

116TH CONGRESS
1ST SESSION

S. 212

To amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000, the Buy Indian Act, and the Native American Programs Act of 1974 to provide industry and economic development opportunities to Indian communities.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2019

Mr. HOEVEN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000, the Buy Indian Act, and the Native American Programs Act of 1974 to provide industry and economic development opportunities to Indian communities.

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 “Indian Community
5 Economic Enhancement Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

(1)(A) to bring industry and economic development to Indian communities, Indian Tribes must overcome a number of barriers, including—

(i) geographical location;

(ii) lack of infrastructure or capacity;

(iii) lack of sufficient collateral and capital;

and

(iv) regulatory bureaucracy relating to—

(I) development; and

(II) access to services provided by the

Federal Government; and

(B) the barriers described in subparagraph (A) often add to the cost of doing business in Indian communities;

(2) Indian Tribes—

(A) enact laws and exercise sovereign governmental powers;

(B) determine policy for the benefit of Tribal members; and

(C) produce goods and services for consumers;

(3) the Federal Government has—

(A) an important government-to-government relationship with Indian Tribes; and

1 (B) a role in facilitating healthy and sus-
2 tainable Tribal economies;

3 (4) the input of Indian Tribes in developing
4 Federal policy and programs leads to more meaning-
5 ful and effective measures to assist Indian Tribes
6 and Indian entrepreneurs in building Tribal econo-
7 mies;

8 (5)(A) many components of Tribal infrastruc-
9 ture need significant repair or replacement; and

10 (B) access to private capital for projects in In-
11 dian communities—

12 (i) may not be available; or

13 (ii) may come at a higher cost than such
14 access for other projects;

15 (6)(A) Federal capital improvement programs,
16 such as those that facilitate tax-exempt bond financ-
17 ing and loan guarantees, are tools that help improve
18 or replace crumbling infrastructure;

19 (B) lack of parity in treatment of an Indian
20 Tribe as a governmental entity under Federal tax
21 and certain other regulatory laws impedes, in part,
22 the ability of Indian Tribes to raise capital through
23 issuance of tax exempt debt, invest as an accredited
24 investor, and benefit from other investment incen-

1 tives accorded to State and local governmental enti-
2 ties; and

3 (C) as a result of the disparity in treatment of
4 Indian Tribes described in subparagraph (B), inves-
5 tors may avoid financing, or demand a premium to
6 finance, projects in Indian communities, making the
7 projects more costly or inaccessible;

8 (7) there are a number of Federal loan guar-
9 antee programs available to facilitate financing of
10 business, energy, economic, housing, and community
11 development projects in Indian communities, and
12 those programs may support public-private partner-
13 ships for infrastructure development, but improve-
14 ments and support are needed for those programs
15 specific to Indian communities to facilitate more ef-
16 fectively private financing for infrastructure and
17 other urgent development needs; and

18 (8)(A) most real property held by Indian Tribes
19 is trust or restricted land that essentially cannot be
20 held as collateral; and

21 (B) while creative solutions, such as leasehold
22 mortgages, have been developed in response to the
23 problem identified in subparagraph (A), some solu-
24 tions remain subject to review and approval by the

1 Bureau of Indian Affairs, adding additional costs
2 and delay to Tribal projects.

3 **SEC. 3. NATIVE AMERICAN BUSINESS DEVELOPMENT,**
4 **TRADE PROMOTION, AND TOURISM ACT OF**
5 **2000.**

6 (a) FINDINGS; PURPOSES.—Section 2 of the Native
7 American Business Development, Trade Promotion, and
8 Tourism Act of 2000 (25 U.S.C. 4301) is amended by
9 adding at the end the following:

10 “(c) APPLICABILITY TO INDIAN-OWNED BUSI-
11 NESSES.—The findings and purposes in subsections (a)
12 and (b) shall apply to any Indian-owned business gov-
13 erned—

14 “(1) by Tribal laws regulating trade or com-
15 merce on Indian lands; or

16 “(2) pursuant to section 5 of the Act of August
17 15, 1876 (19 Stat. 200, chapter 289; 25 U.S.C.
18 261).”.

