

CONSULTATION WITH INDIAN TRIBES

Pub. L. 109-58, title V, § 504, Aug. 8, 2005, 119 Stat. 778, provided that: "In carrying out this title [enacting this chapter, section 7144e of Title 42, The Public Health and Welfare, and subchapter V (§16001) of chapter 149 of Title 42, amending section 4132 of this title and section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 15801 of Title 42] and the amendments made by this title, the Secretary [of Energy] and the Secretary of the Interior shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes."

§ 3502. Indian tribal energy resource development

(a) Department of the Interior program

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy development organizations in achieving the purposes of this chapter.

(2) In carrying out the Program, the Secretary shall—

(A) provide development grants to Indian tribes and tribal energy development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and tribal energy development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land;

(C) provide low-interest loans to Indian tribes and tribal energy development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources;

(D) provide grants and technical assistance to an appropriate tribal environmental organization, as determined by the Secretary, that represents multiple Indian tribes to establish a national resource center to develop tribal capacity to establish and carry out tribal environmental programs in support of energy-related programs and activities under this chapter, including—

(i) training programs for tribal environmental officials, program managers, and other governmental representatives;

(ii) the development of model environmental policies and tribal laws, including tribal environmental review codes, and the creation and maintenance of a clearinghouse of best environmental management practices; and

(iii) recommended standards for reviewing the implementation of tribal environmental laws and policies within tribal judicial or other tribal appeals systems; and

(E) consult with each applicable Indian tribe before adopting or approving a well spacing program or plan applicable to the energy resources of that Indian tribe or the members of that Indian tribe.

(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2006 through 2016.

(4) PLANNING.—

(A) IN GENERAL.—In carrying out the program established by paragraph (1), the Secretary shall provide technical assistance to interested Indian tribes to develop energy plans, including—

(i) plans for electrification;

(ii) plans for oil and gas permitting, renewable energy permitting, energy efficiency, electricity generation, transmission planning, water planning, and other planning relating to energy issues;

(iii) plans for the development of energy resources and to ensure the protection of natural, historic, and cultural resources; and

(iv) any other plans that would assist an Indian tribe in the development or use of energy resources.

(B) COOPERATION.—In establishing the program under paragraph (1), the Secretary shall work in cooperation with the Office of Indian Energy Policy and Programs of the Department of Energy.

(b) Department of Energy Indian energy education planning and management assistance program

(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe, intertribal organization, or tribal energy development organization for use in carrying out—

(A) energy, energy efficiency, and energy conservation programs;

(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;

(C) activities to increase the capacity of Indian tribes to manage energy development and energy efficiency programs;

(D) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

(E) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

(3) TECHNICAL AND SCIENTIFIC RESOURCES.—In addition to providing grants to Indian tribes under this subsection, the Secretary shall collaborate with the Directors of the National Laboratories in making the full array of technical and scientific resources of the Department of Energy available for tribal energy activities and projects.

(4)(A) The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to par-

participate in carbon sequestration practices on Indian land, including—

- (i) geologic sequestration;
- (ii) forest sequestration;
- (iii) agricultural sequestration; and
- (iv) any other sequestration opportunities the Director considers to be appropriate.

(B) The activities carried out under subparagraph (A) shall be—

- (i) coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy;
- (ii) conducted to determine methods consistent with existing standardized measurement protocols to account and report the quantity of carbon dioxide or other greenhouse gases sequestered in projects that may be implemented on Indian land; and
- (iii) reviewed periodically to collect and distribute to Indian tribes information on carbon sequestration practices that will increase the sequestration of carbon without threatening the social and economic well-being of Indian tribes.

(5)(A) The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.

(B) In providing a grant under this subsection, the Director shall give priority to any application received from an Indian tribe with inadequate electric service (as determined by the Director).

(C) In providing a grant under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Director shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Director determines to be appropriate.

(6) The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

(7) There is authorized to be appropriated to carry out this subsection \$20,000,000 for each of fiscal years 2006 through 2016.

(c) Department of Energy loan guarantee program

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 661a of title 2) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe or a tribal energy development organization for energy development.

(2) In providing a loan guarantee under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Secretary of Energy shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Secretary determines to be appropriate.

(3) A loan guaranteed under this subsection shall be made by—

- (A) a financial institution subject to examination by the Secretary of Energy;
- (B) an Indian tribe, from funds of the Indian tribe; or
- (C) a tribal energy development organization, from funds of the tribal energy development organization.

(4) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed \$2,000,000,000.

(5) Not later than 1 year after December 18, 2018, the Secretary of Energy shall issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

(6) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(7) Not later than 1 year after August 8, 2005, the Secretary of Energy shall submit to Congress a report on the financing requirements of Indian tribes for energy development on Indian land.

(d) Preference

(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

(2) In carrying out this subsection, a Federal agency or department shall not—

- (A) pay more than the prevailing market price for an energy product or byproduct; or
- (B) obtain less than prevailing market terms and conditions.

