

AMENDMENT NO. _____ Calendar No. _____

Purpose: To promote Tribal energy development.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. _____

To invest in the energy and outdoor infrastructure of the United States to deploy new and innovative technologies, update existing infrastructure to be reliable and resilient, and secure energy infrastructure against physical and cyber threats, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KELLY

Viz:

1 At the end, add the following:

2 **TITLE XII—TRIBAL ENERGY**
3 **DEVELOPMENT**

4 **SEC. 12001. TRIBAL ENERGY DEVELOPMENT.**

5 (a) DEFINITIONS.—Section 2601 of the Energy Pol-
6 icy Act of 1992 (25 U.S.C. 3501) is amended—

7 (1) in paragraph (2)—

8 (A) in subparagraph (D), by striking
9 “and” at the end;

10 (B) in subparagraph (E), by striking the
11 period at the end and inserting “; and”; and

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

2 “(F) land that is owned or controlled by
3 the Department of Hawaiian Home Lands, the
4 Office of Hawaiian Affairs, or a Native Hawai-
5 ian organization (as defined in section 6207 of
6 the Elementary and Secondary Education Act
7 of 1965 (20 U.S.C. 7517)).”; and

8 (2) in paragraph (12)—

9 (A) in subparagraph (A), by striking
10 “and” at the end;

11 (B) in subparagraph (B), by striking the
12 period at the end and inserting a semicolon;
13 and

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

15 “(C) any group of allottees representing
16 the required undivided interests in an allotment
17 pursuant to section 219(b)(1) of the Indian
18 Land Consolidation Act (25 U.S.C. 2218(b)(1))
19 or a like representation for more than 1 allot-
20 ment; and

21 “(D) the Department of Hawaiian Home
22 Lands, the Office of Hawaiian Affairs, and Na-
23 tive Hawaiian organizations (as defined in sec-
24 tion 6207 of the Elementary and Secondary
25 Education Act of 1965 (20 U.S.C. 7517)).”.

1 (b) DEPARTMENT OF ENERGY INDIAN ENERGY EDU-
2 CATION PLANNING AND MANAGEMENT ASSISTANCE PRO-
3 GRAM.—Section 2602(b) of the Energy Policy Act of 1992
4 (25 U.S.C. 3502(b)) is amended—

5 (1) in paragraph (1)—

6 (A) by inserting “and tribal energy devel-
7 opment organizations” after “Indian tribes”;
8 and

9 (B) by striking “planning, and manage-
10 ment needs” and inserting “planning, manage-
11 ment, and workforce development needs”;

12 (2) in paragraph (2)—

13 (A) in subparagraph (C), by inserting “,
14 including workforce development programs and
15 funding for costs relating to tribal staff” after
16 “programs”;

17 (B) in subparagraph (D), by striking
18 “and” at the end;

19 (C) in subparagraph (E), by striking the
20 period at the end and inserting “; and”; and

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

22 “(F) energy and grid resiliency, climate
23 adaptation, and resiliency for energy infrastruc-
24 ture programs.”;

1 (3) in paragraph (5), by adding at the end the
2 following:

3 “(F) In providing a reimbursement grant under
4 this subsection for energy projects and energy infra-
5 structure for which the applicant has already paid,
6 the Director shall reimburse the Indian tribe or trib-
7 al energy development organization for at least 50
8 percent of the construction costs of those projects
9 and infrastructure, up to any award cap as may be
10 determined by the Director, on the condition that
11 the projects and infrastructure are majority owned
12 by the Indian tribe or tribal energy development or-
13 ganization.”;

14 (4) by redesignating paragraph (7) as para-
15 graph (9); and

16 (5) by inserting after paragraph (6) the fol-
17 lowing:

18 “(7) The Director may combine a grant under
19 this subsection with a loan guarantee under sub-
20 section (c).

21 “(8) Notwithstanding any other provision of
22 law, any funds made available to an Indian tribe or
23 tribal energy development organization under this
24 subsection may be used to meet a non-Federal cost
25 share requirement under another Federal grant pro-

1 gram that contributes to the purposes for which
2 grants under this subsection are made.”.