19 (b) DEFINITIONS.—Section 3 of the Native American
20 Business Development, Trade Promotion, and Tourism
21 Act of 2000 (25 U.S.C. 4302) is amended—

22 (1) by redesignating paragraphs (1) through
23 (6) and paragraphs (7) through (9), as paragraphs
24 (2) through (7) and paragraphs (9) through (11),
25 respectively;

1 (2) by inserting before paragraph (2) (as redes-
2 ignated by paragraph (1)) the following:

3 “(1) DIRECTOR.—The term ‘Director’ means
4 the Director of Native American Business Develop-
5 ment appointed pursuant to section 4(a)(2).”; and

6 (3) by inserting after paragraph (7) (as redesign-
7 ated by paragraph (1)) the following:

8 “(8) OFFICE.—The term ‘Office’ means the Of-
9 fice of Native American Business Development es-
10 tablished by section 4(a)(1).”.

11 (c) OFFICE OF NATIVE AMERICAN BUSINESS DEVEL-
12 OPMENT.—Section 4 of the Native American Business De-
13 velopment, Trade Promotion, and Tourism Act of 2000
14 (25 U.S.C. 4303) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (1)—

17 (i) by striking “Department of Com-
18 merce” and inserting “Office of the Sec-
19 retary”; and

20 (ii) by striking “(referred to in this
21 Act as the ‘Office’)”; and

22 (B) in paragraph (2), in the first sentence,
23 by striking “(referred to in this Act as the ‘Di-
24 rector’)”; and

25 (2) by adding at the end the following:

1 “(c) DUTIES OF DIRECTOR.—

2 “(1) IN GENERAL.—The Director shall serve
3 as—

4 “(A) the program and policy advisor to the
5 Secretary with respect to the trust and govern-
6 mental relationship between the United States
7 and Indian Tribes; and

8 “(B) the point of contact for Indian
9 Tribes, Tribal organizations, and Indians re-
10 garding—

11 “(i) policies and programs of the De-
12 partment of Commerce; and

13 “(ii) other matters relating to eco-
14 nomic development and doing business in
15 Indian lands.

16 “(2) DEPARTMENTAL COORDINATION.—The Di-
17 rector shall coordinate with all offices and agencies
18 within the Department of Commerce to ensure that
19 each office and agency has an accountable process to
20 ensure—

21 “(A) meaningful and timely coordination
22 and assistance, as required by this Act; and

23 “(B) consultation with Indian Tribes re-
24 garding the policies, programs, assistance, and
25 activities of the offices and agencies.

1 “(3) OFFICE OPERATIONS.—There are author-
 2 ized to be appropriated to carry out this section not
 3 more than \$2,000,000 for each fiscal year.”.

4 (d) INDIAN COMMUNITY DEVELOPMENT INITIA-
 5 TIVES.—The Native American Business Development,
 6 Trade Promotion, and Tourism Act of 2000 is amended—

7 (1) by redesignating section 8 (25 U.S.C. 4307)
 8 as section 10; and

9 (2) by inserting after section 7 (25 U.S.C.
 10 4306) the following:

11 **“SEC. 8. INDIAN COMMUNITY DEVELOPMENT INITIATIVES.**

12 “(a) INTERAGENCY COORDINATION.—Not later than
 13 1 year after the enactment of this section, the Secretary,
 14 the Secretary of the Interior, and the Secretary of the
 15 Treasury shall coordinate—

16 “(1) to develop initiatives that—

17 “(A) encourage, promote, and provide edu-
 18 cation regarding investments in Indian commu-
 19 nities through—

20 “(i) the loan guarantee program of
 21 Bureau of Indian Affairs under section
 22 201 of the Indian Financing Act of 1974
 23 (25 U.S.C. 1481);

