

INDIAN EMPLOYMENT, TRAINING AND RELATED  
SERVICES CONSOLIDATION ACT OF 2016

NOVEMBER 16, 2016.—Ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 329]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 329) to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to facilitate the ability of Indian tribes to integrate the employment, training, and related services from diverse Federal sources, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Indian Employment, Training and Related Services Consolidation Act of 2016”.

**SEC. 2. AMENDMENT OF SHORT TITLE.**

(a) **IN GENERAL.**—Section 1 of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 note; 106 Stat. 2302) is amended to read as follows:

**“SECTION 1. SHORT TITLE.**

“This Act may be cited as the ‘Indian Employment, Training and Related Services Act of 1992.’”

(b) **REFERENCES.**—Any reference in law to the “Indian Employment, Training and Related Services Demonstration Act of 1992” shall be deemed to be a reference to the “Indian Employment, Training and Related Services Act of 1992”.

**SEC. 3. STATEMENT OF PURPOSE.**

Section 2 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3401), as amended by section 2 of this Act, is amended—

(1) by striking “The purposes of this Act are to demonstrate how Indian tribal governments can” and inserting “The purpose of this Act is to facilitate the ability of Indian tribes and tribal organizations to”;

(2) by inserting “from diverse Federal sources” after “they provide”;

(3) by striking “and serve tribally-determined” and inserting “, and serve tribally determined”; and

(4) by inserting “, while reducing administrative, reporting, and accounting costs” after “policy of self-determination”.

**SEC. 4. DEFINITIONS.**

Section 3 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3402), as amended by section 2 of this Act, is amended—

(1) by striking paragraph (2) and inserting the following:

“(2) INDIAN TRIBE.—

“(A) IN GENERAL.—The terms ‘Indian tribe’ and ‘tribe’ have the meaning given the term ‘Indian tribe’ in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(B) INCLUSION.—The term ‘Indian tribe’ includes tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) PROGRAM.—The term ‘program’ means a program described in section 5(a).”.

**SEC. 5. INTEGRATION OF SERVICES AUTHORIZED.**

Section 4 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3403), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.**

“The Secretary shall, after approving a plan submitted by an Indian tribe in accordance with section 8, authorize the Indian tribe to, in accordance with the plan—

“(1) integrate the programs and Federal funds received by the Indian tribe; and

“(2) coordinate the employment, training, and related services provided with those funds in a consolidated and comprehensive tribal plan.”.

**SEC. 6. PROGRAMS AFFECTED AND TRANSFER OF FUNDS.**

Section 5 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3404), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 5. PROGRAMS AFFECTED.**

“(a) PROGRAMS AFFECTED.—

“(1) IN GENERAL.—The programs that may be integrated pursuant to a plan approved under section 8 shall be only programs—

“(A) implemented for the purpose of—

“(i) job training;

“(ii) welfare to work and tribal work experience;

“(iii) creating or enhancing employment opportunities;

“(iv) higher education;

“(v) skill development;

“(vi) assisting Indian youth and adults to succeed in the workforce;

“(vii) encouraging self-sufficiency;

“(viii) familiarizing individual participants with the world of work;

“(ix) facilitating the creation of job opportunities;

“(x) economic development; or

“(xi) any services related to the activities described in clauses (i) through (x); and

“(B) under which an Indian tribe or members of an Indian tribe—

“(i) are eligible to receive funds—

“(I) under a statutory or administrative formula making funds available to an Indian tribe; or

“(II) due to their status as Indians under Federal law; or

“(ii) have secured funds as a result of a competitive process, a non-competitive process, or a specific designation.

“(2) TREATMENT OF BLOCK GRANT FUNDS.—For purposes of this section, programs funded by block grant funds provided to an Indian tribe, regardless of whether the block grant is for the benefit of the Indian tribe because of the status of the Indian tribe or the status of the beneficiaries the grant serves, shall be eligible to be integrated into the plan.

“(b) PROGRAM AUTHORIZATION.—The Secretary shall, in cooperation with the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Education, the Secretary of Energy, the Secretary of Health and Human Services, the Secretary of Homeland Security, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Transportation, and the Sec-

retary of Veterans Affairs, after the Secretary approves a plan submitted by an Indian tribe or tribal organization under section 8, authorize the Indian tribe or tribal organization, as applicable, to coordinate, in accordance with the plan, federally funded employment, training, and related services programs and funding in a manner that integrates the programs and funding into a consolidated and comprehensive program.”.

**SEC. 7. PLAN REQUIREMENTS.**

Section 6 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3405), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 6. PLAN REQUIREMENTS.**

“A plan submitted to the Secretary for approval under this Act shall—

“(1) identify the programs to be integrated and consolidated;

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

“(3) describe—

“(A) a comprehensive strategy identifying the full range of potential employment opportunities on and near the service area of the Indian tribe;

“(B) the education, training, and related services to be provided to assist Indians to access those employment opportunities;

“(C) the way in which services and program funds are to be integrated, consolidated, and delivered; and

“(D) the results expected from the plan;

“(4) identify the projected expenditures under the plan in a single budget covering all consolidated funds;

“(5) identify any agency of the Indian tribe to be involved in the delivery of the services integrated under the plan;

“(6) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe believes need to be waived to implement the plan; and

“(7) be approved by the governing body of the Indian tribe.”.

**SEC. 8. PLAN REVIEW; WAIVER AUTHORITY; AND DISPUTE RESOLUTION.**

Section 7 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3406), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 7 PLAN REVIEW.**

“(a) IN GENERAL.—Upon receipt of a plan from an Indian tribe, the Secretary shall consult with—

“(1) the head of each Federal agency overseeing a program identified in the plan; and

“(2) the Indian tribe that submitted the plan.

“(b) IDENTIFICATION OF WAIVERS.—The parties identified in subsection (a) shall identify any waivers of applicable statutory, regulatory, or administrative requirements, or of Federal agency policies or procedures necessary to enable the Indian tribe to efficiently implement the plan.

“(c) TRIBAL WAIVER REQUEST.—In consultation with the Secretary, a participating Indian tribe may request that the head of each affected agency waive any statutory, regulatory, or administrative requirement, policy, or procedure identified subsection (b).

“(d) WAIVER AUTHORITY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, the head of each affected Federal agency shall waive any applicable statutory, regulatory, or administrative requirement, regulation, policy, or procedure promulgated by the agency that has been identified by the parties under subparagraph (b).

“(2) EXCEPTION.—The head of an affected Federal agency shall not grant a waiver under paragraph (1) if the head of the affected agency determines that a waiver will be inconsistent with—

“(A) the purposes of this Act; or

“(B) the provision of law from which the program included in the plan derives its authority that is specifically applicable to Indians.

