

1 **TITLE V—INDIAN ENERGY**

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- Sec. 501. Short title.
- Sec. 502. Office of Indian Energy Policy and Programs.
- Sec. 503. Indian energy.
- Sec. 504. Consultation with Indian tribes.
- Sec. 505. Four corners transmission line project and electrification.
- Sec. 506. Energy efficiency in federally assisted housing.

2 **SEC. 501. SHORT TITLE.**

3 This title may be cited as the “Indian Tribal Energy  
4 Development and Self-Determination Act of 2005”.

5 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
6 **GRAMS.**

7 (a) IN GENERAL.—Title II of the Department of En-  
8 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-  
9 ed by adding at the end the following:

10 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

11 “SEC. 217. (a) ESTABLISHMENT.—There is estab-  
12 lished within the Department an Office of Indian Energy  
13 Policy and Programs (referred to in this section as the  
14 ‘Office’). The Office shall be headed by a Director, who  
15 shall be appointed by the Secretary and compensated at  
16 a rate equal to that of level IV of the Executive Schedule  
17 under section 5315 of title 5, United States Code.

18 “(b) DUTIES OF DIRECTOR.—The Director, in ac-  
19 cordance with Federal policies promoting Indian self-de-



1 termination and the purposes of this Act, shall provide,  
2 direct, foster, coordinate, and implement energy planning,  
3 education, management, conservation, and delivery pro-  
4 grams of the Department that—

5 “(1) promote Indian tribal energy development,  
6 efficiency, and use;

7 “(2) reduce or stabilize energy costs;

8 “(3) enhance and strengthen Indian tribal en-  
9 ergy and economic infrastructure relating to natural  
10 resource development and electrification; and

11 “(4) bring electrical power and service to In-  
12 dian land and the homes of tribal members located  
13 on Indian lands or acquired, constructed, or im-  
14 proved (in whole or in part) with Federal funds.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) The table of contents of the Department of  
17 Energy Organization Act (42 U.S.C. prec. 7101) is  
18 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 (2) Section 5315 of title 5, United States Code,  
2 is amended by inserting after the item related to the  
3 Inspector General, Department of Energy the fol-  
4 lowing new item:

5 “Director, Office of Indian Energy Policy and  
6 Programs, Department of Energy.”.

7 **SEC. 503. INDIAN ENERGY.**

8 (a) IN GENERAL.—Title XXVI of the Energy Policy  
9 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read  
10 as follows:

11 **“TITLE XXVI—INDIAN ENERGY**

12 **“SEC. 2601. DEFINITIONS.**

13 “In this title:

14 “(1) The term ‘Director’ means the Director of  
15 the Office of Indian Energy Policy and Programs,  
16 Department of Energy.

17 “(2) The term ‘Indian land’ means—

18 “(A) any land located within the bound-  
19 aries of an Indian reservation, pueblo, or  
20 rancheria;

21 “(B) any land not located within the  
22 boundaries of an Indian reservation, pueblo, or  
23 rancheria, the title to which is held—



1 “(i) in trust by the United States for  
2 the benefit of an Indian tribe or an indi-  
3 vidual Indian;

4 “(ii) by an Indian tribe or an indi-  
5 vidual Indian, subject to restriction against  
6 alienation under laws of the United States;  
7 or

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

10 “(C) land that is owned by an Indian tribe  
11 and was conveyed by the United States to a  
12 Native Corporation pursuant to the Alaska Na-  
13 tive Claims Settlement Act (43 U.S.C. 1601 et  
14 seq.), or that was conveyed by the United  
15 States to a Native Corporation in exchange for  
16 such land.

17 “(3) The term ‘Indian reservation’ includes—

18 “(A) an Indian reservation in existence in  
19 any State or States as of the date of enactment  
20 of this paragraph;

21 “(B) a public domain Indian allotment;  
22 and

23 “(C) a dependent Indian community lo-  
24 cated within the borders of the United States,



1           regardless of whether the community is  
2           located—

3                   “(i) on original or acquired territory  
4                   of the community; or

5                   “(ii) within or outside the boundaries  
6                   of any State or States.

7           “(4)(A) The term ‘Indian tribe’ has the mean-  
8           ing given the term in section 4 of the Indian Self-  
9           Determination and Education Assistance Act (25  
10          U.S.C. 450b).

11           “(B) For the purpose of paragraph (12) and  
12          sections 2603(b)(1)(C) and 2604, the term ‘Indian  
13          tribe’ does not include any Native Corporation.

14           “(5) The term ‘integration of energy resources’  
15          means any project or activity that promotes the loca-  
16          tion and operation of a facility (including any pipe-  
17          line, gathering system, transportation system or fa-  
18          cility, or electric transmission or distribution facility)  
19          on or near Indian land to process, refine, generate  
20          electricity from, or otherwise develop energy re-  
21          sources on, Indian land.

22           “(6) The term ‘Native Corporation’ has the  
23          meaning given the term in section 3 of the Alaska  
24          Native Claims Settlement Act (43 U.S.C. 1602).



1           “(7) The term ‘organization’ means a partner-  
2           ship, joint venture, limited liability company, or  
3           other unincorporated association or entity that is es-  
4           tablished to develop Indian energy resources.

5           “(8) The term ‘Program’ means the Indian en-  
6           ergy resource development program established  
7           under section 2602(a).

8           “(9) The term ‘Secretary’ means the Secretary  
9           of the Interior.

10          “(10) The term ‘sequestration’ means the long-  
11          term separation, isolation, or removal of greenhouse  
12          gases from the atmosphere, including through a bio-  
13          logical or geologic method such as reforestation or  
14          an underground reservoir.

