

Calendar No. 63

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-28

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

APRIL 8, 2019.—Ordered to be printed

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

R E P O R T

[To accompany S. 212]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 212) 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, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 212 is to amend three Federal laws relating to business, economic, and trade development in Indian communities. These amendments are intended to increase access to capital for Indian tribes and businesses, increase opportunities for Indian business promotion, and create mechanisms and tools to attract investments in Indian communities.

NEED FOR LEGISLATION

The Committee has held numerous hearings and listening sessions at which Indian tribal leaders, business owners, and entrepreneurs testified regarding significant challenges to economic development in Indian communities. The most prevalent problem has been accessing capital to start, build, and grow businesses. Long-range planning and coordination for tribal community development to facilitate business growth has also been an issue for many In-

dian tribes. Moreover, Federal programs which assist economic development have not been adequately supportive of Indian communities' economic growth.

Despite these problems, the Committee is confident that the potential for long-term sustainable and stable economies exists and can be fulfilled through both legislative and administrative improvements.

The bill, S. 212, is an important first step toward these goals and addressing these problems. Moreover, this bill can help create jobs at the local level and assist small business growth and development and assist Indian tribes to engage in more cohesive community development. In addition, S. 212 reduces the costs of engaging in economic development projects in Indian communities by rolling back Federal bureaucratic oversight.

BACKGROUND

The prospect of prosperity often falls short in many Indian communities across the nation. Too many of these communities across the nation face unique and daunting challenges. High rates of unemployment, crime, and poverty and other problems are compounded by the lack of adequate infrastructure, rugged terrain, and geographic isolation of these communities.

In fact, many of these problems have persisted for years. The Committee noted that:

The unemployment rate for American Indian and Alaskan Native populations continues to hover at 50%, with some Native communities suffering unemployment rates of 80–90%. In addition, American Indians and Alaskan Natives have the highest poverty rate in the country at 30%. These statistics reflect a variety of factors including poor physical infrastructure, lack of human capital, lack of access to financial capital, a long-standing dependence on [F]ederal transfer payments, and an almost non-existent private sector economy in Native communities.¹

The Federal government continues its efforts to address this troubling reality, but Tribes feel more efforts are needed. In her testimony before this Committee on behalf of the Department of the Interior, Ms. Cheryl Andrews-Maltais stated that:

Native communities have experienced disproportional barriers to economic development. Economic development is critical for building capacity in Indian Country in other areas such as law enforcement, health, education, natural resource management, and infrastructure. Even in good economic times, the unemployment rate in these communities and villages is double the national average.²

Ms. Alejandra Castillo, on behalf of the Department of Commerce, reiterated that “by any socioeconomic indicator, Native Americans are the most underserved population in the Country.”³

¹ S.Rpt 106–149, 106th Cong., 1st Sess., Sept. 8, 1999, at 2.

² *Legislative Hearing on S.2285, S.3234, S.3261, and H.R.4685 Before the S.Comm. Indian Affairs*, 114 Cong. 2 (2016) (Statement of Cheryl Andrews-Maltais, Sr. Policy Adv., A. Sec. on Indian Affairs, U.S. Dep’t of the Interior, at 11).

³ *Accessing Capital in Indian Country, Hearing Before the S. Comm. Indian Affairs*, 114 Cong. 1 (2015) (Statement of Alejandra Castillo, at 3).

Mr. Michael R. Smith, also on behalf of the Department of the Interior, has further elaborated on the economic inhibitors Indian communities face in trying to build stable and sustainable economies which ultimately will reduce unemployment and help reduce a host of other social problems:

While each Tribal community and their economy is unique, there are a number of common factors that have inhibited economic development in Indian Country. Primary road blocks include, one, lack of collateral in which Tribes and reservation businesses can obtain capital; number two, lack of a business development environment; number three, lack of physical and legal infrastructure; number four, difficulty in developing natural resources due to multiple governments having regulatory and taxing jurisdiction over development; number five, lack of educational and training opportunities to develop a skilled work force; and number six, lack of access to modern technology.⁴