“(e) DECISION ON WAIVER REQUEST.—

“(1) IN GENERAL.—Not later than 90 days after the head of an affected agency receives a waiver request, the head of the affected agency shall decide whether to grant or deny the request.

“(2) DENIAL OF REQUEST.—If the head of the affected agency denies a waiver request, not later than 30 days after the date on which the denial is made, the head of the affected agency shall provide the requesting Indian tribe and the Secretary with written notice of the denial and the reasons for the denial.

- “(3) FAILURE TO ACT ON REQUEST.—If the head of an affected agency does not make a decision under paragraph (1) by the deadline identified in that paragraph, the request shall be considered to be granted.
- “(f) SECRETARIAL REVIEW.—If the head of an affected agency denies a waiver request under subsection (e)(2), not later than 30 days after the date on which the request is denied, the Secretary shall review the denial and determine whether granting the waiver—
- “(1) will be inconsistent with the provisions of this Act; or
- “(2) will prevent the affected agency from fulfilling the obligations of the affected agency under this Act.
- “(g) INTERAGENCY DISPUTE RESOLUTION.—
- “(1) IN GENERAL.—Not later than 30 days after the date on which the Secretary determines that granting the waiver will not be inconsistent with the provisions of this Act and will not prevent the affected agency from fulfilling the obligations of the affected agency under this Act, the Secretary shall establish and initiate an interagency dispute resolution process involving—
- “(A) the Secretary;
- “(B) the participating Indian tribe; and
- “(C) the head of the affected agency.
- “(2) DURATION.—A dispute subject to paragraph (1) shall be resolved not later than 30 days after the date on which the process is initiated.
- “(h) FINAL AUTHORITY.—If the dispute resolution process fails to resolve the dispute between a participating Indian tribe and an affected agency, the head of the affected agency shall have the final authority to resolve the dispute.
- “(i) FINAL DECISION.—Not later than 10 days after the date on which the dispute is resolved under this section, the Secretary shall provide the requesting Indian tribe with—
- “(1) the final decision on the waiver request; and
- “(2) notice of the right to file an appeal in accordance with the applicable provisions described in section 8(d).”.

**SEC. 9. PLAN APPROVAL; SECRETARIAL AUTHORITY; REVIEW OF DECISION.**

Section 8 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3407), as amended by section 2 of this Act, is amended to read as follows:

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

- “(a) IN GENERAL.—The Secretary shall have exclusive authority to approve or disapprove a plan submitted by an Indian tribe in accordance with section 6.
- “(b) APPROVAL PROCESS.—
- “(1) IN GENERAL.—Not later than 90 days after the date on which the Secretary receives a plan, the Secretary shall approve or deny the plan.
- “(2) APPROVAL.—If the Secretary approves a plan under paragraph (1), the Secretary shall authorize the transfer of program funds identified in the plan in accordance with section 13.
- “(3) DENIAL.—If the Secretary denies the plan under paragraph (1), the Secretary shall provide to the Indian tribe a written notification of disapproval of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet the requirements described in section 6.
- “(4) PARTIAL APPROVAL.—
- “(A) IN GENERAL.—If a plan is denied under paragraph (3) solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under section 7, the Secretary shall, upon a request from the tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.
- “(B) APPROVAL AFTER RESOLUTION.—With respect to a plan described in subparagraph (A), on resolution of the request for a waiver under section 7, the Secretary shall, on a request from the tribe, approve the plan or amended plan not later than 90 days after the date on which the Secretary receives the request.
- “(5) FAILURE TO ACT.—If the Secretary does not make a decision under paragraph (1) within 90 days of the date on which the Secretary receives the plan, the plan shall be considered to be approved.
- “(c) EXTENSION OF TIME.—Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period identified in subsection (b)(1) for not more than 90 additional days, if, before the expiration of the period, the Secretary obtains the express written consent of the Indian tribe.
- “(d) REVIEW OF DENIAL.—
- “(1) PROCEDURE UPON REFUSAL TO APPROVE PLAN.—If the Secretary denies a plan under subsection (b)(3), the Secretary shall—

“(A) state any objections in writing to the Indian tribe;  
 “(B) provide assistance to the Indian tribe to overcome the stated objections; and

“(C) unless the Indian tribe brings a civil action under paragraph (2), provide the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.

“(2) CIVIL ACTIONS; CONCURRENT JURISDICTION; RELIEF.—

“(A) IN GENERAL.—The district courts of the United States shall have original jurisdiction of a civil action or claim against the appropriate Secretary arising under this section and over any civil action or claim against the Secretary for money damages arising under contracts authorized by this section.

“(B) ADMINISTRATIVE HEARING AND APPEAL NOT REQUIRED.—An Indian tribe may bring a civil action or claim under this paragraph without regard to whether the Indian tribe had a hearing or filed an appeal under paragraph (1).

“(C) RELIEF.—In an action brought under this paragraph, the court may order appropriate relief, including—

“(i) money damages;

“(ii) injunctive relief against any action by an officer or employee of the United States or any agency thereof contrary to this Act or regulations promulgated thereunder (including immediate injunctive relief to reverse a denial of a plan under this section or to compel the Secretary to approve a plan); and

“(iii) a writ of mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this Act or regulations promulgated hereunder.

“(3) BURDEN OF PROOF AT HEARING OR APPEAL DECLINING CONTRACT; FINAL AGENCY ACTION.—

“(A) IN GENERAL.—With respect to any hearing or appeal conducted under paragraph (1)(C) or any civil action brought under paragraph (2), the Secretary shall have the burden of proving by clear and convincing evidence the validity of the grounds for denying approval of a plan (or portion thereof).

“(B) AGENCY ACTION.—Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (collectively referred to in this paragraph as the ‘Department’) that constitutes final agency action and that relates to an appeal within the Department that is conducted under paragraph (1)(C) shall be made—

“(i) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

“(ii) by an administrative judge.

“(4) APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS.—Section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, shall apply to any administrative appeals pending on or filed after October 5, 1988, by an Indian tribe regarding a plan under this Act.”

**SEC. 10. EMPLOYER TRAINING PLACEMENTS.**

Section 10 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3409), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 10. EMPLOYER TRAINING PLACEMENTS.**

“(a) IN GENERAL.—Subject to subsection (b), an Indian tribe that has in place an approved plan under this Act may use the funds made available for the plan under this Act—

“(1) to place participants in training positions with employers; and

“(2) to pay the participants a training allowance or wage for a training period of not more than 24 months, which may be nonconsecutive.

“(b) REQUIREMENTS.—An Indian tribe may carry out subsection (a) only if the Indian tribe enters into a written agreement with each applicable employer under which the employer shall agree—

“(1) to provide on-the-job training to the participants; and

“(2) on satisfactory completion of the training period described in subsection (a)(2), to prioritize the provision of permanent employment to the participants.”