24 “(ii) programs carried out using
 25 amounts in the Community Development

1 Financial Institutions Fund established
2 under section 104(a) of the Community
3 Development Banking and Financial Insti-
4 tutions Act of 1994 (12 U.S.C. 4703(a));
5 and

6 “(iii) other capital development pro-
7 grams;

8 “(B) examine and develop alternatives that
9 would qualify as collateral for financing in In-
10 dian communities; and

11 “(C) provide entrepreneur and other train-
12 ing relating to economic development through
13 tribally controlled colleges and universities and
14 other Indian organizations with experience in
15 providing such training;

16 “(2) to consult with Indian Tribes and with the
17 Securities and Exchange Commission to study, and
18 collaborate to establish, regulatory changes nec-
19 essary to qualify an Indian Tribe as an accredited
20 investor for the purposes of sections 230.500
21 through 230.508 of title 17, Code of Federal Regu-
22 lations (or successor regulations), consistent with the
23 goals of promoting capital formation and ensuring
24 qualifying Indian Tribes have the ability to with-
25 stand investment loss, on a basis comparable to

1 other legal entities that qualify as accredited inves-
2 tors who are not natural persons;

3 “(3) to identify regulatory, legal, or other bar-
4 riers to increasing investment, business, and eco-
5 nomic development, including qualifying or approv-
6 ing collateral structures, measurements of economic
7 strength, and contributions of Indian economies in
8 Indian communities through the Authority estab-
9 lished under section 4 of the Indian Tribal Regu-
10 latory Reform and Business Development Act of
11 2000 (25 U.S.C. 4301 note);

12 “(4) to ensure consultation with Indian Tribes
13 regarding increasing investment in Indian commu-
14 nities and the development of the report required in
15 paragraph (5); and

16 “(5) not less than once every 2 years, to pro-
17 vide a report to Congress regarding—

18 “(A) improvements to Indian communities
19 resulting from such initiatives and rec-
20 ommendations for promoting sustained growth
21 of the Tribal economies;

22 “(B) results of the study and collaboration
23 regarding the necessary changes referenced in
24 paragraph (2) and the impact of allowing In-

1 dian Tribes to qualify as an accredited investor;
2 and

3 “(C) the identified regulatory, legal, and
4 other barriers referenced in paragraph (3).

5 “(b) WAIVER.—For assistance provided pursuant to
6 section 108 of the Community Development Banking and
7 Financial Institutions Act of 1994 (12 U.S.C. 4707) to
8 benefit Native Community Development Financial Institu-
9 tions, as defined by the Secretary of the Treasury, section
10 108(e) of such Act shall not apply.

11 “(c) INDIAN ECONOMIC DEVELOPMENT FEASIBILITY
12 STUDY.—

13 “(1) IN GENERAL.—The Government Account-
14 ability Office shall conduct a study and, not later
15 than 18 months after the date of enactment of this
16 subsection, submit to the Committee on Indian Af-
17 fairs of the Senate and the Committee on Natural
18 Resources of the House of Representatives a report
19 on the findings of the study and recommendations.

20 “(2) CONTENTS.—The study shall include an
21 assessment of each of the following:

22 “(A) IN GENERAL.—The study shall assess
23 current Federal capitalization and related pro-
24 grams and services that are available to assist
25 Indian communities with business and economic

1 development, including manufacturing, physical
2 infrastructure (such as telecommunications and
3 broadband), community development, and facili-
4 ties construction for such purposes. For each of
5 the Federal programs and services identified,
6 the study shall assess the current use and de-
7 mand by Indian Tribes, individuals, businesses,
8 and communities of the programs, the capital
9 needs of Indian Tribes, businesses, and commu-
10 nities related to economic development, and the
11 extent that similar programs have been used to
12 assist non-Indian communities compared to the
13 extent used for Indian communities.

