

Union Calendar No. 498

116TH CONGRESS
2D SESSION

S. 212

[Report No. 116–605, Part I]

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2019

Referred to the Committee on Natural Resources, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 2, 2020

Reported from the Committee on Natural Resources

DECEMBER 2, 2020

Committee on Education and Labor discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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,*

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—

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

11 (i) geographical location;

12 (ii) lack of infrastructure or capacity;

13 (iii) lack of sufficient collateral and capital;

14 and

15 (iv) regulatory bureaucracy relating to—

16 (I) development; and

17 (II) access to services provided by the

18 Federal Government; and

19 (B) the barriers described in subparagraph (A)

20 often add to the cost of doing business in Indian

21 communities;

22 (2) Indian Tribes—

23 (A) enact laws and exercise sovereign gov-

24 ernmental powers;

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

3 (C) produce goods and services for con-
4 sumers;

5 (3) the Federal Government has—

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

8 (B) a role in facilitating healthy and sus-
9 tainable Tribal economies;

10 (4) the input of Indian Tribes in developing
11 Federal policy and programs leads to more meaning-
12 ful and effective measures to assist Indian Tribes
13 and Indian entrepreneurs in building Tribal econo-
14 mies;

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

17 (B) access to private capital for projects in In-
18 dian communities—

19 (i) may not be available; or

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

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

1 (B) lack of parity in treatment of an Indian
2 Tribe as a governmental entity under Federal tax
3 and certain other regulatory laws impedes, in part,
4 the ability of Indian Tribes to raise capital through
5 issuance of tax exempt debt, invest as an accredited
6 investor, and benefit from other investment incen-
7 tives accorded to State and local governmental enti-
8 ties; and

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

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

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

4 (B) while creative solutions, such as leasehold
 5 mortgages, have been developed in response to the
 6 problem identified in subparagraph (A), some solu-
 7 tions remain subject to review and approval by the
 8 Bureau of Indian Affairs, adding additional costs
 9 and delay to Tribal projects.

10 **SEC. 3. NATIVE AMERICAN BUSINESS DEVELOPMENT,**
 11 **TRADE PROMOTION, AND TOURISM ACT OF**
 12 **2000.**

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

17 “(c) APPLICABILITY TO INDIAN-OWNED BUSI-
 18 NESSES.—The findings and purposes in subsections (a)
 19 and (b) shall apply to any Indian-owned business gov-
 20 erned—

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

23 “(2) pursuant to section 5 of the Act of August
 24 15, 1876 (19 Stat. 200, chapter 289; 25 U.S.C.
 25 261).”.

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

4 (1) by redesignating paragraphs (1) through
 5 (6) and paragraphs (7) through (9), as paragraphs
 6 (2) through (7) and paragraphs (9) through (11),
 7 respectively;

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

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

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

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

18 (c) OFFICE OF NATIVE AMERICAN BUSINESS DEVEL-
 19 OPMENT.—Section 4 of the Native American Business De-
 20 velopment, Trade Promotion, and Tourism Act of 2000
 21 (25 U.S.C. 4303) is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1)—

1 (i) by striking “Department of Com-
 2 merce” and inserting “Office of the Sec-
 3 retary”; and

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

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

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

10 “(c) DUTIES OF DIRECTOR.—

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

13 “(A) the program and policy advisor to the
 14 Secretary with respect to the trust and govern-
 15 mental relationship between the United States
 16 and Indian Tribes; and

17 “(B) the point of contact for Indian
 18 Tribes, Tribal organizations, and Indians re-
 19 garding—

20 “(i) policies and programs of the De-
 21 partment of Commerce; and

22 “(ii) other matters relating to eco-
 23 nomic development and doing business in
 24 Indian lands.

1 “(2) DEPARTMENTAL COORDINATION.—The Di-
 2 rector shall coordinate with all offices and agencies
 3 within the Department of Commerce to ensure that
 4 each office and agency has an accountable process to
 5 ensure—

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

8 “(B) consultation with Indian Tribes re-
 9 garding the policies, programs, assistance, and
 10 activities of the offices and agencies.