15          “(11) The term ‘tribal energy resource develop-  
16          ment organization’ means an organization of 2 or  
17          more entities, at least 1 of which is an Indian tribe,  
18          that has the written consent of the governing bodies  
19          of all Indian tribes participating in the organization  
20          to apply for a grant, loan, or other assistance under  
21          section 2602.

22          “(12) The term ‘tribal land’ means any land or  
23          interests in land owned by any Indian tribe, title to  
24          which is held in trust by the United States, or is



1 subject to a restriction against alienation under laws  
2 of the United States.

3 **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**  
4 **MENT.**

5 “(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

6 “(1) To assist Indian tribes in the development  
7 of energy resources and further the goal of Indian  
8 self-determination, the Secretary shall establish and  
9 implement an Indian energy resource development  
10 program to assist consenting Indian tribes and tribal  
11 energy resource development organizations in achiev-  
12 ing the purposes of this title.

13 “(2) In carrying out the Program, the Sec-  
14 retary shall—

15 “(A) provide development grants to Indian  
16 tribes and tribal energy resource development  
17 organizations for use in developing or obtaining  
18 the managerial and technical capacity needed to  
19 develop energy resources on Indian land, and to  
20 properly account for resulting energy produc-  
21 tion and revenues;

22 “(B) provide grants to Indian tribes and  
23 tribal energy resource development organiza-  
24 tions for use in carrying out projects to pro-  
25 mote the integration of energy resources, and to



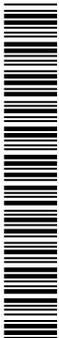
1 process, use, or develop those energy resources,  
2 on Indian land;

3 “(C) provide low-interest loans to Indian  
4 tribes and tribal energy resource development  
5 organizations for use in the promotion of en-  
6 ergy resource development on Indian land and  
7 integration of energy resources; and

8 “(D) provide grants and technical assist-  
9 ance to an appropriate tribal environmental or-  
10 ganization, as determined by the Secretary, that  
11 represents multiple Indian tribes to establish a  
12 national resource center to develop tribal capac-  
13 ity to establish and carry out tribal environ-  
14 mental programs in support of energy-related  
15 programs and activities under this title,  
16 including—

17 “(i) training programs for tribal envi-  
18 ronmental officials, program managers,  
19 and other governmental representatives;

20 “(ii) the development of model envi-  
21 ronmental policies and tribal laws, includ-  
22 ing tribal environmental review codes, and  
23 the creation and maintenance of a clear-  
24 inghouse of best environmental manage-  
25 ment practices; and



1                   “(iii) recommended standards for re-  
2                   viewing the implementation of tribal envi-  
3                   ronmental laws and policies within tribal  
4                   judicial or other tribal appeals systems.

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

8                   “(b) DEPARTMENT OF ENERGY INDIAN ENERGY  
9                   EDUCATION PLANNING AND MANAGEMENT ASSISTANCE  
10                  PROGRAM.—

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

15                  “(2) In carrying out this subsection, the Direc-  
16                  tor may provide grants, on a competitive basis, to an  
17                  Indian tribe or tribal energy resource development  
18                  organization for use in carrying out—

19                         “(A) energy, energy efficiency, and energy  
20                         conservation programs;

21                         “(B) studies and other activities sup-  
22                         porting tribal acquisitions of energy supplies,  
23                         services, and facilities, including the creation of  
24                         tribal utilities to assist in securing electricity to



1 promote electrification of homes and businesses  
2 on Indian land;

3 “(C) planning, construction, development,  
4 operation, maintenance, and improvement of  
5 tribal electrical generation, transmission, and  
6 distribution facilities located on Indian land;  
7 and

8 “(D) development, construction, and inter-  
9 connection of electric power transmission facili-  
10 ties located on Indian land with other electric  
11 transmission facilities.

12 “(3)(A) The Director shall develop a program  
13 to support and implement research projects that  
14 provide Indian tribes with opportunities to partici-  
15 pate in carbon sequestration practices on Indian  
16 land, including—

17 “(i) geologic sequestration;

18 “(ii) forest sequestration;

19 “(iii) agricultural sequestration; and

20 “(iv) any other sequestration opportunities  
21 the Director considers to be appropriate.

22 “(B) The activities carried out under subpara-  
23 graph (A) shall be—



1           “(i) coordinated with other carbon seques-  
2           tration research and development programs  
3           conducted by the Secretary of Energy;

4           “(ii) conducted to determine methods con-  
5           sistent with existing standardized measurement  
6           protocols to account and report the quantity of  
7           carbon dioxide or other greenhouse gases se-  
8           questered in projects that may be implemented  
9           on tribal land; and

10          “(iii) reviewed periodically to collect and  
11          distribute to Indian tribes information on car-  
12          bon sequestration practices that will increase  
13          the sequestration of carbon without threatening  
14          the social and economic well-being of Indian  
15          tribes.

16          “(4)(A) The Director, in consultation with In-  
17          dian tribes, may develop a formula for providing  
18          grants under this subsection.

19          “(B) In providing a grant under this sub-  
20          section, the Director shall give priority to any appli-  
21          cation received from an Indian tribe with inadequate  
22          electric service (as determined by the Director).

23          “(C) In providing a grant under this subsection  
24          for an activity to provide, or expand the provision of,  
25          electricity on Indian land, the Director shall encour-



1       age cooperative arrangements between Indian tribes  
2       and utilities that provide service to Indian tribes, as  
3       the Director determines to be appropriate.

4               “(5) The Secretary of Energy may issue such  
5       regulations as the Secretary determines to be nec-  
6       essary to carry out this subsection.

