

## Calendar No. 575

112TH CONGRESS  
2D SESSION**S. 1684****[Report No. 112-263]**

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

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 2011

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

DECEMBER 21, 2012

Reported by Mr. AKAKA, with amendments

[Omit the part struck through and insert the part printed in italics]

**A BILL**

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Tribal Energy  
3 Development and Self-Determination Act Amendments of  
4 ~~2011~~ 2012”.

5 **SEC. 2. TABLE OF CONTENTS.**

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

Sec. 1. Short title.  
Sec. 2. Table of contents.

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

Sec. 101. Indian tribal energy resource development.  
Sec. 102. Indian tribal energy resource regulation.  
Sec. 103. Tribal energy resource agreements.  
~~Sec. 104. Conforming amendments.~~  
*Sec. 104. Technical assistance for Indian tribal governments.*  
*Sec. 105. Indian energy efficiency.*  
*Sec. 106. Conforming amendments.*

TITLE II—MISCELLANEOUS AMENDMENTS

Sec. 201. Issuance of preliminary permits or licenses.  
~~Sec. 202. Tribal biomass demonstration project.~~  
*Sec. 202. Tribal biomass demonstration project.*  
Sec. 203. Weatherization program.  
*Sec. 204. Appraisals.*  
*Sec. 205. Leases of restricted lands for Navajo Nation.*

7 **TITLE I—INDIAN TRIBAL EN-**  
8 **ERGY DEVELOPMENT AND**  
9 **SELF-DETERMINATION ACT**  
10 **AMENDMENTS**

11 **SEC. 101. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**  
12 **MENT.**

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

15 (1) in paragraph (2)—

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

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

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

6 “(E) consult with each applicable Indian  
7 tribe before adopting or approving a well spac-  
8 ing program or plan applicable to the energy re-  
9 sources of that Indian tribe or the members of  
10 that Indian tribe.”; and

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

12 “(4) PLANNING.—

13 “(A) IN GENERAL.—In carrying out the  
14 program established by paragraph (1), the Sec-  
15 retary shall provide technical assistance to in-  
16 terested Indian tribes to develop energy plans,  
17 including—

18 “(i) plans for electrification;

19 “(ii) plans for oil and gas permitting,  
20 renewable energy permitting, energy effi-  
21 ciency, electricity generation, transmission  
22 planning, water planning, and other plan-  
23 ning relating to energy issues;

24 “(iii) plans for the development of en-  
25 ergy resources and to ensure the protection

1 of natural, historic, and cultural resources;  
2 and

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

6 “(B) COOPERATION.—In establishing the  
7 program under paragraph (1), the Secretary  
8 shall work in cooperation with the Office of In-  
9 dian Energy Policy and Programs of the De-  
10 partment of Energy.”.

11 (b) DEPARTMENT OF ENERGY INDIAN ENERGY EDU-  
12 CATION PLANNING AND MANAGEMENT ASSISTANCE PRO-  
13 GRAM.—Section 2602(b)(2) of the Energy Policy Act of  
14 1992 (25 U.S.C. 3502(b)(2)) is amended—

15 (1) in the matter preceding subparagraph (A),  
16 by inserting “, intertribal organization,” after “In-  
17 dian tribe”;

18 (2) by redesignating subparagraphs (C) and  
19 (D) as subparagraphs (D) and (E), respectively; and

20 (3) by inserting after subparagraph (B) the fol-  
21 lowing:

22 “(C) activities to increase the capacity of  
23 Indian tribes to manage energy development  
24 and energy efficiency programs;”.

1 (c) DEPARTMENT OF ENERGY LOAN GUARANTEE  
2 PROGRAM.—Section 2602(c) of the Energy Policy Act of  
3 1992 (25 U.S.C. 3502(c)) is amended—

4 (1) in paragraph (1), by inserting “or a tribal  
5 energy development organization” after “Indian  
6 tribe”;

7 (2) in paragraph (3)—

8 (A) in the matter preceding subparagraph  
9 (A), by striking “guarantee” and inserting  
10 “guaranteed”;

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

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

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

15 “(C) a tribal energy development organiza-  
16 tion, from funds of the tribal energy develop-  
17 ment organization.”; and

18 (3) in paragraph (5), by striking “The Sec-  
19 retary of Energy may” and inserting “Not later  
20 than 1 year after the date of enactment of the In-  
21 dian Tribal Energy Development and Self-Deter-  
22 mination Act Amendments of ~~2011~~ 2012, the Sec-  
23 retary of Energy shall”.

1 **SEC. 102. INDIAN TRIBAL ENERGY RESOURCE REGULA-**  
 2 **TION.**

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

5 (1) in paragraph (1), by striking “on the re-  
 6 quest of an Indian tribe, the Indian tribe” and in-  
 7 serting “on the request of an Indian tribe or a tribal  
 8 energy development organization, the Indian tribe or  
 9 tribal energy development organization”; and

10 (2) in paragraph (2)(B), by inserting “or tribal  
 11 energy development organization” after “Indian  
 12 tribe”.

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

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

16 (1) in subsection (a)—

17 (A) in paragraph (1)—

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

20 (ii) in subparagraph (B)—

21 (I) by striking clause (i) and in-  
 22 serting the following:

23 “(i) an electric production, generation,  
 24 transmission, or distribution facility (in-  
 25 cluding a facility that produces electricity

1 from renewable energy resources) located  
2 on tribal land; or”; and

3 (II) in clause (ii)—

4 (aa) by inserting “, at least  
5 a portion of which have been”  
6 after “energy resources”;

7 (bb) by inserting “or pro-  
8 duced from” after “developed  
9 on”; and

10 (cc) by striking “and” after  
11 the semicolon at the end and in-  
12 serting “or”; and

13 (iii) by adding at the end the fol-  
14 lowing:

15 “(C) pooling, unitization, or  
16 communitization of the energy mineral re-  
17 sources of the Indian tribe located on tribal  
18 land with any other energy mineral resource  
19 (including energy mineral resources owned by  
20 the Indian tribe or an individual Indian in fee,  
21 trust, or restricted status or by any other per-  
22 sons or entities) if the owner of the resources  
23 has consented or consents to the pooling, unit-  
24 ization, or communitization of the other re-

1 sources under any lease or agreement; and”;  
2 and

3 (B) by striking paragraph (2) and insert-  
4 ing the following:

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

10 “(A) was executed—

11 “(i) in accordance with the require-  
12 ments of a tribal energy resource agree-  
13 ment in effect under subsection (e) (includ-  
14 ing the periodic review and evaluation of  
15 the activities of the Indian tribe under the  
16 agreement, to be conducted pursuant to  
17 subparagraphs (D) and (E) of subsection  
18 (e)(2)); or

19 “(ii) by the Indian tribe and a tribal  
20 energy development organization—

21 “(I) for which the Indian tribe  
22 has obtained certification pursuant to  
23 subsection (h); and

24 “(II) the majority of the interest  
25 in which is, and continues to be



1 throughout the full term or renewal  
 2 term (if any) of the lease or business  
 3 agreement, owned and controlled by  
 4 the Indian tribe (or the Indian tribe  
 5 and 1 or more other Indian tribes);  
 6 and

7 “(B) has a term that does not exceed—  
 8 “(i) 30 years; or  
 9 “(ii) in the case of a lease for the pro-  
 10 duction of oil resources, gas resources, or  
 11 both, 10 years and as long thereafter as oil  
 12 or gas is produced in paying quantities.”;

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

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

18 “(1) serves—  
 19 “(A) an electric production, generation,  
 20 transmission, or distribution facility (including  
 21 a facility that produces electricity from renew-  
 22 able energy resources) located on tribal land;

23 “(B) a facility located on tribal land that  
 24 extracts, produces, processes, or refines energy  
 25 resources; or

1           “(C) the purposes, or facilitates in car-  
2           rying out the purposes, of any lease or agree-  
3           ment entered into for energy resource develop-  
4           ment on tribal land; and