The Committee has long focused on and prioritized helping “Indian communities to prosper and to enjoy healthier lives.”⁵ In a 2015 hearing, then-Chairman of the Committee, Senator John Barrasso stated that “fundamental to these goals is the need to build sustainable tribal economies and create jobs in Indian communities. Economic development and the capital necessary for that development are significant needs in Indian communities.”⁶ These Indian communities “are located in remote areas, far away from transportation, distribution, or communication systems suitable for sustainable commerce.”⁷

OVERVIEW

This legislation, S. 212, would amend three Federal laws relating to economic development in Indian communities: the *Native American Business Development, Trade Promotion, and Tourism Act of 2000*, the *Native American Programs Act*, and the *Buy Indian Act*.

Native American Business Development, Trade Promotion, and Tourism Act of 2000. S. 212 would amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000 to:

- Require coordination between the Secretaries of Commerce, Interior, and Treasury to develop initiatives encouraging investment in Indian communities;
- Elevate the Director of Indian Programs in the Department of Commerce and authorize the funding for operations; and
- Make permanent the waiver of the requirement for Native CDFIs to provide a matching cost share for assistance received by the Treasury CDFI.

⁴*Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development In Native Communities, Field Hearing Before the S. Comm. Indian Affairs*, 112 Cong. 1 (2011) (Statement of Michael R. Smith, Dep. Bureau Dir., Field Operations, Bureau of Indian Affairs, U.S. Dept of the Interior, at 3).

⁵*Accessing Capital in Indian Country, Hearing Before the S. Comm. Indian Affairs* 114 Cong. 1 (2015) (Statement of John Barrasso, Chairman, S. Comm. Indian Affairs, at 1).

⁶*Id.*

⁷*Id.*

The Committee noted long ago that “better coordination of [F]ederal Indian economic development programs and resources will promote greater efficiency as tribes, tribal members, private sector representatives, and individuals engage in business development on Indian lands.”⁸ To that end, during the 106th Congress, the Committee favorably reported S. 401, which proposed the establishment of an Office of Native American Business Development in the Department of Commerce. The Committee included the establishment of that Office in the legislation “to promote both intra-agency and inter-agency coordination of [F]ederal programs that affect Indian economic development.”⁹ This provision became a part of S. 2719, which passed both the Senate and the House of Representatives and was signed into law by the President as P.L. 106–464.

The Committee, however, is concerned that implementation of P.L. 106–464 has not aligned with Congressional intent and has been ineffective at promoting economic development and reducing poverty and unemployment in Indian communities. This legislation, S. 212, would advance these goals in a more effective manner by elevating the Office and ensuring proper Secretarial attention to the economic development needs of Indian Country.

The legislation would further increase the coordination among and accountability of the Federal agencies as well. The Secretaries of Commerce, Interior, and Treasury would be required to collaborate to promote investment in Indian communities, identify barriers to such investments, and ensure consultation with Indian tribes. Not less than every three years, these Secretaries would be required to report to Congress on the results of the initiatives developed.

This coordination is necessary, not only for developing initiatives, but also for collecting information and data needed to identify and reduce barriers to investments. Mr. Black, testifying on behalf of the Department of the Interior, explained that “for the United States to adequately identify and focus on unemployment in Indian Country, we must first collect reliable data that will allow us to track progress over time.”¹⁰

The Department of Commerce, particularly through the Office of Native American Business Development, has already developed a variety of cooperative programs. Ms. Castillo testified before this Committee that the Minority Business Development Agency of the Department of Commerce “work[s] closely with other Federal agencies outside the Department of Commerce such as the Small Business Administration and Treasury to leverage existing programs that increase capital opportunities for MBEs through micro lending, community development, financial institutions, and other loan guarantee programs.”¹¹

This cooperation has led to relatively significant results. For example, this “network center has served 1,100 American Indian and Alaskan Native firms. Further, over the past six fiscal years, FY 2009 through FY 2014, the MBDA has assisted Native American

⁸ S.Rpt. 106–149, 106th Cong., 1st Sess., Sept. 8, 1999, at 2.

