

## Calendar No. 612

116TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 116-310

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TO REAUTHORIZE CERTAIN PROGRAMS UNDER THE OFFICE OF INDIAN  
ENERGY POLICY AND PROGRAMS OF THE DEPARTMENT OF ENERGY,  
AND FOR OTHER PURPOSES

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DECEMBER 10, 2020.—Ordered to be printed

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Mr. HOEVEN, from the Committee on India Affairs,  
submitted the following

### R E P O R T

[To accompany S. 2610]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 2610) to reauthorize certain programs under the Office of Indian Energy Policy and Programs of the Department of Energy and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE

The *Tribal Energy Reauthorization Act* would reauthorize and increase funding, \$50 million per Fiscal Year through 2030, for the Office of Indian Energy Policy and Programs (OIE) within the Department of Energy; amends definitions of the Energy Policy Act of 1992, to provide for greater flexibility in promoting electrification throughout Indian Country and Alaska; authorizes \$30 million per Fiscal Year through 2030 for the Department of Energy Loan Guarantee Program; and, mandates the OIE to submit a report to Congress on an Indian Energy Arctic Strategy.

#### BACKGROUND

There are 574 federally recognized tribes in the United States, including 231 in Alaska. Many American Indian and Alaska Native communities lack access to affordable energy and pay some of the nation's highest prices for energy and electricity. According to the Department of Energy (DOE), for example, in the Southwest, 14.2 percent of Navajo and Hopi homes are not grid-connected (compared to the national average of 1.4 percent). In Alaska, rural resi-

dents and villages are faced with electricity rates that can be 800 percent higher than the national average.

The DOE's Office of Indian Energy Policy and Programs (OIE) is tasked with promoting tribal energy development, efficiency, and use; reducing and stabilizing energy costs; enhancing tribal energy natural resources; strengthening economic infrastructure; and electrifying Indian lands and homes. Congress created the OIE through the *Energy Policy Act of 2005*. While the program's initial authorization of appropriations expired after Fiscal Year 2016, Congress has continued to make appropriations to the OIE each year (including \$22 million in Fiscal Year 2020).

Additionally, Indian Tribes have the opportunity to apply for the Tribal Energy Loan Guarantee Program at the Department of Energy. This loan guarantee program is a partial loan guarantee program that can guarantee up to \$2 billion in loans to support economic opportunities through energy development projects and activities. Congress has appropriated \$2 million in Fiscal Year 2020.

#### NEED FOR LEGISLATION

The Department of Energy's Office of Indian Energy Policy and Programs (OIE) funding has expired after Fiscal Year 2016. Congress needs to reauthorize funding for the office and its programs. The bill also sets authorization of appropriations for the Department of Energy Loan Guarantee Program. Additionally, certain definitions have been amended in order to provide for greater flexibility in promoting electrification throughout Indian Country and Alaska. Also, the bill mandates the OIE to submit a report to Congress on an Indian Energy Arctic Strategy.

#### BILL SUMMARY

The *Tribal Energy Reauthorization Act* reauthorizes the OIE through Fiscal Year 2030; addresses overly restrictive Indian land requirements for energy project grants; allows for Alaska Native Corporations, Tribally designated housing entities, and non-profit electric cooperatives to apply for OIE funding; provides for cost-share requirement flexibility; encourages the OIE to foster relationships with and utilize local and community expertise; ensures the OIE will more consistently make tribes aware of relevant funding opportunities across all federal agencies; and requires the OIE to develop a forward-looking energy strategy for Native communities in the Arctic that takes into account the effects of climate change.

#### LEGISLATIVE HISTORY

On November 16, 2019, Senator Murkowski introduced S. 2610, along with Senator Smith. Senator Sullivan was later added as a cosponsor, on November 22, 2019. The bill was referred to the Indian Affairs Committee. The Committee held a legislative hearing on this bill, on March 4, 2020. On July 29, 2020, by voice vote, the Committee ordered the bill, with an amendment, in the nature of a substitute, to be reported favorably to the Senate. A House companion bill has not been introduced, at this time.

At the legislative hearing held for S. 2610, Director of the Department of Energy Office of Indian Energy Policy and Programs, Kevin Frost, testified that the Department has no position on the

bill. However, Mr. Frost did share concerns with the “Cost Sharing”, “Federal Government Grants and Opportunities Liaison for Indian Tribes and Alaska Native”, and “Indian Energy in the Arctic Strategy” provisions of the bill.

*Amendments.* Two amendments, KEN20133 and KEN20134, both in the nature of a substitute, were offered by Senator Murkowski. Amendment KEN20133 was timely filed. This amendment addressed concerns raised by the Department of Energy’s (DOE) testimony. The amendment also included language from Senators Udall and Smith that would mandate the DOE issue regulations for the Tribal Energy Loan Guarantee Program (TELGP), including reporting requirements for awarding awards; and additional flexibility to completely waiving any cost-sharing for grant application.

During the Committee’s consideration of S. 2610, Senator Murkowski requested amendment KEN20133 be removed from the business meeting agenda, and with the consent from Chairman Hoeven and Vice Chairman Udall waive committee rules to file an untimely amendment, in the nature of a substitute, KEN20134. Per Committee rules, amendments are required be filed 48 hours prior to a business meeting. Amendment KEN20133 was removed from the business meeting. Chairman Hoeven and Vice Chairman Udall agreed to the request to waive committee rules for amendment KEN20134 to be considered at the business meeting.

The substitute amendment, KEN20134, includes all language from KEN20133, but also refines the definition of Section 2601 of the Energy Policy Act that would include Alaska Native Village Statistical Area.

The Committee passed S. 2610, as amended, by voice vote, and ordered the bill to be favorably reported.