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

10       “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE  
11 PROGRAM.—

12               “(1) Subject to paragraphs (2) and (4), the  
13       Secretary of Energy may provide loan guarantees  
14       (as defined in section 502 of the Federal Credit Re-  
15       form Act of 1990 (2 U.S.C. 661a)) for an amount  
16       equal to not more than 90 percent of the unpaid  
17       principal and interest due on any loan made to an  
18       Indian tribe for energy development.

19               “(2) In providing a loan guarantee under this  
20       subsection for an activity to provide, or expand the  
21       provision of, electricity on Indian land, the Secretary  
22       of Energy shall encourage cooperative arrangements  
23       between Indian tribes and utilities that provide serv-  
24       ice to Indian tribes, as the Secretary determines to  
25       be appropriate.



1           “(3) A loan guarantee under this subsection  
2 shall be made by—

3           “(A) a financial institution subject to ex-  
4 amination by the Secretary of Energy; or

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

7           “(4) The aggregate outstanding amount guar-  
8 anteed by the Secretary of Energy at any time under  
9 this subsection shall not exceed \$2,000,000,000.

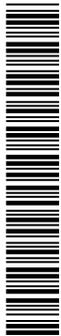
10           “(5) The Secretary of Energy may issue such  
11 regulations as the Secretary of Energy determines  
12 are necessary to carry out this subsection.

13           “(6) There are authorized to be appropriated  
14 such sums as are necessary to carry out this sub-  
15 section, to remain available until expended.

16           “(7) Not later than 1 year after the date of en-  
17 actment of this section, the Secretary of Energy  
18 shall submit to Congress a report on the financing  
19 requirements of Indian tribes for energy develop-  
20 ment on Indian land.

21           “(d) PREFERENCE.—

22           “(1) In purchasing electricity or any other en-  
23 ergy product or byproduct, a Federal agency or de-  
24 partment may give preference to an energy and re-  
25 source production enterprise, partnership, consor-



1 tium, corporation, or other type of business organi-  
2 zation the majority of the interest in which is owned  
3 and controlled by 1 or more Indian tribes.

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

6 “(A) pay more than the prevailing market  
7 price for an energy product or byproduct; or

8 “(B) obtain less than prevailing market  
9 terms and conditions.

10 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**  
11 **TION.**

12 “(a) GRANTS.—The Secretary may provide to Indian  
13 tribes, on an annual basis, grants for use in accordance  
14 with subsection (b).

15 “(b) USE OF FUNDS.—Funds from a grant provided  
16 under this section may be used—

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

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

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



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

4           “(ii) the development of technical infra-  
5           structure to protect the environment under ap-  
6           plicable law; or

7           “(D) by a Native Corporation for the develop-  
8           ment and implementation of corporate policies and  
9           the development of technical infrastructure to pro-  
10          tect the environment under applicable law; and

11          “(2) by an Indian tribe for the training of em-  
12          ployees that—

13                 “(A) are engaged in the development of en-  
14                 ergy resources on Indian land; or

15                 “(B) are responsible for protecting the en-  
16                 vironment.

17          “(c) OTHER ASSISTANCE.—

18                 “(1) In carrying out the obligations of the  
19                 United States under this title, the Secretary shall  
20                 ensure, to the maximum extent practicable and to  
21                 the extent of available resources, that on the request  
22                 of an Indian tribe, the Indian tribe shall have avail-  
23                 able scientific and technical information and exper-  
24                 tise, for use in the regulation, development, and



1 management of energy resources of the Indian tribe  
2 on Indian land.

3 “(2) The Secretary may carry out paragraph  
4 (1)—

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

7 “(B) indirectly, by providing financial as-  
8 sistance to an Indian tribe to secure inde-  
9 pendent assistance.

10 **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**  
11 **OF-WAY INVOLVING ENERGY DEVELOPMENT**  
12 **OR TRANSMISSION.**

13 “(a) LEASES AND BUSINESS AGREEMENTS.—In ac-  
14 cordance with this section—

15 “(1) an Indian tribe may, at the discretion of  
16 the Indian tribe, enter into a lease or business  
17 agreement for the purpose of energy resource devel-  
18 opment on tribal land, including a lease or business  
19 agreement for—

20 “(A) exploration for, extraction of, proc-  
21 essing of, or other development of the energy  
22 mineral resources of the Indian tribe located on  
23 tribal land; or

24 “(B) construction or operation of—



1           “(i) an electric generation, trans-  
2           mission, or distribution facility located on  
3           tribal land; or

4           “(ii) a facility to process or refine en-  
5           ergy resources developed on tribal land;  
6           and

7           “(2) a lease or business agreement described in  
8           paragraph (1) shall not require the approval of the  
9           Secretary under section 2103 of the Revised Stat-  
10          utes (25 U.S.C. 81), or any other provision of law,  
11          if—

12           “(A) the lease or business agreement is ex-  
13           ecuted pursuant to a tribal energy resource  
14           agreement approved by the Secretary under  
15           subsection (e);

16           “(B) the term of the lease or business  
17           agreement does not exceed—

18           “(i) 30 years; or

19           “(ii) in the case of a lease for the pro-  
20           duction of oil resources, gas resources, or  
21           both, 10 years and as long thereafter as oil  
22           or gas is produced in paying quantities;  
23           and

24           “(C) the Indian tribe has entered into a  
25           tribal energy resource agreement with the Sec-



1           retary, as described in subsection (e), relating  
2           to the development of energy resources on tribal  
3           land (including the periodic review and evalua-  
4           tion of the activities of the Indian tribe under  
5           the agreement, to be conducted pursuant to  
6           subsection (e)(2)(D)(i)).

