

108TH CONGRESS  
1ST SESSION

# S. 424

To establish, reauthorize, and improve energy programs relating to Indian tribes.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2003

Mr. BINGAMAN (for himself, Mr. INOUE, Mr. CAMPBELL, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

## A BILL

To establish, reauthorize, and improve energy programs relating to Indian tribes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Tribal Energy Self-Sufficiency Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definition of Secretary.

### TITLE I—INDIAN ENERGY

Sec. 101. Comprehensive Indian energy program.

- Sec. 102. Office of Indian Energy Policy and Programs.  
 Sec. 103. Siting of energy facilities on tribal land.  
 Sec. 104. Indian mineral development review.  
 Sec. 105. Renewable energy study.  
 Sec. 106. Federal power marketing administrations.  
 Sec. 107. Feasibility study for combined wind and hydropower demonstration project.  
 Sec. 108. Transmission line demonstration project.

TITLE II—RENEWABLE ENERGY AND RURAL CONSTRUCTION  
GRANTS

- Sec. 201. Renewable energy production incentive.

TITLE III—ENERGY EFFICIENCY AND ASSISTANCE TO LOW-  
INCOME CONSUMERS

- Sec. 301. Low-income community energy efficiency pilot program.  
 Sec. 302. Rural and remote community electrification grants.

**1 SEC. 2. DEFINITION OF SECRETARY.**

2 In this Act, the term “Secretary” means the Sec-  
 3 retary of Energy.

**4 TITLE I—INDIAN ENERGY**

**5 SEC. 101. COMPREHENSIVE INDIAN ENERGY PROGRAM.**

6 Title XXVI of the Energy Policy Act of 1992 (25  
 7 U.S.C. 3501 et seq.) is amended by adding after section  
 8 2606 the following:

**9 “SEC. 2607. COMPREHENSIVE INDIAN ENERGY PROGRAM.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) DIRECTOR.—The term ‘Director’ means  
 12 the Director of the Office of Indian Energy Policy  
 13 and Programs of the Department of Energy.

14 “(2) INDIAN LAND.—The term ‘Indian land’  
 15 means—

16 “(A) any land within the limits of an In-  
 17 dian reservation, pueblo, or rancheria;

1           “(B) any land not within the limits of an  
2           Indian reservation, pueblo, or rancharia, title to  
3           which is held—

4                   “(i) in trust by the United States for  
5                   the benefit of an Indian tribe;

6                   “(ii) by an Indian tribe subject to re-  
7                   striction by the United States against  
8                   alienation; or

9                   “(iii) by a dependent Indian commu-  
10                  nity; and

11                  “(C) land conveyed to an Alaska Native  
12                  corporation under the Alaska Native Claims  
13                  Settlement Act (43 U.S.C. 1601 et seq.).

14           “(b) INDIAN ENERGY EDUCATION PLANNING AND  
15           MANAGEMENT ASSISTANCE.—

16                   “(1) IN GENERAL.—The Director shall establish  
17                   programs within the Office of Indian Energy Policy  
18                   and Programs to assist Indian tribes in meeting en-  
19                   ergy education, research and development, planning,  
20                   and management needs.

21                   “(2) GRANTS.—In carrying out this section, the  
22                   Director may provide grants, on a competitive basis,  
23                   to an Indian tribe for use in carrying out—

1           “(A) renewable energy, nonrenewable en-  
2 energy, energy efficiency, and energy conservation  
3 programs;

4           “(B) studies and other activities sup-  
5 porting tribal acquisition of energy supplies,  
6 services, and facilities;

7           “(C) planning, construction, development,  
8 operation, maintenance, and improvement of  
9 tribal electrical generation, transmission, and  
10 distribution facilities located on Indian land;  
11 and

12           “(D) development, construction, and inter-  
13 connection of electric power transmission facili-  
14 ties located on Indian land with other electric  
15 transmission facilities.

16           “(3) FORMULA.—

17           “(A) IN GENERAL.—The Director may de-  
18 velop, in consultation with Indian tribes, a for-  
19 mula for providing grants under this section.

20           “(B) CONSIDERATIONS.—In developing a  
21 formula under subparagraph (A), the Director  
22 may take into account—

23           “(i) the number of acres of Indian  
24 land owned by an Indian tribe;

1                   “(ii) the number of households on the  
2                   Indian land of an Indian tribe;

3                   “(iii) the number of households on the  
4                   Indian land of an Indian tribe that have no  
5                   electric service or are underserved; and

6                   “(iv) financial or other assets avail-  
7                   able to the Indian tribe from any source.

8                   “(4) PRIORITY.—In providing a grant under  
9                   this subsection, the Director shall give priority to an  
10                  application received from an Indian tribe with inad-  
11                  equate electric service (as determined by the Direc-  
12                  tor).

13                  “(5) REGULATIONS.—The Secretary may pro-  
14                  mulgate such regulations as the Secretary deter-  
15                  mines are necessary to carry out this subsection.