⁹ *Id.*

¹⁰ Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development In Native Communities” Field Hearing before the S.Comm. Ind. Aff. August 17, 2011. 112th Cong., at 5.

¹¹ *Accessing Capital in Indian Country*. Hearing before the S.Comm. Ind. Aff., June 17, 2015. Statement of Alejandra Castillo, at 4.

clients in accessing over \$1.8 billion in capital.” The Committee strongly believes that additional cooperation, collaboration, and consultation with Indian Country could lead to even more remarkable results.

In increasing access to capital, the Native Community Development Financial Institutions (CDFIs) have been relatively successful in delivering capital to underserved Indian communities. Mr. Dennis Nolan, on behalf of the Department of the Treasury, acknowledged that “[t]he CDFI Fund’s work in Indian Country is born of an awareness that Native communities all across the Nation face extraordinary economic challenges and limited access to capital.”¹²

Mr. Nolan testified, “In 2001, the CDFI published the landmark Native American Lending Study . . . [which] identified 17 major barriers that limit access to capital in Native communities and offered a variety of recommendations to address them.”¹³ Within ten years, the number of Native CDFIs grew from just a few to 68 in 21 states.¹⁴

These Native CDFIs typically provide microloans up to \$250,000 for Indian businesses and entrepreneurs, with an average loan of approximately \$24,000.¹⁵ From 2004 to 2014, “Native CDFIs that received NACA program awards [from the Department of the Treasury’s Native American CDFI Assistance Program] made over 15,000 loans totaling \$365 million in Native communities.”¹⁶ Additionally, “[c]ertified CDFIs made almost 7,000 loans and investments totaling \$184 million in Native communities. Native CDFIs reported that their loans and investments created or retained more than 2,000 jobs.”¹⁷

Native CDFIs receive some Federal funding to make these loans. In its annual Appropriation Acts, Congress waives the cost share requirement for the respective fiscal year for Native CDFI awardees. This legislation, S. 212, would make that waiver permanent. With a permanent waiver, Native CDFIs can more efficiently provide access to capital to underserved Indian communities.

The Committee reiterates Mr. Nolan’s statement that “[t]he Treasury CDFI Fund’s] work and the work of every Native CDFI is about changing lives and building stronger, more resilient communities.”¹⁸ This serious mission mandates that every effort be taken to strengthen and support this important tool for Indian community economies.

Native American Programs Act. The bill would amend the *Native American Programs Act* to:

- Reauthorize the economic development programs;
- Prioritize grant applications for building tribal court systems and code development for economic development; supporting CDFIs; and developing master plans for community and economic development; and

¹²*Economic Development: Encouraging Investment in Indian Country, Hearing Before the S. Comm. Indian Affairs*, 113 Cong. 2 (2014) (Statement of Dennis Nolan, Acting Dir., Community Dev. Financial Institutions, U.S. Dep’t of the Treasury, at 2).

¹³*Id.*

¹⁴*Id.*

¹⁵The University of Arizona Native Nations Institute, “Access to Capital and Credit in Native Communities,” (May 2016), at 14.

¹⁶*Id.*

¹⁷*Economic Development: Encouraging Investment in Indian Country, Hearing Before the S. Comm. Indian Affairs*, 113 Cong. 2 (2014) (Statement of Dennis Nolan, Acting Dir., Community Dev. Financial Institutions, U.S. Dep’t of the Treasury, at 3).

¹⁸*Id.*

- Prioritize groups engaged in the above mentioned activity when providing technical advice.