7           “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC  
8 TRANSMISSION OR DISTRIBUTION LINES.—An Indian  
9 tribe may grant a right-of-way over tribal land for a pipe-  
10 line or an electric transmission or distribution line without  
11 approval by the Secretary if—

12           “(1) the right-of-way is executed in accordance  
13           with a tribal energy resource agreement approved by  
14           the Secretary under subsection (e);

15           “(2) the term of the right-of-way does not ex-  
16           ceed 30 years;

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

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

21           “(B) a facility located on tribal land that  
22           processes or refines energy resources developed  
23           on tribal land; and

24           “(4) the Indian tribe has entered into a tribal  
25           energy resource agreement with the Secretary, as de-



1 scribed in subsection (e), relating to the development  
2 of energy resources on tribal land (including the  
3 periodic review and evaluation of the activities of the  
4 Indian tribe under an agreement described in sub-  
5 paragraphs (D) and (E) of subsection (e)(2)).

6 “(c) RENEWALS.—A lease or business agreement en-  
7 tered into, or a right-of-way granted, by an Indian tribe  
8 under this section may be renewed at the discretion of the  
9 Indian tribe in accordance with this section.

10 “(d) VALIDITY.—No lease, business agreement, or  
11 right-of-way relating to the development of tribal energy  
12 resources under this section shall be valid unless the lease,  
13 business agreement, or right-of-way is authorized by a  
14 tribal energy resource agreement approved by the Sec-  
15 retary under subsection (e)(2).

16 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

17 “(1) On the date on which regulations are pro-  
18 mulgated under paragraph (8), an Indian tribe may  
19 submit to the Secretary for approval a tribal energy  
20 resource agreement governing leases, business agree-  
21 ments, and rights-of-way under this section.

22 “(2)(A) Not later than 270 days after the date  
23 on which the Secretary receives a tribal energy re-  
24 source agreement from an Indian tribe under para-  
25 graph (1), or not later than 60 days after the Sec-



1       retary receives a revised tribal energy resource  
2       agreement from an Indian tribe under paragraph  
3       (4)(C) (or a later date, as agreed to by the Secretary  
4       and the Indian tribe), the Secretary shall approve or  
5       disapprove the tribal energy resource agreement.

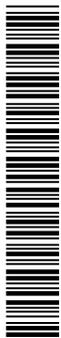
6               “(B) The Secretary shall approve a tribal en-  
7       ergy resource agreement submitted under paragraph  
8       (1) if—

9               “(i) the Secretary determines that the In-  
10       dian tribe has demonstrated that the Indian  
11       tribe has sufficient capacity to regulate the de-  
12       velopment of energy resources of the Indian  
13       tribe;

14               “(ii) the tribal energy resource agreement  
15       includes provisions required under subpara-  
16       graph (D); and

17               “(iii) the tribal energy resource agreement  
18       includes provisions that, with respect to a lease,  
19       business agreement, or right-of-way under this  
20       section—

21               “(I) ensure the acquisition of nec-  
22       essary information from the applicant for  
23       the lease, business agreement, or right-of-  
24       way;



1           “(II) address the term of the lease or  
2 business agreement or the term of convey-  
3 ance of the right-of-way;

4           “(III) address amendments and re-  
5 newals;

6           “(IV) address the economic return to  
7 the Indian tribe under leases, business  
8 agreements, and rights-of-way;

9           “(V) address technical or other rel-  
10 evant requirements;

11           “(VI) establish requirements for envi-  
12 ronmental review in accordance with sub-  
13 paragraph (C);

14           “(VII) ensure compliance with all ap-  
15 plicable environmental laws, including a re-  
16 quirement that each lease, business agree-  
17 ment, and right-of-way state that the les-  
18 see, operator, or right-of-way grantee shall  
19 comply with all such laws;

20           “(VIII) identify final approval author-  
21 ity;

22           “(IX) provide for public notification of  
23 final approvals;

24           “(X) establish a process for consulta-  
25 tion with any affected States regarding off-



1 reservation impacts, if any, identified  
2 under subparagraph (C)(i);

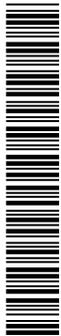
3 “(XI) describe the remedies for  
4 breach of the lease, business agreement, or  
5 right-of-way;

6 “(XII) require each lease, business  
7 agreement, and right-of-way to include a  
8 statement that, if any of its provisions vio-  
9 lates an express term or requirement of the  
10 tribal energy resource agreement pursuant  
11 to which the lease, business agreement, or  
12 right-of-way was executed—

13 “(aa) the provision shall be null  
14 and void; and

15 “(bb) if the Secretary determines  
16 the provision to be material, the Sec-  
17 retary may suspend or rescind the  
18 lease, business agreement, or right-of-  
19 way or take other appropriate action  
20 that the Secretary determines to be in  
21 the best interest of the Indian tribe;

22 “(XIII) require each lease, business  
23 agreement, and right-of-way to provide  
24 that it will become effective on the date on  
25 which a copy of the executed lease, busi-



1           ness agreement, or right-of-way is deliv-  
2           ered to the Secretary in accordance with  
3           regulations promulgated under paragraph  
4           (8);

5           “(XIV) include citations to tribal  
6           laws, regulations, or procedures, if any,  
7           that set out tribal remedies that must be  
8           exhausted before a petition may be sub-  
9           mitted to the Secretary under paragraph  
10          (7)(B);

11          “(XV) specify the financial assistance,  
12          if any, to be provided by the Secretary to  
13          the Indian tribe to assist in implementa-  
14          tion of the tribal energy resource agree-  
15          ment, including environmental review of in-  
16          dividual projects; and

17          “(XVI) in accordance with the regula-  
18          tions promulgated by the Secretary under  
19          paragraph (8), require that the Indian  
20          tribe, as soon as practicable after receipt  
21          of a notice by the Indian tribe, give written  
22          notice to the Secretary of—

23                  “(aa) any breach or other viola-  
24                  tion by another party of any provision  
25                  in a lease, business agreement, or



1 right-of-way entered into under the  
2 tribal energy resource agreement; and

3 “(bb) any activity or occurrence  
4 under a lease, business agreement, or  
5 right-of-way that constitutes a viola-  
6 tion of Federal or tribal environ-  
7 mental laws.