16                  “(6) AUTHORIZATION OF APPROPRIATIONS.—  
17                  There is authorized to be appropriated to the Sec-  
18                  retary to carry out this section \$20,000,000 for each  
19                  of fiscal years 2003 through 2010.

20                  “(c) LOAN GUARANTEE PROGRAM.—

21                  “(1) AUTHORITY.—Subject to paragraph (3),  
22                  the Secretary may provide loan guarantees (as de-  
23                  fined in section 502 of the Federal Credit Reform  
24                  Act of 1990 (2 U.S.C. 661a) for not more than 90

1 percent of the unpaid principal and interest due on  
2 any loan made to any Indian tribe for—

3 “(A) energy development (including the  
4 planning, development, construction, and main-  
5 tenance of electrical generation plants); and

6 “(B) for transmission and delivery mecha-  
7 nisms for electricity produced on Indian land.

8 “(2) LENDERS.—A loan guaranteed under this  
9 subsection shall be made by—

10 “(A) a financial institution subject to ex-  
11 amination by the Secretary; or

12 “(B) an Indian tribe, from funds of the In-  
13 dian tribe.

14 “(3) LIMITATION ON AMOUNT.—The aggregate  
15 outstanding amount guaranteed by the Secretary of  
16 Energy at any time under this subsection shall not  
17 exceed \$2,000,000,000.

18 “(4) REGULATIONS.—The Secretary may pro-  
19 mulgate such regulations as the Secretary deter-  
20 mines are necessary to carry out this subsection.

21 “(5) FUNDING.—

22 “(A) AUTHORIZATION OF APPROPRIA-  
23 TIONS.—There are authorized to be appro-  
24 priated such sums as are necessary to carry out  
25 this subsection.

1           “(B) AVAILABILITY.—Funds made avail-  
2           able under subparagraph (A) shall remain avail-  
3           able until expended.

4           “(d) INDIAN ENERGY PREFERENCE.—

5           “(1) IN GENERAL.—A Federal agency or de-  
6           partment may give, in the purchase of electricity, oil,  
7           gas, coal, or any other energy product or byproduct,  
8           preference in the purchase to an energy and re-  
9           source production enterprise, partnership, corpora-  
10          tion, or other type of business organization the ma-  
11          jority of the interest in which is owned and con-  
12          trolled by an Indian tribe.

13          “(2) PRICE OF PRODUCTS.—In carrying out  
14          this subsection, a Federal agency or department  
15          shall—

16                 “(A) pay not more than the prevailing  
17                 market price for an energy product or byprod-  
18                 uct; and

19                 “(B) shall obtain not less than existing  
20                 market terms and conditions.”.

21 **SEC. 102. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
22 **GRAMS.**

23          (a) IN GENERAL.—Title II of the Department of En-  
24          ergy Organization Act (7 U.S.C. 7131 et seq.) is amended  
25          by adding at the end the following:

1 **“SEC. 217. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
2 **GRAMS.**

3 “(a) ESTABLISHMENT.—

4 “(1) IN GENERAL.—There is established within  
5 the Department an Office of Indian Energy Policy  
6 and Programs (referred to in this section as the ‘Of-  
7 fice’).

8 “(2) DIRECTOR.—The Office shall be headed by  
9 a Director, who shall be—

10 “(A) appointed by the Secretary; and

11 “(B) compensated at a rate equal to that  
12 of level IV of the Executive Schedule under sec-  
13 tion 5315 of title 5, United States Code.

14 “(b) DUTIES OF DIRECTOR.—The Director shall—

15 “(1) in accordance with Federal policies for the  
16 promotion of tribal sovereignty and self-determina-  
17 tion, provide, direct, foster, coordinate, and imple-  
18 ment energy planning, education, management, con-  
19 servation, and delivery programs of the Department  
20 that—

21 “(A) promote tribal energy efficiency and  
22 use;

23 “(B) modernize and develop, for the ben-  
24 efit of Indian tribes, tribal energy and economic  
25 infrastructure relating to natural resource de-  
26 velopment and electrification;



1                   “(C) lower or stabilize energy costs; and

2                   “(D) electrify tribal land and the homes of  
3                   tribal members; and

4                   “(2) carry out the duties assigned to the Sec-  
5                   retary or the Director under title XXVI of the En-  
6                   ergy Policy Act of 1992 (25 U.S.C. 3501 et seq.).”.

7                   (b) CONFORMING AMENDMENTS.—

8                   (1) AUTHORIZATION OF APPROPRIATIONS.—

9                   Section 2603 of the Energy Policy Act of 1992 (25  
10                  U.S.C. 3503) is amended by striking subsection (c)  
11                  and inserting the following:

12                 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
13                 is authorized to be appropriated to the Secretary to carry  
14                 out this section \$10,000,000 for each of fiscal years 2003  
15                 through 2010.”.