14 “(B) FINANCING ASSISTANCE.—The study
15 shall assess and quantify the extent of assist-
16 ance provided to non-Indian borrowers and to
17 Indian (both Tribal and individual) borrowers
18 (including information about such assistance as
19 a percentage of need for Indian borrowers and
20 for non-Indian borrowers, assistance to Indian
21 borrowers and to non-Indian borrowers as a
22 percentage of total applicants, and such assist-
23 ance to Indian borrowers as individuals as com-
24 pared to such assistance to Indian Tribes)

through the loan programs, the loan guarantee programs, or bond guarantee programs of the—

“(i) Department of the Interior;

“(ii) Department of Agriculture;

“(iii) Department of Housing and Urban Development;

“(iv) Department of Energy;

“(v) Small Business Administration;

and

“(vi) Community Development Financial Institutions Fund of the Department of the Treasury.

“(C) TAX INCENTIVES.—The study shall assess and quantify the extent of the assistance and allocations afforded for non-Indian projects and for Indian projects pursuant to each of the following tax incentive programs:

“(i) New market tax credit.

“(ii) Low income housing tax credit.

“(iii) Investment tax credit.

“(iv) Renewable energy tax incentives.

“(v) Accelerated depreciation.

“(D) TRIBAL INVESTMENT INCENTIVE.—

The study shall assess various alternative incentives that could be provided to enable and en-

1 courage Tribal governments to invest in an In-
 2 dian community development investment fund
 3 or bank.”.

4 (e) CONFORMING AND TECHNICAL AMENDMENTS.—
 5 The Native American Business Development, Trade Pro-
 6 motion, and Tourism Act of 2000 (25 U.S.C. 4301 et seq.)
 7 is amended—

8 (1) in section 3—

9 (A) in each of paragraphs (1), (4), and
 10 (8), by striking “tribe” and inserting “Tribe”;
 11 and

12 (B) in paragraph (6), by striking “The
 13 term ‘Indian tribe’ has the meaning given that
 14 term” and inserting “The term ‘Indian Tribe’
 15 has the meaning given the term ‘Indian tribe’”;

16 (2) by striking “tribes” each place the term ap-
 17 pears and inserting “Tribes”; and

18 (3) by striking “tribal” each place the term ap-
 19 pears and inserting “Tribal”.

20 **SEC. 4. BUY INDIAN ACT.**

21 Section 23 of the Act of June 25, 1910 (commonly
 22 known as the “Buy Indian Act”) (36 Stat. 861, chapter
 23 431; 25 U.S.C. 47), is amended to read as follows:

1 **“SEC. 23. EMPLOYMENT OF INDIAN LABOR AND PURCHASE**
 2 **OF PRODUCTS OF INDIAN INDUSTRY; PAR-**
 3 **TICIPATION IN MENTOR-PROTEGE PROGRAM.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) INDIAN ECONOMIC ENTERPRISE.—The
 6 term ‘Indian economic enterprise’ has the meaning
 7 given the term in section 1480.201 of title 48, Code
 8 of Federal Regulations (or successor regulations).

9 “(2) MENTOR FIRM; PROTEGE FIRM.—The
 10 terms ‘mentor firm’ and ‘protege firm’ have the
 11 meanings given those terms in section 831(c) of the
 12 National Defense Authorization Act for Fiscal Year
 13 1991 (10 U.S.C. 2302 note; Public Law 101–510).

14 “(3) SECRETARIES.—The term ‘Secretaries’
 15 means—

16 “(A) the Secretary of the Interior; and

17 “(B) the Secretary of Health and Human
 18 Services.

19 “(b) ENTERPRISE DEVELOPMENT.—

20 “(1) IN GENERAL.—Unless determined by one
 21 of the Secretaries to be impracticable and unreason-
 22 able—

23 “(A) Indian labor shall be employed; and

24 “(B) purchases of Indian industry prod-
 25 ucts (including printing and facilities construc-
 26 tion, notwithstanding any other provision of

1 law) may be made in open market by the Secre-
2 taries.