(Pub. L. 102-486, title XXVI, § 2602, as added Pub. L. 109-58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 765; amended Pub. L. 115-325, title I, §§ 101, 104, 105(b), Dec. 18, 2018, 132 Stat. 4445, 4455, 4456.)

CODIFICATION

August 8, 2005, referred to in subsec. (c)(7), was in the original “the date of enactment of this section”, which was translated as meaning the date of enactment of Pub. L. 109-58, which amended this chapter generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 3502, Pub. L. 102-486, title XXVI, § 2602, Oct. 24, 1992, 106 Stat. 3113, related to tribal consultation in implementing provisions, prior to the general amendment of this chapter by Pub. L. 109-58.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-325, § 105(b)(1)(A), substituted “tribal energy development organizations” for “tribal energy resource development organizations”.

Subsec. (a)(2). Pub. L. 115-325, § 105(b)(1)(B), substituted “tribal energy development organizations” for “tribal energy resource development organizations” wherever appearing.

Subsec. (a)(2)(E). Pub. L. 115-325, § 101(a)(1), added subpar. (E).

Subsec. (a)(4). Pub. L. 115-325, § 101(a)(2), added par. (4).

Subsec. (b)(2). Pub. L. 115-325, §§ 101(b)(1), 105(b)(2), substituted “Indian tribe, intertribal organization, or tribal energy development organization” for “Indian tribe or tribal energy resource development organization” in introductory provisions.

Subsec. (b)(2)(C) to (E). Pub. L. 115-325, § 101(b)(2), (3), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(3) to (7). Pub. L. 115-325, § 104, added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (c)(1). Pub. L. 115-325, §101(c)(1), inserted “or a tribal energy development organization” after “Indian tribe”.

Subsec. (c)(3). Pub. L. 115-325, §101(c)(2)(A), substituted “guaranteed” for “guarantee” in introductory provisions.

Subsec. (c)(3)(C). Pub. L. 115-325, §101(c)(2)(B)–(D), added subpar. (C).

Subsec. (c)(5). Pub. L. 115-325, §101(c)(3), substituted “Not later than 1 year after December 18, 2018, the Secretary of Energy shall” for “The Secretary of Energy may”.

§ 3503. Indian tribal energy resource regulation

(a) Grants

The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

(b) Use of funds

Funds from a grant provided under this section may be used—

(1)(A) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

(B) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

(C) by an Indian tribe (other than an Indian Tribe in the State of Alaska, except the Metlakatla Indian Community) for—

(i) the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development; and

(ii) the development of technical infrastructure to protect the environment under applicable law; or

(D) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

(2) by an Indian tribe for the training of employees that—

(A) are engaged in the development of energy resources on Indian land; or

(B) are responsible for protecting the environment.

(c) Other assistance

(1) In carrying out the obligations of the United States under this chapter, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that on the request of an Indian tribe or a tribal energy development organization, the Indian tribe or tribal energy development organization shall have available scientific and technical information and expertise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

(2) The Secretary may carry out paragraph (1)—

(A) directly, through the use of Federal officials; or

(B) indirectly, by providing financial assistance to an Indian tribe or tribal energy development organization to secure independent assistance.

(Pub. L. 102-486, title XXVI, §2603, as added Pub. L. 109-58, title V, §503(a), Aug. 8, 2005, 119 Stat.

768; amended Pub. L. 115-325, title I, §102, Dec. 18, 2018, 132 Stat. 4447.)

PRIOR PROVISIONS

A prior section 3503, Pub. L. 102-486, title XXVI, §2603, Oct. 24, 1992, 106 Stat. 3114; Pub. L. 105-388, §10, Nov. 13, 1998, 112 Stat. 3484, related to promotion of energy resource development and energy vertical integration on Indian reservations, prior to the general amendment of this chapter by Pub. L. 109-58.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115-325, §102(1), substituted “on the request of an Indian tribe or a tribal energy development organization, the Indian tribe or tribal energy development organization” for “on the request of an Indian tribe, the Indian tribe”.

Subsec. (c)(2)(B). Pub. L. 115-325, §102(2), inserted “or tribal energy development organization” after “Indian tribe”.

§ 3504. Leases, business agreements, and rights-of-way involving energy development or transmission

(a) Leases and business agreements

In accordance with this section—

(1) an Indian tribe may, at the discretion of the Indian tribe, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the energy mineral resources of the Indian tribe located on tribal land;

(B) construction or operation of—

(i) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land; or

(ii) a facility to process or refine energy resources, at least a portion of which have been developed on or produced from tribal land; or

(C) pooling, unitization, or communitization of the energy mineral resources of the Indian tribe located on tribal land with any other energy mineral resource (including energy mineral resources owned by the Indian tribe or an individual Indian in fee, trust, or restricted status or by any other persons or entities) if the owner, or, if appropriate, lessee, of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement; and

(2) a lease or business agreement described in paragraph (1) shall not require review by, or the approval of, the Secretary under section 81 of this title, or any other provision of law (including regulations), if the lease or business agreement—

(A) was executed—

(i) in accordance with the requirements of a tribal energy resource agreement in effect under subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); or