16                 (2) TABLE OF CONTENTS.—The table of con-  
17                 tents of the Department of Energy Organization Act  
18                 (42 U.S.C. prec. 7101) is amended—

19                         (A) in the item relating to section 209, by  
20                         striking “Section” and inserting “Sec.”; and

21                         (B) by striking the items relating to sec-  
22                         tions 213 through 216 and inserting the fol-  
23                         lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Administra-  
tion.

“Sec. 214. Establishment of security, counterintelligence, and intelligence poli-  
cies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

“Sec. 217. Office of Indian Energy Policy and Programs.”.

1           (3) EXECUTIVE SCHEDULE.—Section 5315 of  
2 title 5, United States Code, is amended by inserting  
3 “Director, Office of Indian Energy Policy and Pro-  
4 grams, Department of Energy.” after “Inspector  
5 General, Department of Energy.”.

6 **SEC. 103. SITING OF ENERGY FACILITIES ON TRIBAL LAND.**

7 (a) DEFINITIONS.—In this section:

8 (1) INDIAN TRIBE.—

9 (A) IN GENERAL.—The term “Indian  
10 tribe” means any Indian tribe, band, nation, or  
11 other organized group or community that is rec-  
12 ognized as being eligible for the special pro-  
13 grams and services provided by the United  
14 States to Indians because of their status as In-  
15 dians.

16 (B) EXCLUSIONS.—The term “Indian  
17 tribe” does not include any Regional Corpora-  
18 tion or Native Corporation (as those terms are  
19 defined in section 3 of the Alaska Native  
20 Claims Settlement Act (43 U.S.C. 1602)).

21 (2) INTERESTED PARTY.—The term “interested  
22 party” means a State or other person the interests  
23 of which could be adversely affected by a decision of

1 an Indian tribe to grant a lease or right-of-way in  
2 accordance with this section.

3 (3) PETITION.—The term “petition” means a  
4 written request submitted to the Secretary for the  
5 review of an action (including inaction) of an Indian  
6 tribe that is claimed to be in violation of tribal regu-  
7 lations approved under subsection (f).

8 (4) RESERVATION.—The term “reservation”  
9 means—

10 (A) with respect to a reservation in a State  
11 other than the State of Oklahoma, all land that  
12 has been set aside or that has been acknowl-  
13 edged as having been set aside by the United  
14 States for the use of an Indian tribe, the exte-  
15 rior boundaries of which are more particularly  
16 defined in a final tribal treaty, agreement, exec-  
17 utive order, Federal statute, secretarial order,  
18 or judicial determination; and

19 (B) with respect to a reservation in the  
20 State of Oklahoma, all land that is—

21 (i) within the jurisdictional area of an  
22 Indian tribe; and

23 (ii) within the boundaries of the last  
24 reservation of the Indian tribe that was es-

1                   tablished by treaty, executive order, or sec-  
2                   retarial order.

3                   (5) SECRETARY.—The term ‘Secretary’ means  
4                   the Secretary of the Interior.

5                   (6) TRIBAL LAND.—The term ‘tribal land’  
6                   means any—

7                   (A) tribal trust land; or

8                   (B) other land owned by an Indian tribe  
9                   that is located within the reservation of the In-  
10                  dian tribe.

11               (b) LEASES INVOLVING ELECTRIC GENERATION,  
12 TRANSMISSION, DISTRIBUTION, OR PROCESSING FACILI-  
13 TIES.—

14               (1) IN GENERAL.—An Indian tribe may grant  
15               a lease of tribal land for—

16               (A) an electric generation, transmission, or  
17               distribution facility; or

18               (B) a facility to refine or otherwise process  
19               renewable or nonrenewable energy resources de-  
20               veloped on tribal land.

21               (2) APPROVAL NOT REQUIRED.—A lease de-  
22               scribed in paragraph (1) shall not require the ap-  
23               proval of the Secretary if—

1 (A) the lease is executed under tribal regu-  
2 lations approved by the Secretary under this  
3 subsection; and

4 (B) the term of the lease does not exceed  
5 30 years.

6 (c) RIGHTS-OF-WAY FOR ELECTRIC GENERATION,  
7 TRANSMISSION, DISTRIBUTION, OR PROCESSING FACILI-  
8 TIES.—An Indian tribe may grant a right-of-way over trib-  
9 al land for a pipeline or an electric transmission or dis-  
10 tribution line without separate approval by the Secretary  
11 if—

12 (1) the right-of-way is executed under and com-  
13 plies with tribal regulations approved by the Sec-  
14 retary;

15 (2) the term of the right-of-way does not exceed  
16 30 years; and

17 (3) the pipeline or electric transmission or dis-  
18 tribution line serves—

19 (A) an electric generation, transmission or  
20 distribution facility located on tribal land; or

21 (B) a facility located on tribal land that re-  
22 fines or otherwise processes renewable or non-  
23 renewable energy resources developed on tribal  
24 land.

1 (d) VALIDITY OF LEASES AND RIGHTS-OF-WAY.—No  
2 lease or right-of-way granted under this section shall be  
3 valid unless authorized in compliance with applicable tribal  
4 regulations approved under subsection (f).