**SEC. 11. FEDERAL RESPONSIBILITIES.**

Section 11 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3410), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 11. FEDERAL RESPONSIBILITIES.****“(a) LEAD AGENCY.—**

**“(1) IN GENERAL.—**Notwithstanding any other provision of law, the lead agency responsible for implementation of this Act shall be the Bureau of Indian Affairs.

**“(2) INCLUSIONS.—**The responsibilities of the Director of the Bureau of Indian Affairs in carrying out this Act shall include—

**“(A) the development of a single model report for each Indian tribe that has in place an approved plan under this Act to submit to the Director reports on any consolidated activities undertaken and joint expenditures made under the plan;**

**“(B) the provision, directly or through contract, of appropriate voluntary and technical assistance to participating Indian tribes;**

**“(C) the development and use of a single monitoring and oversight system for plans approved under this Act;**

**“(D)(i) the receipt of all funds covered by a plan approved under this Act; and**

**“(ii) the distribution of the funds to the respective Indian tribes by not later than 45 days after the date of receipt of the funds from the appropriate Federal department or agency; and**

**“(E)(i) the performance of activities described in section 7 relating to agency waivers; and**

**“(ii) the establishment of an interagency dispute resolution process.**

**“(3) MEMORANDUM OF AGREEMENT.—**

**“(A) IN GENERAL.—**Not later than 1 year after the date of enactment of the Indian Employment, Training and Related Services Consolidation Act of 2016, the Secretary (acting through the Director of the Bureau of Indian Affairs), in conjunction with the Secretaries of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, Transportation, and Veterans Affairs and the Attorney General, shall enter into an interdepartmental memorandum of agreement providing for the implementation of this Act.

**“(B) INCLUSIONS.—**The memorandum of agreement under subparagraph (A) shall include provisions relating to—

**“(i) an annual meeting of participating Indian tribes and Federal departments and agencies, to be co-chaired by—**

**“(I) a representative of the President; and**

**“(II) a representative of the participating Indian tribes;**

**“(ii) an annual review of the achievements under this Act and any statutory, regulatory, administrative, or policy obstacles that prevent participating Indian tribes from fully and efficiently carrying out the purposes of this Act; and**

**“(iii) a forum comprised of participating Indian tribes and Federal departments and agencies to identify and resolve interagency conflicts and conflicts between the Federal Government and Indian tribes in the administration of this Act.**

**“(b) REPORT FORMAT.—**

**“(1) IN GENERAL.—**The lead agency shall develop and distribute to Indian tribes that have in place an approved plan under this Act a single report format, in accordance with the requirements of this Act.

**“(2) REQUIREMENTS.—**The lead agency shall ensure that the report format developed under paragraph (1), together with records maintained by each participating Indian tribe, contains information sufficient—

**“(A) to determine whether the Indian tribe has complied with the requirements of the approved plan of the Indian tribe; and**

**“(B) to provide assurances to the head of each applicable Federal department or agency that the Indian tribe has complied with all directly applicable statutory and regulatory requirements not waived under section 7.**

**“(3) LIMITATION.—**The report format developed under paragraph (1) shall not require a participating Indian tribe to report on the expenditure of funds (expressed by fund source or single agency code) transferred to the Indian tribe under an approved plan under this Act.”.

**SEC. 12. NO REDUCTION IN AMOUNTS.**

Section 12 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3411), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 12. NO REDUCTION IN AMOUNTS.**

“(a) IN GENERAL.—In no case shall the amount of Federal funds available to an Indian tribe that has in place an approved plan under this Act be reduced as a result of—

“(1) the enactment of this Act; or

“(2) the approval or implementation of a plan of an Indian tribe under this Act.

“(b) INTERACTION WITH OTHER LAWS.—The inclusion of a program in a tribal plan under this Act shall not—

“(1) modify, limit, or otherwise affect the eligibility of the program for contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or

“(2) eliminate the applicability of any provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), as the provision relates to a specific program eligible for contracting under that Act.”.

**SEC. 13. TRANSFER OF FUNDS.**

Section 13 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3412), as amended by section 2 of this Act, is amended to read as follows:

**“SEC. 13. TRANSFER OF FUNDS.**

“(a) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the date of apportionment to the applicable Federal department or agency, the head of a Federal agency overseeing a program identified in a plan approved under this Act shall transfer to the Director of the Bureau of Indian Affairs for distribution to an Indian tribe any funds identified in the approved plan of the Indian tribe.

“(b) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, at the request of the Indian tribe, all program funds transferred to an Indian tribe in accordance with the approved plan of the Indian tribe shall be transferred to the Indian tribe pursuant to an existing contract, compact, or funding agreement awarded pursuant to title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).”.

**SEC. 14. ADMINISTRATION OF FUNDS.**

Section 14 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3413), as amended by section 2 of this Act, is amended—

(1) by redesignating subsection (b) as subsection (d);

(2) by striking the section designation and heading and all that follows through subsection (a) and inserting the following:

**“SEC. 14. ADMINISTRATION OF FUNDS.**

“(a) REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) CONSOLIDATION AND REALLOCATION OF FUNDS.—Notwithstanding any other provision of law, all amounts transferred to a tribe pursuant to an approved plan may be consolidated, reallocated, and rebudgeted as specified in the approved plan to best meet the employment, training, and related needs of the local community served by the Indian tribe.

“(B) AUTHORIZED USE OF FUNDS.—The amounts used to carry out a plan approved under this Act shall be administered in such manner as the Secretary determines to be appropriate to ensure the amounts are spent on activities authorized under the approved plan.

“(C) EFFECT.—Nothing in this section interferes with the ability of the Secretary or the lead agency to use accounting procedures that conform to generally accepted accounting principles, auditing procedures, and safeguarding of funds that conform to chapter 75 of title 31, United States Code (commonly known as the ‘Single Audit Act of 1984’).

“(2) SEPARATE RECORDS AND AUDITS NOT REQUIRED.—Notwithstanding any other provision of law (including regulations and circulars of any agency (including Office of Management and Budget Circular A-133)), an Indian tribe that has in place an approved plan under this Act shall not be required—

“(A) to maintain separate records that trace any service or activity conducted under the approved plan to the program for which the funds were initially authorized or transferred;

“(B) to allocate expenditures among such a program; or

“(C) to audit expenditures by the original source of the program.

“(b) CARRYOVER.—

“(1) IN GENERAL.—Any funds transferred to an Indian tribe under this Act that are not obligated or expended prior to the beginning of the fiscal year after the fiscal year for which the funds were appropriated shall remain available for

obligation or expenditure without fiscal year limitation, subject to the condition that the funds shall be obligated or expended in accordance with the approved plan of the Indian tribe.

