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United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

ALLISON BINNEY, MAJORITY STAFF DIRECTOR
DAVID A. MULLON JR., MINORITY STAFF DIRECTOR

April 21, 2010

Dear Tribal Leader:

The Senate Committee on Indian Affairs has held several hearings on the need for jobs and economic development opportunities in Indian Country. These hearings confirmed that Indian country faces an average unemployment rate of 50%, the highest levels of poverty in the Nation, a lack of access to capital and financial institutions, and a need for greater support in small business development.

To address these concerns, I am releasing a discussion draft of legislation that would provide a variety of new tools to create jobs and develop reservation economies. Provisions include: (1) amendments to the Indian Guaranteed Loan program to incentivize energy projects, and provide for surety bonding for on-reservation projects; (2) improvements to the Indian Employment Training and Related Services Act (477 Program); and (3) authorizations for tribal programs supporting economic development and access to financial services in the Small Business Administration, the Community Financial Development Institutions Fund and the Department of the Interior.

This bill remains under development, and your comments are greatly appreciated to improve the proposals or suggest new proposals. Please review the attached draft bill and forward any comments with the subject line "Discussion Draft Indian Country Jobs Bill" via facsimile to (202) 228-2589, via e-mail to john_harte@indian.senate.gov and eamon_walsh@indian.senate.gov, or by U.S. mail to the address below:

Senate Committee on Indian Affairs
Re: Draft Indian Country Jobs Bill
838 Hart Senate Office Building
Washington, DC 20510

Thank you for your time and interest in this important matter.

Sincerely,



Byron L. Dorgan
Chairman

1 Title: To improve access to capital, bonding authority, and job training for Native Americans and
2 promote native community development financial institutions and Native American small
3 business opportunities, and for other purposes.
4
5

6 Be it enacted by the Senate and House of Representatives of the United States of America in
7 Congress assembled,

8 SECTION 1. TABLE OF CONTENTS.

9 The table of contents of this Act is as follows:

10 Sec.1.Table of contents.

11 Sec.2.Improving access to capital for Indian tribes.

12 Sec.3.Surety bond guarantees.

13 Sec.4.Indian employment, training, and related services.

14 Sec.5.Native initiatives.

15 Sec.6.Buy Indian.

16 Sec.7.Native American small business development program.

17 SEC. 2. IMPROVING ACCESS TO CAPITAL FOR INDIAN 18 TRIBES.

19 Section 201 of the Indian Financing Act of 1974 (25 U.S.C. 1481) is amended by adding at the
20 end the following:

21 “(c) Improving Access to Capital for Indian Tribes.—

22 “(1) IN GENERAL.—The Secretary shall establish a tier system for loans guaranteed or
23 insured under this section that is based on the number of on-reservation jobs created by each
24 loan.

25 “(2) EFFECT.—In establishing the tier system under paragraph (1), the Secretary shall
26 consider more favorable equity terms or allow an increase in loan guarantees from 80
27 percent up to 100 percent of the unpaid principal and interest due on any loan made under
28 this section for on-reservation energy development or on-reservation manufacturing.”.

29 SEC. 3. SURETY BOND GUARANTEES.

30 Section 218 of the Indian Financing Act of 1974 (25 U.S.C. 1497a) is amended to read as
31 follows:

32 “SEC. 218. SURETY BOND GUARANTEES.

33 “(a) Amount; Eligibility.—The Secretary may issue a guarantee up to 100 percent of amounts
34 covered by a surety bond issued for eligible construction, renovation, or demolition work
35 performed or to be performed by an Indian individual or Indian economic enterprise.

1 “(b) Conditions.—

2 “(1) IN GENERAL.—The Secretary may provide a surety bond guarantee under this section
3 only if the Secretary determines that—

4 “(A) the guarantee is necessary for the Indian individual or Indian economic
5 enterprise to secure a surety bond on commercially reasonable terms;

6 “(B) not more than 25 percent of the business of the surety is comprised of bonds
7 guaranteed pursuant to this section; and

8 “(C) the surety meets eligibility standards established by the Secretary in rules and
9 regulations.

10 “(2) PREVENTION AND MITIGATION OF LOSS.—The Secretary shall provide appropriate
11 technical assistance and advice to, and monitor performance of, the Indian business to
12 prevent and mitigate loss.

13 “(c) Fees and Charges.—

14 “(1) IN GENERAL.—The rules and regulations promulgated by the Secretary to carry out
15 this section shall include the setting of—

16 “(A) reasonable fees to be paid by the Indian individual or economic enterprise; and

17 “(B) reasonable premium charges to be paid by sureties.

18 “(2) RECEIPTS.—The receipts from fees and charges shall be made available to the
19 Secretary for administration and management of this section.”

20 SEC. 4. INDIAN EMPLOYMENT, TRAINING, AND 21 RELATED SERVICES.

22 The Indian Employment, Training, and Related Services Demonstration Act of 1992 is
23 amended—

24 (1) in section 4 (25 U.S.C. 3403)—

25 (A) by striking “The Secretary” and inserting the following:

26 “(a) In General.—The Secretary”; and

27 (B) by adding at the end the following:

28 “(b) Single Integrated Plan.—On approval by the Secretary of a plan submitted by an Indian
29 tribe or tribal organization under subsection (a), the covered programs shall be fully integrated
30 into a single, coordinated, comprehensive program that shall not require the Indian tribe or tribal
31 organization to submit to any additional budgets, reports, audits, supplemental audits, or other
32 documentation requirements.

