

112TH CONGRESS
1ST SESSION

S. 1684

To amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 2011

Mr. BARRASSO (for himself, Mr. AKAKA, Mr. MCCAIN, and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes.

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 Tribal Energy
5 Development and Self-Determination Act Amendments of
6 2011”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-
DETERMINATION ACT AMENDMENTS

- Sec. 101. Indian tribal energy resource development.
Sec. 102. Indian tribal energy resource regulation.
Sec. 103. Tribal energy resource agreements.
Sec. 104. Conforming amendments.

TITLE II—MISCELLANEOUS AMENDMENTS

- Sec. 201. Issuance of preliminary permits or licenses.
Sec. 202. Tribal biomass demonstration project.
Sec. 203. Weatherization program.

1 **TITLE I—INDIAN TRIBAL EN-**
2 **ERGY DEVELOPMENT AND**
3 **SELF-DETERMINATION ACT**
4 **AMENDMENTS**

5 **SEC. 101. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**
6 **MENT.**

7 (a) IN GENERAL.—Section 2602(a) of the Energy
8 Policy Act of 1992 (25 U.S.C. 3502(a)) is amended—

9 (1) in paragraph (2)—

10 (A) in subparagraph (C), by striking
11 “and” after the semicolon;

12 (B) in subparagraph (D), by striking the
13 period at the end and inserting “; and”; and

14 (C) by adding at the end the following:

15 “(E) consult with each applicable Indian
16 tribe before adopting or approving a well spac-
17 ing program or plan applicable to the energy re-
18 sources of that Indian tribe or the members of
19 that Indian tribe.”; and

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

2 “(4) PLANNING.—

3 “(A) IN GENERAL.—In carrying out the
4 program established by paragraph (1), the Sec-
5 retary shall provide technical assistance to in-
6 terested Indian tribes to develop energy plans,
7 including—

8 “(i) plans for electrification;

9 “(ii) plans for oil and gas permitting,
10 renewable energy permitting, energy effi-
11 ciency, electricity generation, transmission
12 planning, water planning, and other plan-
13 ning relating to energy issues;

14 “(iii) plans for the development of en-
15 ergy resources and to ensure the protection
16 of natural, historic, and cultural resources;
17 and

18 “(iv) any other plans that would as-
19 sist an Indian tribe in the development or
20 use of energy resources.

21 “(B) COOPERATION.—In establishing the
22 program under paragraph (1), the Secretary
23 shall work in cooperation with the Office of In-
24 dian Energy Policy and Programs of the De-
25 partment of Energy.”.

1 (b) DEPARTMENT OF ENERGY INDIAN ENERGY EDU-
2 CATION PLANNING AND MANAGEMENT ASSISTANCE PRO-
3 GRAM.—Section 2602(b)(2) of the Energy Policy Act of
4 1992 (25 U.S.C. 3502(b)(2)) is amended—

5 (1) in the matter preceding subparagraph (A),
6 by inserting “, intertribal organization,” after “In-
7 dian tribe”;

8 (2) by redesignating subparagraphs (C) and
9 (D) as subparagraphs (D) and (E), respectively; and

10 (3) by inserting after subparagraph (B) the fol-
11 lowing:

12 “(C) activities to increase the capacity of
13 Indian tribes to manage energy development
14 and energy efficiency programs;”.

15 (c) DEPARTMENT OF ENERGY LOAN GUARANTEE
16 PROGRAM.—Section 2602(c) of the Energy Policy Act of
17 1992 (25 U.S.C. 3502(c)) is amended—

18 (1) in paragraph (1), by inserting “or a tribal
19 energy development organization” after “Indian
20 tribe”;

21 (2) in paragraph (3)—

22 (A) in the matter preceding subparagraph
23 (A), by striking “guarantee” and inserting
24 “guaranteed”;

25 (B) in subparagraph (A), by striking “or”;

1 (C) in subparagraph (B), by striking the
2 period at the end and inserting “; or”; and

3 (D) by adding at the end the following:

4 “(C) a tribal energy development organiza-
5 tion, from funds of the tribal energy develop-
6 ment organization.”; and

7 (3) in paragraph (5), by striking “The Sec-
8 retary of Energy may” and inserting “Not later
9 than 1 year after the date of enactment of the In-
10 dian Tribal Energy Development and Self-Deter-
11 mination Act Amendments of 2011, the Secretary of
12 Energy shall”.

13 **SEC. 102. INDIAN TRIBAL ENERGY RESOURCE REGULA-**
14 **TION.**

15 Section 2603(c) of the Energy Policy Act of 1992 (25
16 U.S.C. 3503(c)) is amended—

17 (1) in paragraph (1), by striking “on the re-
18 quest of an Indian tribe, the Indian tribe” and in-
19 serting “on the request of an Indian tribe or a tribal
20 energy development organization, the Indian tribe or
21 tribal energy development organization”; and

22 (2) in paragraph (2)(B), by inserting “or tribal
23 energy development organization” after “Indian
24 tribe”.

