS.—A report under subsection (a) shall—

“(1) verify that the participating Indian tribes met the statutory purposes of the included programs;

“(2) confirm that key self-governance principles were carried out as Indian tribes operated the included programs; and

“(3) separately include Federal and tribal viewpoints regarding—

“(A) the merger of included programs operated under this title and self-governance principles; and

“(B) the impact on program beneficiaries.
SEC. 608. AUTHORIZATION OF APPROPRIATIONS.

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