3 (c) DEPARTMENT OF ENERGY LOAN GUARANTEE
4 PROGRAM.—Section 2602 of the Energy Policy Act of
5 1992 (25 U.S.C. 3502) is amended by striking subsection
6 (c) and inserting the following:

7 “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE
8 PROGRAM.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) ELIGIBLE ENTITY.—The term ‘eligi-
11 ble entity’ means—

12 “(i) an Indian tribe;

13 “(ii) a tribal energy development orga-
14 nization;

15 “(iii) a tribally-owned electric utility;
16 and

17 “(iv) any energy company owned in
18 part by an Indian tribe or tribal energy de-
19 velopment organization.

20 “(B) LOAN GUARANTEE.—The term ‘loan
21 guarantee’ has the meaning given the term in
22 section 502 of the Federal Credit Reform Act
23 of 1990 (2 U.S.C. 661a).

24 “(2) LOAN GUARANTEES.—Subject to para-
25 graphs (3) and (6), the Secretary of Energy may

1 provide loan guarantees in an amount equal to not
2 more than 90 percent of the unpaid principal and in-
3 terest due on any loan made to an eligible entity for
4 energy projects and energy infrastructure located
5 wholly or partially on Indian land.

6 “(3) SPECIALIZED LENDERS.—In providing a
7 loan guarantee under this subsection for an activity
8 to provide, or expand the provision of, electricity on
9 Indian land, the Secretary of Energy shall encourage
10 the use of specialized lenders and other types of
11 lenders who issue credit and finance projects as a
12 regular course of business, as the Secretary of En-
13 ergy determines to be appropriate.

14 “(4) LOAN ISSUERS.—A loan guarantee under
15 this subsection may be issued by—

16 “(A) a financial institution subject to ex-
17 amination by the Secretary of Energy;

18 “(B) an Indian tribe, from funds of the In-
19 dian tribe; or

20 “(C) a tribal energy development organiza-
21 tion, from funds of the tribal energy develop-
22 ment organization; or

23 “(D) an energy company owned in whole
24 or in part by an Indian tribe or tribal energy

1 development organization, from funds of the en-
2 ergy company.

3 “(5) LOAN PURPOSE.—A loan guarantee under
4 this subsection may be issued for—

5 “(A) planning, pre-development, and pre-
6 construction costs relating to an energy project
7 or energy infrastructure located wholly or par-
8 tially on Indian land, without regard to the user
9 or purchaser of the energy products generated
10 by the energy project or energy infrastructure;

11 “(B) construction of energy projects or en-
12 ergy infrastructure located wholly or partially
13 on Indian land, without regard to the user or
14 purchaser of the energy products generated by
15 the energy project or energy infrastructure; and

16 “(C) purchasing and refinancing existing
17 energy projects or energy infrastructure located
18 wholly or partially on Indian land, without re-
19 gard to the user or purchaser of the energy
20 products generated by the energy project or en-
21 ergy infrastructure.

22 “(6) AGGREGATE AMOUNT GUARANTEED BY
23 SECRETARY.—The aggregate outstanding amount
24 guaranteed by the Secretary of Energy at any time

1 under this subsection shall not exceed
2 \$2,000,000,000.

3 “(7) REQUIREMENTS.—

4 “(A) IN GENERAL.—A loan guarantee
5 under this subsection shall be issued, in accord-
6 ance with paragraph (2) and for a purpose de-
7 scribed in subparagraph (B) or (C) of para-
8 graph (5), if the application of the eligible enti-
9 ty shows that—

10 “(i) the earnings of the energy project
11 or energy infrastructure can meet the busi-
12 ness expenses of that eligible entity;

13 “(ii) the management team of that eli-
14 gible entity has a proven ability to operate
15 the energy project and energy infrastruc-
16 ture successfully, as determined by the
17 Secretary of Energy; and

18 “(iii) there is a history of timely re-
19 payment by that eligible entity with respect
20 to a loan guarantee issued under this sub-
21 section.

