

115TH CONGRESS
1ST SESSION

S. 1116

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

MAY 11, 2017

Mr. HOEVEN (for himself and Mr. MCCAIN) 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 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1)(A) to bring industry and economic develop-
2 ment to Indian communities, Indian tribes must
3 overcome a number of barriers, including—

4 (i) geographical location;

5 (ii) lack of infrastructure or capacity;

6 (iii) lack of sufficient collateral and capital;

7 and

8 (iv) regulatory bureaucracy relating to—

9 (I) development; and

10 (II) access to services provided by the

11 Federal Government; and

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

15 (2) Indian tribes—

16 (A) enact laws and exercise sovereign gov-
17 ernmental powers;

18 (B) determine policy for the benefit of trib-
19 al members; and

20 (C) produce goods and services for con-
21 sumers;

22 (3) the Federal Government has—

23 (A) an important government-to-govern-
24 ment 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 and
6 Indian entrepreneurs in building tribal economies;

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

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

11 (i) may not be available; or

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

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

18 (B) lack of parity in treatment of an Indian
19 tribe as a governmental entity under Federal tax
20 and certain other regulatory laws impedes, in part,
21 the ability of Indian tribes to raise capital through
22 issuance of tax exempt debt, invest as an accredited
23 investor, and benefit from other investment incen-
24 tives accorded to State and local governmental enti-
25 ties; and

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

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

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

19 (B) while creative solutions, such as leasehold
20 mortgages, have been developed in response to the
21 problem identified in subparagraph (A), some solu-
22 tions remain subject to review and approval by the
23 Bureau of Indian Affairs, adding additional costs
24 and delay to tribal projects.

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

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

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

12 “(1) by tribal laws regulating trade or com-
13 merce on Indian lands; or

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

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

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

24 (2) by inserting before paragraph (2) (as redес-
25 igned by paragraph (1)) the following:

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

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

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

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

13 (1) in subsection (a)—

14 (A) in paragraph (1)—

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

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

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

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

24 “(c) DUTIES OF DIRECTOR.—

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

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

7 “(B) the point of contact for Indian tribes,
8 tribal organizations, and Indians regarding—

9 “(i) policies and programs of the De-
10 partment of Commerce; and

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

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

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

21 “(B) consultation with Indian tribes re-
22 garding the policies, programs, assistance, and
23 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 determine,
18 and collaborate to establish, statutory or regulatory
19 changes necessary to qualify an Indian tribe as an
20 accredited investor for the purposes of sections
21 230.500 through 230.508 of title 17, Code of Fed-
22 eral Regulations (or successor regulations);

23 “(3) to identify regulatory, legal, or other bar-
24 riers to increasing investment, business, and eco-
25 nomic development, including qualifying or approv-

1 ing collateral structures, measurements of economic
2 strength, and contributions of Indian economies in
3 Indian communities through the Authority estab-
4 lished under section 4 of the Indian Tribal Regu-
5 latory Reform and Business Development Act of
6 2000 (25 U.S.C. 4301 note);

7 “(4) to ensure consultation with Indian tribes
8 regarding increasing investment in Indian commu-
9 nities and the development of the report required in
10 paragraph (5); and

11 “(5) not less than once every 3 years, to pro-
12 vide a report to Congress regarding improvements to
13 Indian communities resulting from such initiatives
14 and recommendations for promoting sustained
15 growth of the tribal economies.

16 “(b) WAIVER.—For assistance provided pursuant to
17 section 108 of the Community Development Banking and
18 Financial Institutions Act of 1994 (12 U.S.C. 4707) to
19 benefit Native Community Development Financial Institu-
20 tions, as defined by the Secretary of the Treasury, section
21 108(e) of such Act shall not apply.

22 “(c) INDIAN ECONOMIC DEVELOPMENT FEASIBILITY
23 STUDY.—

24 “(1) IN GENERAL.—The Government Account-
25 ability Office shall conduct a study and, not later

1 than 18 months after the date of enactment of this
2 subsection, submit to the Committee on Indian Af-
3 fairs of the Senate and the Committee on Natural
4 Resources of the House of Representatives a report
5 on the findings of the study and recommendations.

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

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

“(B) FINANCING ASSISTANCE.—The study shall assess and quantify the extent of assistance provided to non-Indian borrowers and to Indian (both tribal and individual) borrowers 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.

1 “(v) Accelerated depreciation.

2 “(D) TRIBAL INVESTMENT INCENTIVE.—

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

8 **SEC. 4. BUY INDIAN ACT.**

9 Section 23 of the Act of June 25, 1910 (commonly
 10 known as the “Buy Indian Act”) (36 Stat. 861, chapter
 11 431; 25 U.S.C. 47), is amended to read as follows:

12 **“SEC. 23. EMPLOYMENT OF INDIAN LABOR AND PURCHASE**
 13 **OF PRODUCTS OF INDIAN INDUSTRY; PAR-**
 14 **TICIPATION IN MENTOR-PROTEGE PROGRAM.**

15 “(a) DEFINITIONS.—In this section:

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

20 “(2) MENTOR FIRM; PROTEGE FIRM.—The
 21 terms ‘mentor firm’ and ‘protege firm’ have the
 22 meanings given those terms in section 831(c) of the
 23 National Defense Authorization Act for Fiscal Year
 24 1991 (10 U.S.C. 2302 note; Public Law 101–510).

