

117TH CONGRESS
1ST SESSION

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

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 2021”.

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. 5321
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) DEMONSTRATION PROJECT.—**The term
11 ‘demonstration project’ means the demonstration
12 project under this title.

13 **“(3) FUNDING AGREEMENT.—**The term ‘fund-
14 ing agreement’ means a funding agreement under
15 section 604.

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

22 **“(5) INDIAN TRIBE.—**The term ‘Indian tribe’,
23 in a case in which an Indian tribe authorizes an-
24 other Indian tribe, an inter-tribal consortium, or a
25 tribal organization to plan for or carry out an in-
26 cluded program on its behalf in accordance with sec-

1 tion 603(a)(3), includes the other authorized Indian
2 tribe, inter-tribal consortium, or tribal organization.

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

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

8 “(8) SELF-GOVERNANCE.—The term ‘self-gov-
9 ernance’ has the meaning given the term in section
10 501.

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

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

14 “(a) DEMONSTRATION.—For a period of not more
15 than 5 years after the date of enactment of the Depart-
16 ment of Health and Human Services Tribal Self-Govern-
17 ance Amendments Act of 2021, the Secretary shall carry
18 out a project to demonstrate the effectiveness of tribal op-
19 eration of the included programs under self-governance
20 principles and authorities.

21 “(b) ADMINISTRATION.—The management and ad-
22 ministration of the demonstration project shall be in
23 the Office of the Secretary.

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

25 “(a) IN GENERAL.—

26 “(1) CONTINUING PARTICIPATION.—Not more
27 than 50 Indian tribes that meet the eligibility cri-

1 teria specified in subsection (b) shall be entitled to
2 participate in the demonstration project.

3 “(2) ADDITIONAL PARTICIPANTS.—If more
4 than 50 eligible Indian tribes request participation,
5 the Secretary may select additional Indian tribes to
6 participate in the demonstration project.

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

17 “(b) ELIGIBILITY.—An Indian tribe shall be eligible
18 to participate in the demonstration project if the Indian
19 tribe, as of the date of enactment of the Department of
20 Health and Human Services Tribal Self-Governance
21 Amendments Act of 2021, is a party to a compact or fund-
22 ing agreement under this Act.

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

27 “(d) PLANNING AND NEGOTIATION GRANTS.—

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

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

10 “SEC. 604. COMPACTS AND FUNDING AGREEMENTS.

11 “(a) IN GENERAL.—

12 “(1) NEW COMPACT AND FUNDING AGREE-
13 MENT.—Not later than 60 days after the date of
14 submission by an Indian tribe of a request to par-
15 ticipate in the demonstration project, the Secretary
16 shall negotiate and enter into a written compact
17 and funding agreement with the Indian tribe in a man-
18 ner that is consistent with the trust responsibility
19 of the Federal Government, treaty and statutory ob-
20 ligations, and the government-to-government rela-
21 tionship between Indian tribes and the United
22 States.

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

27 “(3) MULTIPLE AGENCIES.—At the option of the

1 Indian tribe, a single compact and funding agreement
2 may be negotiated for multiple agencies within the
3 Department of Health and Human Services.

4 “(b) COMPACTS.—

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

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

9 “(B) the intent of the demonstration
10 project;

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

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

15 “(2) EFFECTIVE DATE.—The effective date of a
16 compact shall be the date of execution by the Indian
17 tribe and the Secretary or another date agreed on by
18 the parties.

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

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

24 “(c) FUNDING AGREEMENTS.—

25 “(1) SCOPE.—A funding agreement under sub-
26 section (a) shall, at the option of the Indian tribe,
27 authorize the Indian tribe to plan, conduct, and ad-

1 minister included programs administered by the Sec-
2 retary through an agency of the Department of
3 Health and Human Services, set forth in paragraphs
4 (2) through (4).

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

8 “(A) ADMINISTRATION FOR COMMUNITY LIVING.—
9 Grants for Native Americans under title VI of the
10 Older Americans Act of 1965 (42 U.S.C. 3057
11 et seq.).

12 “(B) ADMINISTRATION FOR CHILDREN
13 AND FAMILIES.—

14 “(i) The tribal temporary assistance
15 for needy families program under section
16 412(a)(1) of the Social Security Act (42
17 U.S.C. 612(a)(1) et seq.).

18 “(ii) The Low-Income Home Energy
19 Assistance Program under the Low-Income
20 Home Energy Assistance Act of 1981 (42
21 U.S.C. 8621 et seq.).

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

26 “(iv) The Child Care and Develop-
27 ment Fund under the Child Care and Develop-

1 ment Block Grant Act (42 U.S.C. 9858 et seq.).

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

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

8 “(vii) Child welfare services programs
9 under part B of title IV of the Social Secu-
10 rity Act (42 U.S.C. 628 et seq.).

11 “(viii) The promoting safe and stable
12 families program under part B of title IV
13 of the Social Security Act (42 U.S.C. 629c
14 et seq.).“

15 “(ix) Family violence prevention
16 grants for battered women’s shelters under
17 the Family Violence Prevention and Serv-
18 ices Act (42 U.S.C. 10401 et seq.).