1 **SEC. 103. TRIBAL ENERGY RESOURCE AGREEMENTS.**

2 (a) AMENDMENT.—Section 2604 of the Energy Pol-
3 icy Act of 1992 (25 U.S.C. 3504) is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1)—

6 (i) in subparagraph (A), by striking
7 “or” after the semicolon at the end;

8 (ii) in subparagraph (B)—

9 (I) by striking clause (i) and in-
10 serting the following:

11 “(i) an electric production, generation,
12 transmission, or distribution facility (in-
13 cluding a facility that produces electricity
14 from renewable energy resources) located
15 on tribal land; or”; and

16 (II) in clause (ii)—

17 (aa) by inserting “, at least
18 a portion of which have been”
19 after “energy resources”;

20 (bb) by inserting “or pro-
21 duced from” after “developed
22 on”; and

23 (cc) by striking “and” after
24 the semicolon at the end and in-
25 serting “or”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(C) pooling, unitization, or
4 communitization of the energy mineral re-
5 sources of the Indian tribe located on tribal
6 land with any other energy mineral resource
7 (including energy mineral resources owned by
8 the Indian tribe or an individual Indian in fee,
9 trust, or restricted status or by any other per-
10 sons or entities) if the owner of the resources
11 has consented or consents to the pooling, unit-
12 ization, or communitization of the other re-
13 sources under any lease or agreement; and”;
14 and

15 (B) by striking paragraph (2) and insert-
16 ing the following:

17 “(2) a lease or business agreement described in
18 paragraph (1) shall not require review by, or the ap-
19 proval of, the Secretary under section 2103 of the
20 Revised Statutes (25 U.S.C. 81), or any other provi-
21 sion of law, if the lease or business agreement—

22 “(A) was executed—

23 “(i) in accordance with the require-
24 ments of a tribal energy resource agree-
25 ment in effect under subsection (e) (includ-

1 ing the periodic review and evaluation of
2 the activities of the Indian tribe under the
3 agreement, to be conducted pursuant to
4 subparagraphs (D) and (E) of subsection
5 (e)(2)); or

6 “(ii) by the Indian tribe and a tribal
7 energy development organization—

8 “(I) for which the Indian tribe
9 has obtained certification pursuant to
10 subsection (h); and

11 “(II) the majority of the interest
12 in which is, and continues to be
13 throughout the full term or renewal
14 term (if any) of the lease or business
15 agreement, owned and controlled by
16 the Indian tribe (or the Indian tribe
17 and 1 or more other Indian tribes);
18 and

19 “(B) has a term that does not exceed—

20 “(i) 30 years; or

21 “(ii) in the case of a lease for the pro-
22 duction of oil resources, gas resources, or
23 both, 10 years and as long thereafter as oil
24 or gas is produced in paying quantities.”;

1 (2) by striking subsection (b) and inserting the
2 following:

3 “(b) RIGHTS-OF-WAY.—An Indian tribe may grant a
4 right-of-way over tribal land without review or approval
5 by the Secretary if the right-of-way—

6 “(1) serves—

7 “(A) an electric production, generation,
8 transmission, or distribution facility (including
9 a facility that produces electricity from renew-
10 able energy resources) located on tribal land;

11 “(B) a facility located on tribal land that
12 extracts, produces, processes, or refines energy
13 resources; or

14 “(C) the purposes, or facilitates in car-
15 rying out the purposes, of any lease or agree-
16 ment entered into for energy resource develop-
17 ment on tribal land; and

18 “(2) was executed—

19 “(A) in accordance with the requirements
20 of a tribal energy resource agreement in effect
21 under subsection (e) (including the periodic re-
22 view and evaluation of the activities of the In-
23 dian tribe under the agreement, to be conducted
24 pursuant to subparagraphs (D) and (E) of sub-
25 section (e)(2)); or

1 “(B) by the Indian tribe and a tribal en-
2 ergy development organization—

3 “(i) for which the Indian tribe has ob-
4 tained certification pursuant to subsection
5 (h); and

6 “(ii) the majority of the interest in
7 which is, and continues to be throughout
8 the full term or renewal term (if any) of
9 the right-of-way, owned and controlled by
10 the Indian tribe (or the Indian tribe and 1
11 or more other Indian tribes); and

12 “(3) has a term that does not exceed 30
13 years.”;

14 (3) by striking subsection (d) and inserting the
15 following:

16 “(d) VALIDITY.—No lease or business agreement en-
17 tered into, or right-of-way granted, pursuant to this sec-
18 tion shall be valid unless the lease, business agreement,
19 or right-of-way is authorized by subsection (a) or (b).”;

20 (4) in subsection (e)—

21 (A) in paragraph (2)—

22 (i) by striking “(2)(A)” and all that
23 follows through the end of subparagraph
24 (A) and inserting the following:

25 “(2) PROCEDURE.—

1 “(A) EFFECTIVE DATE.—

2 “(i) IN GENERAL.—On the date that
3 is 271 days after the date on which the
4 Secretary receives a tribal energy resource
5 agreement from an Indian tribe under
6 paragraph (1), the tribal energy resource
7 agreement shall take effect, unless the Sec-
8 retary disapproves the tribal energy re-
9 source agreement under subparagraph (B).