22 “(B) NEW ENTITIES.—For eligible entities
23 who have not yet established a payment history
24 under clause (iii) of subparagraph (A), the Sec-
25 retary of Energy may, in lieu of the require-

1 ments of that clause, pre-qualify the eligible en-
2 tity for a loan guarantee based on the experi-
3 ence and credit history of the management
4 team of that eligible entity, including members,
5 partners, and shareholders.

6 “(C) PLANNING, PRE-DEVELOPMENT, AND
7 PRE-CONSTRUCTION.—Subparagraph (A) shall
8 not apply to a loan guarantee under this sub-
9 section issued in accordance with paragraph (2)
10 for the purpose described in paragraph (5)(A).

11 “(8) COMBINATION WITH GRANTS.—The Sec-
12 retary of Energy may combine a grant under sub-
13 section (b) with a loan guarantee under this sub-
14 section.

15 “(9) COST.—Except as provided in subpara-
16 graph (B), the cost of a loan guarantee under this
17 subsection shall be paid by the Secretary of En-
18 ergy—

19 “(A) subject to the availability of appro-
20 priations; and

21 “(B) only using amounts made available in
22 an appropriations Act to provide loan guaran-
23 tees under this subsection.

24 “(10) ADMINISTRATIVE EXPENSES.—On or
25 after the date of the financial close of a loan guar-

1 antee under this subsection, the Secretary of Energy
2 shall charge a fee, to be retained by the Department
3 of Energy, in an amount that the Secretary of En-
4 ergy determines is sufficient to cover the applicable
5 administrative expenses of the Secretary of Energy
6 in providing the loan guarantee, including any costs
7 associated with third-party consultants engaged by
8 the Secretary of Energy.

9 “(11) REGULATIONS.—Not later than 1 year
10 after the date of enactment of the Energy Infra-
11 structure Act, the Secretary of Energy shall issue
12 such regulations as the Secretary of Energy deter-
13 mines are necessary to carry out this subsection.

14 “(12) REPORT.—Not later than 1 year after
15 the date of enactment of the Energy Infrastructure
16 Act, the Secretary of Energy shall submit to Con-
17 gress a report on the financing requirements of In-
18 dian tribes for energy development on Indian land.

19 “(13) AUTHORIZATION OF APPROPRIATIONS.—
20 There are authorized to be appropriated such sums
21 as are necessary to carry out this subsection, to re-
22 main available until expended.”.

23 (d) PREFERENCE.—Section 2602 of the Energy Pol-
24 icy Act of 1992 (25 U.S.C. 3502) is amended by striking
25 subsection (d) and inserting the following:

1 “(d) PREFERENCE.—

2 “(1) IN GENERAL.—Notwithstanding any other
3 provision of law, in purchasing electricity or any
4 other energy product or byproduct, a Federal agency
5 or department may give preference to an energy and
6 resource production enterprise, partnership, consor-
7 tium, corporation, or other type of business organi-
8 zation—

9 “(A) located on Indian land; or

10 “(B) the majority of the interest in which
11 is—

12 “(i) owned and controlled by 1 or
13 more Indian tribes; or

14 “(ii) owned and controlled by 1 or
15 more members of an Indian tribe.

16 “(2) COST.—In carrying out this subsection, a
17 Federal agency or department shall not—

18 “(A) pay more than just and reasonable
19 rates for electricity or natural gas, or the pre-
20 vailing market price for an energy product or
21 byproduct; or

22 “(B) obtain less than prevailing market
23 terms and conditions.

24 “(3) REGULATIONS.—The Secretary of Defense
25 and the Administrator of General Services shall pro-

1 mulgate any regulations and issue any rules nec-
2 essary to carry out this subsection.”.