“(2) NO ADDITIONAL DOCUMENTATION.—The Indian tribe shall not be required to provide any additional justification or documentation of the purposes of the approved plan as a condition of receiving or expending the funds.

“(c) INDIRECT COSTS.—Notwithstanding any other provision of law, an Indian tribe shall be entitled to recover 100 percent of any indirect costs incurred by the Indian tribe as a result of the transfer of funds to the Indian tribe under this Act.”; and

(3) in subsection (d) (as redesignated by paragraph (1))—

(A) by striking “All administrative” and inserting the following:

“(1) IN GENERAL.—All administrative”; and

(B) by striking “regulations” and all that follows through the end of the subsection and inserting the following: “regulations).

“(2) TREATMENT.—The amount equal to the difference between the amount of the commingled funds and the actual administrative cost of the programs, as described in paragraph (1), shall be considered to be properly spent for Federal audit purposes if the amount is used to achieve the purposes of this Act.

“(e) MATCHING FUNDS.—Notwithstanding any other provision of law, any funds transferred to an Indian tribe under this Act shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

“(f) CLAIMS.—The following provisions of law shall apply to plans approved under this Act:

“(1) Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101–512; 104 Stat. 1959).

“(2) Chapter 171 of title 28 (commonly known as the ‘Federal Tort Claims Act’).

“(g) INTEREST OR OTHER INCOME.—

“(1) IN GENERAL.—An Indian tribe shall be entitled to retain interest earned on any funds transferred to the tribe under an approved plan and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under the plan in the year the interest is earned or in any subsequent fiscal year.

“(2) PRUDENT INVESTMENT.—Funds transferred under a plan shall be managed in accordance with the prudent investment standard.”.

#### **SEC. 15. LABOR MARKET INFORMATION ON INDIAN WORK FORCE.**

Section 17(a) of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3416(a)), as amended by section 2 of this Act, is amended in the first sentence—

(1) by striking “The Secretary” and all that follows through “manner,” and inserting “The Secretary of Labor, in consultation with the Secretary, Indian tribes, and the Director of the Bureau of the Census, shall”; and

(2) by striking “, by gender,”.

#### **SEC. 16. REPEALS; CONFORMING AMENDMENTS.**

(a) REPEALS.—Sections 15 and 16 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3414, 3415), as amended by section 2 of this Act, are repealed.

(b) CONFORMING AMENDMENTS.—Sections 17 and 18 of the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3416, 3417) (as amended by this Act) are redesignated as sections 15 and 16, respectively.

#### **SEC. 17. EFFECT OF ACT.**

Nothing in this Act or any amendment made by this Act—

(1) affects any plan approved under the Indian Employment, Training and Related Services Act of 1992 (25 U.S.C. 3401 et seq.) (as so redesignated) before the date of enactment of this Act;

(2) requires any Indian tribe or tribal organization to resubmit a plan described in paragraph (1); or

(3) modifies the effective period of any plan described in paragraph (1).

### **PURPOSE OF THE BILL**

The purpose of H.R. 329 is to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to facilitate the ability of Indian tribes to integrate the employment, training, and related services from diverse Federal sources.



## BACKGROUND AND NEED FOR LEGISLATION

The Federal government has a wide range of programs to assist State, local, and tribal governments in developing the workforce of their communities. Specifically, the Departments of the Interior, Health and Human Services, and Labor award grant monies for employment, training, and related workforce service programs that provide grant funding to tribes. Tribes use that funding to provide services such as education and workforce training, resume building, on-the-job training, and childcare services to individuals attempting to enter the workforce.

In 1992, the Indian Employment, Training, and Related Services Demonstration Act (Public Law 102–477, 25 U.S.C. § 3401 et seq.) was enacted with the intent to enable tribes to integrate the federal resources they received from multiple executive agencies under comprehensive plans. The integration of services was meant to reduce administrative burdens or costs by allowing tribes to report and audit multiple programs (up to ten) under a single plan and budget. These are deemed “477 plans”.

The ten eligible programs are: the Department of the Interior Bureau of Indian Affairs’ General Assistance Program, Division of Workforce Development’s Job Placement and Training Program, Higher Education and Adult Basic Education programs, and the Johnson-O’Malley programs; the Department of Labor’s Comprehensive Services Program and Supplemental Youth Services Program; and Department of Health and Human Service’s Native Employment Works, Tribal Temporary Assistance for Needy Families (TANF), and Child Care and Development Fund programs (CCDF).

In fiscal year 2014, the Bureau of Indian Affairs (BIA) estimated that there were more than 250 participating tribes that benefited by approximately \$90 million in grant funding. A majority of those funds have come from the TANF, CCDF, and Native Employment Works programs at the Department of Health and Human Services. Funds from the Department of Health and Human Services and the Department of Labor are transferred to the Department of the Interior, which then transfers all employment, training, and related services funding to the tribes once the tribes’ 477 plans are approved.

While tribal programs participating under Public Law 102–477 have had few, if any, negative audit findings, the Administration began in 2008 to require tribes to report and audit their programs by breaking their funds back down to the original federal source of funding. Tribes considered this requirement contrary to the original intent of the law, and after further consultation, the Administration did not enforce the new requirement. Since those consultations began, the Administration and tribes have worked together to try and reconcile their differences in interpreting Public Law 102–477. However, the interested parties still do not agree on how certain provisions of the law should be implemented by the federal agencies.

In response to concerns over the implementation of Public Law 102–477, the 2012 omnibus appropriations act included report language requiring the Administration and tribes to form a workgroup to resolve differences in how funds should be transferred to tribes

and how tribal programs should be audited. In addition, report language in the fiscal year 2014 consolidated appropriations act required the Bureau of Indian Affairs to submit a report summarizing the workgroup's efforts. This report indicated that Congressional action would be required to make the authority of the program permanent and to provide clarity on how the program should work. H.R. 329 amends and makes permanent the Indian Employment, Training and Related Services demonstration project authorized by Public Law 102-477, while aiming to improve the structure of the 477 program and ensuring that the burdens Public Law 102-477 intended to address are resolved.

#### COMMITTEE ACTION

H.R. 329 was introduced on January 13, 2015, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On April 14, 2015, the Subcommittee held a hearing on the bill. On March 15, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Don Young offered amendment designated 113; it was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent on March 16, 2016.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 29, 2016.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 329, the Indian Employment, Training and Related Services Consolidation Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 329—Indian Employment, Training and Related Services Consolidation Act of 2015*

Under current law, a variety of federal agencies provide financial assistance to Indian tribes for a wide range of purposes. Under the Indian Employment, Training and Related Services Demonstration Act and subject to approval by the Bureau of Indian Affairs (BIA), tribes can consolidate certain types of federal grants, particularly those that support programs related to employment, training, and education. H.R. 329 would amend that act to expand the types of federal grants that tribes could consolidate.