5 (e) RENEWALS.—Leases or rights-of-way entered  
6 into under this section may be renewed at the discretion  
7 of the Indian tribe making the grant of the lease or right-  
8 of-way in accordance with this section.

9 (f) TRIBAL REGULATION REQUIREMENTS.—

10 (1) IN GENERAL.—The Secretary shall approve  
11 or disapprove tribal regulations required under this  
12 subsection.

13 (2) CONDITIONS FOR APPROVAL.—The Sec-  
14 retary shall approve tribal regulations described in  
15 paragraph (1) if the Secretary determines that the  
16 regulations—

17 (A) are comprehensive in nature;

18 (B) include provisions that address—

19 (i) securing necessary information  
20 from the lessee or right-of-way applicant;

21 (ii) the term of any conveyance;

22 (iii) amendments and renewals;

23 (iv) consideration for a lease or right-  
24 of-way;

1 (v) technical or other relevant require-  
2 ments;

3 (vi) requirements for environmental  
4 review as described in paragraph (3);

5 (vii) requirements for complying with  
6 all applicable environmental laws;

7 (viii) the identification of final ap-  
8 proval authority; and

9 (ix) the provision of public notification  
10 of final approvals; and

11 (C) establish a process for consultation  
12 with any affected States concerning potential  
13 off-reservation impacts associated with a lease  
14 or right-of-way proposed to be granted.

15 (3) ENVIRONMENTAL REVIEW PROCESS.—An  
16 Indian tribe shall establish an environmental review  
17 process that includes—

18 (A) an identification and evaluation of all  
19 significant environmental impacts of the pro-  
20 posed action as compared to a no action alter-  
21 native;

22 (B) identification of proposed mitigation;

23 (C) a process for ensuring that the public  
24 is informed of and has an opportunity to com-

1           ment on the proposed action prior to tribal ap-  
2           proval of the lease or right-of-way; and

3           (D) sufficient administrative support and  
4           technical capability to carry out the environ-  
5           mental review process.

6           (4) PERIOD FOR APPROVAL OR DISAPPROVAL.—

7           (A) IN GENERAL.—Not later than 270  
8           days after the date of submission by an Indian  
9           tribe to the Secretary of tribal regulations  
10          under this subsection, the Secretary—

11           (i) may provide notice and an oppor-  
12          tunity for public comment on the regula-  
13          tions; and

14           (ii) shall approve or disapprove the  
15          regulations.

16          (B) FORM OF DISAPPROVAL.—Any dis-  
17          approval by the Secretary of tribal regulations  
18          described in subparagraph (A) shall be accom-  
19          panied by—

20           (i) written documentation that de-  
21          scribes the basis for the disapproval; and

22           (ii) a description of changes or other  
23          actions required to address concerns of the  
24          Secretary.



1           (C) EXTENSION.—The Secretary may ex-  
2           tend the deadline specified in subparagraph (A)  
3           for an Indian tribe after consultation with the  
4           Indian tribe.

5           (5) DUTIES OF INDIAN TRIBE.—If an Indian  
6           tribe executes a lease or right-of-way in accordance  
7           with tribal regulations required under this sub-  
8           section, the Indian tribe shall provide to the Sec-  
9           retary—

10           (A) a copy of the lease or right-of-way doc-  
11           ument (including all amendments and renewals  
12           to the lease or document); and

13           (B) in the case of tribal regulations or a  
14           lease or right-of-way that permits payment to  
15           be made directly to the Indian tribe, docu-  
16           mentation of the payments sufficient to enable  
17           the Secretary to discharge the trust responsi-  
18           bility of the United States as appropriate under  
19           applicable law.

20           (6) NO LIABILITY FOR LOSSES.—The United  
21           States shall not be liable for any loss sustained by  
22           any party (including any Indian tribe or member of  
23           an Indian tribe) to a lease executed in accordance  
24           with tribal regulations under this subsection.

25           (7) VIOLATIONS.—

1 (A) PETITIONS.—

2 (i) IN GENERAL.—An interested party  
3 may, after exhaustion of tribal remedies,  
4 submit to the Secretary, in a timely man-  
5 ner, a petition for the review of compliance  
6 of an Indian tribe with any tribal regula-  
7 tions approved under this subsection.

8 (ii) DEADLINE FOR CONDUCT OF RE-  
9 VIEW.—The Secretary shall conduct any  
10 such review under clause (i) as the Sec-  
11 retary determines to be necessary not later  
12 than 90 days after the date of receipt of  
13 a petition described in clause (i).

14 (B) DETERMINATION OF VIOLATION.—If,  
15 on completion of a review of tribal regulations  
16 under subparagraph (A), the Secretary deter-  
17 mines that the regulations were violated, the  
18 Secretary may take such action as the Sec-  
19 retary determines to be necessary to remedy the  
20 violation, including—

21 (i) rescinding or holding any applica-  
22 ble lease or right-of-way in abeyance until  
23 the violation is cured; and

24 (ii)(I) rescinding the approval of the  
25 tribal regulations; and

1                   (II) reassuming responsibility for ap-  
2                   proval of leases or rights-of-way associated  
3                   with the facilities covered by those leases  
4                   or rights-of-way.

