

Calendar No. 63

116TH CONGRESS
1ST SESSION

S. 212

[Report No. 116–28]

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

APRIL 8, 2019

Reported by Mr. HOEVEN, without amendment

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Community
3 Economic Enhancement Act of 2019”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1)(A) to bring industry and economic develop-
7 ment to Indian communities, Indian Tribes must
8 overcome a number of barriers, including—

9 (i) geographical location;

10 (ii) lack of infrastructure or capacity;

11 (iii) lack of sufficient collateral and capital;

12 and

13 (iv) regulatory bureaucracy relating to—

14 (I) development; and

15 (II) access to services provided by the

16 Federal Government; and

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

20 (2) Indian Tribes—

21 (A) enact laws and exercise sovereign gov-
22 ernmental powers;

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

25 (C) produce goods and services for con-
26 sumers;

1 (3) the Federal Government has—

2 (A) an important government-to-govern-
3 ment relationship with Indian Tribes; and

4 (B) a role in facilitating healthy and sus-
5 tainable Tribal economies;

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

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

13 (B) access to private capital for projects in In-
14 dian communities—

15 (i) may not be available; or

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

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

22 (B) lack of parity in treatment of an Indian
23 Tribe as a governmental entity under Federal tax
24 and certain other regulatory laws impedes, in part,
25 the ability of Indian Tribes to raise capital through

1 issuance of tax exempt debt, invest as an accredited
2 investor, and benefit from other investment incen-
3 tives accorded to State and local governmental enti-
4 ties; and

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

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

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

23 (B) while creative solutions, such as leasehold
24 mortgages, have been developed in response to the
25 problem identified in subparagraph (A), some solu-

1 tions remain subject to review and approval by the
 2 Bureau of Indian Affairs, adding additional costs
 3 and delay to Tribal projects.

4 **SEC. 3. NATIVE AMERICAN BUSINESS DEVELOPMENT,**
 5 **TRADE PROMOTION, AND TOURISM ACT OF**
 6 **2000.**

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

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

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

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

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

23 (1) by redesignating paragraphs (1) through
 24 (6) and paragraphs (7) through (9), as paragraphs

1 (2) through (7) and paragraphs (9) through (11),
 2 respectively;

3 (2) by inserting before paragraph (2) (as redes-
 4 igned by paragraph (1)) the following:

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

8 (3) by inserting after paragraph (7) (as redesign-
 9 nated by paragraph (1)) the following:

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

13 (c) OFFICE OF NATIVE AMERICAN BUSINESS DEVEL-
 14 OPMENT.—Section 4 of the Native American Business De-
 15 velopment, Trade Promotion, and Tourism Act of 2000
 16 (25 U.S.C. 4303) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (1)—

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

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

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

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

5 “(c) DUTIES OF DIRECTOR.—

6 “(1) IN GENERAL.—The Director shall serve
 7 as—

8 “(A) the program and policy advisor to the
 9 Secretary with respect to the trust and govern-
 10 mental relationship between the United States
 11 and Indian Tribes; and

12 “(B) the point of contact for Indian
 13 Tribes, Tribal organizations, and Indians re-
 14 garding—

15 “(i) policies and programs of the De-
 16 partment of Commerce; and

17 “(ii) other matters relating to eco-
 18 nomic development and doing business in
 19 Indian lands.

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

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

3 “(B) consultation with Indian Tribes re-
4 garding the policies, programs, assistance, and
5 activities of the offices and agencies.

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

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

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

14 (2) by inserting after section 7 (25 U.S.C.
15 4306) the following:

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

17 “(a) INTERAGENCY COORDINATION.—Not later than
18 1 year after the enactment of this section, the Secretary,
19 the Secretary of the Interior, and the Secretary of the
20 Treasury shall coordinate—

21 “(1) to develop initiatives that—

22 “(A) encourage, promote, and provide edu-
23 cation regarding investments in Indian commu-
24 nities through—

1 “(i) the loan guarantee program of
2 Bureau of Indian Affairs under section
3 201 of the Indian Financing Act of 1974
4 (25 U.S.C. 1481);

5 “(ii) programs carried out using
6 amounts in the Community Development
7 Financial Institutions Fund established
8 under section 104(a) of the Community
9 Development Banking and Financial Insti-
10 tutions Act of 1994 (12 U.S.C. 4703(a));
11 and

12 “(iii) other capital development pro-
13 grams;

14 “(B) examine and develop alternatives that
15 would qualify as collateral for financing in In-
16 dian communities; and

17 “(C) provide entrepreneur and other train-
18 ing relating to economic development through
19 tribally controlled colleges and universities and
20 other Indian organizations with experience in
21 providing such training;

22 “(2) to consult with Indian Tribes and with the
23 Securities and Exchange Commission to study, and
24 collaborate to establish, regulatory changes nec-
25 essary to qualify an Indian Tribe as an accredited

