

115TH CONGRESS
2D SESSION

S. 1116

AN ACT

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 2018”.

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 trib-
24 al 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 and
9 Indian entrepreneurs in building tribal economies;

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

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

14 (i) may not be available; or

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

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

21 (B) lack of parity in treatment of an Indian
22 tribe as a governmental entity under Federal tax
23 and certain other regulatory laws impedes, in part,
24 the ability of Indian tribes to raise capital through
25 issuance of tax exempt debt, invest as an accredited

1 investor, and benefit from other investment incen-
2 tives accorded to State and local governmental enti-
3 ties; and

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

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

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

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

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

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

(3) by inserting after paragraph (7) (as redesignated by paragraph (1)) the following:

“(8) OFFICE.—The term ‘Office’ means the Office of Native American Business Development established by section 4(a)(1).”.

(c) OFFICE OF NATIVE AMERICAN BUSINESS DEVELOPMENT.—Section 4 of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (25 U.S.C. 4303) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “Department of Commerce” and inserting “Office of the Secretary”; and

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

(B) in paragraph (2), in the first sentence, by striking “(referred to in this Act as the ‘Director’)”; and

(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 tribes,
9 tribal organizations, and Indians regarding—

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

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

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

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

22 “(B) consultation with Indian tribes re-
23 garding the policies, programs, assistance, and
24 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 in-
20 vestor for the purposes of sections 230.500 through
21 230.508 of title 17, Code of Federal Regulations (or
22 successor regulations), consistent with the goals of
23 promoting capital formation and ensuring qualifying
24 Indian tribes have the ability to withstand invest-
25 ment loss, on a basis comparable to other legal enti-

1 ties that qualify as accredited investors who are not
2 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 **SEC. 4. BUY INDIAN ACT.**

5 Section 23 of the Act of June 25, 1910 (commonly
 6 known as the “Buy Indian Act”) (36 Stat. 861, chapter
 7 431; 25 U.S.C. 47), is amended to read as follows:

8 **“SEC. 23. EMPLOYMENT OF INDIAN LABOR AND PURCHASE**
 9 **OF PRODUCTS OF INDIAN INDUSTRY; PAR-**
 10 **TICIPATION IN MENTOR-PROTEGE PROGRAM.**

11 “(a) DEFINITIONS.—In this section:

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

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

21 “(3) SECRETARIES.—The term ‘Secretaries’
 22 means—

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

24 “(B) the Secretary of Health and Human
 25 Services.

1 “(b) ENTERPRISE DEVELOPMENT.—

2 “(1) IN GENERAL.—Unless determined by one
3 of the Secretaries to be impracticable and unreason-
4 able—

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

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

11 “(2) MENTOR-PROTEGE PROGRAM.—

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

22 “(B) TREATMENT.—For purposes of this
23 section, no determination of affiliation or con-
24 trol (whether direct or indirect) may be found
25 between a protege firm and a mentor firm on

1 the basis that the mentor firm has provided, or
2 agreed to provide, to the protege firm, pursuant
3 to a mentor-protege agreement, any form of de-
4 velopmental assistance described in section
5 831(f) of the National Defense Authorization
6 Act for Fiscal Year 1991 (10 U.S.C. 2302 note;
7 Public Law 101–510).

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

10 “(1) conduct outreach to Indian industrial enti-
11 ties;

12 “(2) provide training;

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

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

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

1 “(6) consult with Indian tribes, Indian indus-
2 trial entities, and other stakeholders regarding meth-
3 ods to facilitate compliance with—

4 “(A) this section; and

5 “(B) other small business or procurement
6 goals.

7 “(d) REPORT.—

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

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

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

1 “(B) a summary of the types of purchases
2 made from, and contracts (including any rel-
3 evant modifications, extensions, or renewals)
4 awarded to, Indian economic enterprises, ex-
5 pressed by agency region;

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

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

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

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

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

1 “(F) a summary of all determinations
2 made to provide awards to Indian economic en-
3 terprises, including a description of the dollar
4 value of the awards;

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

11 “(i) Indian economic enterprises; and

12 “(ii) non-Indian economic enterprises;

13 “(H) any administrative, procedural, legal,
14 or other barriers to achieving the purposes of
15 this section, together with recommendations for
16 legislative or administrative actions to address
17 those barriers; and

18 “(I) for each agency region—

19 “(i) the total amount spent on pur-
20 chases made from, and contracts awarded
21 to, Indian economic enterprises; and

22 “(ii) a comparison of the amount de-
23 scribed in clause (i) to the total amount
24 that the agency region would likely have
25 spent on the same purchases made from a

1 non-Indian economic enterprise or con-
 2 tracts awarded to a non-Indian economic
 3 enterprise.

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

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

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

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

13 (2) by inserting after subsection (a) the fol-
 14 lowing:

15 “(b) ECONOMIC DEVELOPMENT.—

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

21 “(2) PRIORITY.—With regard to not less than
 22 50 percent of the total amount available for assist-
 23 ance under this section, the Commissioner shall give
 24 priority to any application seeking assistance for—

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

“(B) the development of a community development financial institution, including training and administrative expenses; or

“(C) the development of a tribal master plan for community and economic development and infrastructure.”.

(b) TECHNICAL ASSISTANCE AND TRAINING.—Section 804 of the Native American Programs Act of 1974 (42 U.S.C. 2991c) is amended—

(1) in the matter preceding paragraph (1), by striking “The Commissioner” and inserting the following:

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

(2) by adding at the end the following:

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

1 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
2 816 of the Native American Programs Act of 1974 (42
3 U.S.C. 2992d) is amended—
4 (1) by striking “803(d)” each place it appears
5 and inserting “803(e)”; and
6 (2) in subsection (a)—
7 (A) by striking “such sums as may be nec-
8 essary” and inserting “\$34,000,000”; and
9 (B) by striking “1999, 2000, 2001, and
10 2002” and inserting “2019 through 2023”.

Passed the Senate March 22, 2018.

Attest:

Secretary.

115TH CONGRESS
2^D SESSION

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AN ACT

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.