8 “(C) Tribal energy resource agreements  
9 submitted under paragraph (1) shall establish,  
10 and include provisions to ensure compliance  
11 with, an environmental review process that,  
12 with respect to a lease, business agreement, or  
13 right-of-way under this section, provides for, at  
14 a minimum—

15 “(i) the identification and evaluation  
16 of all significant environmental effects (as  
17 compared to a no-action alternative), in-  
18 cluding effects on cultural resources;

19 “(ii) the identification of proposed  
20 mitigation measures, if any, and incorpora-  
21 tion of appropriate mitigation measures  
22 into the lease, business agreement, or  
23 right-of-way;

24 “(iii) a process for ensuring that—



1                   “(I) the public is informed of,  
2                   and has an opportunity to comment  
3                   on, the environmental impacts of the  
4                   proposed action; and

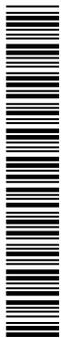
5                   “(II) responses to relevant and  
6                   substantive comments are provided,  
7                   before tribal approval of the lease,  
8                   business agreement, or right-of-way;

9                   “(iv) sufficient administrative support  
10                  and technical capability to carry out the  
11                  environmental review process; and

12                  “(v) oversight by the Indian tribe of  
13                  energy development activities by any other  
14                  party under any lease, business agreement,  
15                  or right-of-way entered into pursuant to  
16                  the tribal energy resource agreement, to  
17                  determine whether the activities are in  
18                  compliance with the tribal energy resource  
19                  agreement and applicable Federal environ-  
20                  mental laws.

21                  “(D) A tribal energy resource agreement  
22                  between the Secretary and an Indian tribe  
23                  under this subsection shall include—

24                  “(i) provisions requiring the Secretary  
25                  to conduct a periodic review and evaluation



1 to monitor the performance of the activi-  
2 ties of the Indian tribe associated with the  
3 development of energy resources under the  
4 tribal energy resource agreement; and

5 “(ii) if a periodic review and evalua-  
6 tion, or an investigation, by the Secretary  
7 of any breach or violation described in a  
8 notice provided by the Indian tribe to the  
9 Secretary in accordance with subparagraph  
10 (B)(iii)(XVI), results in a finding by the  
11 Secretary of imminent jeopardy to a phys-  
12 ical trust asset arising from a violation of  
13 the tribal energy resource agreement or ap-  
14 plicable Federal laws, provisions author-  
15 izing the Secretary to take actions deter-  
16 mined by the Secretary to be necessary to  
17 protect the asset, including reassumption  
18 of responsibility for activities associated  
19 with the development of energy resources  
20 on tribal land until the violation and any  
21 condition that caused the jeopardy are cor-  
22 rected.

23 “(E) Periodic review and evaluation under  
24 subparagraph (D) shall be conducted on an an-  
25 nual basis, except that, after the third annual



1 review and evaluation, the Secretary and the  
2 Indian tribe may mutually agree to amend the  
3 tribal energy resource agreement to authorize  
4 the review and evaluation under subparagraph  
5 (D) to be conducted once every 2 years.

6 “(3) The Secretary shall provide notice and op-  
7 portunity for public comment on tribal energy re-  
8 source agreements submitted for approval under  
9 paragraph (1).

10 “(4) If the Secretary disapproves a tribal en-  
11 ergy resource agreement submitted by an Indian  
12 tribe under paragraph (1), the Secretary shall, not  
13 later than 10 days after the date of disapproval—

14 “(A) notify the Indian tribe in writing of  
15 the basis for the disapproval;

16 “(B) identify what changes or other ac-  
17 tions are required to address the concerns of  
18 the Secretary; and

19 “(C) provide the Indian tribe with an op-  
20 portunity to revise and resubmit the tribal en-  
21 ergy resource agreement.

22 “(5) If an Indian tribe executes a lease or busi-  
23 ness agreement, or grants a right-of-way, in accord-  
24 ance with a tribal energy resource agreement ap-  
25 proved under this subsection, the Indian tribe shall,



1 in accordance with the process and requirements  
2 under regulations promulgated under paragraph (8),  
3 provide to the Secretary—

4 “(A) a copy of the lease, business agree-  
5 ment, or right-of-way document (including all  
6 amendments to and renewals of the document);  
7 and

8 “(B) in the case of a tribal energy resource  
9 agreement or a lease, business agreement, or  
10 right-of-way that permits payments to be made  
11 directly to the Indian tribe, information and  
12 documentation of those payments sufficient to  
13 enable the Secretary to discharge the trust re-  
14 sponsibility of the United States to enforce the  
15 terms of, and protect the rights of the Indian  
16 tribe under, the lease, business agreement, or  
17 right-of-way.

18 “(6)(A) In carrying out this section, the Sec-  
19 retary shall—

20 “(i) act in accordance with the trust re-  
21 sponsibility of the United States relating to  
22 mineral and other trust resources; and

23 “(ii) act in good faith and in the best in-  
24 terests of the Indian tribes.



1           “(B) Subject to the provisions of subsections  
2           (a)(2), (b), and (c) waiving the requirement of Sec-  
3           retarial approval of leases, business agreements, and  
4           rights-of-way executed pursuant to tribal energy re-  
5           source agreements approved under this section, and  
6           the provisions of subparagraph (D), nothing in this  
7           section shall absolve the United States from any re-  
8           sponsibility to Indians or Indian tribes, including,  
9           but not limited to, those which derive from the trust  
10          relationship or from any treaties, statutes, and other  
11          laws of the United States, Executive Orders, or  
12          agreements between the United States and any In-  
13          dian tribe.