5           “(2) was executed—

6           “(A) in accordance with the requirements  
7           of a tribal energy resource agreement in effect  
8           under subsection (e) (including the periodic re-  
9           view and evaluation of the activities of the In-  
10          dian tribe under the agreement, to be conducted  
11          pursuant to subparagraphs (D) and (E) of sub-  
12          section (e)(2)); or

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

15                 “(i) for which the Indian tribe has ob-  
16                 tained certification pursuant to subsection  
17                 (h); and

18                 “(ii) the majority of the interest in  
19                 which is, and continues to be throughout  
20                 the full term or renewal term (if any) of  
21                 the right-of-way, owned and controlled by  
22                 the Indian tribe (or the Indian tribe and 1  
23                 or more other Indian tribes); and

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

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

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

7           (4) in subsection (e)—

8           (A) in paragraph (2)—

9           (i) by striking “(2)(A)” and all that  
10 follows through the end of subparagraph  
11 (A) and inserting the following:

12           “(2) PROCEDURE.—

13           (A) EFFECTIVE DATE.—

14           “(i) IN GENERAL.—On the date that  
15 is 271 days after the date on which the  
16 Secretary receives a tribal energy resource  
17 agreement from an Indian tribe under  
18 paragraph (1), the tribal energy resource  
19 agreement shall take effect, unless the Sec-  
20 retary disapproves the tribal energy re-  
21 source agreement under subparagraph (B).

22           “(ii) REVISED TRIBAL ENERGY RE-  
23 SOURCE AGREEMENT.—On the date that is  
24 91 days after the date on which the Sec-  
25 retary receives a revised tribal energy re-

1 source agreement from an Indian tribe  
2 under paragraph (4)(B), the revised tribal  
3 energy resource agreement shall take ef-  
4 fect, unless the Secretary disapproves the  
5 revised tribal energy resource agreement  
6 under subparagraph (B).”;

7 (ii) in subparagraph (B)—

8 (I) by striking “(B)” and all that  
9 follows through “if—” and inserting  
10 the following:

11 “(B) DISAPPROVAL.—The Secretary shall  
12 disapprove a tribal energy resource agreement  
13 submitted pursuant to paragraph (1) or (4)(B)  
14 only if—”;

15 (II) by striking clause (i) and in-  
16 serting the following:

17 “(i) the Secretary determines that the  
18 Indian tribe has not demonstrated that the  
19 Indian tribe has sufficient capacity to reg-  
20 ulate the development of the specific 1 or  
21 more energy resources identified for devel-  
22 opment under the tribal energy resource  
23 agreement submitted by the Indian tribe;”;

1 (III) by redesignating clause (iii)  
2 as clause (iv) and indenting appro-  
3 priately;

4 (IV) by striking clause (ii) and  
5 inserting the following:

6 “(ii) a provision of the tribal energy  
7 resource agreement would violate applica-  
8 ble Federal law (including regulations) or  
9 a treaty applicable to the Indian tribe;

10 “(iii) the tribal energy resource agree-  
11 ment does not include 1 or more provisions  
12 required under subparagraph (D); or”; and

13 (V) in clause (iv) (as redesign-  
14 nated by subclause (III))—

15 (aa) in the matter preceding  
16 subclause (I), by striking “in-  
17 cludes” and all that follows  
18 through “section—” and insert-  
19 ing “does not include provisions  
20 that, with respect to any lease,  
21 business agreement, or right-of-  
22 way to which the tribal energy  
23 resource agreement applies—”;  
24 and

1 (bb) in subclause (XVI)(bb),  
2 by striking “or tribal”;

3 (iii) in subparagraph (C)—

4 (I) in the matter preceding clause  
5 (i), by inserting “the approval of”  
6 after “with respect to”;

7 (II) by striking clause (ii) and in-  
8 serting the following:

9 “(ii) the identification of mitigation  
10 measures, if any, that, in the discretion of  
11 the Indian tribe, the Indian tribe might  
12 propose for incorporation into the lease,  
13 business agreement, or right-of-way”;

14 (III) in clause (iii)(I), by striking  
15 “proposed action” and inserting “ap-  
16 proval of the lease, business agree-  
17 ment, or right-of-way”;

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

20 (V) in clause (v), by striking the  
21 period at the end and inserting “;  
22 and”;

23 (VI) by adding at the end the fol-  
24 lowing:

1 “(vi) the identification of specific  
2 classes or categories of actions, if any, de-  
3 termined by the Indian tribe not to have  
4 significant environmental effects.”;

5 (iv) in subparagraph (D)(ii), by strik-  
6 ing “subparagraph (B)(iii)(XVI)” and in-  
7 serting “subparagraph (B)(iv)(XV)”;

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

9 “(F) A tribal energy resource agreement  
10 that takes effect pursuant to this subsection  
11 shall remain in effect to the extent any provi-  
12 sion of the tribal energy resource agreement is  
13 consistent with applicable Federal law (includ-  
14 ing regulations), unless the tribal energy re-  
15 source agreement is—

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

18 “(ii) voluntarily rescinded by the In-  
19 dian tribe pursuant to the regulations pro-  
20 mulgated under paragraph (8)(B) (or suc-  
21 cessor regulations).

22 “(G)(i) The Secretary shall make a capac-  
23 ity determination under subparagraph (B)(i)  
24 not later than 120 days after the date on which  
25 the Indian tribe submits to the Secretary the

1 tribal energy resource agreement of the Indian  
2 tribe pursuant to paragraph (1), unless the Sec-  
3 retary and the Indian tribe mutually agree to  
4 an extension of the time period for making the  
5 determination.

6 “(ii) Any determination that the Indian  
7 tribe lacks the requisite capacity shall be treat-  
8 ed as a disapproval under paragraph (4) and,  
9 not later than 10 days after the date of the de-  
10 termination, the Secretary shall provide to the  
11 Indian tribe—

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

14 “(II) a description of the steps that  
15 the Indian tribe should take to dem-  
16 onstrate sufficient capacity.

17 “(H) Notwithstanding any other provision  
18 of this section, an Indian tribe shall be consid-  
19 ered to have demonstrated sufficient capacity  
20 under subparagraph (B)(i) to regulate the de-  
21 velopment of the specific 1 or more energy re-  
22 sources of the Indian tribe identified for devel-  
23 opment under the tribal energy resource agree-  
24 ment submitted by the Indian tribe pursuant to  
25 paragraph (1) if—



1 “(i) the Secretary determines that—

2 “(I) the Indian tribe has carried  
3 out a contract or compact under title  
4 I or IV of the Indian Self-Determina-  
5 tion and Education Assistance Act  
6 (25 U.S.C. 450 et seq.); and

7 “(II) for a period of not less than  
8 3 consecutive years ending on the date  
9 on which the Indian tribe submits the  
10 tribal energy resource agreement of  
11 the Indian tribe pursuant to para-  
12 graph (1) or (4)(B), the contract or  
13 compact—

14 “(aa) has been carried out  
15 by the Indian tribe without mate-  
16 rial audit exceptions (or without  
17 any material audit exceptions  
18 that were not corrected within  
19 the 3-year period); and

20 “(bb) has included programs  
21 or activities relating to the man-  
22 agement of tribal land; or

23 “(ii) the Secretary fails to make the  
24 determination within the time allowed  
25 under subparagraph (G)(i) (including any

1 extension of time agreed to under that sub-  
2 paragraph).”;

3 (B) in paragraph (4), by striking “date of  
4 disapproval” and all that follows through the  
5 end of subparagraph (C) and inserting the fol-  
6 lowing: “date of disapproval, provide the Indian  
7 tribe with—

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

9 “(i) each reason for the disapproval;  
10 and

11 “(ii) the revisions or changes to the  
12 tribal energy resource agreement necessary  
13 to address each reason; and

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

16 (C) in paragraph (6)—

17 (i) in subparagraph (B)—

18 (I) by striking “(B) Subject to”  
19 and inserting the following:

20 “(B) Subject only to”; and

21 (II) by striking “subparagraph  
22 (D)” and inserting “subparagraphs  
23 (C) and (D)”;