5                   (C) ACTIONS OF SECRETARY.—If the Sec-  
6                   retary seeks to remedy a violation described in  
7                   subparagraph (A), the Secretary shall—

8                   (i) make a written determination with  
9                   respect to the regulations that have been  
10                  violated;

11                  (ii) provide to the applicable Indian  
12                  tribe a written notice of the violation and  
13                  a copy of the written determination de-  
14                  scribed in clause (i); and

15                  (iii) prior to the exercise of any rem-  
16                  edy or the rescission of the approval of the  
17                  regulations involved and reassumption of  
18                  responsibility for approval of any lease or  
19                  right-of-way, provide for the Indian tribe a  
20                  hearing and a reasonable opportunity to  
21                  cure the alleged violation.

22                  (D) APPEAL.—An Indian tribe that is de-  
23                  termined by the Secretary under this paragraph  
24                  to have violated tribal regulations under this  
25                  subsection shall retain all rights to appeal as

1           provided by regulations promulgated by the  
2           Secretary.

3           (g) AGREEMENTS.—

4           (1) IN GENERAL.—An agreement between an  
5           Indian tribe and a business entity that is directly as-  
6           sociated with the development of an electric genera-  
7           tion, transmission, or distribution facility, or a facil-  
8           ity to refine or otherwise process renewable or non-  
9           renewable energy resources developed on tribal land,  
10          shall not require the separate approval of the Sec-  
11          retary in accordance with section 2103 of the Re-  
12          vised Statutes (25 U.S.C. 81) if the activity that is  
13          the subject of the agreement has been the subject of  
14          an environmental review process under subsection  
15          (f)(3).

16          (2) NO LIABILITY FOR LOSS.—The United  
17          States shall not be liable for any loss sustained by  
18          any party (including any Indian tribe or member of  
19          an Indian tribe) associated with an agreement en-  
20          tered into under this subsection.

21          (h) NO EFFECT ON OTHER LAW.—Nothing in this  
22          section modifies or otherwise affects the applicability of  
23          any provision of—

1           (1) the Act of May 11, 1938 (commonly known  
2           as the “Indian Mineral Leasing Act of 1938”) (25  
3           U.S.C. 396a et seq.);

4           (2) the Indian Mineral Development Act of  
5           1982 (25 U.S.C. 2101 et seq.);

6           (3) the Surface Mining Control and Reclama-  
7           tion Act of 1977 (30 U.S.C. 1201 et seq.); or

8           (4) any environmental law of the United States.

9   **SEC. 104. INDIAN MINERAL DEVELOPMENT REVIEW.**

10          (a) IN GENERAL.—The Secretary of the Interior shall  
11          conduct a review of the activities that, as of the date of  
12          enactment of this Act, have been carried out by govern-  
13          ments of Indian tribes under the Indian Mineral Develop-  
14          ment Act of 1982 (25 U.S.C. 2101 et seq.).

15          (b) REPORT.—Not later than 1 year after the date  
16          of enactment of this Act, the Secretary of the Interior  
17          shall submit to the Committee on Indian Affairs and the  
18          Committee on Energy and Natural Resources of the Sen-  
19          ate and the Committee on Resources of the House of Rep-  
20          resentatives a report that describes—

21                 (1) the results of the review;

22                 (2) recommendations to ensure that Indian  
23          tribes have the opportunity to develop nonrenewable  
24          energy resources; and

1           (3) an analysis of the barriers to the develop-  
2           ment of energy resources on Indian land, including  
3           Federal policies and regulations and recommenda-  
4           tions regarding the removal of those barriers.

5           (c) CONSULTATION.—In developing the report and  
6           recommendations under this section, the Secretary of the  
7           Interior shall consult with Indian tribes on a government-  
8           to-government basis.

9           **SEC. 105. RENEWABLE ENERGY STUDY.**

10          (a) IN GENERAL.—Not later than 2 years after the  
11          date of enactment of this Act, and once every 2 years  
12          thereafter, the Secretary shall submit to the Committee  
13          on Energy and Natural Resources and the Committee on  
14          Indian Affairs of the Senate and the Committee on Energy  
15          and Commerce and the Committee on Resources of the  
16          House of Representatives a report that—

17                 (1) describes energy consumption and renew-  
18                 able energy development potential on Indian land;

19                 (2) identifies barriers to the development of re-  
20                 newable energy by Indian tribes, including Federal  
21                 policies and regulations; and

22                 (3) makes recommendations regarding the re-  
23                 moval of those barriers.

24          (b) CONSULTATION.—In developing the report and  
25          recommendations under this section, the Secretary shall

1 consult with Indian tribes on a government-to-government  
2 basis.