19 “(C) SUBSTANCE ABUSE AND MENTAL

20 HEALTH SERVICES ADMINISTRATION.—

21 “(i) Targeted capacity expansion program
22 under title V of the Public Health Service Act
23 (42 U.S.C. 290aa et seq.).

24 “(ii) Mental health and substance abuse
25 block grant programs under title XIX of the
26 Public Health Services Act (42 U.S.C. 300x et
27 seq.).

1 “(iii) Tribal Behavioral Health Grants (42
2 U.S. Code § 290bb–32

3 “(iv) Tribal Opioid Response Grants (as
4 authorized by Section 509 of the Public
5 Health Service Act)

6 “(D) HEALTH RESOURCES AND SERVICES
7 ADMINISTRATION.—Community health center
8 grants under section 330 of the Public Health
9 Service Act (42 U.S.C. 254b).

10 “(E) CENTERS FOR DISEASE CONTROL AND
11 PREVENTION.—

12 “(i) Good Health and Wellness in Indian
13 Country (42 U.S.C. Sections 241(a) and 247b)

14 “(ii) Public Health Emergency
15 Preparedness Cooperative Agreement (42
16 U.S.C. § 247d)

17 “(iii) Preventive Health and Health
18 Services Block Grant (42 U.S.C. 300w)

19 “(iv) Tribal Public Health Capacity Building
20 and Quality Improvement Cooperative
21 Agreement (42 U.S.C. 247(b)(k)(2))

22 “(v) National Breast and Cervical Cancer
23 Early Detection Program (NBCCEDP) (42
24 U.S.C. 1396a and 1396n)

25 “(vi) National Comprehensive Cancer
26 Control Program (42 U.S.C. 247 (b)(k)(2))

27 “(vii) Tribal Practices for Wellness in Indian

1 Country (42. U.S.C., section 241(a), and
2 247(b)(k)(2), and Title IV, Section 4002,
3 Prevention and Public Health Fund,
4 Affordable Health Care Act.)

5 “(F) INDIAN HEALTH SERVICE.—Special Diabetes
6 Program for Indians (42 U.S.C. 254c-3)

7 “(3) ADDITIONAL INCLUDED PROGRAMS.—The
8 Secretary may identify not more than 6 additional
9 programs annually for inclusion in the demonstra-
10 tion project, including, for example—

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

13 “(B) all other programs for which Indians
14 are eligible beneficiaries; or

15 “(C) competitive grants for which an In-
16 dian tribe receives an individual or cooperative
17 award.

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

19 “(A) shall specify—

20 “(i) the services to be provided;

21 “(ii) the functions to be performed; And

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

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

27 “(C) shall not allow the Secretary to waive,

1 modify, or diminish in any way the trust re-
2 sponsibility of the United States with respect to
3 Indian tribes and individual Indians that exist
4 under treaties, Executive orders, and Acts of
5 Congress;

6 “(D) shall allow for retrocession of in-
7 cluded programs under section 105(e); and

8 “(E) shall authorize the use of funds for
9 construction purposes, subject to negotiations
10 between the parties.

11 **“SEC. 605. TRANSFER OF FUNDS.**

12 “(a) TRANSFER.—

13 “(1) IN GENERAL.— Notwithstanding any other
14 provision of the law, under any compact or
15 funding agreement entered into under this title, the
16 Secretary shall transfer to the Indian tribe all funds
17 eligible for inclusion in the funding agreement as soon
18 as those funds are identified for the Indian tribe.

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

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

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

1 “(b) AMOUNT OF FUNDING.—

2 “(1) FUNDING FORMULAS.—

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

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

7 “(ii) shall not be used to determine the
8 amount of funding provided to an Indian
9 tribe.

10 “(B) ADEQUACY.—Subject to the avail-
11 ability of appropriations—

12 “(i) the funding amount shall be ade-
13 quate to permit the successful implementa
14 tion of the demonstration project; and

15 “(ii) the Secretary and the partici-
16 pating Indian tribe shall determine the
17 funding amount through negotiation.

18 “(2) MATCHING REQUIREMENT.—An Indian
19 tribe may request a waiver of any matching require-
20 ment applicable to an included program, and the
21 Secretary shall liberally grant such reasonable waiv-
22 er requests.

23 “(3) CONTRACT SUPPORT COSTS.—The amounts
24 required by paragraph (1) shall be deemed to be funds
25 transferred under section 106(a)(1) of the Indian Self-
26 Determination and Education Assistance Act, P.L. 93-
27 638 as amended, and there shall be added to those

1 amounts contract support costs as specified in
2 paragraphs (2), (3), (4), (5), and (6) of section 106(a)
3 of that Act.

4 “(A) Notwithstanding any other provision of
5 the law, the funding required by paragraph (1)
6 shall be entitled to contract support cost
7 funding regardless of whether the Secretary
8 would otherwise have used the funds to provide
9 the services.