24 (ii) in subparagraph (C), in the mat-  
25 ter preceding clause (i), by inserting “to

1 perform the obligations of the Secretary  
2 under this section and” before “to ensure”;  
3 and

4 (iii) in subparagraph (D), by adding  
5 at the end the following:

6 “(iii) Nothing in this section absolves,  
7 limits, or otherwise affects the liability, if  
8 any, of the United States for any—

9 “(I) term of any lease, business  
10 agreement, or right-of-way under this  
11 section that is not a negotiated term;  
12 or

13 “(II) losses that are not the re-  
14 sult of a negotiated term, including  
15 losses resulting from the failure of the  
16 Secretary to perform an obligation of  
17 the Secretary under this section.”;  
18 and

19 (D) in paragraph (7)—

20 (i) in subparagraph (A), by striking  
21 “has demonstrated” and inserting “the  
22 Secretary determines has demonstrated  
23 with substantial evidence”;

24 (ii) in subparagraph (B), by striking  
25 “any tribal remedy” and inserting “all

1 remedies (if any) provided under the laws  
2 of the Indian tribe”;

3 (iii) in subparagraph (D)—

4 (I) in clause (i), by striking “de-  
5 termine” and all that follows through  
6 the end of the clause and inserting the  
7 following: “determine—

8 “(I) whether the petitioner  
9 is an interested party; and

10 “(II) if the petitioner is an  
11 interested party, whether the In-  
12 dian tribe is not in compliance  
13 with the tribal energy resource  
14 agreement as alleged in the peti-  
15 tion.”;

16 (II) in clause (ii), by striking  
17 “determination” and inserting “deter-  
18 minations”; and

19 (III) in clause (iii), in the matter  
20 preceding subclause (I) by striking  
21 “agreement” the first place it appears  
22 and all that follows through “, includ-  
23 ing” and inserting “agreement pursu-  
24 ant to clause (i), the Secretary shall  
25 only take such action as the Secretary

1 determines necessary to address the  
2 claims of noncompliance made in the  
3 petition, including”;

4 (iv) in subparagraph (E)(i), by strik-  
5 ing “the manner in which” and inserting  
6 “, with respect to each claim made in the  
7 petition, how”; and

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

9 “(G) Notwithstanding any other provision  
10 of this paragraph, the Secretary shall dismiss  
11 any petition from an interested party that has  
12 agreed with the Indian tribe to a resolution of  
13 the claims presented in the petition of that  
14 party.”;

15 (5) by redesignating subsection (g) as sub-  
16 section (j); and

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

19 “(g) FINANCIAL ASSISTANCE IN LIEU OF ACTIVITIES  
20 BY THE SECRETARY.—

21 “(1) IN GENERAL.—Any amounts that the Sec-  
22 retary would otherwise expend to operate or carry  
23 out any program, function, service, or activity (or  
24 any portion of a program, function, service, or activ-  
25 ity) of the Department that, as a result of an Indian

1       tribe carrying out activities under a tribal energy re-  
2       source agreement, the Secretary does not expend,  
3       the Secretary shall, at the request of the Indian  
4       tribe, make available to the Indian tribe in accord-  
5       ance with this subsection.

6               “(2) ANNUAL FUNDING AGREEMENTS.—The  
7       Secretary shall make the amounts described in para-  
8       graph (1) available to an Indian tribe through an  
9       annual written funding agreement that is negotiated  
10      and entered into with the Indian tribe that is sepa-  
11      rate from the tribal energy resource agreement.

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

14                   “(A) the provision of amounts to an Indian  
15      tribe under this subsection is subject to the  
16      availability of appropriations; and

17                   “(B) the Secretary shall not be required to  
18      reduce amounts for programs, functions, serv-  
19      ices, or activities that serve any other Indian  
20      tribe to make amounts available to an Indian  
21      tribe under this subsection.

22              “(4) DETERMINATION.—

23                   “(A) IN GENERAL.—The Secretary shall  
24      calculate the amounts under paragraph (1) in  
25      accordance with the regulations adopted under

1 section 103(b) of the Indian Tribal Energy De-  
2 velopment and Self-Determination Act Amend-  
3 ments of ~~2011~~ 2012.

4 “(B) APPLICABILITY.—The effective date  
5 or implementation of a tribal energy resource  
6 agreement under this section shall not be de-  
7 layed or otherwise affected by—

8 “(i) a delay in the promulgation of  
9 regulations under section 103(b) of the In-  
10 dian Tribal Energy Development and Self-  
11 Determination Act Amendments of ~~2011~~  
12 2012;

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

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

18 “(h) CERTIFICATION OF TRIBAL ENERGY DEVELOP-  
19 MENT ORGANIZATION.—

20 “(1) IN GENERAL.—Not later than 90 days  
21 after the date on which an Indian tribe submits an  
22 application for certification of a tribal energy devel-  
23 opment organization in accordance with regulations  
24 promulgated under section 103(b) of the Indian  
25 Tribal Energy Development and Self-Determination

1 Act Amendments of ~~2011~~ 2012, the Secretary shall  
2 approve or disapprove the application.

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

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

9 “(ii) for a period of not less than 3 con-  
10 secutive years ending on the date on which the  
11 Indian tribe submits the application, the con-  
12 tract or compact—

13 “(I) has been carried out by the In-  
14 dian tribe without material audit excep-  
15 tions (or without any material audit excep-  
16 tions that were not corrected within the 3-  
17 year period); and

18 “(II) has included programs or activi-  
19 ties relating to the management of tribal  
20 land; and

21 “(B)(i) the tribal energy development orga-  
22 nization is organized under the laws of the In-  
23 dian tribe and subject to the jurisdiction and  
24 authority of the Indian tribe;



1           “(ii) the majority of the interest in the  
2           tribal energy development organization is owned  
3           and controlled by the Indian tribe (or the In-  
4           dian tribe and 1 or more other Indian tribes);  
5           and

6           “(iii) the organizing document of the tribal  
7           energy development organization requires that  
8           the Indian tribe (or the Indian tribe and 1 or  
9           more other Indian tribes) own and control at all  
10          times a majority of the interest in the tribal en-  
11          ergy development organization.

12          “(3) ACTION BY SECRETARY.—If the Secretary  
13          approves an application for certification pursuant to  
14          paragraph (2), the Secretary shall, not more than 10  
15          days after making the determination—

16                 “(A) issue a certification stating that—

17                         “(i) the tribal energy development or-  
18                         ganization is organized under the laws of  
19                         the Indian tribe and subject to the juris-  
20                         diction and authority of the Indian tribe;

21                         “(ii) the majority of the interest in  
22                         the tribal energy development organization  
23                         is owned and controlled by the Indian tribe  
24                         (or the Indian tribe and 1 or more other  
25                         Indian tribes);

1                   “(iii) the organizing document of the  
2                   tribal energy development organization re-  
3                   quires that the Indian tribe (or the Indian  
4                   tribe and 1 or more other Indian tribes)  
5                   own and control at all times a majority of  
6                   the interest in the tribal energy develop-  
7                   ment organization; and

8                   “(iv) the certification is issued pursu-  
9                   ant this subsection;

10                   “(B) deliver a copy of the certification to  
11                   the Indian tribe; and

12                   “(C) publish the certification in the Fed-  
13                   eral Register.