CBO estimates that enacting H.R. 329 would have no significant effect on the federal budget because the legislation would not affect the overall amount of assistance provided by federal agencies to tribes. Based on information from BIA, CBO estimates that any increased federal costs to oversee and administer tribal plans under the bill, which would be subject to appropriation, would not exceed \$500,000 in any year.

Enacting H.R. 329 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 329 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 329 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On January 8, 2016, CBO transmitted a cost estimate for S. 1443, the Indian Employment, Training and Related Services Consolidation Act of 2015, as ordered reported by the Senate Committee on Indian Affairs on October 21, 2015. H.R. 329 and S. 1443 are similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office has concluded that enactment of this bill “would have no significant effect on the federal budget because the legislation would not affect the overall amount of assistance provided by federal agencies to tribes. Based on information from BIA, CBO estimates that any increased federal costs to oversee and administer tribal plans under the bill, which would be subject to appropriation, would not exceed \$500,000 in any year.”

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to facilitate the ability of

Indian tribes to integrate the employment, training, and related services from diverse Federal sources.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs. In fact, this bill could help reduce overlap and duplication by authorizing approved tribal plans for consolidating various tribal employment and training grant programs from different agencies. Several of these underlying programs have been identified by the Government Accountability Office as providing similar services.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### **INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES DEMONSTRATION ACT OF 1992**

#### **[SECTION 1. SHORT TITLE.**

**[This Act may be cited as the “Indian Employment, Training and Related Services Demonstration Act of 1992”.]**

#### **SEC. 1. SHORT TITLE.**

*This Act may be cited as the “Indian Employment, Training and Related Services Act of 1992”.*

#### **SEC. 2. STATEMENT OF PURPOSE.**

**[The purposes of this Act are to demonstrate how Indian tribal governments can]** *The purpose of this Act is to facilitate the ability*

*of Indian tribes and tribal organizations 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], and serve tribally determined goals consistent with the policy of self-determination, while reducing administrative, reporting, and accounting costs .*

**SEC. 3. 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, United States Code.

[(2) **INDIAN TRIBE.**— The terms “Indian tribe” and “tribe” shall have the meaning given the term “Indian tribe” in section 4(e) of the Indian Self-Determination and Education Assistance Act.]

(2) **INDIAN TRIBE.**—

(A) **IN GENERAL.**— *The terms “Indian tribe” and “tribe” have the meaning given the term “Indian tribe” in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).*

(B) **INCLUSION.**— *The term “Indian tribe” includes tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).*

(3) **INDIAN.**— The term “Indian” shall have the meaning given such term in section 4(d) of the Indian Self-Determination and Education Assistance Act.

\* \* \* \* \*

(4) **PROGRAM.**— *The term “program” means a program described in section 5(a).*

[(4)] (5) **SECRETARY.**— Except where otherwise provided, the term “Secretary” means the Secretary of the Interior.

**[SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.**

[The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

**[SEC. 5. PROGRAMS AFFECTED.**

[The programs that may be integrated in a demonstration project under any such plan referred to in section 4 shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing Indian Youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities.

**[SEC. 6. PLAN REQUIREMENTS**

**[For a plan to be acceptable pursuant to section 4, it shall—**

**[(1) identify the programs to be integrated;**

**[(2) be consistent with the purposes of this Act authorizing the services to be integrated in a demonstration project;**

**[(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers 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 tribal government to be involved in the delivery of the services integrated under the plan;**

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

**[(8) be approved by the governing body of the affected tribe.]**

**SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.**

*The Secretary shall, after approving a plan submitted by an Indian tribe in accordance with section 8, authorize the Indian tribe to, in accordance with the plan—*

*(1) integrate the programs and Federal funds received by the Indian tribe; and*

*(2) coordinate the employment, training, and related services provided with those funds in a consolidated and comprehensive tribal plan.*

**SEC. 5. PROGRAMS AFFECTED.**

**(a) PROGRAMS AFFECTED.—**

**(1) IN GENERAL.—** *The programs that may be integrated pursuant to a plan approved under section 8 shall be only programs—*

**(A) implemented for the purpose of—**

*(i) job training;*

*(ii) welfare to work and tribal work experience;*

*(iii) creating or enhancing employment opportunities;*

*(iv) higher education;*

*(v) skill development;*

*(vi) assisting Indian youth and adults to succeed in the workforce;*

*(vii) encouraging self-sufficiency;*

*(viii) familiarizing individual participants with the world of work;*

*(ix) facilitating the creation of job opportunities;*

*(x) economic development; or*

*(xi) any services related to the activities described in clauses (i) through (x); and*

**(B) under which an Indian tribe or members of an Indian tribe—**

*(i) are eligible to receive funds—*

(I) under a statutory or administrative formula making funds available to an Indian tribe; or

(II) due to their status as Indians under Federal law; or

(ii) have secured funds as a result of a competitive process, a noncompetitive process, or a specific designation.

(2) *TREATMENT OF BLOCK GRANT FUNDS.*— For purposes of this section, programs funded by block grant funds provided to an Indian tribe, regardless of whether the block grant is for the benefit of the Indian tribe because of the status of the Indian tribe or the status of the beneficiaries the grant serves, shall be eligible to be integrated into the plan.

(b) *PROGRAM AUTHORIZATION.*—The Secretary shall, in cooperation with the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Education, the Secretary of Energy, the Secretary of Health and Human Services, the Secretary of Homeland Security, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Transportation, and the Secretary of Veterans Affairs, after the Secretary approves a plan submitted by an Indian tribe or tribal organization under section 8, authorize the Indian tribe or tribal organization, as applicable, to coordinate, in accordance with the plan, federally funded employment, training, and related services programs and funding in a manner that integrates the programs and funding into a consolidated and comprehensive program.

**SEC. 6. PLAN REQUIREMENTS.**

A plan submitted to the Secretary for approval under this Act shall—

(1) identify the programs to be integrated and consolidated;

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

(3) describe—

(A) a comprehensive strategy identifying the full range of potential employment opportunities on and near the service area of the Indian tribe;

(B) the education, training, and related services to be provided to assist Indians to access those employment opportunities;

(C) the way in which services and program funds are to be integrated, consolidated, and delivered; and

(D) the results expected from the plan;

(4) identify the projected expenditures under the plan in a single budget covering all consolidated funds;

(5) identify any agency of the Indian tribe to be involved in the delivery of the services integrated under the plan;

(6) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe believes need to be waived to implement the plan; and

(7) be approved by the governing body of the Indian tribe.