#### SECTION-BY-SECTION ANALYSIS (AS INTRODUCED)

##### *Section 1. Short title*

“Tribal Energy Reauthorization Act”.

##### *Section 2. Indian energy*

Section 2(a) amends definitions in Section 2601 of the Energy Policy Act of 1992, including the term “Native” to be defined as Section 3 of the Alaska Native Claims Settlement Act. It also amends the definition of a “tribal energy development organization” to include Alaska Native Corporations, Tribally designated housing entities, and non-profit electric cooperatives.

Section 2(b) amends Section 2602(b) of the Energy Policy Act of 1992 to allow the Office of Indian Energy Policy and Programs (OIE) Director to award grants for energy projects that promote electrification, energy development, and energy efficiency even if a proposed project is not located entirely on Indian land. It also provides flexibility for the Director to take into consideration a tribe’s fiscal ability to meet cost-share requirements.

This section also authorizes \$50 million for each of Fiscal Years 2020 through 2030 for the OIE.

Section 2(c) amends Section 2602(c) of the Energy Policy Act of 1992 to authorize \$30 million for each of Fiscal Years 2020 through 2030 for the Tribal Energy Loan Guarantee Program.

Section 2(d) amends Section 217 of the Department of Energy Organization Act to encourage OIE to give priority to partnering with local and regional organizations when providing technical assistance to tribes. It also requires the Director to designate appropriate OIE staff to serve as a liaison to tribes to ensure maximum awareness of relevant grant and funding opportunities across the federal government. Finally, this subsection requires, within 180 days of enactment, that OIE submit to Congress a report entitled the “Indian Energy in the Arctic Strategy” that shall apply through calendar year 2030 and include recommendations for how best to prepare Indian communities in the Arctic for energy challenges relating to climate change.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 6, 2020.*

Hon. JOHN HOEVEN,  
*Chairman, Committee on Indian Affairs,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2610, the Tribal Energy Reauthorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aaron Krupkin.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>S. 2610, Tribal Energy Reauthorization Act</b>			
<small>[Manager]</small>			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	7	219	618
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 2610 would authorize the appropriation of \$50 million annually over the 2021–2030 period for programs sponsored by the Department of Energy’s (DOE’s) Office of Indian Energy. Under those programs, the agency would provide grants and technical assistance to Native American tribes, intertribal organizations, and tribal energy development organizations for energy efficiency programs, electric infrastructure projects, and other related activities.

The bill also would expand eligibility for assistance under those programs, amend cost-sharing requirements, and require DOE to develop a strategy on Native American energy in the Arctic.

In addition, S. 2610 would authorize the appropriation of \$30 million annually over the 2021–2030 period for DOE’s Tribal Energy Loan Guarantee Program (TELGP), which partially guarantees loans issued to tribal organizations for energy development activities. The bill would expand eligibility for the program and would require DOE to report to the Congress on program implementation. Using information from the department, CBO estimates that \$4 million per year would be needed for administrative costs; the remaining \$26 million would be available to cover subsidy costs each year.<sup>1</sup>

In 2020, the Congress appropriated \$22 million for the Office of Indian Energy and \$2 million for TELGP. Because CBO estimates budgetary effects under continuing resolutions on an annualized basis, in 2021 CBO assumes that the same amount will be available under the current continuing resolution (Public Law 116–159). As a result, CBO estimates that the bill would authorize additional appropriations in 2021 of \$28 million for the Office of Indian Energy and \$28 million for TELGP, the difference between the authorized amounts and the annualized amounts provided under the continuing resolution.

Based on historical spending patterns for similar activities, and assuming appropriation of the authorized amounts, CBO estimates that implementing S. 2610 would cost \$219 million over the 2021–2025 period, \$618 million over the 2021–2030 period, and \$158 million after 2030. The costs of the legislation (detailed in Table 1) fall within budget function 270 (energy).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2610

	By fiscal year, millions of dollars—					
	2021	2022	2023	2024	2025	2021–2025
Office of Indian Energy:						
Authorization <sup>a</sup> .....	28	50	50	50	50	228
Estimated Outlays .....	6	18	32	42	47	145
TELGP:						
Authorization <sup>a</sup> .....	28	30	30	30	30	148
Estimated Outlays .....	1	7	14	22	30	74
Total Changes:						
Authorization <sup>a</sup> .....	56	80	80	80	80	376
Estimated Outlays .....	7	25	46	64	77	219

TELGP = Tribal Energy Loan Guarantee Program.

<sup>a</sup> S. 2610 would authorize the appropriation of \$50 million annually through 2030 for programs sponsored by the Department of Energy’s Office of Indian Energy. The bill also would authorize the appropriation of \$30 million annually through 2030 for TELGP. In 2020, the Congress appropriated \$22 million and \$2 million, respectively, for those purposes. Because CBO estimates budgetary effects under continuing resolutions on an annualized basis, in 2021 CBO assumes that the same amounts will be available under the current continuing resolution (Public Law 116–159). As a result, CBO estimates that the bill would authorize additional appropriations in 2021 of \$56 million for those purposes, the difference between the authorized amounts and the annualized amounts provided under the continuing resolution.

<sup>1</sup> Under the Federal Credit Reform Act of 1990, the subsidy cost of a loan guarantee is the net present value of estimated payments by the government to cover defaults and delinquencies, interest subsidies, or other expenses, offset by any payments to the government, including origination fees, other fees, penalties, and recoveries on defaulted loans. Such subsidy costs are calculated by discounting those expected cash flows using the rate on Treasury securities of comparable maturity. The resulting estimated subsidy costs are recorded in the budget when the loans are disbursed.

The CBO staff contact for this estimate is Aaron Krupkin. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communication from the Executive Branch regarding S. 2610.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2610 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.