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

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

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

19 (2) by inserting after section 7 (25 U.S.C.
 20 4306) the following:

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

22 “(a) INTERAGENCY COORDINATION.—Not later than
 23 1 year after the enactment of this section, the Secretary,
 24 the Secretary of the Interior, and the Secretary of the
 25 Treasury shall coordinate—

1 “(1) to develop initiatives that—

2 “(A) encourage, promote, and provide edu-
3 cation regarding investments in Indian commu-
4 nities through—

5 “(i) the loan guarantee program of
6 Bureau of Indian Affairs under section
7 201 of the Indian Financing Act of 1974
8 (25 U.S.C. 1481);

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

16 “(iii) other capital development pro-
17 grams;

18 “(B) examine and develop alternatives that
19 would qualify as collateral for financing in In-
20 dian communities; and

21 “(C) provide entrepreneur and other train-
22 ing relating to economic development through
23 tribally controlled colleges and universities and
24 other Indian organizations with experience in
25 providing such training;

1 “(2) to consult with Indian Tribes and with the
2 Securities and Exchange Commission to study, and
3 collaborate to establish, regulatory changes nec-
4 essary to qualify an Indian Tribe as an accredited
5 investor for the purposes of sections 230.500
6 through 230.508 of title 17, Code of Federal Regu-
7 lations (or successor regulations), consistent with the
8 goals of promoting capital formation and ensuring
9 qualifying Indian Tribes have the ability to with-
10 stand investment loss, on a basis comparable to
11 other legal entities that qualify as accredited inves-
12 tors who are not natural persons;

13 “(3) to identify regulatory, legal, or other bar-
14 riers to increasing investment, business, and eco-
15 nomic development, including qualifying or approv-
16 ing collateral structures, measurements of economic
17 strength, and contributions of Indian economies in
18 Indian communities through the Authority estab-
19 lished under section 4 of the Indian Tribal Regu-
20 latory Reform and Business Development Act of
21 2000 (25 U.S.C. 4301 note);

22 “(4) to ensure consultation with Indian Tribes
23 regarding increasing investment in Indian commu-
24 nities and the development of the report required in
25 paragraph (5); and

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

3 “(A) improvements to Indian communities
4 resulting from such initiatives and rec-
5 ommendations for promoting sustained growth
6 of the Tribal economies;

7 “(B) results of the study and collaboration
8 regarding the necessary changes referenced in
9 paragraph (2) and the impact of allowing In-
10 dian Tribes to qualify as an accredited investor;
11 and

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

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

20 “(c) INDIAN ECONOMIC DEVELOPMENT FEASIBILITY
21 STUDY.—

22 “(1) IN GENERAL.—The Government Account-
23 ability Office shall conduct a study and, not later
24 than 18 months after the date of enactment of this
25 subsection, submit to the Committee on Indian Af-

1 fairs of the Senate and the Committee on Natural
2 Resources of the House of Representatives a report
3 on the findings of the study and recommendations.

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

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

1 and allocations afforded for non-Indian projects
 2 and for Indian projects pursuant to each of the
 3 following tax incentive programs:

4 “(i) New market tax credit.

5 “(ii) Low income housing tax credit.

6 “(iii) Investment tax credit.

7 “(iv) Renewable energy tax incentives.

8 “(v) Accelerated depreciation.

9 “(D) TRIBAL INVESTMENT INCENTIVE.—

10 The study shall assess various alternative incen-
 11 tives that could be provided to enable and en-
 12 courage Tribal governments to invest in an In-
 13 dian community development investment fund
 14 or bank.”.

15 (e) CONFORMING AND TECHNICAL AMENDMENTS.—

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

19 (1) in section 3—

20 (A) in each of paragraphs (1), (4), and
 21 (8), by striking “tribe” and inserting “Tribe”;
 22 and

23 (B) in paragraph (6), by striking “The
 24 term ‘Indian tribe’ has the meaning given that

1 term” and inserting “The term ‘Indian Tribe’
 2 has the meaning given the term ‘Indian tribe’”;
 3 (2) by striking “tribes” each place the term ap-
 4 pears and inserting “Tribes”; and
 5 (3) by striking “tribal” each place the term ap-
 6 pears and inserting “Tribal”.