**[SEC. 7. PLAN REVIEW.**

[Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal agency providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so con-

sulting shall identify any waivers of statutory requirements or of Federal agency regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected agency shall have the authority to waive any statutory requirement, regulation, policy, or procedure promulgated by that agency that has been so identified by such tribal government or agency, unless the Secretary of the affected agency determines that such a waiver is inconsistent with the purposes of this Act or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.】

**SEC. 7. PLAN REVIEW.**

(a) *IN GENERAL.*—Upon receipt of a plan from an Indian tribe, the Secretary shall consult with—

(1) the head of each Federal agency overseeing a program identified in the plan; and

(2) the Indian tribe that submitted the plan.

(b) *IDENTIFICATION OF WAIVERS.*—The parties identified in subsection (a) shall identify any waivers of applicable statutory, regulatory, or administrative requirements, or of Federal agency policies or procedures necessary to enable the Indian tribe to efficiently implement the plan.

(c) *TRIBAL WAIVER REQUEST.*—In consultation with the Secretary, a participating Indian tribe may request that the head of each affected agency waive any statutory, regulatory, or administrative requirement, policy, or procedure identified subsection (b).

(d) *WAIVER AUTHORITY.*—

(1) *IN GENERAL.*— Except as provided in paragraph (2), notwithstanding any other provision of law, the head of each affected Federal agency shall waive any applicable statutory, regulatory, or administrative requirement, regulation, policy, or procedure promulgated by the agency that has been identified by the parties under subparagraph (b).

(2) *EXCEPTION.*— The head of an affected Federal agency shall not grant a waiver under paragraph (1) if the head of the affected agency determines that a waiver will be inconsistent with—

(A) the purposes of this Act; or

(B) the provision of law from which the program included in the plan derives its authority that is specifically applicable to Indians.

(e) *DECISION ON WAIVER REQUEST.*—

(1) *IN GENERAL.*— Not later than 90 days after the head of an affected agency receives a waiver request, the head of the affected agency shall decide whether to grant or deny the request.

(2) *DENIAL OF REQUEST.*— If the head of the affected agency denies a waiver request, not later than 30 days after the date on which the denial is made, the head of the affected agency shall provide the requesting Indian tribe and the Secretary with written notice of the denial and the reasons for the denial.

(3) *FAILURE TO ACT ON REQUEST.*— If the head of an affected agency does not make a decision under paragraph (1) by the deadline identified in that paragraph, the request shall be considered to be granted.



(f) *SECRETARIAL REVIEW.*—If the head of an affected agency denies a waiver request under subsection (e)(2), not later than 30 days after the date on which the request is denied, the Secretary shall review the denial and determine whether granting the waiver—

(1) will be inconsistent with the provisions of this Act; or

(2) will prevent the affected agency from fulfilling the obligations of the affected agency under this Act.

(g) *INTERAGENCY DISPUTE RESOLUTION.*—

(1) *IN GENERAL.*— Not later than 30 days after the date on which the Secretary determines that granting the waiver will not be inconsistent with the provisions of this Act and will not prevent the affected agency from fulfilling the obligations of the affected agency under this Act, the Secretary shall establish and initiate an interagency dispute resolution process involving—

(A) the Secretary;

(B) the participating Indian tribe; and

(C) the head of the affected agency.

(2) *DURATION.*— A dispute subject to paragraph (1) shall be resolved not later than 30 days after the date on which the process is initiated.

(h) *FINAL AUTHORITY.*—If the dispute resolution process fails to resolve the dispute between a participating Indian tribe and an affected agency, the head of the affected agency shall have the final authority to resolve the dispute.

(i) *FINAL DECISION.*—Not later than 10 days after the date on which the dispute is resolved under this section, the Secretary shall provide the requesting Indian tribe with—

(1) the final decision on the waiver request; and

(2) notice of the right to file an appeal in accordance with the applicable provisions described in section 8(d).

**[SEC. 8. PLAN APPROVAL.**

**[**Within 90 days after the receipt of a tribal government’s plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary’s approval or disapproval of the plan, including any request for a waiver that is made as part of the plan submitted by the tribal government. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval, including reconsidering the disapproval of any waiver requested by the Indian tribe.**]**

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

(a) *IN GENERAL.*—The Secretary shall have exclusive authority to approve or disapprove a plan submitted by an Indian tribe in accordance with section 6.

(b) *APPROVAL PROCESS.*—

(1) *IN GENERAL.*— Not later than 90 days after the date on which the Secretary receives a plan, the Secretary shall approve or deny the plan.

(2) *APPROVAL.*— If the Secretary approves a plan under paragraph (1), the Secretary shall authorize the transfer of program funds identified in the plan in accordance with section 13.

(3) *DENIAL.*— *If the Secretary denies the plan under paragraph (1), the Secretary shall provide to the Indian tribe a written notification of disapproval of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet the requirements described in section 6.*

(4) *PARTIAL APPROVAL.*—

(A) *IN GENERAL.*— *If a plan is denied under paragraph (3) solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under section 7, the Secretary shall, upon a request from the tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.*

(B) *APPROVAL AFTER RESOLUTION.*— *With respect to a plan described in subparagraph (A), on resolution of the request for a waiver under section 7, the Secretary shall, on a request from the tribe, approve the plan or amended plan not later than 90 days after the date on which the Secretary receives the request.*

(5) *FAILURE TO ACT.*— *If the Secretary does not make a decision under paragraph (1) within 90 days of the date on which the Secretary receives the plan, the plan shall be considered to be approved.*

(c) *EXTENSION OF TIME.*— *Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period identified in subsection (b)(1) for not more than 90 additional days, if, before the expiration of the period, the Secretary obtains the express written consent of the Indian tribe.*

(d) *REVIEW OF DENIAL.*—

(1) *PROCEDURE UPON REFUSAL TO APPROVE PLAN.*— *If the Secretary denies a plan under subsection (b)(3), the Secretary shall—*

(A) *state any objections in writing to the Indian tribe;*

(B) *provide assistance to the Indian tribe to overcome the stated objections; and*

(C) *unless the Indian tribe brings a civil action under paragraph (2), provide the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.*

(2) *CIVIL ACTIONS; CONCURRENT JURISDICTION; RELIEF.*—

(A) *IN GENERAL.*— *The district courts of the United States shall have original jurisdiction of a civil action or claim against the appropriate Secretary arising under this section and over any civil action or claim against the Secretary for money damages arising under contracts authorized by this section.*

(B) *ADMINISTRATIVE HEARING AND APPEAL NOT REQUIRED.*— *An Indian tribe may bring a civil action or claim under this paragraph without regard to whether the Indian tribe had a hearing or filed an appeal under paragraph (1).*

(C) *RELIEF.*— *In an action brought under this paragraph, the court may order appropriate relief, including—*

- (i) money damages;
- (ii) injunctive relief against any action by an officer or employee of the United States or any agency thereof contrary to this Act or regulations promulgated thereunder (including immediate injunctive relief to reverse a denial of a plan under this section or to compel the Secretary to approve a plan); and
- (iii) a writ of mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this Act or regulations promulgated hereunder.

(3) *BURDEN OF PROOF AT HEARING OR APPEAL DECLINING CONTRACT; FINAL AGENCY ACTION.—*

(A) *IN GENERAL.—* With respect to any hearing or appeal conducted under paragraph (1)(C) or any civil action brought under paragraph (2), the Secretary shall have the burden of proving by clear and convincing evidence the validity of the grounds for denying approval of a plan (or portion thereof).

(B) *AGENCY ACTION.—* Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (collectively referred to in this paragraph as the “Department”) that constitutes final agency action and that relates to an appeal within the Department that is conducted under paragraph (1)(C) shall be made—

- (i) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or
- (ii) by an administrative judge.

(4) *APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS.—* Section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, shall apply to any administrative appeals pending on or filed after October 5, 1988, by an Indian tribe regarding a plan under this Act.

\* \* \* \* \*

**[SEC. 10. PRIVATE SECTOR TRAINING PLACEMENTS.**

[A tribal government participating in a demonstration program under this Act is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and, 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 THE DEPARTMENT OF THE INTERIOR.—** Within 180 days following the date of enactment of this Act, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall

enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this Act. The lead agency for a demonstration program under this Act shall be the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

[(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;

[(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;

[(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and

[(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

[(b) REPORT REQUIREMENTS.—The single report format shall be developed by the Secretary, consistent with the requirements of this Act. Such report format, together with records maintained on the consolidated program at the tribal level shall contain such information as will allow a determination that the tribe has complied with the requirements incorporated in its approved plan and will provide assurances to each Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.

**[SEC. 12. NO REDUCTION IN AMOUNTS.**

[In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this Act.

**[SEC. 13. INTERAGENCY FUND TRANSFERS AUTHORIZED.**

[The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this Act.]

**SEC. 10. EMPLOYER TRAINING PLACEMENTS.**

(a) *IN GENERAL.*—Subject to subsection (b), an Indian tribe that has in place an approved plan under this Act may use the funds made available for the plan under this Act—

(1) to place participants in training positions with employers; and

(2) to pay the participants a training allowance or wage for a training period of not more than 24 months, which may be nonconsecutive.

(b) *REQUIREMENTS.*—An Indian tribe may carry out subsection (a) only if the Indian tribe enters into a written agreement with each applicable employer under which the employer shall agree—

(1) to provide on-the-job training to the participants; and

(2) on satisfactory completion of the training period described in subsection (a)(2), to prioritize the provision of permanent employment to the participants.

**SEC. 11. FEDERAL RESPONSIBILITIES.**

(a) **LEAD AGENCY.**—

(1) **IN GENERAL.**— Notwithstanding any other provision of law, the lead agency responsible for implementation of this Act shall be the Bureau of Indian Affairs.

(2) **INCLUSIONS.**— The responsibilities of the Director of the Bureau of Indian Affairs in carrying out this Act shall include—

(A) the development of a single model report for each Indian tribe that has in place an approved plan under this Act to submit to the Director reports on any consolidated activities undertaken and joint expenditures made under the plan;

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

(C) the development and use of a single monitoring and oversight system for plans approved under this Act;

(D)(i) the receipt of all funds covered by a plan approved under this Act; and

(ii) the distribution of the funds to the respective Indian tribes by not later than 45 days after the date of receipt of the funds from the appropriate Federal department or agency; and

(E)(i) the performance of activities described in section 7 relating to agency waivers; and

(ii) the establishment of an interagency dispute resolution process.

(3) **MEMORANDUM OF AGREEMENT.**—

(A) **IN GENERAL.**— Not later than 1 year after the date of enactment of the Indian Employment, Training and Related Services Consolidation Act of 2015, the Secretary (acting through the Director of the Bureau of Indian Affairs), in conjunction with the Secretaries of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, Transportation, and Veterans Affairs and the Attorney General, shall enter into an interdepartmental memorandum of agreement providing for the implementation of this Act.

(B) **INCLUSIONS.**— The memorandum of agreement under subparagraph (A) shall include provisions relating to—

(i) an annual meeting of participating Indian tribes and Federal departments and agencies, to be co-chaired by—

(I) a representative of the President; and

(II) a representative of the participating Indian tribes;

(ii) an annual review of the achievements under this Act and any statutory, regulatory, administrative, or policy obstacles that prevent participating Indian tribes

from fully and efficiently carrying out the purposes of this Act; and

(iii) a forum comprised of participating Indian tribes and Federal departments and agencies to identify and resolve interagency conflicts and conflicts between the Federal Government and Indian tribes in the administration of this Act.

(b) **REPORT FORMAT.**—

(1) **IN GENERAL.**— The lead agency shall develop and distribute to Indian tribes that have in place an approved plan under this Act a single report format, in accordance with the requirements of this Act.

(2) **REQUIREMENTS.**— The lead agency shall ensure that the report format developed under paragraph (1), together with records maintained by each participating Indian tribe, contains information sufficient—

(A) to determine whether the Indian tribe has complied with the requirements of the approved plan of the Indian tribe; and

(B) to provide assurances to the head of each applicable Federal department or agency that the Indian tribe has complied with all directly applicable statutory and regulatory requirements not waived under section 7.

(3) **LIMITATION.**— The report format developed under paragraph (1) shall not require a participating Indian tribe to report on the expenditure of funds (expressed by fund source or single agency code) transferred to the Indian tribe under an approved plan under this Act.

**SEC. 12. NO REDUCTION IN AMOUNTS.**

(a) **IN GENERAL.**—In no case shall the amount of Federal funds available to an Indian tribe that has in place an approved plan under this Act be reduced as a result of—

(1) the enactment of this Act; or

(2) the approval or implementation of a plan of an Indian tribe under this Act.

(b) **INTERACTION WITH OTHER LAWS.**—The inclusion of a program in a tribal plan under this Act shall not—

(1) modify, limit, or otherwise affect the eligibility of the program for contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or

(2) eliminate the applicability of any provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), as the provision relates to a specific program eligible for contracting under that Act.

**SEC. 13. TRANSFER OF FUNDS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, not later than 30 days after the date of apportionment to the applicable Federal department or agency, the head of a Federal agency overseeing a program identified in a plan approved under this Act shall transfer to the Director of the Bureau of Indian Affairs for distribution to an Indian tribe any funds identified in the approved plan of the Indian tribe.