In 2001, then-Vice Chairman of the Committee, Senator Ben Nighthorse Campbell, stated that “it is increasingly apparent that the kind of governing environment that a tribe has in place will determine whether or not businesses will prosper and jobs and income will flow.”¹⁹ He further elaborated that “[b]y ‘good governance’ I mean stable institutions with administrative capacity, fair and effective dispute resolutions with an appeals process, a separation of politics from business management and transparency in government, to name a few.”²⁰

Mr. Andrew Lee, testifying before the Committee, noted that “[g]overnance goes a long way toward explaining why some tribes are able to break poverty, dependency and their related social ills while others languish.”²¹ He further explained that based on research from the Harvard Project, “[t]ribal enterprises that are formally insulated from political interference are four times as likely to be profitable from those that are not.”²²

The November 2001 Report of the Native American Lending Study noted that “one major barrier to capital access related to legal infrastructure” was the “uncertain tribal commercial laws and regulations and the absence of an independent judiciary.”²³ In testimony before the Committee, Mr. Derrick Watchman, Chairman of the Board of the National Center for American Indian Enterprise Development (NCAIED), underscored that finding.

A banker by trade, Mr. Watchman testified before the Committee on how tribal governments, the banks, and the Federal Government could facilitate access to capital in Indian Country.²⁴ He stated, “it is very helpful for tribal governments to establish a uniform commercial code system.”²⁵ Businesses can utilize such systems to resolve commercial disputes in fair and equitable ways in tribal courts. With access to capital highlighted as one of the most prevalent problems for tribal economic development, the need to address the legal infrastructure issues is a significant priority. Various Federal programs provide tribal court funding for code development, but these are usually designed to address criminal justice needs.

Rather than divert resources designed to build tribal criminal justice capacity, the Committee turned to the social and economic development programs authorized by the Native American Programs Act to assist in developing the legal infrastructure necessary for increasing access to capital.

Mr. Watchman further testified that “[s]trategic clarity (with strategies that are aligned with community ideals and backed with

¹⁹ *Indian Tribal Good Governance Practices as they Relate to Economic Development, Hearing Before the S. Comm. Indian Affairs*, 107 Cong. 1 (2001) (Statement of Sen. Ben Nighthorse Campbell, V. Chairman, S. Comm. Indian Affairs, at 1).

²⁰ *Id.*

²¹ *Indian Tribal Good Governance Practices as they Relate to Economic Development, Hearing Before the S. Comm. Indian Affairs*, 107 Cong. 1 (2001) (Statement of Andrew Lee, Ex. Dir., Harvard Proj. on American Indian Econ. Dev., John F Kennedy Sch. Of Gov., Harvard Uni., at 28).

²² *Id.* at 29.

²³ The Report of the Native American Lending Study. Community Development Financial Institutions Fund. U.S. Dept. of the Treasury. November, 2001, at 4.

²⁴ *Accessing Capital in Indian Country, Hearing Before S. Comm. Indian Affairs*, 114. Cong. 1 (2015) (Statement of Derrick Watchman, Chairman, Board of Dir.’s, National Center for American Indian Enterprise Dev, at 8).

²⁵ *Id.*

community support)” is an important consideration for tribal policymakers in facilitating economic development. To that end, S. 212 prioritizes the development of tribal master plans for community and economic development as authorized activities for the Native American Programs Act’s grant programs. The Harvard Project findings also suggest that such master plans will be useful in promoting economic development. The Project has found that “successful economies in Indian Country stand on the shoulders of culturally appropriate governing institutions.”²⁶

However, the grants authorized by the Native American Programs Act neither prioritized nor encouraged a focus on legal infrastructure building or master planning for economic development purposes. This legislation, S. 212, would change this by restructuring the priorities among the social and economic development grants so that the following applications would receive priority consideration: those that would provide technical assistance related to building tribal court systems and codes; those that develop Native CDFIs; and those that promote master planning for economic development purposes.

Those priorities, however, would only extend to fifty percent of the funding for the Act’s social and economic development programs. This is necessary to ensure that a variety of economic development projects are funded through these programs each year.

According to the officials of the Administration for Native Americans, which administers these grants, the current method for selecting grantees does not have set percentages for different types of projects; nor does it otherwise distinguish among them. Grants are awarded based only on the number of points received during the assessment process.

Because there are so many applications, a priority structure without caps based on project type could potentially exhaust all funding on one or two types of projects, at the expense of all other economic and social projects. By requiring that only fifty percent of available grant funding be governed by the bill’s priority structure, S. 212 can achieve its twin ends of prioritizing the projects that research has shown are most fundamental to increasing access to capital, and not impeding other types of economic development projects.