14          “(C) The Secretary shall continue to fulfill the  
15          trust obligation of the United States to ensure that  
16          the rights and interests of an Indian tribe are pro-  
17          tected if—

18                 “(i) any other party to a lease, business  
19                 agreement, or right-of-way violates any applica-  
20                 ble Federal law or the terms of any lease, busi-  
21                 ness agreement, or right-of-way under this sec-  
22                 tion; or

23                 “(ii) any provision in a lease, business  
24                 agreement, or right-of-way violates the tribal  
25                 energy resource agreement pursuant to which



1           the lease, business agreement, or right-of-way  
2           was executed.

3           “(D)(i) In this subparagraph, the term ‘nego-  
4           tiated term’ means any term or provision that is ne-  
5           gotiated by an Indian tribe and any other party to  
6           a lease, business agreement, or right-of-way entered  
7           into pursuant to an approved tribal energy resource  
8           agreement.

9           “(ii) Notwithstanding subparagraph (B), the  
10          United States shall not be liable to any party (in-  
11          cluding any Indian tribe) for any negotiated term of,  
12          or any loss resulting from the negotiated terms of,  
13          a lease, business agreement, or right-of-way executed  
14          pursuant to and in accordance with a tribal energy  
15          resource agreement approved by the Secretary under  
16          paragraph (2).

17          “(7)(A) In this paragraph, the term ‘interested  
18          party’ means any person (including an entity) that  
19          has demonstrated that an interest of the person has  
20          sustained, or will sustain, an adverse environmental  
21          impact as a result of the failure of an Indian tribe  
22          to comply with a tribal energy resource agreement of  
23          the Indian tribe approved by the Secretary under  
24          paragraph (2).



1           “(B) After exhaustion of any tribal remedy, and  
2           in accordance with regulations promulgated by the  
3           Secretary under paragraph (8), an interested party  
4           may submit to the Secretary a petition to review the  
5           compliance by an Indian tribe with a tribal energy  
6           resource agreement of the Indian tribe approved by  
7           the Secretary under paragraph (2).

8           “(C)(i) Not later than 20 days after the date on  
9           which the Secretary receives a petition under sub-  
10          paragraph (B), the Secretary shall—

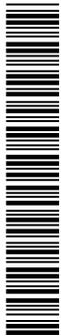
11                  “(I) provide to the Indian tribe a copy of  
12                  the petition; and

13                  “(II) consult with the Indian tribe regard-  
14                  ing any noncompliance alleged in the petition.

15           “(ii) Not later than 45 days after the date on  
16           which a consultation under clause (i)(II) takes place,  
17           the Indian tribe shall respond to any claim made in  
18           a petition under subparagraph (B).

19           “(iii) The Secretary shall act in accordance with  
20           subparagraphs (D) and (E) only if the Indian  
21           tribe—

22                  “(I) denies, or fails to respond to, each  
23                  claim made in the petition within the period de-  
24                  scribed in clause (ii); or



1           “(II) fails, refuses, or is unable to cure or  
2 otherwise resolve each claim made in the peti-  
3 tion within a reasonable period, as determined  
4 by the Secretary, after the expiration of the pe-  
5 riod described in clause (ii).

6           “(D)(i) Not later than 120 days after the date  
7 on which the Secretary receives a petition under sub-  
8 paragraph (B), the Secretary shall determine wheth-  
9 er the Indian tribe is not in compliance with the  
10 tribal energy resource agreement.

11           “(ii) The Secretary may adopt procedures  
12 under paragraph (8) authorizing an extension of  
13 time, not to exceed 120 days, for making the deter-  
14 mination under clause (i) in any case in which the  
15 Secretary determines that additional time is nec-  
16 essary to evaluate the allegations of the petition.

17           “(iii) Subject to subparagraph (E), if the Sec-  
18 retary determines that the Indian tribe is not in  
19 compliance with the tribal energy resource agree-  
20 ment, the Secretary shall take such action as the  
21 Secretary determines to be necessary to ensure com-  
22 pliance with the tribal energy resource agreement,  
23 including—

24           “(I) temporarily suspending any activity  
25 under a lease, business agreement, or right-of-



1 way under this section until the Indian tribe is  
2 in compliance with the approved tribal energy  
3 resource agreement; or

4 “(II) rescinding approval of all or part of  
5 the tribal energy resource agreement, and if all  
6 of the agreement is rescinded, reassuming the  
7 responsibility for approval of any future leases,  
8 business agreements, or rights-of-way described  
9 in subsection (a) or (b).

10 “(E) Before taking an action described in sub-  
11 paragraph (D)(iii), the Secretary shall—

12 “(i) make a written determination that de-  
13 scribes the manner in which the tribal energy  
14 resource agreement has been violated;

15 “(ii) provide the Indian tribe with a writ-  
16 ten notice of the violations together with the  
17 written determination; and

18 “(iii) before taking any action described in  
19 subparagraph (D)(iii) or seeking any other rem-  
20 edy, provide the Indian tribe with a hearing and  
21 a reasonable opportunity to attain compliance  
22 with the tribal energy resource agreement.

23 “(F) An Indian tribe described in subparagraph  
24 (E) shall retain all rights to appeal under any regu-  
25 lation promulgated by the Secretary.