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

16                   (b) REGULATIONS.—Not later than 1 year after the  
17                   date of enactment of the Indian Tribal Energy Develop-  
18                   ment and Self-Determination Act Amendments of ~~2011~~  
19                   ~~2012~~, the Secretary shall promulgate or update any regu-  
20                   lations that are necessary to implement this section, in-  
21                   cluding provisions to implement—

22                   (1) section 2604(g) of the Energy Policy Act of  
23                   1992 (25 U.S.C. 3504(g)) including the manner in  
24                   which the Secretary, at the request of an Indian  
25                   tribe, shall—

1           (A) identify the programs, functions, serv-  
2           ices, and activities (or any portions of pro-  
3           grams, functions, services, or activities) that the  
4           Secretary will not have to operate or carry out  
5           as a result of the Indian tribe carrying out ac-  
6           tivities under a tribal energy resource agree-  
7           ment;

8           (B) identify the amounts that the Sec-  
9           retary would have otherwise expended to oper-  
10          ate or carry out each program, function, serv-  
11          ice, and activity (or any portion of a program,  
12          function, service, or activity) identified pursu-  
13          ant to subparagraph (A); and

14          (C) provide to the Indian tribe a list of the  
15          programs, functions, services, and activities (or  
16          any portions of programs, functions, services, or  
17          activities) identified pursuant subparagraph (A)  
18          and the amounts associated with each program,  
19          function, service, and activity (or any portion of  
20          a program, function, service, or activity) identi-  
21          fied pursuant to subparagraph (B); and

22          (2) section 2604(h) of the Energy Policy Act of  
23          1992 (25 U.S.C. 3504(h)), including the process to  
24          be followed by, and any applicable criteria and docu-

1           mentation required for, an Indian tribe to request  
2           and obtain the certification described in that section.

3 **SEC. 104. CONFORMING AMENDMENTS.**

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

8                   “(11) **TRIBAL ENERGY DEV ELOPMENT ORGANI-**  
9 **ZATION.**—The term ‘tribal energy development orga-  
10 nization’ means—

11                   “(11) The term ‘tribal energy development or-  
12 ganization’ means—

13                           “(A) any enterprise, partnership, consor-  
14 tium, corporation, or other type of business or-  
15 ganization that is engaged in the development  
16 of energy resources and is wholly owned by an  
17 Indian tribe (including an organization incor-  
18 porated pursuant to section 17 of the Indian  
19 Reorganization Act of 1934 (25 U.S.C. 477) or  
20 section 3 of the Act of June 26, 1936 (25  
21 U.S.C. 503) (commonly known as the ‘Okla-  
22 homa Indian Welfare Act’)); or

23                           “(B) any organization of 2 or more enti-  
24 ties, at least 1 of which is an Indian tribe, that  
25 has the written consent of the governing bodies

1 of all Indian tribes participating in the organi-  
 2 zation to apply for a grant, loan, or other as-  
 3 sistance under section 2602 or to enter into a  
 4 lease or business agreement with, or acquire a  
 5 right-of-way from, an Indian tribe pursuant to  
 6 subsection (a)(2)(A)(ii) or (b)(2)(B) of section  
 7 2604.”.

8 (b) INDIAN TRIBAL ENERGY RESOURCE DEVELOP-  
 9 MENT.—Section 2602 of the Energy Policy Act of 1992  
 10 (25 U.S.C. 3502) is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (1), by striking “tribal  
 13 energy resource development organizations”  
 14 and inserting “tribal energy development orga-  
 15 nizations”; and

16 (B) in paragraph (2), by striking “tribal  
 17 energy resource development organizations”  
 18 each place it appears and inserting “tribal en-  
 19 ergy development organizations”; and

20 (2) in subsection (b)(2), by striking “tribal en-  
 21 ergy resource development organization” and insert-  
 22 ing “tribal energy development organization”.

23 (c) WIND AND HYDROPOWER FEASIBILITY STUDY.—  
 24 Section 2606(c)(3) of the Energy Policy Act of 1992 (25

1 U.S.C. 3506(e)(3)) is amended by striking “energy re-  
 2 source development” and inserting “energy development”.

3 (d) CONFORMING AMENDMENTS.—Section 2604(e)  
 4 of the Energy Policy Act of 1992 (25 U.S.C. 3504(e)) is  
 5 amended—

6 (1) in paragraph (1)—

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

9 “(1) IN GENERAL.—On the date”; and

10 (B) by striking “for approval”;

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

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

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

16 (C) by redesignating subclause (XVI) as  
 17 subclause (XV);

18 (3) in paragraph (3)—

19 (A) by striking “(3) The Secretary” and  
 20 inserting the following:

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

23 (B) by striking “for approval”;

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

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

3           (5) in paragraph (5)—

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

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

8           (B) in the matter preceding subparagraph  
9     (A), by striking “approved” and inserting “in  
10    effect”;

11          (6) in paragraph (6)—

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

14          “(6) SECRETARIAL OBLIGATIONS AND EFFECT  
15     OF SECTION.—

16           “(A) In carrying out”;

17           (B) in subparagraph (A), by indenting  
18     clauses (i) and (ii) appropriately;

19           (C) in subparagraph (B), by striking “ap-  
20     proved” and inserting “in effect”; and

21           (D) in subparagraph (D)—

22           (i) in clause (i), by striking “an ap-  
23     proved tribal energy resource agreement”  
24     and inserting “a tribal energy resource

1 agreement in effect under this section”;

2 and

3 (ii) in clause (ii), by striking “ap-

4 proved by the Secretary” and inserting “in

5 effect”; and

6 (7) in paragraph (7)—

7 (A) by striking “(7)(A) In this paragraph”

8 and inserting the following:

9 “(7) PETITIONS BY INTERESTED PARTIES.—

10 “(A) In this paragraph”;

11 (B) in subparagraph (A), by striking “ap-

12 proved by the Secretary” and inserting “in ef-

13 feet”;

14 (C) in subparagraph (B), by striking “ap-

15 proved by the Secretary” and inserting “in ef-

16 feet”; and

17 (D) in subparagraph (D)(iii)—

18 (i) in subclause (I), by striking “ap-

19 proved”; and

20 (ii) in subclause (II)—

21 (I) by striking “approval of” in

22 the first place it appears; and

23 (II) by striking “subsection (a)

24 or (b)” and inserting “subsection

25 (a)(2)(A)(i) or (b)(2)(A)”.



1 **SEC. 104. TECHNICAL ASSISTANCE FOR INDIAN TRIBAL**  
2 **GOVERNMENTS.**

3 *Section 2602(b) of the Energy Policy Act of 1992 (25*  
4 *U.S.C. 3502(b)) is amended—*

5 *(1) by redesignating paragraphs (3) through (6)*  
6 *as paragraphs (4) through (7), respectively; and*

7 *(2) by inserting after paragraph (2) the fol-*  
8 *lowing:*

9 *“(3) TECHNICAL AND SCIENTIFIC RESOURCES.—*  
10 *In addition to providing grants to Indian tribes*  
11 *under this subsection, the Secretary shall collaborate*  
12 *with the Directors of the National Laboratories in*  
13 *making the full array of technical and scientific re-*  
14 *sources of the Department of Energy available for*  
15 *tribal energy activities and projects.”.*

16 **SEC. 105. INDIAN ENERGY EFFICIENCY.**

17 *Part D of title III of the Energy Policy and Conserva-*  
18 *tion Act (42 U.S.C. 6321 et seq.) is amended by adding*  
19 *at the end the following:*

20 **“SEC. 367. INDIAN ENERGY EFFICIENCY PROGRAM.**

21 *“(a) DEFINITION OF INDIAN TRIBE.—In this section,*  
22 *the term ‘Indian tribe’ has the meaning given the term in*  
23 *section 4 of the Indian Self-Determination and Education*  
24 *Assistance Act (25 U.S.C. 450b).*

1       “(b) *PURPOSE.*—*The purpose of the grants provided*  
2 *under subsection (d) shall be to assist Indian tribes in im-*  
3 *plementing strategies—*

4               “(1) *to reduce fossil fuel emissions created as a*  
5 *result of activities within the jurisdictions of eligible*  
6 *entities in a manner that—*

7                       “(A) *is environmentally sustainable; and*

8                       “(B) *to the maximum extent practicable,*  
9 *maximizes benefits for Indian tribes and tribal*  
10 *members;*

11               “(2) *to increase the energy efficiency of Indian*  
12 *tribes and tribal members; and*

13               “(3) *to improve energy efficiency in—*

14                       “(A) *the transportation sector;*

15                       “(B) *the building sector; and*

16                       “(C) *other appropriate sectors.*

17       “(c) *TRIBAL ALLOCATION.*—*Of the amount of funds*  
18 *authorized to be appropriated for each fiscal year under sec-*  
19 *tion 365(f) to carry out this part, the Secretary shall allo-*  
20 *cate not less than 2.5 percent of the funds for each fiscal*  
21 *year to be distributed to Indian tribes in accordance with*  
22 *subsection (d).*