Buy Indian Act. The bill would amend the Buy Indian Act to:

- Facilitate agency compliance with the Buy Indian Act’s provisions when covered agencies, such as the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS), engage in procurement; and
- Require more accountability in implementing this Act.

The Buy Indian Act was enacted in 1910. The Bureau of Indian Affairs “has obtained services and supplies from Indian sources using the Buy Indian Program since 1965, based on policy memoranda and acquisition.”²⁷

In 2013, the Bureau of Indian Affairs issued regulations to “describe[] uniform administrative procedures that [the agency] will use in all of its locations to encourage procurement relation-

²⁶ *Indian Tribal Good Governance Practices as they Relate to Economic Development*, Hearing before the S. Comm. Indian Affairs, 107 Cong. 1 (2001) (Statement of Andrew Lee, Ex. Dir., Harvard Proj. on American Indian Econ. Dev., John F Kennedy Sch. Of Gov., Harvard Uni., at 29).

²⁷ 78 F.R. 34266 (June 7, 2013).

ships with eligible Indian Economic Enterprises in the execution of the Buy Indian Act.”²⁸ On the other hand, the Indian Health Service, to which the Buy Indian Act also applies, has yet to issue regulations governing its use of the Buy Indian Act.

Indian business owners and entrepreneurs have long expressed concerns that both agencies have not fully or appropriately implemented the Buy Indian Act, thereby denying a significant amount of business to Indian entrepreneurs.²⁹ According to Michael G. Anderson, Executive Director for the Native American Contractors Association:

The Federal Procurement Data System shows that since [F]iscal [Y]ear 2013, the [BIA] has procured \$103.3 million under Buy Indian [*sic*] out of \$1.22 billion spent (8.5 percent). At the same time, the [IHS] procured \$15.1 million under Buy Indian [*sic*] out of \$3.3 billion spent (0.5 percent). If we were to assume a Buy Indian [*sic*] goal of just 23 percent—the goal for [F]ederal small business contracting—that would translate to \$200 million more in potential BIA opportunities and \$800 million more in potential IHS opportunities.³⁰

Mr. Anderson, who before House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs last Congress, further testified that:

The investment impact to Native communities is quantifiable. For Interior every 1% increase in Buy Indian awards equates to a \$118 million increase. Assuming a conservative 5% profit to IEEs, a 1% increase equates to \$5.9 million in economic development to Native communities. For IHS, every 1% increase in Buy Indian awards equates to a \$30 million increase. Using the same 5% profit, a 1% increase translates to \$1.5 million in economic development available to Native communities.³¹

At a Committee on Indian Affairs hearing in the 114th Congress, the Department of Interior’s Senior Policy Advisor to the Acting Assistant Secretary on Indian Affairs Ms. Andrews-Maltais testified, “Buy Indian Act is an important component of the Department’s goal of fostering and supporting American Indian/Alaska Native entrepreneurship.”³²

Although the new BIA regulations have been issued to improve such procurement, the Committee strongly believes that legislative refinements are needed to ensure that the Buy Indian Act will be implemented more fully and consistently throughout both the BIA and IHS. S. 212 codifies several provisions of BIA’s regulations, adds more training requirements, and increases accountability for both agencies. The Committee expects that the agencies will expeditiously and consistently implement these provisions.

²⁸ *Id.*

²⁹ See Economic Development: Encouraging Investment in Indian Country.

³⁰ Michael G. Anderson, Tribal Business Journal, Buy Indian Act. Available at <http://tribalbusinessjournal.com/news/buy-indian-act/>.

³¹ *Legislative Hearing on S. 607 and S. 1116 Before H. Comm. on Nat. Res. Subcom. on Indian, Insular, and Alaska Native Affairs*, 115th Cong. 2 (2018) (Statement of Michael G. Anderson, Executive Director, Native American Contractors Association).

³² *Legislative Hearing on S. 2285, S. 3234, S. 3261, and H.R. 4685 Before the S. Comm. Indian Affairs*, 114 Cong. (2016) (Statement of Cheryl Andrews-Maltais, at 12).