1 investor for the purposes of sections 230.500
2 through 230.508 of title 17, Code of Federal Regu-
3 lations (or successor regulations), consistent with the
4 goals of promoting capital formation and ensuring
5 qualifying Indian Tribes have the ability to with-
6 stand investment loss, on a basis comparable to
7 other legal entities that qualify as accredited inves-
8 tors who are not natural persons;

9 “(3) to identify regulatory, legal, or other bar-
10 riers to increasing investment, business, and eco-
11 nomic development, including qualifying or approv-
12 ing collateral structures, measurements of economic
13 strength, and contributions of Indian economies in
14 Indian communities through the Authority estab-
15 lished under section 4 of the Indian Tribal Regu-
16 latory Reform and Business Development Act of
17 2000 (25 U.S.C. 4301 note);

18 “(4) to ensure consultation with Indian Tribes
19 regarding increasing investment in Indian commu-
20 nities and the development of the report required in
21 paragraph (5); and

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

24 “(A) improvements to Indian communities
25 resulting from such initiatives and rec-

1 ommendations for promoting sustained growth
2 of the Tribal economies;

3 “(B) results of the study and collaboration
4 regarding the necessary changes referenced in
5 paragraph (2) and the impact of allowing In-
6 dian Tribes to qualify as an accredited investor;
7 and

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

10 “(b) WAIVER.—For assistance provided pursuant to
11 section 108 of the Community Development Banking and
12 Financial Institutions Act of 1994 (12 U.S.C. 4707) to
13 benefit Native Community Development Financial Institu-
14 tions, as defined by the Secretary of the Treasury, section
15 108(e) of such Act shall not apply.

16 “(c) INDIAN ECONOMIC DEVELOPMENT FEASIBILITY
17 STUDY.—

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

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

3 “(A) IN GENERAL.—The study shall assess
4 current Federal capitalization and related pro-
5 grams and services that are available to assist
6 Indian communities with business and economic
7 development, including manufacturing, physical
8 infrastructure (such as telecommunications and
9 broadband), community development, and facili-
10 ties construction for such purposes. For each of
11 the Federal programs and services identified,
12 the study shall assess the current use and de-
13 mand by Indian Tribes, individuals, businesses,
14 and communities of the programs, the capital
15 needs of Indian Tribes, businesses, and commu-
16 nities related to economic development, and the
17 extent that similar programs have been used to
18 assist non-Indian communities compared to the
19 extent used for Indian communities.

20 “(B) FINANCING ASSISTANCE.—The study
21 shall assess and quantify the extent of assist-
22 ance provided to non-Indian borrowers and to
23 Indian (both Tribal and individual) borrowers
24 (including information about such assistance as
25 a percentage of need for Indian borrowers and

for non-Indian borrowers, assistance to Indian borrowers and to non-Indian borrowers as a percentage of total applicants, and such assistance to Indian borrowers as individuals as compared 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.

1 “(iv) Renewable energy tax incentives.

2 “(v) Accelerated depreciation.

3 “(D) TRIBAL INVESTMENT INCENTIVE.—

4 The study shall assess various alternative incen-
5 tives that could be provided to enable and en-
6 courage Tribal governments to invest in an In-
7 dian community development investment fund
8 or bank.”.

9 (e) CONFORMING AND TECHNICAL AMENDMENTS.—

10 The Native American Business Development, Trade Pro-
11 motion, and Tourism Act of 2000 (25 U.S.C. 4301 et seq.)
12 is amended—

13 (1) in section 3—

14 (A) in each of paragraphs (1), (4), and
15 (8), by striking “tribe” and inserting “Tribe”;
16 and

17 (B) in paragraph (6), by striking “The
18 term ‘Indian tribe’ has the meaning given that
19 term” and inserting “The term ‘Indian Tribe’
20 has the meaning given the term ‘Indian tribe’”;

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

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

1 **SEC. 4. BUY INDIAN ACT.**

2 Section 23 of the Act of June 25, 1910 (commonly
3 known as the “Buy Indian Act”) (36 Stat. 861, chapter
4 431; 25 U.S.C. 47), is amended to read as follows:

5 **“SEC. 23. EMPLOYMENT OF INDIAN LABOR AND PURCHASE**
6 **OF PRODUCTS OF INDIAN INDUSTRY; PAR-**
7 **TICIPATION IN MENTOR-PROTEGE PROGRAM.**

8 “(a) DEFINITIONS.—In this section:

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

13 “(2) MENTOR FIRM; PROTEGE FIRM.—The
14 terms ‘mentor firm’ and ‘protege firm’ have the
15 meanings given those terms in section 831(c) of the
16 National Defense Authorization Act for Fiscal Year
17 1991 (10 U.S.C. 2302 note; Public Law 101–510).

18 “(3) SECRETARIES.—The term ‘Secretaries’
19 means—

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

21 “(B) the Secretary of Health and Human
22 Services.

23 “(b) ENTERPRISE DEVELOPMENT.—

24 “(1) IN GENERAL.—Unless determined by one
25 of the Secretaries to be impracticable and unreason-
26 able—

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

2 “(B) purchases of Indian industry prod-
3 ucts (including printing and facilities construc-
4 tion, notwithstanding any other provision of
5 law) may be made in open market by the Secre-
6 taries.