23       “(d) *GRANTS.*—*Of the amounts available for distribu-*  
24 *tion under subsection (c), the Secretary shall establish a*

1 *competitive process for providing grants under this section*  
2 *that gives priority to projects that—*

3           “(1) *increase energy efficiency and energy con-*  
4 *servation rather than new energy generation projects;*

5           “(2) *integrate cost-effective renewable energy*  
6 *with energy efficiency;*

7           “(3) *move beyond the planning stage and are*  
8 *ready for implementation;*

9           “(4) *clearly articulate and demonstrate the abil-*  
10 *ity to achieve measurable goals;*

11           “(5) *have the potential to make an impact in the*  
12 *government buildings, infrastructure, communities,*  
13 *and land of an Indian tribe; and*

14           “(6) *maximize the creation or retention of jobs*  
15 *on Indian land.*

16           “(e) *USE OF FUNDS.—An Indian tribe may use a*  
17 *grant received under this section to carry out activities to*  
18 *achieve the purposes described in subsection (b), includ-*  
19 *ing—*

20           “(1) *the development and implementation of en-*  
21 *ergy efficiency and conservation strategies;*

22           “(2) *the retention of technical consultant services*  
23 *to assist the Indian tribe in the development of an en-*  
24 *ergy efficiency and conservation strategy, including—*

1           “(A) the formulation of energy efficiency,  
2 energy conservation, and energy usage goals;

3           “(B) the identification of strategies to  
4 achieve the goals—

5                 “(i) through efforts to increase energy  
6 efficiency and reduce energy consumption;  
7 and

8                 “(ii) by encouraging behavioral  
9 changes among the population served by the  
10 Indian tribe;

11           “(C) the development of methods to measure  
12 progress in achieving the goals;

13           “(D) the development and publication of  
14 annual reports to the population served by the  
15 eligible entity describing—

16                 “(i) the strategies and goals; and

17                 “(ii) the progress made in achieving  
18 the strategies and goals during the pre-  
19 ceding calendar year; and

20           “(E) other services to assist in the imple-  
21 mentation of the energy efficiency and conserva-  
22 tion strategy;

23           “(3) the implementation of residential and com-  
24 mercial building energy audits;

1           “(4) the establishment of financial incentive pro-  
2           grams for energy efficiency improvements;

3           “(5) the provision of grants for the purpose of  
4           performing energy efficiency retrofits;

5           “(6) the development and implementation of en-  
6           ergy efficiency and conservation programs for build-  
7           ings and facilities within the jurisdiction of the In-  
8           dian tribe, including—

9                   “(A) the design and operation of the pro-  
10                   grams;

11                   “(B) the identification of the most effective  
12                   methods of achieving maximum participation  
13                   and efficiency rates;

14                   “(C) the education of the members of an In-  
15                   dian tribe;

16                   “(D) the measurement and verification pro-  
17                   tocols of the programs; and

18                   “(E) the identification of energy efficient  
19                   technologies;

20           “(7) the development and implementation of pro-  
21           grams to conserve energy used in transportation, in-  
22           cluding—

23                   “(A) the use of—

24                           “(i) flextime by employers; or

25                           “(ii) satellite work centers;

1           “(B) the development and promotion of zon-  
2           ing guidelines or requirements that promote en-  
3           ergy-efficient development;

4           “(C) the development of infrastructure, in-  
5           cluding bike lanes, pathways, and pedestrian  
6           walkways;

7           “(D) the synchronization of traffic signals;  
8           and

9           “(E) other measures that increase energy ef-  
10          ficiency and decrease energy consumption;

11          “(8) the development and implementation of  
12          building codes and inspection services to promote  
13          building energy efficiency;

14          “(9) the application and implementation of en-  
15          ergy distribution technologies that significantly in-  
16          crease energy efficiency, including—

17                 “(A) distributed resources; and

18                 “(B) district heating and cooling systems;

19          “(10) the implementation of activities to increase  
20          participation and efficiency rates for material con-  
21          servation programs, including source reduction, recy-  
22          cling, and recycled content procurement programs  
23          that lead to increases in energy efficiency;

24          “(11) the purchase and implementation of tech-  
25          nologies to reduce, capture, and, to the maximum ex-

1       *tent practicable, use methane and other greenhouse*  
2       *gases generated by landfills or similar sources;*

3               “(12) *the replacement of traffic signals and street*  
4       *lighting with energy-efficient lighting technologies, in-*  
5       *cluding—*

6                       “(A) *light-emitting diodes; and*

7                       “(B) *any other technology of equal or great-*  
8       *er energy efficiency;*

9               “(13) *the development, implementation, and in-*  
10       *stallation on or in any government building of the*  
11       *Indian tribe of onsite renewable energy technology*  
12       *that generates electricity from renewable resources, in-*  
13       *cluding—*

14                       “(A) *solar energy;*

15                       “(B) *wind energy;*

16                       “(C) *fuel cells; and*

17                       “(D) *biomass; and*

18               “(14) *any other appropriate activity, as deter-*  
19       *mined by the Secretary, in consultation with—*

20                       “(A) *the Secretary of the Interior;*

21                       “(B) *the Administrator of the Environ-*  
22       *mental Protection Agency;*

23                       “(C) *the Secretary of Transportation;*

24                       “(D) *the Secretary of Housing and Urban*  
25       *Development; and*

1                   “(E) *Indian tribes.*

2           “(f) *GRANT APPLICATIONS.—*

3                   “(1) *IN GENERAL.—*

4                           “(A) *APPLICATION.—To apply for a grant*  
5                           *under this section, an Indian tribe shall submit*  
6                           *to the Secretary a proposed energy efficiency and*  
7                           *conservation strategy in accordance with this*  
8                           *paragraph.*

9                           “(B) *CONTENTS.—A proposed strategy de-*  
10                           *scribed in subparagraph (A) shall include a de-*  
11                           *scription of—*

12                                   “(i) *the goals of the Indian tribe for*  
13                                   *increased energy efficiency and conservation*  
14                                   *in the jurisdiction of the Indian tribe; and*

15                                   “(ii) *the manner in which—*

16   “(I) *the proposed strategy com-*  
17   *plies with the restrictions described in*  
18   *subsection (e); and*

19   “(II) *a grant will allow the In-*  
20   *dian tribe fulfill the goals of the pro-*  
21   *posed strategy.*

22                           “(2) *APPROVAL.—*

23                                   “(A) *IN GENERAL.—The Secretary shall ap-*  
24                                   *prove or disapprove a proposed strategy under*



1           *paragraph (1) by not later than 120 days after*  
2           *the date of submission of the proposed strategy.*

3           “(B) *DISAPPROVAL.—If the Secretary dis-*  
4           *approves a proposed strategy under paragraph*  
5           *(1)—*

6                     *“(i) the Secretary shall provide to the*  
7                     *Indian tribe the reasons for the disapproval;*  
8                     *and*

9                     *“(ii) the Indian tribe may revise and*  
10                    *resubmit the proposed strategy as many*  
11                    *times as necessary, until the Secretary ap-*  
12                    *proves a proposed strategy.*

13           “(C) *REQUIREMENT.—The Secretary shall*  
14           *not provide to an Indian tribe a grant under*  
15           *this section until a proposed strategy is approved*  
16           *by the Secretary.*

17           “(3) *LIMITATIONS ON USE OF FUNDS.—Of the*  
18           *amounts provided to an Indian tribe under this sec-*  
19           *tion, an Indian tribe may use for administrative ex-*  
20           *penditures, excluding the cost of the reporting require-*  
21           *ments of this section, an amount equal to the greater*  
22           *of—*

23                     *“(A) 10 percent of the administrative ex-*  
24                     *penditures; or*

25                     *“(B) \$75,000.*

1           “(4) *ANNUAL REPORT*.—Not later than 2 years  
 2           after the date on which funds are initially provided  
 3           to an Indian tribe under this section, and annually  
 4           thereafter, the Indian tribe shall submit to the Sec-  
 5           retary a report describing—

6                         “(A) the status of development and imple-  
 7                         mentation of the energy efficiency and conserva-  
 8                         tion strategy; and

9                         “(B) to the maximum extent practicable, an  
 10                         assessment of energy efficiency gains within the  
 11                         jurisdiction of the Indian tribe.”.