3 **SEC. 106. FEDERAL POWER MARKETING ADMINISTRA-**  
4 **TIONS.**

5 Title XXVI of the Energy Policy Act of 1992 (25  
6 U.S.C. 3501 et seq.) (as amended by section 101) is  
7 amended by adding at the end the following:

8 **“SEC. 2608. FEDERAL POWER MARKETING ADMINISTRA-**  
9 **TIONS.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) ADMINISTRATOR.—The term ‘Adminis-  
12 trator’ means—

13 “(A) the Administrator of the Bonneville  
14 Power Administration; and

15 “(B) the Administrator of the Western  
16 Area Power Administration.

17 “(2) POWER MARKETING ADMINISTRATION.—  
18 The term ‘power marketing administration’ means—

19 “(A) the Bonneville Power Administration;

20 “(B) the Western Area Power Administra-  
21 tion; and

22 “(C) any other power administration the  
23 power allocation of which is used by or for the  
24 benefit of an Indian tribe located in the service  
25 area of the administration.

1           “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY  
2 DEVELOPMENT.—Each Administrator shall encourage In-  
3 dian tribal energy development by taking such actions as  
4 are appropriate, including administration of programs of  
5 the Bonneville Power Administration and the Western  
6 Area Power Administration, in accordance with this sec-  
7 tion.

8           “(c) ACTION BY THE ADMINISTRATOR.—In carrying  
9 out this section—

10           “(1) each Administrator shall consider the  
11 unique relationship that exists between the Federal  
12 Government and Indian tribes;

13           “(2) power allocations from the Western Area  
14 Power Administration to Indian tribes may be used  
15 to firm Indian-owned renewable energy projects for  
16 delivery of loads located on Indian land; and

17           “(3) the Administrator of the Western Area  
18 Power Administration may purchase renewable or  
19 nonrenewable power from Indian tribes to meet the  
20 firming requirements of the Western Area Power  
21 Administration.

22           “(d) ASSISTANCE FOR TRANSMISSION SYSTEM  
23 USE.—

24           “(1) IN GENERAL.—An Administrator may pro-  
25 vide technical assistance to Indian tribes seeking to



1 use the high-voltage transmission system for delivery  
2 of electric power.

3 “(2) COSTS.—The costs of technical assistance  
4 provided under paragraph (1) shall be funded—

5 “(A) by the Administrator using non-  
6 reimbursable funds appropriated for that pur-  
7 pose; or

8 “(B) by the applicable Indian tribes.

9 “(3) PRIORITY FOR ASSISTANCE FOR TRANS-  
10 MISSION STUDIES.—In providing discretionary as-  
11 sistance to Indian tribes under paragraph (1), each  
12 Administrator shall give priority in funding to In-  
13 dian tribes that have limited financial capability to  
14 acquire that assistance.

15 “(e) POWER ALLOCATION STUDY.—

16 “(1) IN GENERAL.—Not later than 2 years  
17 after the date of enactment of this section, the Sec-  
18 retary of Energy shall submit to the Committee on  
19 Energy and Natural Resources and the Committee  
20 on Indian Affairs of the Senate and the Committee  
21 on Energy and Commerce and the Committee on  
22 Resources of the House of Representatives a report  
23 that—

24 “(A) describes the use by Indian tribes of  
25 Federal power allocations of the Western Area

1 Power Administration (or power sold by the  
2 Southwestern Power Administration) and the  
3 Bonneville Power Administration to or for the  
4 benefit of Indian tribes in service areas of those  
5 administrations; and

6 “(B) identifies—

7 “(i) the quantity of power allocated to  
8 Indian tribes by the Western Area Power  
9 Administration;

10 “(ii) the quantity of power sold to In-  
11 dian tribes by other power marketing ad-  
12 ministrations; and

13 “(iii) barriers that impede tribal ac-  
14 cess to and use of Federal power, including  
15 an assessment of opportunities—

16 “(I) to remove those barriers;

17 and

18 “(II) improve the ability of power  
19 marketing administrations to facilitate  
20 the use of Federal power by Indian  
21 tribes.

22 “(2) CONSULTATION.—In developing the report  
23 under paragraph (1), each power marketing admin-  
24 istration shall consult with Indian tribes on a gov-  
25 ernment-to-government basis.



1           (4) include a preliminary interconnection study  
2           and a determination of resource adequacy of the  
3           Upper Great Plains Region of the Western Area  
4           Power Administration;

5           (5) determine seasonal capacity needs and asso-  
6           ciated transmission upgrades for integration of tribal  
7           wind generation; and

8           (6) include an independent tribal engineer as a  
9           study team member.