3 “(2) MENTOR-PROTEGE PROGRAM.—

4 “(A) IN GENERAL.—Participation in the
5 Mentor-Protege Program established under sec-
6 tion 831(a) of the National Defense Authoriza-
7 tion Act for Fiscal Year 1991 (10 U.S.C. 2302
8 note; Public Law 101–510) or receipt of assist-
9 ance under a developmental assistance agree-
10 ment under that program shall not render any
11 individual or entity involved in the provision of
12 Indian labor or an Indian industry product in-
13 eligible to receive assistance under this section.

14 “(B) TREATMENT.—For purposes of this
15 section, no determination of affiliation or con-
16 trol (whether direct or indirect) may be found
17 between a protege firm and a mentor firm on
18 the basis that the mentor firm has provided, or
19 agreed to provide, to the protege firm, pursuant
20 to a mentor-protege agreement, any form of de-
21 velopmental assistance described in section
22 831(f) of the National Defense Authorization
23 Act for Fiscal Year 1991 (10 U.S.C. 2302 note;
24 Public Law 101–510).

1 “(c) IMPLEMENTATION.—In carrying out this sec-
2 tion, the Secretaries shall—

3 “(1) conduct outreach to Indian industrial enti-
4 ties;

5 “(2) provide training;

6 “(3) promulgate regulations in accordance with
7 this section and with the regulations under part
8 1480 of title 48, Code of Federal Regulations (or
9 successor regulations), to harmonize the procure-
10 ment procedures of the Department of the Interior
11 and the Department of Health and Human Services,
12 to the maximum extent practicable;

13 “(4) require regional offices of the Bureau of
14 Indian Affairs and the Indian Health Service to ag-
15 gregate data regarding compliance with this section;

16 “(5) require procurement management reviews
17 by their respective Departments to include a review
18 of the implementation of this section; and

19 “(6) consult with Indian Tribes, Indian indus-
20 trial entities, and other stakeholders regarding meth-
21 ods to facilitate compliance with—

22 “(A) this section; and

23 “(B) other small business or procurement
24 goals.

25 “(d) REPORT.—

1 “(1) IN GENERAL.—Not later than 1 year after
 2 the date of enactment of this section, and not less
 3 frequently than once every 2 years thereafter, each
 4 of the Secretaries shall submit to the Committee on
 5 Indian Affairs of the Senate and the Committee on
 6 Natural Resources of the House of Representatives
 7 a report describing, during the period covered by the
 8 report, the implementation of this section by each of
 9 the respective Secretaries.

10 “(2) CONTENTS.—Each report under this sub-
 11 section shall include, for each fiscal year during the
 12 period covered by the report—

13 “(A) the names of each agency under the
 14 respective jurisdiction of each of the Secretaries
 15 to which this section has been applied, and ef-
 16 forts made by additional agencies within the
 17 Secretaries’ respective Departments to use the
 18 procurement procedures under this Act;

19 “(B) a summary of the types of purchases
 20 made from, and contracts (including any rel-
 21 evant modifications, extensions, or renewals)
 22 awarded to, Indian economic enterprises, ex-
 23 pressed by agency region;

24 “(C) a description of the percentage in-
 25 crease or decrease in total dollar value and

1 number of purchases and awards made within
2 each agency region, as compared to the totals
3 of the region for the preceding fiscal year;

4 “(D) a description of the methods used by
5 applicable contracting officers and employees to
6 conduct market searches to identify qualified
7 Indian economic enterprises;

8 “(E) a summary of all deviations granted
9 under section 1480.403 of title 48, Code of
10 Federal Regulations (or successor regulations),
11 including a description of—

12 “(i) the types of alternative procure-
13 ment methods used, including any Indian
14 owned businesses reported under other
15 procurement goals; and

16 “(ii) the dollar value of any awards
17 made pursuant to those deviations;

18 “(F) a summary of all determinations
19 made to provide awards to Indian economic en-
20 terprises, including a description of the dollar
21 value of the awards;

22 “(G) a description or summary of the total
23 number and value of all purchases of, and con-
24 tracts awarded for, supplies, services, and con-
25 struction (including the percentage increase or