10 “(ii) REVISED TRIBAL ENERGY RE-
11 SOURCE AGREEMENT.—On the date that is
12 91 days after the date on which the Sec-
13 retary receives a revised tribal energy re-
14 source agreement from an Indian tribe
15 under paragraph (4)(B), the revised tribal
16 energy resource agreement shall take ef-
17 fect, unless the Secretary disapproves the
18 revised tribal energy resource agreement
19 under subparagraph (B).”;

20 (ii) in subparagraph (B)—

21 (I) by striking “(B)” and all that
22 follows through “if—” and inserting
23 the following:

24 “(B) DISAPPROVAL.—The Secretary shall
25 disapprove a tribal energy resource agreement

1 submitted pursuant to paragraph (1) or (4)(B)
2 only if—”;

3 (II) by striking clause (i) and in-
4 serting the following:

5 “(i) the Secretary determines that the
6 Indian tribe has not demonstrated that the
7 Indian tribe has sufficient capacity to reg-
8 ulate the development of the specific 1 or
9 more energy resources identified for devel-
10 opment under the tribal energy resource
11 agreement submitted by the Indian tribe;”;

12 (III) by redesignating clause (iii)
13 as clause (iv) and indenting appro-
14 priately;

15 (IV) by striking clause (ii) and
16 inserting the following:

17 “(ii) a provision of the tribal energy
18 resource agreement would violate applica-
19 ble Federal law (including regulations) or
20 a treaty applicable to the Indian tribe;

21 “(iii) the tribal energy resource agree-
22 ment does not include 1 or more provisions
23 required under subparagraph (D); or”;

24 (V) in clause (iv) (as redesign-
25 nated by subclause (III))—

1 (aa) in the matter preceding
2 subclause (I), by striking “in-
3 cludes” and all that follows
4 through “section—” and insert-
5 ing “does not include provisions
6 that, with respect to any lease,
7 business agreement, or right-of-
8 way to which the tribal energy
9 resource agreement applies—”;
10 and

11 (bb) in subclause (XVI)(bb),
12 by striking “or tribal”;

13 (iii) in subparagraph (C)—

14 (I) in the matter preceding clause
15 (i), by inserting “the approval of”
16 after “with respect to”;

17 (II) by striking clause (ii) and in-
18 serting the following:

19 “(ii) the identification of mitigation
20 measures, if any, that, in the discretion of
21 the Indian tribe, the Indian tribe might
22 propose for incorporation into the lease,
23 business agreement, or right-of-way;”;

24 (III) in clause (iii)(I), by striking
25 “proposed action” and inserting “ap-

1 proval of the lease, business agree-
2 ment, or right-of-way”;

3 (IV) in clause (iv), by striking
4 “and” at the end;

5 (V) in clause (v), by striking the
6 period at the end and inserting “;
7 and”; and

8 (VI) by adding at the end the fol-
9 lowing:

10 “(vi) the identification of specific
11 classes or categories of actions, if any, de-
12 termined by the Indian tribe not to have
13 significant environmental effects.”;

14 (iv) in subparagraph (D)(ii), by strik-
15 ing “subparagraph (B)(iii)(XVI)” and in-
16 serting “subparagraph (B)(iv)(XV)”;

17 (v) by adding at the end the following:

18 “(F) A tribal energy resource agreement
19 that takes effect pursuant to this subsection
20 shall remain in effect to the extent any provi-
21 sion of the tribal energy resource agreement is
22 consistent with applicable Federal law (includ-
23 ing regulations), unless the tribal energy re-
24 source agreement is—

1 “(i) rescinded by the Secretary pursu-
2 ant to paragraph (7)(D)(iii)(II); or

3 “(ii) voluntarily rescinded by the In-
4 dian tribe pursuant to the regulations pro-
5 mulgated under paragraph (8)(B) (or suc-
6 cessor regulations).

7 “(G)(i) The Secretary shall make a capaci-
8 ty determination under subparagraph (B)(i)
9 not later than 120 days after the date on which
10 the Indian tribe submits to the Secretary the
11 tribal energy resource agreement of the Indian
12 tribe pursuant to paragraph (1), unless the Sec-
13 retary and the Indian tribe mutually agree to
14 an extension of the time period for making the
15 determination.