12 **SEC. 106. CONFORMING AMENDMENTS.**

13           (a) *DEFINITION OF TRIBAL ENERGY DEVELOPMENT*  
 14 *ORGANIZATION*.—Section 2601 of the Energy Policy Act of  
 15 1992 (25 U.S.C. 3501) is amended by striking paragraph  
 16 (11) and inserting the following:

17                         “(11) The term ‘tribal energy development orga-  
 18                         nization’ means—

19                         “(A) any enterprise, partnership, consor-  
 20                         tium, corporation, or other type of business orga-  
 21                         nization that is engaged in the development of  
 22                         energy resources and is wholly owned by an In-  
 23                         dian tribe (including an organization incor-  
 24                         porated pursuant to section 17 of the Indian Re-  
 25                         organization Act of 1934 (25 U.S.C. 477) or sec-

1            *tion 3 of the Act of June 26, 1936 (25 U.S.C.*  
 2            *503) (commonly known as the ‘Oklahoma Indian*  
 3            *Welfare Act’); or*

4                       *“(B) any organization of 2 or more entities,*  
 5            *at least 1 of which is an Indian tribe, that has*  
 6            *the written consent of the governing bodies of all*  
 7            *Indian tribes participating in the organization*  
 8            *to apply for a grant, loan, or other assistance*  
 9            *under section 2602 or to enter into a lease or*  
 10            *business agreement with, or acquire a right-of-*  
 11            *way from, an Indian tribe pursuant to sub-*  
 12            *section (a)(2)(A)(ii) or (b)(2)(B) of section*  
 13            *2604.”.*

14            *(b) INDIAN TRIBAL ENERGY RESOURCE DEVELOP-*  
 15            *MENT.—Section 2602 of the Energy Policy Act of 1992 (25*  
 16            *U.S.C. 3502) is amended—*

17                       *(1) in subsection (a)—*

18                                  *(A) in paragraph (1), by striking “tribal*  
 19            *energy resource development organizations” and*  
 20            *inserting “tribal energy development organiza-*  
 21            *tions”; and*

22                                  *(B) in paragraph (2), by striking “tribal*  
 23            *energy resource development organizations” each*  
 24            *place it appears and inserting “tribal energy de-*  
 25            *velopment organizations”; and*

1           (2) *in subsection (b)(2), by striking “tribal en-*  
2           *ergy resource development organization” and insert-*  
3           *ing “tribal energy development organization”.*

4           (c) *WIND AND HYDROPOWER FEASIBILITY STUDY.—*  
5           *Section 2606(c)(3) of the Energy Policy Act of 1992 (25*  
6           *U.S.C. 3506(c)(3)) is amended by striking “energy resource*  
7           *development” and inserting “energy development”.*

8           (d) *CONFORMING AMENDMENTS.—Section 2604(e) of*  
9           *the Energy Policy Act of 1992 (25 U.S.C. 3504(e)) is*  
10          *amended—*

11           (1) *in paragraph (1)—*

12                   (A) *by striking “(1) On the date” and in-*  
13                   *serting the following:*

14                           “(1) *IN GENERAL.—On the date*”; and

15                                   (B) *by striking “for approval”;*

16           (2) *in paragraph (2)(B)(iv) (as redesignated by*  
17           *section 4(a)(4)(A)(ii)(III))—*

18                   (A) *in subclause (XIV), by inserting “and”*  
19                   *after the semicolon at the end;*

20                   (B) *by striking subclause (XV); and*

21                   (C) *by redesignating subclause (XVI) as*  
22                   *subclause (XV);*

23           (3) *in paragraph (3)—*

24                   (A) *by striking “(3) The Secretary” and in-*  
25                   *serting the following:*

1           “(3) NOTICE AND COMMENT; SECRETARIAL RE-  
2 VIEW.—*The Secretary*”; and

3           (B) by striking “for approval”;

4           (4) in paragraph (4), by striking “(4) If the Sec-  
5 retary” and inserting the following:

6           “(4) ACTION IN CASE OF DISAPPROVAL.—*If the*  
7 *Secretary*”;

8           (5) in paragraph (5)—

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

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

13           (B) in the matter preceding subparagraph  
14 (A), by striking “approved” and inserting “in  
15 effect”;

16           (6) in paragraph (6)—

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

19           “(6) SECRETARIAL OBLIGATIONS AND EFFECT OF  
20 SECTION.—

21           “(A) In carrying out”;

22           (B) in subparagraph (A), by indenting  
23 clauses (i) and (ii) appropriately;

24           (C) in subparagraph (B), by striking “ap-  
25 proved” and inserting “in effect”; and

1                   (D) in subparagraph (D)—

2                   (i) in clause (i), by striking “an ap-  
3                   proved tribal energy resource agreement”  
4                   and inserting “a tribal energy resource  
5                   agreement in effect under this section”; and

6                   (ii) in clause (ii), by striking “ap-  
7                   proved by the Secretary” and inserting “in  
8                   effect”; and

9                   (7) in paragraph (7)—

10                   (A) by striking “(7)(A) In this paragraph”  
11                   and inserting the following:

12                   “(7) PETITIONS BY INTERESTED PARTIES.—

13                   “(A) In this paragraph”;

14                   (B) in subparagraph (A), by striking “ap-  
15                   proved by the Secretary” and inserting “in ef-  
16                   fect”;

17                   (C) in subparagraph (B), by striking “ap-  
18                   proved by the Secretary” and inserting “in ef-  
19                   fect”; and

20                   (D) in subparagraph (D)(iii)—

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

23                   (ii) in subclause (II)—

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

1                                    (II) by striking “subsection (a) or  
 2                                    (b)” and inserting “subsection  
 3                                    (a)(2)(A)(i) or (b)(2)(A)”.

4                                    **TITLE II—MISCELLANEOUS**  
 5                                    **AMENDMENTS**

6   **SEC. 201. ISSUANCE OF PRELIMINARY PERMITS OR LI-**  
 7                                    **CENSES.**

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

12          (b) APPLICABILITY.—The amendment made by sub-  
 13 section (a) shall not affect—

14               (1) any preliminary permit or original license  
 15               issued before the date of enactment of the Indian  
 16               Tribal Energy Development and Self-Determination  
 17               Act Amendments of ~~2011~~ 2012; or

18               (2) an application for an original license, if the  
 19               Commission has issued a notice accepting that appli-  
 20               cation for filing pursuant to section 4.32(d) of title  
 21               18, Code of Federal Regulations (or successor regu-  
 22               lations), before the date of enactment of the Indian  
 23               Tribal Energy Development and Self-Determination  
 24               Act Amendments of ~~2011~~ 2012.

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

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

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

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

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

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

14           “(a) IN GENERAL.—For each of fiscal years 2013  
 15 through 2017, the Secretary shall enter into stewardship  
 16 contracts or similar agreements (excluding direct service  
 17 contracts) with Indian tribes to carry out demonstration  
 18 projects to promote biomass energy production (including  
 19 biofuel, heat, and electricity generation) on Indian forest  
 20 land and in nearby communities by providing reliable sup-  
 21 plies of woody biomass from Federal land.

22           “(b) DEMONSTRATION PROJECTS.—In each fiscal  
 23 year for which projects are authorized, at least 4 new dem-  
 24 onstration projects that meet the eligibility criteria de-



1 scribed in subsection (c) shall be carried out under con-  
 2 tracts or agreements described in subsection (a).