1 decrease, as compared to the preceding fiscal
2 year) from—

3 “(i) Indian economic enterprises; and

4 “(ii) non-Indian economic enterprises;

5 “(H) any administrative, procedural, legal,

6 or other barriers to achieving the purposes of

7 this section, together with recommendations for

8 legislative or administrative actions to address

9 those barriers; and

10 “(I) for each agency region—

11 “(i) the total amount spent on pur-

12 chases made from, and contracts awarded

13 to, Indian economic enterprises; and

14 “(ii) a comparison of the amount de-

15 scribed in clause (i) to the total amount

16 that the agency region would likely have

17 spent on the same purchases made from a

18 non-Indian economic enterprise or con-

19 tracts awarded to a non-Indian economic

20 enterprise.

21 “(e) GOALS.—Each agency shall establish an annual

22 minimum percentage goal for procurement in compliance

23 with this section.”.

1 **SEC. 5. NATIVE AMERICAN PROGRAMS ACT OF 1974.**

2 (a) FINANCIAL ASSISTANCE FOR NATIVE AMERICAN
3 PROJECTS.—Section 803 of the Native American Pro-
4 grams Act of 1974 (42 U.S.C. 2991b) is amended—

5 (1) by redesignating subsections (b) through (d)
6 as subsections (c) through (e), respectively; and

7 (2) by inserting after subsection (a) the fol-
8 lowing:

9 “(b) ECONOMIC DEVELOPMENT.—

10 “(1) IN GENERAL.—The Commissioner may
11 provide assistance under subsection (a) for projects
12 relating to the purposes of this title to a Native com-
13 munity development financial institution, as defined
14 by the Secretary of the Treasury.

15 “(2) PRIORITY.—With regard to not less than
16 50 percent of the total amount available for assist-
17 ance under this section, the Commissioner shall give
18 priority to any application seeking assistance for—

19 “(A) the development of a Tribal code or
20 court system for purposes of economic develop-
21 ment, including commercial codes, training for
22 court personnel, regulation pursuant to section
23 5 of the Act of August 15, 1876 (19 Stat. 200,
24 chapter 289; 25 U.S.C. 261), and the develop-
25 ment of nonprofit subsidiaries or other Tribal
26 business structures;

1 “(B) the development of a community de-
 2 velopment financial institution, including train-
 3 ing and administrative expenses; or

4 “(C) the development of a Tribal master
 5 plan for community and economic development
 6 and infrastructure.”.

7 (b) TECHNICAL ASSISTANCE AND TRAINING.—Sec-
 8 tion 804 of the Native American Programs Act of 1974
 9 (42 U.S.C. 2991c) is amended—

10 (1) in the matter preceding paragraph (1), by
 11 striking “The Commissioner” and inserting the fol-
 12 lowing:

13 “(a) IN GENERAL.—The Commissioner”; and

14 (2) by adding at the end the following:

15 “(b) PRIORITY.—In providing assistance under sub-
 16 section (a), the Commissioner shall give priority to any
 17 application described in section 803(b)(2).”.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
 19 816 of the Native American Programs Act of 1974 (42
 20 U.S.C. 2992d) is amended—

21 (1) by striking “803(d)” each place it appears
 22 and inserting “803(e)”; and

23 (2) in subsection (a)—

24 (A) by striking “such sums as may be nec-
 25 essary” and inserting “\$34,000,000”; and

1 (B) by striking “1999, 2000, 2001, and
2 2002” and inserting “2020 through 2024”.

3 (d) CONFORMING AND TECHNICAL AMENDMENTS.—
4 The Native American Programs Act of 1974 (42 U.S.C.
5 2991 et seq.) is amended—

6 (1) by striking “tribe” each place the term ap-
7 pears and inserting “Tribe”;

8 (2) by striking “tribes” each place the term ap-
9 pears and inserting “Tribes”; and

10 (3) by striking “tribal” each place the term ap-
11 pears and inserting “Tribal”.

○