1           “(8) Not later than 1 year after the date of en-  
2           actment of the Energy Policy Act of 2005, the Sec-  
3           retary shall promulgate regulations that implement  
4           this subsection, including—

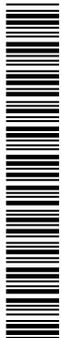
5                   “(A) criteria to be used in determining the  
6                   capacity of an Indian tribe under paragraph  
7                   (2)(B)(i), including the experience of the Indian  
8                   tribe in managing natural resources and finan-  
9                   cial and administrative resources available for  
10                  use by the Indian tribe in implementing the ap-  
11                  proved tribal energy resource agreement of the  
12                  Indian tribe;

13                  “(B) a process and requirements in accord-  
14                  ance with which an Indian tribe may—

15                          “(i) voluntarily rescind a tribal energy  
16                          resource agreement approved by the Sec-  
17                          retary under this subsection; and

18                          “(ii) return to the Secretary the re-  
19                          sponsibility to approve any future lease,  
20                          business agreement, or right-of-way under  
21                          this subsection;

22                  “(C) provisions establishing the scope of,  
23                  and procedures for, the periodic review and  
24                  evaluation described in subparagraphs (D) and  
25                  (E) of paragraph (2), including provisions for



1 review of transactions, reports, site inspections,  
2 and any other review activities the Secretary  
3 determines to be appropriate; and

4 “(D) provisions describing final agency ac-  
5 tions after exhaustion of administrative appeals  
6 from determinations of the Secretary under  
7 paragraph (7).

8 “(f) NO EFFECT ON OTHER LAW.—Nothing in this  
9 section affects the application of—

10 “(1) any Federal environmental law;

11 “(2) the Surface Mining Control and Reclama-  
12 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

13 “(3) except as otherwise provided in this title,  
14 the Indian Mineral Development Act of 1982 (25  
15 U.S.C. 2101 et seq.).

16 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary such  
18 sums as are necessary for each of fiscal years 2006  
19 through 2016 to carry out this section and to make grants  
20 or provide other appropriate assistance to Indian tribes  
21 to assist the Indian tribes in developing and implementing  
22 tribal energy resource agreements in accordance with this  
23 section.



1 **“SEC. 2605. FEDERAL POWER MARKETING ADMINISTRA-**  
2 **TIONS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) The term ‘Administrator’ means the Ad-  
5 ministrator of the Bonneville Power Administration  
6 and the Administrator of the Western Area Power  
7 Administration.

8 “(2) The term ‘power marketing administra-  
9 tion’ means—

10 “(A) the Bonneville Power Administration;

11 “(B) the Western Area Power Administra-  
12 tion; and

13 “(C) any other power administration the  
14 power allocation of which is used by or for the  
15 benefit of an Indian tribe located in the service  
16 area of the administration.

17 “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY  
18 DEVELOPMENT.—Each Administrator shall encourage In-  
19 dian tribal energy development by taking such actions as  
20 the Administrators determine to be appropriate, including  
21 administration of programs of the power marketing ad-  
22 ministration, in accordance with this section.

23 “(c) ACTION BY ADMINISTRATORS.—In carrying out  
24 this section, in accordance with laws in existence on the  
25 date of enactment of the Energy Policy Act of 2005—



1           “(1) each Administrator shall consider the  
2 unique relationship that exists between the United  
3 States and Indian tribes;

4           “(2) power allocations from the Western Area  
5 Power Administration to Indian tribes may be used  
6 to meet firming and reserve needs of Indian-owned  
7 energy projects on Indian land;

8           “(3) the Administrator of the Western Area  
9 Power Administration may purchase non-federally  
10 generated power from Indian tribes to meet the  
11 firming and reserve requirements of the Western  
12 Area Power Administration; and

13           “(4) each Administrator shall not—

14                   “(A) pay more than the prevailing market  
15 price for an energy product; or

16                   “(B) obtain less than prevailing market  
17 terms and conditions.

18           “(d) ASSISTANCE FOR TRANSMISSION SYSTEM  
19 USE.—

20           “(1) An Administrator may provide technical  
21 assistance to Indian tribes seeking to use the high-  
22 voltage transmission system for delivery of electric  
23 power.

24           “(2) The costs of technical assistance provided  
25 under paragraph (1) shall be funded—



1           “(A) by the Secretary of Energy using  
2           nonreimbursable funds appropriated for that  
3           purpose; or

4           “(B) by any appropriate Indian tribe.

5           “(e) POWER ALLOCATION STUDY.—Not later than 2  
6 years after the date of enactment of the Energy Policy  
7 Act of 2005, the Secretary of Energy shall submit to Con-  
8 gress a report that—

9           “(1) describes the use by Indian tribes of Fed-  
10 eral power allocations of the power marketing ad-  
11 ministration (or power sold by the Southwestern  
12 Power Administration) to or for the benefit of In-  
13 dian tribes in a service area of the power marketing  
14 administration; and

15          “(2) identifies—

16           “(A) the quantity of power allocated to, or  
17 used for the benefit of, Indian tribes by the  
18 Western Area Power Administration;

19           “(B) the quantity of power sold to Indian  
20 tribes by any other power marketing adminis-  
21 tration; and

22           “(C) barriers that impede tribal access to  
23 and use of Federal power, including an assess-  
24 ment of opportunities to remove those barriers



1           and improve the ability of power marketing ad-  
2           ministrations to deliver Federal power.

3           “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to carry out this section  
5 \$750,000, non-reimbursable, to remain available until ex-  
6 pended.

7           **“SEC. 2606. WIND AND HYDROPOWER FEASIBILITY STUDY.**

8           “(a) STUDY.—The Secretary of Energy, in coordina-  
9 tion with the Secretary of the Army and the Secretary,  
10 shall conduct a study of the cost and feasibility of devel-  
11 oping a demonstration project that uses wind energy gen-  
12 erated by Indian tribes and hydropower generated by the  
13 Army Corps of Engineers on the Missouri River to supply  
14 firming power to the Western Area Power Administration.