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

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

8 “(2) that includes a description of—

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

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

13 “(d) **SELECTION.**—In evaluating the applications  
 14 submitted under subsection (c), the Secretary shall—

15 “(1) take into consideration—

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

18 “(B) whether a proposed project would—

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

21 “(ii) enhance the economic develop-  
 22 ment of the Indian tribe;

23 “(iii) result in or improve the connec-  
 24 tion of electric power transmission facilities

1 serving the Indian tribe with other electric  
2 transmission facilities;

3 “(iv) improve the forest health or wa-  
4 tersheds of Federal land or Indian forest  
5 land or rangeland;

6 “(v) demonstrate new investments in  
7 infrastructure; or

8 “(vi) otherwise promote the use of  
9 woody biomass; and

10 “(2) exclude from consideration any merchant-  
11 able logs that have been identified by the Secretary  
12 for commercial sale.

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

14 “(1) ensure that the criteria described in sub-  
15 section (e) are publicly available by not later than  
16 120 days after the date of enactment of this section;  
17 and

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

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

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

3           “(2) each contract and agreement entered into  
4           pursuant to this section.

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

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

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

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

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

20          (a) *PURPOSE.*—*The purpose of this section is to estab-*  
21          *lish a biomass demonstration project for federally recog-*  
22          *nized Indian tribes and Alaska Native corporations to pro-*  
23          *mote biomass energy production.*

1           (b) *TRIBAL BIOMASS DEMONSTRATION PROJECT.*—  
 2 *The Tribal Forest Protection Act of 2004 (Public Law 108–*  
 3 *278; 118 Stat. 868) is amended—*

4                   (1) *in section 2(a), by striking “In this section”*  
 5 *and inserting “In this Act”; and*

6                   (2) *by adding at the end the following:*

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

8           “(a) *STEWARDSHIP CONTRACTS OR SIMILAR AGREE-*  
 9 *MENTS.*—*For each of fiscal years 2013 through 2017, the*  
 10 *Secretary shall enter into stewardship contracts or similar*  
 11 *agreements (excluding direct service contracts) with Indian*  
 12 *tribes to carry out demonstration projects to promote bio-*  
 13 *mass energy production (including biofuel, heat, and elec-*  
 14 *tricity generation) on Indian forest land and in nearby*  
 15 *communities by providing reliable supplies of woody bio-*  
 16 *mass from Federal land.*

17           “(b) *DEMONSTRATION PROJECTS.*—*In each fiscal year*  
 18 *for which projects are authorized, at least 4 new demonstra-*  
 19 *tion projects that meet the eligibility criteria described in*  
 20 *subsection (c) shall be carried out under contracts or agree-*  
 21 *ments described in subsection (a).*

22           “(c) *ELIGIBILITY CRITERIA.*—*To be eligible to enter*  
 23 *into a contract or agreement under this section, an Indian*  
 24 *tribe shall submit to the Secretary an application—*

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

3           “(2) that includes a description of—

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

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

8           “(d) SELECTION.—In evaluating the applications sub-  
9           mitted under subsection (c), the Secretary shall—

10           “(1) take into consideration—

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

13                   “(B) whether a proposed project would—

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

16                           “(ii) enhance the economic development  
17                           of the Indian tribe;

18                           “(iii) result in or improve the connec-  
19                           tion of electric power transmission facilities  
20                           serving the Indian tribe with other electric  
21                           transmission facilities;

22                           “(iv) improve the forest health or wa-  
23                           tersheds of Federal land or Indian forest  
24                           land or rangeland;

1                   “(v) demonstrate new investments in  
2                   infrastructure; or

3                   “(vi) otherwise promote the use of  
4                   woody biomass; and

5                   “(2) exclude from consideration any merchant-  
6                   able logs that have been identified by the Secretary for  
7                   commercial sale.

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

9                   “(1) ensure that the criteria described in sub-  
10                  section (c) are publicly available by not later than  
11                  120 days after the date of enactment of this section;  
12                  and

13                  “(2) to the maximum extent practicable, consult  
14                  with Indian tribes and appropriate intertribal orga-  
15                  nizations likely to be affected in developing the appli-  
16                  cation and otherwise carrying out this section.

17                  “(f) REPORT.—Not later than September 20, 2015, the  
18                  Secretary shall submit to Congress a report that describes,  
19                  with respect to the reporting period—

20                  “(1) each individual tribal application received  
21                  under this section; and

22                  “(2) each contract and agreement entered into  
23                  pursuant to this section.

24                  “(g) INCORPORATION OF MANAGEMENT PLANS.—In  
25                  carrying out a contract or agreement under this section,

1 on receipt of a request from an Indian tribe, the Secretary  
 2 shall incorporate into the contract or agreement, to the  
 3 maximum extent practicable, management plans (including  
 4 forest management and integrated resource management  
 5 plans) in effect on the Indian forest land or rangeland of  
 6 the respective Indian tribe.

7 “(h) *TERM.*—A contract or agreement entered into  
 8 under this section—

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

11 “(2) may be renewed in accordance with this sec-  
 12 tion for not more than an additional 10 years.”.

13 (c) *ALASKA NATIVE CORPORATION BIOMASS DEM-*  
 14 *ONSTRATION PROJECT.*—

15 (1) *DEFINITIONS.*—In this subsection:

16 (A) *ALASKA NATIVE CORPORATION.*—The  
 17 term “Alaska Native corporation” has the mean-  
 18 ing given the term “Native Corporation” in sec-  
 19 tion 3 of the Alaska Native Claims Settlement  
 20 Act (43 U.S.C. 1602).

21 (B) *FEDERAL LAND.*—The term “Federal  
 22 land” means—

23 (i) land of the National Forest System  
 24 (as defined in section 11(a) of the Forest  
 25 and Rangeland Renewable Resources Plan-

1            *ning Act of 1974 (16 U.S.C. 1609(a)) ad-*  
2            *ministered by the Secretary of Agriculture,*  
3            *acting through the Chief of the Forest Serv-*  
4            *ice; and*

5            *(ii) public lands (as defined in section*  
6            *103 of the Federal Land Policy Manage-*  
7            *ment Act of 1976 (43 U.S.C. 1702)), the*  
8            *surface of which is administered by the Sec-*  
9            *retary of the Interior, acting through the*  
10           *Director of the Bureau of Land Manage-*  
11           *ment.*

12           *(C) FOREST LAND.—The term “forest land”*  
13           *means land that—*

14           *(i) is conveyed to an Alaska Native*  
15           *corporation pursuant to the Alaska Native*  
16           *Claims Settlement Act (43 U.S.C. 1601 et*  
17           *seq.); and*

18           *(ii)(I) is considered chiefly valuable for*  
19           *the production of forest products or to*  
20           *maintain watershed or other land values en-*  
21           *hanced by a forest cover (including commer-*  
22           *cial and noncommercial timberland and*  
23           *woodland), regardless of whether a formal*  
24           *inspection and land classification action*  
25           *has been taken; or*



1                   (ii) formerly had a forest or vegetative  
2                   cover that is capable of restoration.

3                   (D) SECRETARY.—The term “Secretary”  
4                   means—

5                   (i) the Secretary of Agriculture, with  
6                   respect to land under the jurisdiction of the  
7                   Forest Service; and

8                   (ii) the Secretary of the Interior, with  
9                   respect to land under the jurisdiction of the  
10                  Bureau of Land Management.

11                  (2) AGREEMENTS.—For each of fiscal years 2013  
12                  through 2017, the Secretary shall enter into a stew-  
13                  ardship contract or similar agreement (excluding a  
14                  direct service contract) with 1 or more Alaska Native  
15                  corporations to carry out a demonstration project to  
16                  promote biomass energy production (including  
17                  biofuel, heat, and electricity generation) on forest  
18                  land of the Alaska Native corporations and in nearby  
19                  communities by providing reliable supplies of woody  
20                  biomass from Federal land.