3 (e) FEDERAL POWER MARKETING ADMINISTRA-
4 TIONS.—Section 2605 of the Energy Policy Act of 1992
5 (25 U.S.C. 3505) is amended—

6 (1) in subsection (c), by striking paragraph (3)
7 and inserting the following:

8 “(3) and notwithstanding any other provision of
9 law, each Administrator and other Federal power
10 marketing administrations purchasing non-federally
11 generated power to meet customer contractual obli-
12 gations shall give preference in purchasing to
13 projects owned by Indian tribes or tribal energy de-
14 velopment organizations to meet firming and reserve
15 requirements or to increase the power available to
16 preference customers of that Federal power mar-
17 keting administration, on the condition that the In-
18 dian tribe or tribal energy development organization
19 offers to provide the power from a project on Indian
20 land and the power does not exceed the market price
21 of power in the region in which that Federal power
22 marketing administration is located, and provided
23 that nothing in this paragraph shall be construed to
24 obligate any Administrator or Federal power mar-

1 keting administration to purchase non-federally gen-
 2 erated power or to expend funds; and”;

3 (2) by redesignating subsection (f) as sub-
 4 section (g); and

5 (3) by inserting after subsection (e) the fol-
 6 lowing:

7 “(f) ASSISTANCE PROVIDED BY THE ADMINISTRATOR
 8 OF THE WESTERN AREA POWER ADMINISTRATION.—In
 9 accordance with the terms and conditions of section 301
 10 of the Hoover Power Plant Act of 1984 (42 U.S.C.
 11 16421a), the Administrator of the Western Area Power
 12 Administration may provide technical assistance, develop-
 13 ment assistance, and financial assistance, if requested, to
 14 an Indian tribe, tribal energy development organization,
 15 or tribally-owned electric utility for the purpose of con-
 16 structing electric transmission and distribution lines on
 17 Indian land.”.

18 (f) PROHIBITION ON USE OF APPROPRIATED
 19 FUNDS.—Title XXVI of the Energy Policy Act of 1992
 20 (25 U.S.C. 3501 et seq.) is amended by adding at the end
 21 the following:

22 **“SEC. 2608. PROHIBITION ON USE OF APPROPRIATED**
 23 **FUNDS.**

24 “Amounts appropriated before the date of enactment
 25 of the Energy Infrastructure Act shall not be available to

1 provide grants under section 2602(b) to, to provide loan
2 guarantees under section 2602(c) to, to give preference
3 under section 2602(d) to, or to make purchases under sec-
4 tion 2605(c)(3) from entities that were not eligible for the
5 grants, loan guarantees, preference, or purchases on the
6 day before that date of enactment.”.

7 (g) RIGHTS-OF-WAY ACROSS INDIAN LAND.—The
8 first section of the Act of February 5, 1948 (62 Stat. 17,
9 chapter 45; 25 U.S.C. 323) is amended by adding at the
10 end the following: “Any right-of-way granted by an Indian
11 tribe for the purposes authorized under this section shall
12 not require the approval of the Secretary of the Interior,
13 on the condition that the right-of-way approval process by
14 the Indian tribe substantially complies with subsection (h)
15 of the first section of the Act of August 9, 1955 (69 Stat.
16 539, chapter 615; 25 U.S.C. 415(h)) or the Indian tribe
17 has approved regulations under paragraph (1) of that sub-
18 section.”.

19 (h) FEDERAL POWER ACT AMENDMENT.—Section
20 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is
21 amended by inserting “a federally recognized Indian tribe,
22 or a company that is at least 51 percent owned by a feder-
23 ally recognized Indian tribe,” before “or any corporation
24 which is wholly owned”.

1 (i) PUBLIC UTILITY REGULATORY POLICIES ACT OF
2 1978 AMENDMENT.—Section 3(15) of the Public Utility
3 Regulatory Policies Act of 1978 (16 U.S.C. 2602(15)) is
4 amended by striking “and Puerto Rico” and inserting
5 “Puerto Rico, and a federally recognized Indian Tribe”.

6 (j) ENERGY POLICY ACT OF 2005 AMENDMENTS.—
7 Section 1262(13) of the Energy Policy Act of 2005 (42
8 U.S.C. 16451(13)) is amended—

9 (1) by striking “The term” and inserting the
10 following:

11 “(A) IN GENERAL.—The term”; and

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

13 “(B) EXCLUSIONS.—The term ‘public util-
14 ity’ does not include a federally recognized In-
15 dian tribe or a company that is at least 51 per-
16 cent owned by a federally recognized Indian
17 tribe.”.