

Calendar No. 248

115TH CONGRESS
1ST SESSION

S. 1116

[Report No. 115–174]

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

OCTOBER 17, 2017

Reported by Mr. HOEVEN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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 2017”.

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;

1 (2) by inserting before paragraph (2) (as reded-
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 nated 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 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 determine,~~
 18 ~~and collaborate to establish, statutory or regulatory~~
 19 *to study, and collaborate to establish, regulatory*
 20 changes necessary to qualify an Indian tribe as an
 21 accredited investor for the purposes of sections
 22 230.500 through 230.508 of title 17, Code of Fed-
 23 eral Regulations (or successor regulations), *con-*
 24 *sistent with the goals of promoting capital formation*
 25 *and ensuring qualifying Indian tribes have the abil-*

1 *ity to withstand investment loss, on a basis com-*
2 *parable to other legal entities that qualify as accred-*
3 *ited investors who are not natural persons;*

4 “(3) to identify regulatory, legal, or other bar-

5 riers to increasing investment, business, and eco-

6 nomic development, including qualifying or approv-

7 ing collateral structures, measurements of economic

8 strength, and contributions of Indian economies in

9 Indian communities through the Authority estab-

10 lished under section 4 of the Indian Tribal Regu-

11 latory Reform and Business Development Act of

12 2000 (25 U.S.C. 4301 note);

13 “(4) to ensure consultation with Indian tribes

14 regarding increasing investment in Indian commu-

15 nities and the development of the report required in

16 paragraph (5); and

17 “(5) not less than once every 3 years, to pro-

18 vide a report to Congress regarding improvements to

19 Indian communities resulting from such initiatives

20 and recommendations for promoting sustained

21 growth of the tribal economies.

22 “(b) WAIVER.—For assistance provided pursuant to

23 section 108 of the Community Development Banking and

24 Financial Institutions Act of 1994 (12 U.S.C. 4707) to

25 benefit Native Community Development Financial Institu-

1 tions, as defined by the Secretary of the Treasury, section
2 108(e) of such Act shall not apply.

3 “(c) INDIAN ECONOMIC DEVELOPMENT FEASIBILITY
4 STUDY.—

5 “(1) IN GENERAL.—The Government Account-
6 ability Office shall conduct a study and, not later
7 than 18 months after the date of enactment of this
8 subsection, submit to the Committee on Indian Af-
9 fairs of the Senate and the Committee on Natural
10 Resources of the House of Representatives a report
11 on the findings of the study and recommendations.

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

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

1 needs of Indian tribes, businesses, and commu-
2 nities related to economic development, and the
3 extent that similar programs have been used to
4 assist non-Indian communities compared to the
5 extent used for Indian communities.

6 “(B) FINANCING ASSISTANCE.—The study
7 shall assess and quantify the extent of assist-
8 ance provided to non-Indian borrowers and to
9 Indian (both tribal and individual) borrowers
10 through the loan programs, the loan guarantee
11 programs, or bond guarantee programs of the—

12 “(i) Department of the Interior;

13 “(ii) Department of Agriculture;

14 “(iii) Department of Housing and
15 Urban Development;

16 “(iv) Department of Energy;

17 “(v) Small Business Administration;

18 and

19 “(vi) Community Development Finan-
20 cial Institutions Fund of the Department
21 of the Treasury.

22 “(C) TAX INCENTIVES.—The study shall
23 assess and quantify the extent of the assistance
24 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 encourage tribal governments to invest in an Indian community development investment fund or bank.”.

SEC. 4. BUY INDIAN ACT.

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

“SEC. 23. EMPLOYMENT OF INDIAN LABOR AND PURCHASE OF PRODUCTS OF INDIAN INDUSTRY; PARTICIPATION IN MENTOR-PROTEGE PROGRAM.

“(a) DEFINITIONS.—In this section:

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

1 “(2) MENTOR FIRM; PROTEGE FIRM.—The
2 terms ‘mentor firm’ and ‘protege firm’ have the
3 meanings given those terms in section 831(c) of the
4 National Defense Authorization Act for Fiscal Year
5 1991 (10 U.S.C. 2302 note; Public Law 101–510).

6 “(3) SECRETARIES.—The term ‘Secretaries’
7 means—

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

9 “(B) the Secretary of Health and Human
10 Services.

11 “(b) ENTERPRISE DEVELOPMENT.—

12 “(1) IN GENERAL.—Unless determined by one
13 of the Secretaries to be impracticable and unreason-
14 able—

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

16 “(B) purchases of Indian industry prod-
17 ucts (including printing and facilities construc-
18 tion, notwithstanding any other provision of
19 law) may be made in open market by the Secre-
20 taries.

21 “(2) MENTOR-PROTEGE PROGRAM.—

22 “(A) IN GENERAL.—Participation in the
23 Mentor-Protege Program established under sec-
24 tion 831(a) of the National Defense Authoriza-
25 tion Act for Fiscal Year 1991 (10 U.S.C. 2302

1 note; Public Law 101–510) or receipt of assist-
2 ance under a developmental assistance agree-
3 ment under that program shall not render any
4 individual or entity involved in the provision of
5 Indian labor or an Indian industry product in-
6 eligible to receive assistance under this section.

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

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

20 “(1) conduct outreach to Indian industrial enti-
21 ties;

22 “(2) provide training;

23 “(3) promulgate regulations in accordance with
24 this section and with the regulations under part
25 1480 of title 48, Code of Federal Regulations (or

1 successor regulations), to harmonize the procure-
2 ment procedures of the Department of the Interior
3 and the Department of Health and Human Services,
4 to the maximum extent practicable;

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

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

11 “(6) consult with Indian tribes, Indian indus-
12 trial entities, and other stakeholders regarding meth-
13 ods to facilitate compliance with—

14 “(A) this section; and

15 “(B) other small business or procurement
16 goals.

17 “(d) REPORT.—

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

1 covered by the report, the implementation of this
2 section by each of the respective Secretaries.

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

6 “(A) the names of each agency under the
7 respective jurisdiction of each of the Secretaries
8 to which this section has been applied, and ef-
9 forts made by additional agencies within the
10 Secretaries’ respective Departments to use the
11 procurement procedures under this Act;

12 “(B) a summary of the types of purchases
13 made from, and contracts (including any rel-
14 evant modifications, extensions, or renewals)
15 awarded to, Indian economic enterprises, ex-
16 pressed by agency region;

17 “(C) a description of the percentage in-
18 crease or decrease in total dollar value and
19 number of purchases and awards made within
20 each agency region, as compared to the totals
21 of the region for the preceding fiscal year;

22 “(D) a description of the methods used by
23 applicable contracting officers and employees to
24 conduct market searches to identify qualified
25 Indian economic enterprises;

1 “(E) a summary of all deviations granted
 2 under section 1480.403 of title 48, Code of
 3 Federal Regulations (or successor regulations),
 4 including a description of—

5 “(i) the types of alternative procure-
 6 ment methods used, including any Indian
 7 owned businesses reported under other
 8 procurement goals; and

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

11 “(F) a summary of all determinations
 12 made to provide awards to Indian economic en-
 13 terprises, including a description of the dollar
 14 value of the awards;

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

21 “(i) Indian economic enterprises; and

22 “(ii) non-Indian economic enterprises;

23 and

24 “(H) any administrative, procedural, legal,
 25 or other barriers to achieving the purposes of

1 this section, together with recommendations for
 2 legislative or administrative actions to address
 3 those barriers.

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), by striking “1999, 2000,
7 2001, and 2002” and inserting “2018 through
8 2022”.

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