16 “(ii) Any determination that the Indian
17 tribe lacks the requisite capacity shall be treat-
18 ed as a disapproval under paragraph (4) and,
19 not later than 10 days after the date of the de-
20 termination, the Secretary shall provide to the
21 Indian tribe—

22 “(I) a detailed, written explanation of
23 each reason for the determination; and

1 “(II) a description of the steps that
2 the Indian tribe should take to dem-
3 onstrate sufficient capacity.

4 “(H) Notwithstanding any other provision
5 of this section, an Indian tribe shall be consid-
6 ered to have demonstrated sufficient capacity
7 under subparagraph (B)(i) to regulate the de-
8 velopment of the specific 1 or more energy re-
9 sources of the Indian tribe identified for devel-
10 opment under the tribal energy resource agree-
11 ment submitted by the Indian tribe pursuant to
12 paragraph (1) if—

13 “(i) the Secretary determines that—

14 “(I) the Indian tribe has carried
15 out a contract or compact under title
16 I or IV of the Indian Self-Determina-
17 tion and Education Assistance Act
18 (25 U.S.C. 450 et seq.); and

19 “(II) for a period of not less than
20 3 consecutive years ending on the date
21 on which the Indian tribe submits the
22 tribal energy resource agreement of
23 the Indian tribe pursuant to para-
24 graph (1) or (4)(B), the contract or
25 compact—

1 “(aa) has been carried out
2 by the Indian tribe without mate-
3 rial audit exceptions (or without
4 any material audit exceptions
5 that were not corrected within
6 the 3-year period); and

7 “(bb) has included programs
8 or activities relating to the man-
9 agement of tribal land; or

10 “(ii) the Secretary fails to make the
11 determination within the time allowed
12 under subparagraph (G)(i) (including any
13 extension of time agreed to under that sub-
14 paragraph).”;

15 (B) in paragraph (4), by striking “date of
16 disapproval” and all that follows through the
17 end of subparagraph (C) and inserting the fol-
18 lowing: “date of disapproval, provide the Indian
19 tribe with—

20 “(A) a detailed, written explanation of—

21 “(i) each reason for the disapproval;
22 and

23 “(ii) the revisions or changes to the
24 tribal energy resource agreement necessary
25 to address each reason; and

1 “(B) an opportunity to revise and resubmit
2 the tribal energy resource agreement.”;

3 (C) in paragraph (6)—

4 (i) in subparagraph (B)—

5 (I) by striking “(B) Subject to”
6 and inserting the following:

7 “(B) Subject only to”; and

8 (II) by striking “subparagraph
9 (D)” and inserting “subparagraphs
10 (C) and (D)”;

11 (ii) in subparagraph (C), in the mat-
12 ter preceding clause (i), by inserting “to
13 perform the obligations of the Secretary
14 under this section and” before “to ensure”;
15 and

16 (iii) in subparagraph (D), by adding
17 at the end the following:

18 “(iii) Nothing in this section absolves,
19 limits, or otherwise affects the liability, if
20 any, of the United States for any—

21 “(I) term of any lease, business
22 agreement, or right-of-way under this
23 section that is not a negotiated term;
24 or

1 “(II) losses that are not the re-
2 sult of a negotiated term, including
3 losses resulting from the failure of the
4 Secretary to perform an obligation of
5 the Secretary under this section.”;
6 and

7 (D) in paragraph (7)—

8 (i) in subparagraph (A), by striking
9 “has demonstrated” and inserting “the
10 Secretary determines has demonstrated
11 with substantial evidence”;

12 (ii) in subparagraph (B), by striking
13 “any tribal remedy” and inserting “all
14 remedies (if any) provided under the laws
15 of the Indian tribe”;

16 (iii) in subparagraph (D)—

17 (I) in clause (i), by striking “de-
18 termine” and all that follows through
19 the end of the clause and inserting the
20 following: “determine—

21 “(I) whether the petitioner
22 is an interested party; and

23 “(II) if the petitioner is an
24 interested party, whether the In-
25 dian tribe is not in compliance

1 with the tribal energy resource
2 agreement as alleged in the peti-
3 tion.”;

4 (II) in clause (ii), by striking
5 “determination” and inserting “deter-
6 minations”; and

7 (III) in clause (iii), in the matter
8 preceding subclause (I) by striking
9 “agreement” the first place it appears
10 and all that follows through “, includ-
11 ing” and inserting “agreement pursu-
12 ant to clause (i), the Secretary shall
13 only take such action as the Secretary
14 determines necessary to address the
15 claims of noncompliance made in the
16 petition, including”;

17 (iv) in subparagraph (E)(i), by strik-
18 ing “the manner in which” and inserting
19 “, with respect to each claim made in the
20 petition, how”; and

21 (v) by adding at the end the following:

22 “(G) Notwithstanding any other provision
23 of this paragraph, the Secretary shall dismiss
24 any petition from an interested party that has
25 agreed with the Indian tribe to a resolution of

1 the claims presented in the petition of that
2 party.”;