1 “(3) SECRETARIES.—The term ‘Secretaries’
2 means—

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

4 “(B) the Secretary of Health and Human
5 Services.

6 “(b) ENTERPRISE DEVELOPMENT.—

7 “(1) IN GENERAL.—Unless determined by one
8 of the Secretaries to be impracticable and unreason-
9 able—

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

11 “(B) purchases of Indian industry prod-
12 ucts (including printing and facilities construc-
13 tion, notwithstanding any other provision of
14 law) may be made in open market by the Secre-
15 taries.

16 “(2) MENTOR-PROTEGE PROGRAM.—

17 “(A) IN GENERAL.—Participation in the
18 Mentor-Protege Program established under sec-
19 tion 831(a) of the National Defense Authoriza-
20 tion Act for Fiscal Year 1991 (10 U.S.C. 2302
21 note; Public Law 101–510) or receipt of assist-
22 ance under a developmental assistance agree-
23 ment under that program shall not render any
24 individual or entity involved in the provision of

1 Indian labor or an Indian industry product in-
2 eligible to receive assistance under this section.

3 “(B) TREATMENT.—For purposes of this
4 section, no determination of affiliation or con-
5 trol (whether direct or indirect) may be found
6 between a protege firm and a mentor firm on
7 the basis that the mentor firm has provided, or
8 agreed to provide, to the protege firm, pursuant
9 to a mentor-protege agreement, any form of de-
10 velopmental assistance described in section
11 831(f) of the National Defense Authorization
12 Act for Fiscal Year 1991 (10 U.S.C. 2302 note;
13 Public Law 101–510).

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

16 “(1) conduct outreach to Indian industrial enti-
17 ties;

18 “(2) provide training;

19 “(3) promulgate regulations in accordance with
20 this section and with the regulations under part
21 1480 of title 48, Code of Federal Regulations (or
22 successor regulations), to harmonize the procure-
23 ment procedures of the Department of the Interior
24 and the Department of Health and Human Services,
25 to the maximum extent practicable;

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

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

7 “(6) consult with Indian tribes, Indian indus-
8 trial entities, and other stakeholders regarding meth-
9 ods to facilitate compliance with—

10 “(A) this section; and

11 “(B) other small business or procurement
12 goals.

13 “(d) REPORT.—

14 “(1) IN GENERAL.—Not later than 1 year after
15 the date of enactment of this subsection, and not
16 less frequently than once every 2 years thereafter,
17 each of the Secretaries shall submit to the Com-
18 mittee on Indian Affairs of the Senate and the Com-
19 mittee on Natural Resources of the House of Rep-
20 resentatives a report describing, during the period
21 covered by the report, the implementation of this
22 section by each of the respective Secretaries.

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

1 “(A) the names of each agency under the
2 respective jurisdiction of each of the Secretaries
3 to which this section has been applied, and ef-
4 forts made by additional agencies within the
5 Secretaries’ respective Departments to use the
6 procurement procedures under this Act;

7 “(B) a summary of the types of purchases
8 made from, and contracts (including any rel-
9 evant modifications, extensions, or renewals)
10 awarded to, Indian economic enterprises, ex-
11 pressed by agency region;

12 “(C) a description of the percentage in-
13 crease or decrease in total dollar value and
14 number of purchases and awards made within
15 each agency region, as compared to the totals
16 of the region for the preceding fiscal year;

17 “(D) a description of the methods used by
18 applicable contracting officers and employees to
19 conduct market searches to identify qualified
20 Indian economic enterprises;

21 “(E) a summary of all deviations granted
22 under section 1480.403 of title 48, Code of
23 Federal Regulations (or successor regulations),
24 including a description of—

1 “(i) the types of alternative procure-
2 ment methods used, including any Indian
3 owned businesses reported under other
4 procurement goals; and

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

7 “(F) a summary of all determinations
8 made to provide awards to Indian economic en-
9 terprises, including a description of the dollar
10 value of the awards;

11 “(G) a description or summary of the total
12 number and value of all purchases of, and con-
13 tracts awarded for, supplies, services, and con-
14 struction (including the percentage increase or
15 decrease, as compared to the preceding fiscal
16 year) from—

17 “(i) Indian economic enterprises; and

18 “(ii) non-Indian economic enterprises;

19 and

20 “(H) any administrative, procedural, legal,
21 or other barriers to achieving the purposes of
22 this section, together with recommendations for
23 legislative or administrative actions to address
24 those barriers.

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), by striking “1999, 2000,
4 2001, and 2002” and inserting “2018 through
5 2022”.

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