LEGISLATIVE HISTORY

On January 24, 2018, Senator Hoeven introduced S. 212. Senator McSally joined as a co-sponsor on February 4, 2019. The Senate referred the bill to the Committee on Indian Affairs. On January 29, 2019, the Committee met at a duly called business meeting to consider S. 212, among other bills. By voice vote, the Committee ordered the bill, without amendment, favorably reported to the Senate.

In the 115th Congress, Senator Hoeven introduced S. 1116, a similar predecessor bill, on May 11, 2017. Senator McCain joined him as an original co-sponsor. The bill was referred to the Committee on Indian Affairs, which held a business meeting on May 17, 2017, to consider the bill. Senator Cortez Masto proposed an amendment, which the Committee adopted, that provided changes to the consultation procedures between the Securities and Exchange Commission and Indian tribes. The Committee ordered the bill, as amended, reported favorably.

On March 22, 2018, the Senate passed S. 1116 by voice vote and sent the bill to the House of Representatives, which referred it to the Committees on Natural Resources and on Education and the Workforce. On July 24, 2018, the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources held a hearing on the bill. The House of Representatives took no further action on the bill.

In the 114th Congress, Senator Barrasso introduced S. 3234, a similar predecessor bill, on July 24, 2016. Senator McCain joined him as an original co-sponsor. The Senate referred the bill to the Committee on Indian Affairs. On September 7, 2016, the Committee held a legislative hearing on the bill. Ms. Cheryl Andrews-Maltais testified on behalf of the Department of the Interior in support of the bill and recommended technical refinements for the bill.

On September 21, 2016, the Committee held a duly called business meeting to consider S. 3234. Senator Barrasso offered a substitute amendment which made a number of technical or clarifying, conforming, and substantive changes to the bill as introduced.

The technical or clarifying changes occurred in:

- the findings in Section 2 of the bill;
- the duties of the Director in Section 3;
- the position responsible for interagency coordination in Section 3;
- the permanent waiver of the cost sharing requirement for Native CDFIs in Section 3; and
- the reporting requirements under the Buy Indian Act in Section 4.

The substitute amendment's conforming changes modified the definitions in Section 3 of the bill by striking the definitions of "Fund" and "Native community development financial institution" and clarifying "Native community development financial institution".

For the interagency coordination initiatives in Section 3, the substitute amendment:

- included Indian organizations with experience in providing entrepreneurial training as participants in these initiatives;

- required the agencies to work with the Authority established in 2000 to identify barriers to increasing investments and economic measures in Indian communities; and
- required a report (every 3 years) to Congress regarding improvements to Indian communities from these initiatives.

The amendment additionally made the following changes:

- Replaced the Indian Economic Development Fund with a GAO study on Federal capitalization programs, capital needs and demand in Indian communities, extent of and comparison between Indian and non-Indian use of these programs;
- Struck the definition of “Fund,” and clarified the definition of “Native Community Development Financial Institution” in Section 3;
- Struck the Indian Trader Act provisions from the bill; and
- Set a fifty percent cap on the amount of grant funding for the Native American Programs Act social and economic development programs which would be governed by the priorities set forth in S. 3234.

The Committee adopted the amendment and ordered the bill, as amended, reported favorably. The Congressional Budget Office did not issue a cost estimate prior to the end of the 114th Congress. The Senate took no further action on the bill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth the short title of the bill as the “*Indian Community Economic Enhancement Act of 2019*”.

Section 2. Findings

Section 2 sets forth the findings which state that Indian tribes must overcome many barriers to bring industry and economic development to Indian communities. These barriers include geographic location, lack of infrastructure, lack of sufficient collateral and capital, and regulatory bureaucracy. These barriers increase the costs of doing business in Indian communities.

The Federal government has an important government-to-government relationship with tribes, and a role in facilitating healthy and sustainable tribal economies. The input of tribes is important for developing Federal policies and programs designed to assist Indian tribes and Indian entrepreneurs in building tribal economies.