3 (5) by redesignating subsection (g) as sub-
4 section (j); and

5 (6) by inserting after subsection (f) the fol-
6 lowing:

7 “(g) FINANCIAL ASSISTANCE IN LIEU OF ACTIVITIES
8 BY THE SECRETARY.—

9 “(1) IN GENERAL.—Any amounts that the Sec-
10 retary would otherwise expend to operate or carry
11 out any program, function, service, or activity (or
12 any portion of a program, function, service, or activ-
13 ity) of the Department that, as a result of an Indian
14 tribe carrying out activities under a tribal energy re-
15 source agreement, the Secretary does not expend,
16 the Secretary shall, at the request of the Indian
17 tribe, make available to the Indian tribe in accord-
18 ance with this subsection.

19 “(2) ANNUAL FUNDING AGREEMENTS.—The
20 Secretary shall make the amounts described in para-
21 graph (1) available to an Indian tribe through an
22 annual written funding agreement that is negotiated
23 and entered into with the Indian tribe that is sepa-
24 rate from the tribal energy resource agreement.

1 “(3) EFFECT OF APPROPRIATIONS.—Notwith-
2 standing paragraph (1)—

3 “(A) the provision of amounts to an Indian
4 tribe under this subsection is subject to the
5 availability of appropriations; and

6 “(B) the Secretary shall not be required to
7 reduce amounts for programs, functions, serv-
8 ices, or activities that serve any other Indian
9 tribe to make amounts available to an Indian
10 tribe under this subsection.

11 “(4) DETERMINATION.—

12 “(A) IN GENERAL.—The Secretary shall
13 calculate the amounts under paragraph (1) in
14 accordance with the regulations adopted under
15 section 103(b) of the Indian Tribal Energy De-
16 velopment and Self-Determination Act Amend-
17 ments of 2011.

18 “(B) APPLICABILITY.—The effective date
19 or implementation of a tribal energy resource
20 agreement under this section shall not be de-
21 layed or otherwise affected by—

22 “(i) a delay in the promulgation of
23 regulations under section 103(b) of the In-
24 dian Tribal Energy Development and Self-
25 Determination Act Amendments of 2011;

1 “(ii) the period of time needed by the
2 Secretary to make the calculation required
3 under paragraph (1); or

4 “(iii) the adoption of a funding agree-
5 ment under paragraph (2).

6 “(h) CERTIFICATION OF TRIBAL ENERGY DEVELOP-
7 MENT ORGANIZATION.—

8 “(1) IN GENERAL.—Not later than 90 days
9 after the date on which an Indian tribe submits an
10 application for certification of a tribal energy devel-
11 opment organization in accordance with regulations
12 promulgated under section 103(b) of the Indian
13 Tribal Energy Development and Self-Determination
14 Act Amendments of 2011, the Secretary shall ap-
15 prove or disapprove the application.

16 “(2) REQUIREMENTS.—The Secretary shall ap-
17 prove an application for certification if—

18 “(A)(i) the Indian tribe has carried out a
19 contract or compact under title I or IV of the
20 Indian Self-Determination and Education As-
21 sistance Act (25 U.S.C. 450 et seq.); and

22 “(ii) for a period of not less than 3 con-
23 secutive years ending on the date on which the
24 Indian tribe submits the application, the con-
25 tract or compact—

1 “(I) has been carried out by the In-
2 dian tribe without material audit excep-
3 tions (or without any material audit excep-
4 tions that were not corrected within the 3-
5 year period); and

6 “(II) has included programs or activi-
7 ties relating to the management of tribal
8 land; and

9 “(B)(i) the tribal energy development orga-
10 nization is organized under the laws of the In-
11 dian tribe and subject to the jurisdiction and
12 authority of the Indian tribe;

13 “(ii) the majority of the interest in the
14 tribal energy development organization is owned
15 and controlled by the Indian tribe (or the In-
16 dian tribe and 1 or more other Indian tribes);
17 and

18 “(iii) the organizing document of the tribal
19 energy development organization requires that
20 the Indian tribe (or the Indian tribe and 1 or
21 more other Indian tribes) own and control at all
22 times a majority of the interest in the tribal en-
23 ergy development organization.

24 “(3) ACTION BY SECRETARY.—If the Secretary
25 approves an application for certification pursuant to

1 paragraph (2), the Secretary shall, not more than 10
2 days after making the determination—

3 “(A) issue a certification stating that—

4 “(i) the tribal energy development or-
5 ganization is organized under the laws of
6 the Indian tribe and subject to the juris-
7 diction and authority of the Indian tribe;

8 “(ii) the majority of the interest in
9 the tribal energy development organization
10 is owned and controlled by the Indian tribe
11 (or the Indian tribe and 1 or more other
12 Indian tribes);

13 “(iii) the organizing document of the
14 tribal energy development organization re-
15 quires that the Indian tribe (or the Indian
16 tribe and 1 or more other Indian tribes)
17 own and control at all times a majority of
18 the interest in the tribal energy develop-
19 ment organization; and

20 “(iv) the certification is issued pursu-
21 ant this subsection;

22 “(B) deliver a copy of the certification to
23 the Indian tribe; and

24 “(C) publish the certification in the Fed-
25 eral Register.

1 “(i) SOVEREIGN IMMUNITY.—Nothing in this section
2 waives the sovereign immunity of an Indian tribe.”.

3 (b) REGULATIONS.—Not later than 1 year after the
4 date of enactment of the Indian Tribal Energy Develop-
5 ment and Self-Determination Act Amendments of 2011,
6 the Secretary shall promulgate or update any regulations
7 that are necessary to implement this section, including
8 provisions to implement—

9 (1) section 2604(g) of the Energy Policy Act of
10 1992 (25 U.S.C. 3504(g)) including the manner in
11 which the Secretary, at the request of an Indian
12 tribe, shall—

13 (A) identify the programs, functions, serv-
14 ices, and activities (or any portions of pro-
15 grams, functions, services, or activities) that the
16 Secretary will not have to operate or carry out
17 as a result of the Indian tribe carrying out ac-
18 tivities under a tribal energy resource agree-
19 ment;

20 (B) identify the amounts that the Sec-
21 retary would have otherwise expended to oper-
22 ate or carry out each program, function, serv-
23 ice, and activity (or any portion of a program,
24 function, service, or activity) identified pursu-
25 ant to subparagraph (A); and

1 (C) provide to the Indian tribe a list of the
2 programs, functions, services, and activities (or
3 any portions of programs, functions, services, or
4 activities) identified pursuant subparagraph (A)
5 and the amounts associated with each program,
6 function, service, and activity (or any portion of
7 a program, function, service, or activity) identi-
8 fied pursuant to subparagraph (B); and

9 (2) section 2604(h) of the Energy Policy Act of
10 1992 (25 U.S.C. 3504(h)), including the process to
11 be followed by, and any applicable criteria and docu-
12 mentation required for, an Indian tribe to request
13 and obtain the certification described in that section.

14 **SEC. 104. CONFORMING AMENDMENTS.**

15 (a) DEFINITION OF TRIBAL ENERGY DEVELOPMENT
16 ORGANIZATION.—Section 2601 of the Energy Policy Act
17 of 1992 (25 U.S.C. 3501) is amended by striking para-
18 graph (11) and inserting the following:

19 “(11) TRIBAL ENERGY DEVELOPMENT ORGANI-
20 ZATION.—The term ‘tribal energy development orga-
21 nization’ means—

22 “(A) any enterprise, partnership, consor-
23 tium, corporation, or other type of business or-
24 ganization that is engaged in the development
25 of energy resources and is wholly owned by an

1 Indian tribe (including an organization incor-
2 porated pursuant to section 17 of the Indian
3 Reorganization Act of 1934 (25 U.S.C. 477) or
4 section 3 of the Act of June 26, 1936 (25
5 U.S.C. 503) (commonly known as the ‘Okla-
6 homa Indian Welfare Act’)); or

7 “(B) any organization of 2 or more enti-
8 ties, at least 1 of which is an Indian tribe, that
9 has the written consent of the governing bodies
10 of all Indian tribes participating in the organi-
11 zation to apply for a grant, loan, or other as-
12 sistance under section 2602 or to enter into a
13 lease or business agreement with, or acquire a
14 right-of-way from, an Indian tribe pursuant to
15 subsection (a)(2)(A)(ii) or (b)(2)(B) of section
16 2604.”.

17 (b) INDIAN TRIBAL ENERGY RESOURCE DEVELOP-
18 MENT.—Section 2602 of the Energy Policy Act of 1992
19 (25 U.S.C. 3502) is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (1), by striking “tribal
22 energy resource development organizations”
23 and inserting “tribal energy development orga-
24 nizations”; and

1 (B) in paragraph (2), by striking “tribal
2 energy resource development organizations”
3 each place it appears and inserting “tribal en-
4 ergy development organizations”; and

5 (2) in subsection (b)(2), by striking “tribal en-
6 ergy resource development organization” and insert-
7 ing “tribal energy development organization”.

8 (c) WIND AND HYDROPOWER FEASIBILITY STUDY.—
9 Section 2606(c)(3) of the Energy Policy Act of 1992 (25
10 U.S.C. 3506(c)(3)) is amended by striking “energy re-
11 source development” and inserting “energy development”.

12 (d) CONFORMING AMENDMENTS.—Section 2604(e)
13 of the Energy Policy Act of 1992 (25 U.S.C. 3504(e)) is
14 amended—

15 (1) in paragraph (1)—

16 (A) by striking “(1) On the date” and in-
17 serting the following:

18 “(1) IN GENERAL.—On the date”; and

19 (B) by striking “for approval”;

20 (2) in paragraph (2)(B)(iv) (as redesignated by
21 section 4(a)(4)(A)(ii)(III))—

22 (A) in subclause (XIV), by inserting “and”
23 after the semicolon at the end;

24 (B) by striking subclause (XV); and

1 (C) by redesignating subclause (XVI) as
2 subclause (XV);

3 (3) in paragraph (3)—

4 (A) by striking “(3) The Secretary” and
5 inserting the following:

6 “(3) NOTICE AND COMMENT; SECRETARIAL RE-
7 VIEW.—The Secretary”; and

8 (B) by striking “for approval”;

9 (4) in paragraph (4), by striking “(4) If the
10 Secretary” and inserting the following:

11 “(4) ACTION IN CASE OF DISAPPROVAL.—If the
12 Secretary”;

13 (5) in paragraph (5)—

14 (A) by striking “(5) If an Indian tribe”
15 and inserting the following:

16 “(5) PROVISION OF DOCUMENTS TO SEC-
17 RETARY.—If an Indian tribe”; and

18 (B) in the matter preceding subparagraph
19 (A), by striking “approved” and inserting “in
20 effect”;

21 (6) in paragraph (6)—

22 (A) by striking “(6)(A) In carrying out”
23 and inserting the following:

24 “(6) SECRETARIAL OBLIGATIONS AND EFFECT
25 OF SECTION.—

- 1 “(A) In carrying out”;
- 2 (B) in subparagraph (A), by indenting
- 3 clauses (i) and (ii) appropriately;
- 4 (C) in subparagraph (B), by striking “ap-
- 5 proved” and inserting “in effect”; and
- 6 (D) in subparagraph (D)—
- 7 (i) in clause (i), by striking “an ap-
- 8 proved tribal energy resource agreement”
- 9 and inserting “a tribal energy resource
- 10 agreement in effect under this section”;
- 11 and
- 12 (ii) in clause (ii), by striking “ap-
- 13 proved by the Secretary” and inserting “in
- 14 effect”; and
- 15 (7) in paragraph (7)—
- 16 (A) by striking “(7)(A) In this paragraph”
- 17 and inserting the following:
- 18 “(7) PETITIONS BY INTERESTED PARTIES.—
- 19 “(A) In this paragraph”;
- 20 (B) in subparagraph (A), by striking “ap-
- 21 proved by the Secretary” and inserting “in ef-
- 22 fect”;
- 23 (C) in subparagraph (B), by striking “ap-
- 24 proved by the Secretary” and inserting “in ef-
- 25 fect”; and

1 (D) in subparagraph (D)(iii)—

2 (i) in subclause (I), by striking “ap-
3 proved”; and

4 (ii) in subclause (II)—

5 (I) by striking “approval of” in
6 the first place it appears; and

7 (II) by striking “subsection (a)
8 or (b)” and inserting “subsection
9 (a)(2)(A)(i) or (b)(2)(A)”.

10 **TITLE II—MISCELLANEOUS**
11 **AMENDMENTS**

12 **SEC. 201. ISSUANCE OF PRELIMINARY PERMITS OR LI-**
13 **CENSES.**

14 (a) **IN GENERAL.**—Section 7(a) of the Federal Power
15 Act (16 U.S.C. 800(a)) is amended by striking “States
16 and municipalities” and inserting “States, Indian tribes,
17 and municipalities”.

18 (b) **APPLICABILITY.**—The amendment made by sub-
19 section (a) shall not affect—

20 (1) any preliminary permit or original license
21 issued before the date of enactment of the Indian
22 Tribal Energy Development and Self-Determination
23 Act Amendments of 2011; or

24 (2) an application for an original license, if the
25 Commission has issued a notice accepting that appli-

1 cation for filing pursuant to section 4.32(d) of title
2 18, Code of Federal Regulations (or successor regu-
3 lations), before the date of enactment of the Indian
4 Tribal Energy Development and Self-Determination
5 Act Amendments of 2011.

6 (c) DEFINITION OF INDIAN TRIBE.—For purposes of
7 section 7(a) of the Federal Power Act (16 U.S.C. 800(a))
8 (as amended by subsection (a)), the term “Indian tribe”
9 has the meaning given the term in section 4 of the Indian
10 Self-Determination and Education Assistance Act (25
11 U.S.C. 450b).

12 **SEC. 202. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

13 The Tribal Forest Protection Act of 2004 (Public
14 Law 108–278; 118 Stat. 868) is amended—

15 (1) in section 2(a), by striking “In this section”
16 and inserting “In this Act”; and

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

18 **“SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

19 “(a) IN GENERAL.—For each of fiscal years 2013
20 through 2017, the Secretary shall enter into stewardship
21 contracts or similar agreements (excluding direct service
22 contracts) with Indian tribes to carry out demonstration
23 projects to promote biomass energy production (including
24 biofuel, heat, and electricity generation) on Indian forest

1 land and in nearby communities by providing reliable sup-
2 plies of woody biomass from Federal land.