7 **SEC. 4. BUY INDIAN ACT.**

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

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

14 “(a) DEFINITIONS.—In this section:

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

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

24 “(3) SECRETARIES.—The term ‘Secretaries’
 25 means—

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

2 “(B) the Secretary of Health and Human
3 Services.

4 “(b) ENTERPRISE DEVELOPMENT.—

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

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

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

14 “(2) MENTOR-PROTEGE PROGRAM.—

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

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

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

14 “(1) conduct outreach to Indian industrial enti-
15 ties;

16 “(2) provide training;

17 “(3) promulgate regulations in accordance with
18 this section and with the regulations under part
19 1480 of title 48, Code of Federal Regulations (or
20 successor regulations), to harmonize the procure-
21 ment procedures of the Department of the Interior
22 and the Department of Health and Human Services,
23 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 section, and not less
16 frequently than once every 2 years thereafter, each
17 of the Secretaries shall submit to the Committee on
18 Indian Affairs of the Senate and the Committee on
19 Natural Resources of the House of Representatives
20 a report describing, during the period covered by the
21 report, the implementation of this section by each of
22 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 “(H) any administrative, procedural, legal,
20 or other barriers to achieving the purposes of
21 this section, together with recommendations for
22 legislative or administrative actions to address
23 those barriers; and

24 “(I) for each agency region—

1 “(i) the total amount spent on pur-
 2 chases made from, and contracts awarded
 3 to, Indian economic enterprises; and

4 “(ii) a comparison of the amount de-
 5 scribed in clause (i) to the total amount
 6 that the agency region would likely have
 7 spent on the same purchases made from a
 8 non-Indian economic enterprise or con-
 9 tracts awarded to a non-Indian economic
 10 enterprise.

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

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

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

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

20 (2) by inserting after subsection (a) the fol-
 21 lowing:

22 “(b) ECONOMIC DEVELOPMENT.—

23 “(1) IN GENERAL.—The Commissioner may
 24 provide assistance under subsection (a) for projects
 25 relating to the purposes of this title to a Native com-

1 community development financial institution, as defined
 2 by the Secretary of the Treasury.

3 “(2) PRIORITY.—With regard to not less than
 4 50 percent of the total amount available for assist-
 5 ance under this section, the Commissioner shall give
 6 priority to any application seeking assistance for—

7 “(A) the development of a Tribal code or
 8 court system for purposes of economic develop-
 9 ment, including commercial codes, training for
 10 court personnel, regulation pursuant to section
 11 5 of the Act of August 15, 1876 (19 Stat. 200,
 12 chapter 289; 25 U.S.C. 261), and the develop-
 13 ment of nonprofit subsidiaries or other Tribal
 14 business structures;

15 “(B) the development of a community de-
 16 velopment financial institution, including train-
 17 ing and administrative expenses; or

18 “(C) the development of a Tribal master
 19 plan for community and economic development
 20 and infrastructure.”.

21 (b) TECHNICAL ASSISTANCE AND TRAINING.—Sec-
 22 tion 804 of the Native American Programs Act of 1974
 23 (42 U.S.C. 2991c) is amended—

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

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

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

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

9 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
10 816 of the Native American Programs Act of 1974 (42
11 U.S.C. 2992d) is amended—

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

14 (2) in subsection (a)—

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

17 (B) by striking “1999, 2000, 2001, and
18 2002” and inserting “2020 through 2024”.

19 (d) CONFORMING AND TECHNICAL AMENDMENTS.—
20 The Native American Programs Act of 1974 (42 U.S.C.
21 2991 et seq.) is amended—

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

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

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

Union Calendar No. 498

116TH CONGRESS
2D Session

S. 212

[Report No. 116-605, Part I]

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.

DECEMBER 2, 2020

Reported from the Committee on Natural Resources

DECEMBER 2, 2020

Committee on Education and Labor discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed