

# 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.

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## 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

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## 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 redesi-  
2           gnated 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 redesigni-  
7           gated 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

1 and for Indian projects pursuant to each of the  
2 following tax incentive programs:

3 “(i) New market tax credit.

4 “(ii) Low income housing tax credit.

5 “(iii) Investment tax credit.

6 “(iv) Renewable energy tax incentives.

7 “(v) Accelerated depreciation.

8 “(D) TRIBAL INVESTMENT INCENTIVE.—

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

14 **SEC. 4. BUY INDIAN ACT.**

15 Section 23 of the Act of June 25, 1910 (commonly  
16 known as the “Buy Indian Act”) (36 Stat. 861, chapter  
17 431; 25 U.S.C. 47), is amended to read as follows:

18 **“SEC. 23. EMPLOYMENT OF INDIAN LABOR AND PURCHASE**  
19 **OF PRODUCTS OF INDIAN INDUSTRY; PAR-**  
20 **TICIPATION IN MENTOR-PROTEGE PROGRAM.**

21 “(a) DEFINITIONS.—In this section:

22 “(1) INDIAN ECONOMIC ENTERPRISE.—The  
23 term ‘Indian economic enterprise’ has the meaning  
24 given the term in section 1480.201 of title 48, Code  
25 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—

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

9           “(B) the development of a community de-  
10          velopment financial institution, including train-  
11          ing and administrative expenses; or

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

15          (b) TECHNICAL ASSISTANCE AND TRAINING.—Sec-  
16          tion 804 of the Native American Programs Act of 1974  
17          (42 U.S.C. 2991c) is amended—

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

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

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

23               “(b) PRIORITY.—In providing assistance under sub-  
24               section (a), the Commissioner shall give priority to any  
25               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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Reported with amendments