10          (c) REPORT.—Not later than 1 year after the date  
11          of enactment of this Act, the Secretary and Secretary of  
12          the Army shall submit to Congress a report that describes  
13          the results of the study, including—

14                (1) an analysis of the potential energy cost sav-  
15                ings to the customers of the Western Area Power  
16                Administration through the blend of wind and hy-  
17                dropower;

18                (2) an evaluation of whether a combined wind  
19                and hydropower system can reduce reservoir fluctua-  
20                tion, enhance efficient and reliable energy produc-  
21                tion, and provide Missouri River management flexi-  
22                bility;

23                (3) recommendations for a demonstration  
24                project that could be carried out by the Western  
25                Area Power Administration in partnership with an

1 Indian tribal government or tribal government en-  
2 ergy consortium to demonstrate the feasibility and  
3 potential of using wind energy produced on Indian  
4 land to supply firming energy to the Western Area  
5 Power Administration or any other Federal power  
6 marketing agency; and

7 (4) an identification of—

8 (A) the economic and environmental bene-  
9 fits to be realized through such a Federal-tribal  
10 partnership; and

11 (B) the manner in which such a partner-  
12 ship could contribute to the energy security of  
13 the United States.

14 (d) CONSULTATION.—In developing the report and  
15 recommendations under this section, the Secretary and the  
16 Secretary of the Army shall consult with applicable Indian  
17 tribes on a government-to-government basis.

18 (e) FUNDING.—

19 (1) AUTHORIZATION OF APPROPRIATIONS.—

20 There is authorized to be appropriated to carry out  
21 this section \$500,000, to remain available until ex-  
22 pended.

23 (2) NONREIMBURSABILITY OF COSTS.—All

24 costs incurred by the Western Area Power Adminis-

1       tration in carrying out this section shall be non-  
2       reimbursable.

3 **SEC. 108. TRANSMISSION LINE DEMONSTRATION PROJECT.**

4       The Dine Power Authority, an enterprise of the Nav-  
5 ajo Nation, shall be eligible to receive grants and other  
6 assistance under the demonstration program authorized  
7 by section 2603 of the Energy Policy Act of 1992 (25  
8 U.S.C. 3503) for activities associated with the develop-  
9 ment of a transmission line from the Four Corners Area  
10 to southern Nevada, including related power generation  
11 opportunities.

12 **TITLE II—RENEWABLE ENERGY**  
13 **AND RURAL CONSTRUCTION**  
14 **GRANTS**

15 **SEC. 201. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

16       (a) INCENTIVE PAYMENTS.—Section 1212(a) of the  
17 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is  
18 amended in the third and fourth sentences by striking  
19 “payment and which satisfies” and all that follows  
20 through “Secretary shall establish.” and inserting the fol-  
21 lowing: “payment. The Secretary shall establish other pro-  
22 cedures necessary for efficient administration of the pro-  
23 gram. The Secretary shall not establish any criteria or  
24 procedures that have the effect of assigning to proposals  
25 a higher or lower priority for eligibility or allocation of

1 appropriated funds on the basis of the energy source pro-  
2 posed.”.

3 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—  
4 Section 1212(b) of the Energy Policy Act of 1992 (42  
5 U.S.C. 13317(b)) is amended—

6 (1) by striking “a State or any political” and  
7 all that follows through “nonprofit electrical cooper-  
8 ative” and inserting the following: “a nonprofit elec-  
9 trical cooperative, a public utility, a State, territory,  
10 or possession of the United States, the District of  
11 Columbia (or a political subdivision of a State, terri-  
12 tory, or possession or the District of Columbia), or  
13 an Indian tribal government (or subdivision of an  
14 Indian tribal government),”; and

15 (2) by inserting “landfill gas, incremental hy-  
16 dropower, ocean” after “wind, biomass,”.

17 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the  
18 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is  
19 amended by striking “during the 10-fiscal year period be-  
20 ginning with the first full fiscal year occurring after the  
21 enactment of this section” and inserting “before October  
22 1, 2013”.

23 (d) PAYMENT PERIOD.—Section 1212(d) of the En-  
24 ergy Policy Act of 1992 (42 U.S.C. 13317(d)) is amended  
25 in the second sentence by inserting “or in which the Sec-

1   retary determines that all necessary Federal and State au-  
 2   thorizations have been obtained to begin construction of  
 3   the facility” after “eligible for such payments”.

4       (e) AMOUNT OF PAYMENT.—Section 1212(e)(1) of  
 5   the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))  
 6   is amended in the first sentence by inserting “landfill gas,  
 7   incremental hydropower, ocean” after “wind, biomass,”.

8       (f) TERMINATION OF AUTHORITY.—Section 1212(f)  
 9   of the Energy Policy Act of 1992 (42 U.S.C. 13317(f))  
 10   is amended by striking “the expiration of” and all that  
 11   follows through “of this section” and inserting “Sep-  
 12   tember 30, 2023”.

13       (g) INCREMENTAL HYDROPOWER; AUTHORIZATION  
 14   OF APPROPRIATIONS.—Section 1212 of the Energy Policy  
 15   Act of 1992 (42 U.S.C. 13317) is amended by striking  
 16   subsection (g) and inserting the following:

17       “(g) INCREMENTAL HYDROPOWER.—

18               “(1) DEFINITION OF INCREMENTAL HYDRO-  
 19   POWER.—In this subsection, the term ‘incremental  
 20   hydropower’ means additional generating capacity  
 21   achieved from increased efficiency or an addition of  
 22   new capacity at a hydroelectric facility in existence  
 23   on the date of enactment of this paragraph.