3 “(b) DEMONSTRATION PROJECTS.—In each fiscal
4 year for which projects are authorized, at least 4 new dem-
5 onstration projects that meet the eligibility criteria de-
6 scribed in subsection (c) shall be carried out under con-
7 tracts or agreements described in subsection (a).

8 “(c) ELIGIBILITY CRITERIA.—To be eligible to enter
9 into a contract or agreement under this subsection, an In-
10 dian tribe shall submit to the Secretary an application—

11 “(1) containing such information as the Sec-
12 retary may require; and

13 “(2) that includes a description of—

14 “(A) the Indian forest land or rangeland
15 under the jurisdiction of the Indian tribe; and

16 “(B) the demonstration project proposed
17 to be carried out by the Indian tribe.

18 “(d) SELECTION.—In evaluating the applications
19 submitted under subsection (c), the Secretary shall—

20 “(1) take into consideration—

21 “(A) the factors set forth in paragraphs
22 (1) and (2) of section 2(e); and

23 “(B) whether a proposed project would—

24 “(i) increase the availability or reli-
25 ability of local or regional energy;

1 “(ii) enhance the economic develop-
2 ment of the Indian tribe;

3 “(iii) result in or improve the connec-
4 tion of electric power transmission facilities
5 serving the Indian tribe with other electric
6 transmission facilities;

7 “(iv) improve the forest health or wa-
8 tersheds of Federal land or Indian forest
9 land or rangeland;

10 “(v) demonstrate new investments in
11 infrastructure; or

12 “(vi) otherwise promote the use of
13 woody biomass; and

14 “(2) exclude from consideration any merchant-
15 able logs that have been identified by the Secretary
16 for commercial sale.

17 “(e) IMPLEMENTATION.—The Secretary shall—

18 “(1) ensure that the criteria described in sub-
19 section (c) are publicly available by not later than
20 120 days after the date of enactment of this section;
21 and

22 “(2) to the maximum extent practicable, consult
23 with Indian tribes and appropriate intertribal orga-
24 nizations likely to be affected in developing the ap-
25 plication and otherwise carrying out this section.

1 “(f) REPORT.—Not later than September 20, 2015,
2 the Secretary shall submit to Congress a report that de-
3 scribes, with respect to the reporting period—

4 “(1) each individual tribal application received
5 under this section; and

6 “(2) each contract and agreement entered into
7 pursuant to this section.

8 “(g) INCORPORATION OF MANAGEMENT PLANS.—In
9 carrying out a contract or agreement under this section,
10 on receipt of a request from an Indian tribe, the Secretary
11 shall incorporate into the contract or agreement, to the
12 extent practicable, management plans (including forest
13 management and integrated resource management plans)
14 in effect on the Indian forest land or rangeland of the re-
15 spective Indian tribe.

16 “(h) TERM.—A contract or agreement entered into
17 under this section—

18 “(1) shall be for a term of not more than 20
19 years; and

20 “(2) may be renewed in accordance with this
21 section for not more than an additional 10 years.”.

22 **SEC. 203. WEATHERIZATION PROGRAM.**

23 Section 413(d) of the Energy Conservation and Pro-
24 duction Act (42 U.S.C. 6863(d)) is amended—

1 (1) by striking paragraph (1) and inserting the
2 following:

3 “(1) RESERVATION OF AMOUNTS.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B) and notwithstanding any other provi-
6 sion of this part, the Secretary shall reserve
7 from amounts that would otherwise be allocated
8 to a State under this part not less than 100
9 percent, but not more than 150 percent, of an
10 amount which bears the same proportion to the
11 allocation of that State for the applicable fiscal
12 year as the population of all low-income mem-
13 bers of an Indian tribe in that State bears to
14 the population of all low-income individuals in
15 that State.

16 “(B) RESTRICTIONS.—Subparagraph (A)
17 shall apply only if—

18 “(i) the tribal organization serving the
19 low-income members of the applicable In-
20 dian tribe requests that the Secretary
21 make a grant directly; and

22 “(ii) the Secretary determines that
23 the low-income members of the applicable
24 Indian tribe would be equally or better
25 served by making a grant directly than a

1 grant made to the State in which the low-
2 income members reside.”;

3 (2) in paragraph (2)—

4 (A) by striking “The sums” and inserting
5 “ADMINISTRATION.—The amounts”;

6 (B) by striking “on the basis of his deter-
7 mination”;

8 (C) by striking “individuals for whom such
9 a determination has been made” and inserting
10 “low-income members of the Indian tribe”; and

11 (D) by striking “he” and inserting “the
12 Secretary”; and

13 (3) in paragraph (3), by striking “In order”
14 and inserting “APPLICATION.—In order”.

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