(b) **TRANSFER OF FUNDS.**—Notwithstanding any other provision of law, at the request of the Indian tribe, all program funds trans-

*ferred to an Indian tribe in accordance with the approved plan of the Indian tribe shall be transferred to the Indian tribe pursuant to an existing contract, compact, or funding agreement awarded pursuant to title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).*

**SEC. 14. [ADMINISTRATION OF FUNDS AND OVERAGE.] ADMINISTRATION OF FUNDS.**

**[(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 attracted from each program) are spent on allowable activities authorized under such program.

**[(2) SEPARATE RECORDS NOT REQUIRED.—** Nothing in this section shall be construed as requiring the tribe to maintain separate records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among such individual programs.]

**(a) REQUIREMENTS.—**

**(1) IN GENERAL.—**

**(A) CONSOLIDATION AND REALLOCATION OF FUNDS** *Notwithstanding any other provision of law, all amounts transferred to a tribe pursuant to an approved plan may be consolidated, reallocated, and rebudgeted as specified in the approved plan to best meet the employment, training, and related needs of the local community served by the Indian tribe.*

**(B) AUTHORIZED USE OF FUNDS** *The amounts used to carry out a plan approved under this Act shall be administered in such manner as the Secretary determines to be appropriate to ensure the amounts are spent on activities authorized under the approved plan.*

**(C) EFFECT** *Nothing in this section interferes with the ability of the Secretary or the lead agency to use accounting procedures that conform to generally accepted accounting principles, auditing procedures, and safeguarding of funds that conform to chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act of 1984").*

**(2) SEPARATE RECORDS AND AUDITS NOT REQUIRED.—** *Notwithstanding any other provision of law (including regulations and circulars of any agency (including Office of Management and Budget Circular A-133)), an Indian tribe that has in place an approved plan under this Act shall not be required—*

*(A) to maintain separate records that trace any service or activity conducted under the approved plan to the program for which the funds were initially authorized or transferred;*

*(B) to allocate expenditures among such a program; or*

*(C) to audit expenditures by the original source of the program.*

**(b) CARRYOVER.—**

**(1) IN GENERAL.—** *Any funds transferred to an Indian tribe under this Act that are not obligated or expended prior to the beginning of the fiscal year after the fiscal year for which the*

*funds were appropriated shall remain available for obligation or expenditure without fiscal year limitation, subject to the condition that the funds shall be obligated or expended in accordance with the approved plan of the Indian tribe.*

(2) *NO ADDITIONAL DOCUMENTATION.— The Indian tribe shall not be required to provide any additional justification or documentation of the purposes of the approved plan as a condition of receiving or expending the funds.*

(c) *INDIRECT COSTS.—Notwithstanding any other provision of law, an Indian tribe shall be entitled to recover 100 percent of any indirect costs incurred by the Indian tribe as a result of the transfer of funds to the Indian tribe under this Act.*

**[(b)] (d) OVERAGE.— [All administrative]**

(1) *IN GENERAL.—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), and no overage shall be counted for Federal audit purposes, provided that the overage is used for the purposes provided for under this Act.] regulations).*

(2) *TREATMENT.— The amount equal to the difference between the amount of the commingled funds and the actual administrative cost of the programs, as described in paragraph (1), shall be considered to be properly spent for Federal audit purposes if the amount is used to achieve the purposes of this Act.*

(e) *MATCHING FUNDS.—Notwithstanding any other provision of law, any funds transferred to an Indian tribe under this Act shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.*

(f) *CLAIMS.—The following provisions of law shall apply to plans approved under this Act:*

(1) *Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959).*

(2) *Chapter 171 of title 28 (commonly known as the "Federal Tort Claims Act").*

**(g) INTEREST OR OTHER INCOME.—**

(1) *IN GENERAL.— An Indian tribe shall be entitled to retain interest earned on any funds transferred to the tribe under an approved plan and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under the plan in the year the interest is earned or in any subsequent fiscal year.*

(2) *PRUDENT INVESTMENT.— Funds transferred under a plan shall be managed in accordance with the prudent investment standard.*

**[SEC. 15. FISCAL ACCOUNTABILITY.**

**[Nothing in this Act shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984.**

**[SEC. 16. REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.**

**[(a) PRELIMINARY REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit a pre-**



liminary report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives on the status of the implementation of the demonstration program authorized under this Act.

[(b) FINAL REPORT.—Not later than five years after the date of the enactment of this Act, the Secretary shall submit a report 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 on the results of the implementation of the demonstration program authorized under this Act. Such report shall identify statutory barriers to the ability of tribal governments to integrate more effectively their employment, training, and related services in a manner consistent with the purposes of this Act.]

**SEC. [17.] 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,] *The Secretary of Labor, in consultation with the Secretary, Indian tribes, and the Director of the Bureau of the Census, shall* develop, maintain and publish, not less than biennially, a report on the population[, by gender,] 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 and Alaska Native population throughout the entire 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 and 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 12 months after the date of enactment of this Act.

**SEC. [18.] 16. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ECONOMIC DEVELOPMENT PROGRAMS.**

Any State with an economic development program targeted to Indian tribes 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.

\* \* \* \* \*

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**U.S. House of Representatives**

**Committee on Natural Resources**

Washington, DC 20515

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 DEMOCRATIC STAFF DIRECTOR

12 September 2016

The Honorable Bob Goodlatte  
 Chairman  
 Committee on the Judiciary  
 2138 Rayburn HOB  
 Washington, DC 20515

Dear Mr. Chairman:

On March 16, 2016, the Committee on Natural Resources favorably reported as amended H.R. 329, the Indian Employment, Training and Related Services Consolidation Act of 2016, by unanimous consent. My staff has shared the reported text of the bill with your staff.

The reported bill contains provisions regarding judicial review, a matter within the jurisdiction of the Committee on the Judiciary. Specifically, section 9 of the bill amends section 8(d) of the Indian Employment, Training and Related Services Act of 1992 to provide for judicial review of the Secretary of the Interior's denial of a plan. I understand that you have concerns regarding this provision. Based on my agreement to drop this text from the bill when it is considered by the House of Representatives, I ask that the Committee on the Judiciary not seek a sequential referral of the bill so that it may be scheduled by the Majority Leader before the House adjourns for the election. This concession in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary and the issues raised by the omitted text are within the scope of the conference, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include this letter and any response in the Congressional Record to document this agreement.

Thank you for your consideration of my request, and I look forward to further opportunities to work with you this Congress.

Sincerely,



Rob Bishop  
 Chairman  
 Committee on Natural Resources

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Kevin McCarthy, Majority Leader  
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources  
The Honorable Thomas J. Wickham, Jr., Parliamentarian