Tribal infrastructure needs repair, but access to private capital is limited. Federal capital improvement programs, such as loan guarantees and programs that facilitate tax-exempt bond financing, can help build tribal infrastructure.

Tribes are not treated as states or local governments under federal tax and regulatory law, which impedes their ability to raise capital, invest, and benefit from other investment incentives. As a result, investors may avoid financing in Indian communities, making economic projects costly and inaccessible. In order to facilitate private financing for urgent development needs, federal loan programs specific to Indian communities need support. Tribal trust or restricted property cannot be held as collateral. Transactions involving trust or restricted property, such as leases or rights-of-

ways, are subject to the Bureau of Indian Affairs' approval process which adds delays or costs to projects.

Section 3. Community development

Section 3 amends the *Native American Business Development, Trade, Promotion, and Tourism Act of 2000* (25 U.S.C. 4301) by clarifying policies, adding definitions, and creating two new subsections. This section would ensure that the findings and purposes of trade promotion and business development apply to all Indian businesses, not just those that seek assistance pursuant to this statute.

This section would add definitions for the "Director" (which is referenced but not defined in current law); "Native Community Development Financial Institutions (CDFIs)" which are CDFIs authorized under Section 103 of the *Community Development Banking and Financial Institutions Act of 1994* serving Indian reservations or tribes; and "Office" which is the Office of Native American Business Development within the Department of Commerce.

This section describes the role of the Director of the Office of Native American Business Development, giving the holder of that office significant responsibility. The Director would report to the Secretary of Commerce, and serve as the policy advisor on the trust responsibility and as the point of contact for Indian tribes for Departmental programs. The Director would be required to coordinate with all Department offices and agencies to ensure there is an accountable process for consultation regarding Departmental programs and policies. This section also caps the amount of funding authorized for the operations of this Office at \$2 million per fiscal year.

This section adds a new Section 8 (25 U.S.C. 4307) to *Native American Business Development, Trade Promotion, and Tourism Act of 2000*, and would:

- Require, not later than one year after enactment, inter-agency coordination between the Secretaries of Interior, Commerce, and Treasury to develop initiatives
 - to encourage investments in Indian communities, examine collateral alternatives, and use tribal colleges to provide entrepreneurial training;
 - to identify regulatory or legal barriers to increasing such investments; and to consult with Indian tribes regarding increasing such investments;
- Require, at least once every three years, a report to Congress that details the impact of these initiatives on Indian communities;

Require consultation between the Securities and Exchange Commission (SEC) and Indian tribes on statutory or regulatory changes needed for Indian tribes to qualify as an accredited investor under SEC regulations, so that Indian tribes have the ability to withstand investment loss on a basis comparable to other legal entities who are not natural persons; and

- Require that the Government Accountability Office conduct a study to assess current Federal capitalization and programs that are available to assist Indian communities with economic and community development.

- The study shall assess the demand and utilization of each program, the capital needs of Indian tribes and communities related to economic development, and the extent to which similar programs have been used to assist non-Indian communities in comparison.
- The GAO shall submit a report on the findings of this study to the Senate Committee on Indian Affairs and the House Committee on Natural Resources not later than 18 months after the date of enactment.

Section 4. Buy Indian Act

Section 4 would amend the Buy Indian Act (25 U.S.C. 47) in three substantive ways.

First, it would ensure that the Bureau of Indian Affairs and the Indian Health Service consider the *Buy Indian Act* in its procurement decisions by

- Requiring the agencies to utilize the Buy Indian Act preferences unless the Departments determine such procurement decisions would not be practicable and reasonable; and
- Clarifying that facilities construction is also authorized for Buy Indian Act consideration.

In addition, this section would require:

- The Secretaries of Interior and Health and Human Services to conduct outreach to Indian businesses, provide training, and issue regulations;
- Regional office data on implementation;
- Procurement management reviews to include a review of implementation of the *Buy Indian Act*; and
- Consultations with various stakeholders on how compliance with this statute can be harmonized with other procurement goals.