24               “(2) PROGRAMS.—Subject to subsection (h)(2),  
 25   if an incremental hydropower program meets the re-



1        requirements of this section, as determined by the Sec-  
 2        retary, the incremental hydropower program shall be  
 3        eligible to receive incentive payments under this sec-  
 4        tion.

5        “(h) AUTHORIZATION OF APPROPRIATIONS.—

6                “(1) IN GENERAL.—Subject to paragraph (2),  
 7        there are authorized to be appropriated such sums  
 8        as are necessary to carry out this section for each  
 9        of fiscal years 2003 through 2023.

10              “(2) LIMITATION ON FUNDS USED FOR INCRE-  
 11        MENTAL HYDROPOWER PROGRAMS.—Not more than  
 12        30 percent of the amounts made available under  
 13        paragraph (1) shall be used to carry out programs  
 14        described in subsection (g)(2).

15              “(3) AVAILABILITY OF FUNDS.—Funds made  
 16        available under paragraph (1) shall remain available  
 17        until expended.”

18        **TITLE III—ENERGY EFFICIENCY**  
 19        **AND ASSISTANCE TO LOW-IN-**  
 20        **COME CONSUMERS**

21        **SEC. 301. LOW-INCOME COMMUNITY ENERGY EFFICIENCY**  
 22        **PILOT PROGRAM.**

23        (a) DEFINITION OF INDIAN TRIBE.—

24              (1) IN GENERAL.—In this section, the term  
 25        “Indian tribe” means any Indian tribe, band, nation,

1 or other organized group or community that is rec-  
2 ognized as being eligible for the special programs  
3 and services provided by the United States to Indi-  
4 ans because of their status as Indians.

5 (2) INCLUSIONS.—In this section, the term “In-  
6 dian tribe” includes an Alaskan Native village, Re-  
7 gional Corporation, and Village Corporation (as de-  
8 fined in or established under the Alaska Native  
9 Claims Settlement Act (43 U.S.C. 1601 et seq.)).

10 (b) GRANTS TO LOCAL GOVERNMENT, NONPROFIT,  
11 AND TRIBAL ENTITIES.—The Secretary may provide  
12 grants to units of local government, private, nonprofit  
13 community development organizations, and tribal eco-  
14 nomic development entities for use in—

15 (1) improving energy efficiency;

16 (2) identifying and developing alternative re-  
17 newable and distributed energy supplies; and

18 (3) increasing energy conservation in low-in-  
19 come rural and urban communities.

20 (c) COMPETITIVE GRANTS.—In addition to grants de-  
21 scribed in subsection (b), the Secretary may provide  
22 grants on a competitive basis for—

23 (1) investments that develop alternative renew-  
24 able and distributed energy supplies;



1           “(i) a unit of local government of a  
2           State or Territory;

3           “(ii) an Indian tribe; and

4           “(iii) a tribal college or university.

5           “(B) INDIAN TRIBE.—

6           “(i) IN GENERAL.—The term ‘Indian  
7           tribe’ means any Indian tribe, band, na-  
8           tion, or other organized group or commu-  
9           nity that is recognized as being eligible for  
10          the special programs and services provided  
11          by the United States to Indians because of  
12          their status as Indians.

13          “(ii) INCLUSIONS.—The term “Indian  
14          tribe” includes a Alaskan Native village,  
15          Regional Corporation, and Village Corpora-  
16          tion (as defined in or established under the  
17          Alaska Native Claims Settlement Act (43  
18          U.S.C. 1601 et seq.)).

19          “(C) TRIBAL COLLEGE OR UNIVERSITY.—

20          The term ‘tribal college or university’ has the  
21          meaning given the term in section 316(b)(3) of  
22          the Higher Education Act (20 U.S.C.  
23          1059c(b)(3)).

24          “(2) GRANTS.—The Secretary, in consultation  
25          with the Secretary of Energy and the Secretary of

1 the Interior, may provide to an eligible entity 1 or  
2 more grants for the purpose of—

3 “(A) increasing energy efficiency;

4 “(B) siting or upgrading transmission and  
5 distribution lines; or

6 “(C) providing or modernizing electric fa-  
7 cilities.

8 “(3) GRANT CRITERIA.—The Secretary shall  
9 provide grants under this subsection based on a de-  
10 termination of the most effective and cost-efficient  
11 use of the funds to achieve the purposes of this sub-  
12 section.

13 “(4) PRIORITY.—In providing grants under this  
14 subsection, the Secretary shall give priority to re-  
15 newable energy facilities.

16 “(5) AUTHORIZATION OF APPROPRIATIONS.—  
17 There is authorized to be appropriated to carry out  
18 this subsection \$20,000,000 for each of the 7 fiscal  
19 years following the fiscal year in which this sub-  
20 section is enacted.”.

○