15           “(b) SCOPE OF STUDY.—The study shall—

16                   “(1) determine the economic and engineering  
17 feasibility of blending wind energy and hydropower  
18 generated from the Missouri River dams operated by  
19 the Army Corps of Engineers, including an assess-  
20 ment of the costs and benefits of blending wind en-  
21 ergy and hydropower compared to current sources  
22 used for firming power to the Western Area Power  
23 Administration;

24                   “(2) review historical and projected require-  
25 ments for, patterns of availability and use of, and



1 reasons for historical patterns concerning the avail-  
2 ability of firming power;

3 “(3) assess the wind energy resource potential  
4 on tribal land and projected cost savings through a  
5 blend of wind and hydropower over a 30-year period;

6 “(4) determine seasonal capacity needs and as-  
7 sociated transmission upgrades for integration of  
8 tribal wind generation and identify costs associated  
9 with these activities;

10 “(5) include an independent tribal engineer and  
11 a Western Area Power Administration customer rep-  
12 resentative as study team members; and

13 “(6) incorporate, to the extent appropriate, the  
14 results of the Dakotas Wind Transmission study  
15 prepared by the Western Area Power Administra-  
16 tion.

17 “(c) REPORT.—Not later than 1 year after the date  
18 of enactment of the Energy Policy Act of 2005, the Sec-  
19 retary of Energy, the Secretary and the Secretary of the  
20 Army shall submit to Congress a report that describes the  
21 results of the study, including—

22 “(1) an analysis and comparison of the poten-  
23 tial energy cost or benefits to the customers of the  
24 Western Area Power Administration through the use  
25 of combined wind and hydropower;



1           “(2) an economic and engineering evaluation of  
2 whether a combined wind and hydropower system  
3 can reduce reservoir fluctuation, enhance efficient  
4 and reliable energy production, and provide Missouri  
5 River management flexibility;

6           “(3) if found feasible, recommendations for a  
7 demonstration project to be carried out by the West-  
8 ern Area Power Administration, in partnership with  
9 an Indian tribal government or tribal energy re-  
10 source development organization, and Western Area  
11 Power Administration customers to demonstrate the  
12 feasibility and potential of using wind energy pro-  
13 duced on Indian land to supply firming energy to  
14 the Western Area Power Administration; and

15           “(4) an identification of—

16                   “(A) the economic and environmental costs  
17 of, or benefits to be realized through, a Fed-  
18 eral-tribal-customer partnership; and

19                   “(B) the manner in which a Federal-tribal-  
20 customer partnership could contribute to the  
21 energy security of the United States.

22           “(d) FUNDING.—

23                   “(1) AUTHORIZATION OF APPROPRIATIONS.—

24           There is authorized to be appropriated to carry out



1 this section \$1,000,000, to remain available until ex-  
2 pended.

3 “(2) NONREIMBURSABILITY.—Costs incurred  
4 by the Secretary in carrying out this section shall be  
5 nonreimbursable.”.

6 (b) CONFORMING AMENDMENTS.—The table of con-  
7 tents for the Energy Policy Act of 1992 is amended by  
8 striking the items relating to title XXVI and inserting the  
9 following:

“2601. Definitions.

“2602. Indian tribal energy resource development.

“2603. Indian tribal energy resource regulation.

“2604. Leases, business agreements, and rights-of-way involving energy develop-  
ment or transmission.

“2605. Federal Power Marketing Administrations.

“2606. Wind and hydropower feasibility study.”.

10 **SEC. 504. CONSULTATION WITH INDIAN TRIBES.**

11 In carrying out this title and the amendments made  
12 by this title, the Secretary of Energy and the Secretary  
13 shall, as appropriate and to the maximum extent prac-  
14 ticable, involve and consult with Indian tribes.

15 **SEC. 505. FOUR CORNERS TRANSMISSION LINE PROJECT**  
16 **AND ELECTRIFICATION.**

17 (a) TRANSMISSION LINE PROJECT.—The Dine  
18 Power Authority, an enterprise of the Navajo Nation, shall  
19 be eligible to receive grants and other assistance under  
20 section 217 of the Department of Energy Organization  
21 Act, as added by section 502, and section 2602 of the En-  
22 ergy Policy Act of 1992, as amended by this Act, for ac-



1 tivities associated with the development of a transmission  
2 line from the Four Corners Area to southern Nevada, in-  
3 cluding related power generation opportunities.

4 (b) NAVAJO ELECTRIFICATION.—Section 602 of  
5 Public Law 106–511 (114 Stat. 2376) is amended—

6 (1) in subsection (a)—

7 (A) in the first sentence, by striking “5-  
8 year” and inserting “10-year”; and

9 (B) in the third sentence, by striking  
10 “2006” and inserting “2011”; and

11 (2) in the first sentence of subsection (e) by  
12 striking “2006” and inserting “2011”.

13 **SEC. 506. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**  
14 **HOUSING.**

15 (a) IN GENERAL.—The Secretary of Housing and  
16 Urban Development shall promote energy conservation in  
17 housing that is located on Indian land and assisted with  
18 Federal resources through—

19 (1) the use of energy-efficient technologies and  
20 innovations (including the procurement of energy-ef-  
21 ficient refrigerators and other appliances);

22 (2) the promotion of shared savings contracts;  
23 and

24 (3) the use and implementation of such other  
25 similar technologies and innovations as the Secretary



1 of Housing and Urban Development considers to be  
2 appropriate.

3 (b) AMENDMENT.—Section 202(2) of the Native  
4 American Housing and Self-Determination Act of 1996  
5 (25 U.S.C. 4132(2)) is amended by inserting “improve-  
6 ment to achieve greater energy efficiency,” after “plan-  
7 ning,”.