This section would require a biannual report from the agencies on implementation, including:

- The names and efforts of each agency under the respective Secretaries' jurisdiction and Departments to which this Act applies;
- A summary of the purchases;
- Data on increases or decreases in usage;
- Methods for conducting market searches for qualified vendors;
- A summary of deviations;
- The total number and dollar amount of contract awards;
- Any administrative or legal barriers to achieving the goals of the statute; and
- Recommendations for legislative or administrative actions to address the barriers.

Section 5. Native American Programs Act

Section 5 amends the *Native American Programs Act of 1974* (42 U.S.C. 2991) in three substantive ways.

First, for economic development programs administered under this Act, this section would authorize Native CDFIs to be eligible grantees. It also creates a priority structure for the grant assessment process, giving priority to those applicants whose programs seek to develop tribal codes and court systems relating to economic

development; aim at developing nonprofit subsidiaries or other tribal business structures; develop or maintain CDFIs; or develop tribal master plans for community and economic development and infrastructure.

Additionally, the Commissioner of the Administration for Native Americans, who oversees the grant program, shall also prioritize projects that fall into the above mentioned categories when providing technical advice.

Finally, this section reauthorizes the Act's grants for fiscal years 2018 through 2022 at level funding.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 212, as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 5, 2019.

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. 212, the Indian Community Economic Enhancement Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 212—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.

S. 212 would reorganize the Office of Native American Business Development (ONABD) within the Department of Commerce (DOC), require that office to serve as the liaison between DOC and Indian tribes, and permanently authorize the appropriation of \$2 million a year for that office (or \$20 million through 2029). Current law authorizes the appropriation of whatever amounts are necessary for ONABD operations; however, no funds have been appropriated for such purposes since ONABD was originally authorized.

The bill also would authorize the appropriation of \$34 million a year from 2020 through 2024 (totaling \$170 million over the five years) for the Department of Health and Human Services (HHS) to make grants to assist the social and economic development of Native American communities. The authority to make those grants expired at the end of 2002. However, HHS has continued to allocate funds each year for those grants from its appropriation. In 2018, the most recent year for which data is available, that allocation was \$34 million.

Finally, the bill would require DOC, the Department of the Interior, and the Department of the Treasury to develop coordinated

initiatives to encourage investment in Indian communities. Using information from those departments, CBO estimates that implementing those requirements would have no significant effect on the federal budget.

CBO assumes that the bill will be enacted in 2019 and that the authorized amounts will be appropriated each year. Estimated outlays are based on historical spending patterns and would total \$144 million over the 2019–2024 period, CBO estimates.

The costs of the legislation fall within budget functions 450 (community and regional development) and 500 (education, training, employment, and social services) and are detailed in Table 1.

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 212

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019– 2024	2019– 2029
Department of Commerce:													
Authorization	0	2	2	2	2	2	2	2	2	2	2	10	20
Estimated Outlays	0	2	2	2	2	2	2	2	2	2	2	10	20
Department of Health and Human Services:													
Authorization	0	34	34	34	34	34	0	0	0	0	0	170	170
Estimated Outlays	0	1	31	34	34	34	33	3	0	0	0	134	170
Total Changes:													
Authorization	0	36	36	36	36	36	2	2	2	2	2	180	190
Estimated Outlays	0	3	33	36	36	36	35	5	2	2	2	144	190

Although S. 212 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, tribal governments would benefit from the reauthorization of the Buy Indian Act. Such reauthorization would allow the award of federal contracts to Indian-owned businesses and bypass the standard competitive process. Tribal governments would benefit from provision in the bill promoting private investment in Indian communities. Any costs to tribal governments would result from complying with conditions of assistance.

The CBO staff contacts for this estimate are Jon Sperl (for the Department of Commerce), Jennifer Gray (for the Department of Health and Human Services), and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enactment of S. 212 will create only de minimis regulatory or paperwork burdens.

EXECUTIVE COMMUNICATIONS

The Committee has received no official communications from the Administration on the provisions of this bill.

CHANGES IN EXISTING LAW

In compliance with the Standing Rules of the Senate and the Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