7 “(2) MENTOR-PROTEGE PROGRAM.—

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

18 “(B) TREATMENT.—For purposes of this
19 section, no determination of affiliation or con-
20 trol (whether direct or indirect) may be found
21 between a protege firm and a mentor firm on
22 the basis that the mentor firm has provided, or
23 agreed to provide, to the protege firm, pursuant
24 to a mentor-protege agreement, any form of de-
25 velopmental assistance described in section

1 831(f) of the National Defense Authorization
2 Act for Fiscal Year 1991 (10 U.S.C. 2302 note;
3 Public Law 101–510).

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

6 “(1) conduct outreach to Indian industrial enti-
7 ties;

8 “(2) provide training;

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

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

19 “(5) require procurement management reviews
20 by their respective Departments to include a review
21 of the implementation of this section; and

22 “(6) consult with Indian Tribes, Indian indus-
23 trial entities, and other stakeholders regarding meth-
24 ods to facilitate compliance with—

25 “(A) this section; and

1 “(B) other small business or procurement
2 goals.

3 “(d) REPORT.—

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

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

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

22 “(B) a summary of the types of purchases
23 made from, and contracts (including any rel-
24 evant modifications, extensions, or renewals)

1 awarded to, Indian economic enterprises, ex-
2 pressed by agency region;

3 “(C) a description of the percentage in-
4 crease or decrease in total dollar value and
5 number of purchases and awards made within
6 each agency region, as compared to the totals
7 of the region for the preceding fiscal year;

8 “(D) a description of the methods used by
9 applicable contracting officers and employees to
10 conduct market searches to identify qualified
11 Indian economic enterprises;

12 “(E) a summary of all deviations granted
13 under section 1480.403 of title 48, Code of
14 Federal Regulations (or successor regulations),
15 including a description of—

16 “(i) the types of alternative procure-
17 ment methods used, including any Indian
18 owned businesses reported under other
19 procurement goals; and

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

22 “(F) a summary of all determinations
23 made to provide awards to Indian economic en-
24 terprises, including a description of the dollar
25 value of the awards;

1 “(G) a description or summary of the total
2 number and value of all purchases of, and con-
3 tracts awarded for, supplies, services, and con-
4 struction (including the percentage increase or
5 decrease, as compared to the preceding fiscal
6 year) from—

7 “(i) Indian economic enterprises; and

8 “(ii) non-Indian economic enterprises;

9 “(H) any administrative, procedural, legal,
10 or other barriers to achieving the purposes of
11 this section, together with recommendations for
12 legislative or administrative actions to address
13 those barriers; and

14 “(I) for each agency region—

15 “(i) the total amount spent on pur-
16 chases made from, and contracts awarded
17 to, Indian economic enterprises; and

18 “(ii) a comparison of the amount de-
19 scribed in clause (i) to the total amount
20 that the agency region would likely have
21 spent on the same purchases made from a
22 non-Indian economic enterprise or con-
23 tracts awarded to a non-Indian economic
24 enterprise.

1 “(e) GOALS.—Each agency shall establish an annual
2 minimum percentage goal for procurement in compliance
3 with this section.”.

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

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

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

10 (2) by inserting after subsection (a) the fol-
11 lowing:

12 “(b) ECONOMIC DEVELOPMENT.—

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

18 “(2) PRIORITY.—With regard to not less than
19 50 percent of the total amount available for assist-
20 ance under this section, the Commissioner shall give
21 priority to any application seeking assistance for—

22 “(A) the development of a Tribal code or
23 court system for purposes of economic develop-
24 ment, including commercial codes, training for
25 court personnel, regulation pursuant to section

1 5 of the Act of August 15, 1876 (19 Stat. 200,
2 chapter 289; 25 U.S.C. 261), and the develop-
3 ment of nonprofit subsidiaries or other Tribal
4 business structures;

5 “(B) the development of a community de-
6 velopment financial institution, including train-
7 ing and administrative expenses; or

8 “(C) the development of a Tribal master
9 plan for community and economic development
10 and infrastructure.”.

11 (b) TECHNICAL ASSISTANCE AND TRAINING.—Sec-
12 tion 804 of the Native American Programs Act of 1974
13 (42 U.S.C. 2991c) is amended—

14 (1) in the matter preceding paragraph (1), by
15 striking “The Commissioner” and inserting the fol-
16 lowing:

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

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

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

22 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
23 816 of the Native American Programs Act of 1974 (42
24 U.S.C. 2992d) is amended—

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

3 (2) in subsection (a)—

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

6 (B) by striking “1999, 2000, 2001, and
7 2002” and inserting “2020 through 2024”.

8 (d) CONFORMING AND TECHNICAL AMENDMENTS.—

9 The Native American Programs Act of 1974 (42 U.S.C.
10 2991 et seq.) is amended—

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

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

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

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