21                  (3) DEMONSTRATION PROJECTS.—In each fiscal  
22                  year for which projects are authorized, at least 1 new  
23                  demonstration project that meets the eligibility cri-  
24                  teria described in paragraph (4) shall be carried out

1        *under contracts or agreements described in paragraph*  
2        *(2).*

3            *(4) ELIGIBILITY CRITERIA.—To be eligible to*  
4        *enter into a contract or agreement under this sub-*  
5        *section, an Alaska Native corporation shall submit to*  
6        *the Secretary an application—*

7            *(A) containing such information as the Sec-*  
8        *retary may require; and*

9            *(B) that includes a description of—*

10            *(i) the forest land or rangeland under*  
11        *the jurisdiction of the Alaska Native cor-*  
12        *poration; and*

13            *(ii) the demonstration project proposed*  
14        *to be carried out by the Alaska Native cor-*  
15        *poration.*

16            *(5) SELECTION.—In evaluating the applications*  
17        *submitted under paragraph (4), the Secretary shall—*

18            *(A) take into consideration whether a pro-*  
19        *posed project would—*

20            *(i) increase the availability or reli-*  
21        *ability of local or regional energy;*

22            *(ii) enhance the economic development*  
23        *of the Alaska Native corporation;*

24            *(iii) result in or improve the connec-*  
25        *tion of electric power transmission facilities*

1           *serving the Alaska Native corporation with*  
2           *other electric transmission facilities;*

3                   *(iv) improve the forest health or water-*  
4                   *sheds of Federal land or Alaska Native cor-*  
5                   *poration forest land or rangeland;*

6                   *(v) demonstrate new investments in in-*  
7                   *frastructure; or*

8                   *(vi) otherwise promote the use of woody*  
9                   *biomass; and*

10           *(B) exclude from consideration any mer-*  
11           *chantable logs that have been identified by the*  
12           *Secretary for commercial sale.*

13           *(6) IMPLEMENTATION.—The Secretary shall—*

14                   *(A) ensure that the criteria described in*  
15                   *paragraph (4) are publicly available by not later*  
16                   *than 120 days after the date of enactment of this*  
17                   *subsection; and*

18                   *(B) to the maximum extent practicable,*  
19                   *consult with Alaska Native corporations and ap-*  
20                   *propriate Alaska Native organizations likely to*  
21                   *be affected in developing the application and oth-*  
22                   *erwise carrying out this subsection.*

23           *(7) REPORT.—Not later than September 20,*  
24           *2015, the Secretary shall submit to Congress a report*  
25           *that describes, with respect to the reporting period—*

1           (A) each individual application received  
2           under this subsection; and

3           (B) each contract and agreement entered  
4           into pursuant to this subsection.

5           (8) *TERM.*—A contract or agreement entered into  
6           under this subsection—

7           (A) shall be for a term of not more than 20  
8           years; and

9           (B) may be renewed in accordance with this  
10          subsection for not more than an additional 10  
11          years.

12 **SEC. 203. WEATHERIZATION PROGRAM.**

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

15          (1) by striking paragraph (1) and inserting the  
16          following:

17               “(1) **RESERVATION OF AMOUNTS.**—

18                       “(A) **IN GENERAL.**—Subject to subpara-  
19                       graph (B) and notwithstanding any other provi-  
20                       sion of this part, the Secretary shall reserve  
21                       from amounts that would otherwise be allocated  
22                       to a State under this part not less than 100  
23                       percent, but not more than 150 percent, of an  
24                       amount which bears the same proportion to the  
25                       allocation of that State for the applicable fiscal

1 year as the population of all low-income mem-  
2 bers of an Indian tribe in that State bears to  
3 the population of all low-income individuals in  
4 that State.

5 “(B) RESTRICTIONS.—Subparagraph (A)  
6 shall apply only if—

7 “(i) the tribal organization serving the  
8 low-income members of the applicable In-  
9 dian tribe requests that the Secretary  
10 make a grant directly; and

11 “(ii) the Secretary determines that  
12 the low-income members of the applicable  
13 Indian tribe would be equally or better  
14 served by making a grant directly than a  
15 grant made to the State in which the low-  
16 income members reside.”;

17 (2) in paragraph (2)—

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

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

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

1 (D) by striking “he” and inserting “the  
2 Secretary”; and  
3 (3) in paragraph (3), by striking “In order”  
4 and inserting “APPLICATION.—In order”.

5 **SEC. 204. APPRAISALS.**

6 (a) *IN GENERAL.*—*Title XXVI of the Energy Policy*  
7 *Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding*  
8 *at the end the following:*

9 **“SEC. 2607. APPRAISALS.**

10 “(a) *IN GENERAL.*—*For any transaction that requires*  
11 *approval of the Secretary and involves mineral or energy*  
12 *resources held in trust by the United States for the benefit*  
13 *of an Indian tribe or by an Indian tribe subject to Federal*  
14 *restrictions against alienation, any appraisal relating to*  
15 *fair market value of those resources required to be prepared*  
16 *under applicable law may be prepared by—*

17 “(1) *the Secretary;*

18 “(2) *the affected Indian tribe; or*

19 “(3) *a certified, third-party appraiser pursuant*  
20 *to a contract with the Indian tribe.*

21 “(b) *SECRETARIAL REVIEW AND APPROVAL.*—*Not*  
22 *later than 45 days after the date on which the Secretary*  
23 *receives an appraisal prepared by or for an Indian tribe*  
24 *under paragraph (2) or (3) of subsection (a), the Secretary*  
25 *shall—*

1           “(1) review the appraisal; and

2           “(2) approve the appraisal unless the Secretary  
3 determines that the appraisal fails to meet the stand-  
4 ards set forth in regulations promulgated under sub-  
5 section (d).

6           “(c) NOTICE OF DISAPPROVAL.—If the Secretary deter-  
7 mines that an appraisal submitted for approval under sub-  
8 section (b) should be disapproved, the Secretary shall give  
9 written notice of the disapproval to the Indian tribe and  
10 a description of—

11           “(1) each reason for the disapproval; and

12           “(2) how the appraisal should be corrected or  
13 otherwise cured to meet the applicable standards set  
14 forth in the regulations promulgated under subsection  
15 (d).

16           “(d) REGULATIONS.—The Secretary shall promulgate  
17 regulations to carry out this section, including standards  
18 the Secretary shall use for approving or disapproving the  
19 appraisal described in subsection (a).”.

20 **SEC. 205. LEASES OF RESTRICTED LANDS FOR NAVAJO NA-**  
21 **TION.**

22           “(a) IN GENERAL.—Subsection (e)(1) of the first section  
23 of the Act of August 9, 1955 (commonly known as the  
24 “Long-Term Leasing Act”) (25 U.S.C. 415(e)(1)), is  
25 amended—

1           (1) by striking “, except a lease for” and insert-  
2           ing “, including a lease for”;

3           (2) by striking subparagraph (A) and inserting  
4           the following:

5                   “(A) in the case of a business or agricul-  
6                   tural lease, 99 years;”;

7           (3) in subparagraph (B), by striking the period  
8           at the end and inserting “; and”; and

9           (4) by adding at the end the following:

10                   “(C) in the case of a lease for the explo-  
11                   ration, development, or extraction of any min-  
12                   eral resource (including geothermal resources),  
13                   25 years, except that—

14                           “(i) any such lease may include an op-  
15                           tion to renew for 1 additional term of not  
16                           to exceed 25 years; and

17                           “(ii) any such lease for the exploration,  
18                           development, or extraction of an oil or gas  
19                           resource shall be for a term of not to exceed  
20                           10 years, plus such additional period as the  
21                           Navajo Nation determines to be appropriate  
22                           in any case in which an oil or gas resource  
23                           is produced in a paying quantity.”.

24           (b) GAO REPORT.—Not later than 5 years after the  
25           date of enactment of this Act, the Comptroller General of



1 *the United States shall prepare and submit to Congress a*  
2 *report describing the progress made in carrying out the*  
3 *amendment made by subsection (a)(4).*

Calendar No. 575

112<sup>TH</sup> CONGRESS  
2D SESSION

**S. 1684**

[Report No. 112-263]

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**A BILL**

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

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DECEMBER 21, 2012

Reported with amendments