10 “(B) Program income, as defined in section
11 508(j), that is used to carry out a funding
12 agreement under this demonstration project shall
13 be entitled to contract support cost funding to
14 the same extent as funding under paragraph (1).

15 “(4) ADMINISTRATIVE FUND SHARES.—

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

20 “(B) INCLUSION.—A tribal share under
21 subparagraph (A) shall include a share for
22 training and technical assistance services per-
23 formed by a contractor.

24 “(5) The inclusion of funds in a funding agreement
25 under this demonstration project shall not reduce
26 the total amount of funding that the Secretary is
27 obligated to provide to an Indian tribe.

1 “SEC. 606. GENERAL PROVISIONS.

2 “(a) REDESIGN, CONSOLIDATION, AND REALLOCA-
3 TION.—

4 “(1) IN GENERAL.—To the extent not prohibited
5 under the statutory provisions of the included pro-
6 grams included in the funding agreement, and sub-
7 ject to the terms of the funding agreement, an Indian
8 tribe may—

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

13 “(B) reallocate or redirect funds for the
14 included programs, among the included programs
15 under the funding agreement, so long as all
16 demonstration project costs using those funds meet
17 allowable cost standards as required by section
18 506(c).

19 “(2) WAIVERS.—

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

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

4 “(i) the reasons for each request;

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

7 “(iii) the views of the Indian tribe re-
8 garding the requested waiver.

9 “(C) DISAGREEMENT.—Waiver requests shall
10 be subject to the final offer process in subsect-
11 ion (b) of this section.

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

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

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

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

1 the final offer.

2 “(4) REJECTION OF FINAL OFFER.—

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

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

8 “(ii) provide the Indian tribe with a
9 hearing on the record (except that the In-
10 dian tribe may, in lieu of such a hearing,
11 file an appeal of the rejection to the Intra-
12 Departmental Council on Native American
13 Affairs, the decision of which shall be final
14 and not subject to judicial review).

15 “(B) BURDEN OF PROOF.—In a hearing or
16 appeal under subparagraph (A)(ii), the Sec-
17 retary shall have the burden of proving by clear
18 and convincing evidence that

19 “(i) the amount of funds proposed in the
20 final offer exceeds the applicable funding
21 level to which the Indian tribe is entitled
22 under this title;

23 “(ii) the program, function, service, or
24 activity (or portion thereof) that is the
25 subject of the final offer is an inherent
26 Federal function that cannot legally be
27 delegated to an Indian tribe;

1 “(iii) the Indian tribe cannot carry out the
2 program, function, service, or activity (or
3 portion thereof) in a manner that would not
4 result in significant danger or risk to the public
5 health; or

6 “(iv) the Indian tribe is not eligible to
7 participate in self-governance under section
8 503.

9 “(c) OTHER FUNDING.—Participation by an Indian
10 tribe in the demonstration project under this title shall
11 not affect the amount of funding that the Indian tribe
12 would receive under the laws (including regulations) gov-
13 erning the included programs if the Indian tribe did not
14 participate.

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

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

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

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

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

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

9 “(1) Section 102(d).

10 “(2) Section 105(l) (lease of tribal facilities).

11 “(3) Section 506(b) (conflicts of interest).

12 “(4) Section 506(c)(1) (Single Agency Audit
13 Act).

14 “(5) Section 506(c)(2) (cost principles).

15 “(6) Section 506(c) (records).

16 “(7) Section 507(c)(1)(A) (grounds for reject-
17 ing a final offers).

18 “(8) Section 508(g) (prompt payment).

19 “(9) Section 506(h) (nonduplication).

20 “(10) Section 508(h) (interest or other income
21 on transfers).

22 “(11) Section 508(i) (carryover of funds).

23 “(12) Section 509 (construction projects).

24 “(13) Section 510 (Federal procurement laws).

25 “(14) Section 512(b) (regulation waivers).

26 **“SEC. 607. REPORTS.**

27 “(a) IN GENERAL.—The Secretary shall annually

1 submit to Congress a report on the relative costs and bene-
2 fits of the demonstration project using evaluation and re-
3 porting data provided by participating Indian tribes.

4 “(b) BASELINE MEASUREMENTS.—

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

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

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

14 “(1) verify that the participating Indian tribes
15 met the statutory purposes of the included pro-
16 grams;

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

20 “(3) separately include Federal and tribal view-
21 points regarding—

22 “(A) the merger of included programs op-
23 erated under this title and self-governance prin-
24 ciples; and

25 “(B) the impact on program beneficiaries.

26 “(d) STATE FUNDING.—Within 120 days after the
27 enactment of this Act, the Secretary is directed to

1 prepare and submit to Congress a report that identifies
2 all funding provided to States from all agencies within
3 HHS that States are expected or have agreed to use to
4 provide services to Indians.
5 “SEC. 608. AUTHORIZATION OF APPROPRIATIONS.
6 “There are authorized to be appropriated such sums
7 as are necessary to carry out this title, to remain available
8 until expended.”