33 “(c) Transfer of Funds.—Notwithstanding any other provision of law, all funds for programs
34 and services covered by an approved plan under this section shall, at the request of the Indian
35 tribe or tribal organization, be transferred to the Indian tribe or tribal organization pursuant to an
36 existing contract, compact, or funding agreement, including those awarded under title I or IV of
37 the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);”

1 (2) in section 6 (25 U.S.C. 3405), by striking paragraph (3) and inserting the following:

2 “(3) identify—

3 “(A) the full range of potential employment opportunities on and near the service
4 area of the tribe or tribal organization; and

5 “(B) the education and training services to be provided to assist individual Indians to
6 access those employment opportunities;”;

7 (3) by striking sections 7 and 8 (25 U.S.C. 3406, 3407) and inserting the following:

8 **“SEC. 7. PLAN REVIEW AND APPROVAL.**

9 “(a) In General.—Not later than 90 days after the date of receipt of a plan under section 4, the
10 Secretary shall approve the plan, including any request for a waiver that is made as part of the
11 plan, and authorize the transfer of funds pursuant to that plan, unless the Secretary provides
12 written notification of disapproval of the plan that contains a specific finding that clearly
13 demonstrates that, or that is supported by a controlling legal authority that, the plan does not
14 meet the requirements of section 6.

15 “(b) Failure to Act.—Any plan that the Secretary fails to act on by the date that is 90 days after
16 the date of receipt (or such extended time as may be provided under subsection (c)) shall be
17 considered to be approved.

18 “(c) Extension of Time.—Notwithstanding any other provision of law, the Secretary may
19 extend or otherwise modify the 90-day period specified in subsection (a), if before the expiration
20 of that period, the Secretary obtains the express written consent of the tribe or tribal organization
21 to extend or alter the period for up to 90 additional days.

22 “(d) Review of Decision; Applicable Provisions.—On a decision to disapprove a plan, the
23 following provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C.
24 450 et seq.) shall apply to the review of the decision:

25 “(1) Section 102(b) (25 U.S.C. 450f(b)) (relating to the declination process).

26 “(2) Section 102(e) (25 U.S.C. 450f(e)) (relating to burden of proof and finality).

27 “(3) Subsections (a) and (c) of section 110 (25 U.S.C. 450m-1) (relating to appeals).”;

28 (4) in section 11 (25 U.S.C. 3410)—

29 (A) in subsection (a), by striking paragraphs (1) through (4) and inserting the
30 following:

31 “(1) the development and use of a model single report for each approved plan submitted
32 by an Indian tribe or tribal organization to report on the activities undertaken and
33 expenditures made under the plan;

34 “(2) the provision, either directly or through contract, of appropriate technical assistance
35 to an Indian tribe or tribal organization with an approved plan, on the condition that the
36 Indian tribe or tribal organization retains the authority to accept the plan for providing such
37 technical assistance and the technical assistance provider;

38 “(3) the development and use of a single monitoring and oversight system for the plan;

1 “(4)(A) the receipt of all funds covered by a plan submitted by an Indian tribe and
2 approved by the Secretary; and

3 “(B) the distribution of all such funds to the respective Indian tribe or tribal organization;
4 and

5 “(5) the performance of activities described in section 7 relating to agency waivers and
6 the establishment of an inter-agency dispute resolution.”;

7 (B) by redesignating subsection (b) as subsection (c); and

8 (C) by inserting after subsection (a) the following:

9 “(b) Interdepartmental Memorandum.—

10 “(1) IN GENERAL.—The interdepartmental memorandum described in subsection (a) shall
11 include, at a minimum, requirements for—

12 “(A) an annual meeting of participating Indian tribes and Federal agencies, with the
13 meeting co-chaired by a representative of the President and a representative of the
14 participating Indian tribes;

15 “(B) an annual review of the achievements under the Act as well as statutory,
16 regulatory, administrative, and policy obstacles that prevent participating Indian tribes
17 from fully carrying out the purposes of the Act; and

18 “(C) in accordance with paragraph (2), the establishment of an advisory committee
19 to identify and resolve inter-agency or Federal-tribal conflicts in the administration of
20 the Act.

21 “(2) ADVISORY COMMITTEE.—The Advisory Committee described in paragraph (1)(C)
22 shall—

23 “(A) be comprised of representatives appointed by the Secretary of the Interior, the
24 Secretary of Labor, the Secretary of Health and Human Services, the Secretary of
25 Education, the Secretary of Commerce, the Secretary of Transportation, and the
26 Secretary of Agriculture;

27 “(B) have 2 representatives appointed by the Secretary of the Interior from
28 nominations submitted by Indian tribes or tribal organizations;

29 “(C) meet at least twice per year; and

30 “(D) be exempt from the requirements of Federal Advisory Committee Act (5
31 U.S.C. App.)”;

32 (5) in section 14 (25 U.S.C. 3413)—

33 (A) in subsection (a), by striking paragraph (2) and inserting the following:

34 “(2) SEPARATE RECORDS AND AUDITS NOT REQUIRED.—Notwithstanding any other
35 provision of law, including any regulation or circular of any agency (including Circular A-
36 133 of the Office of Management and Budget), a participating Indian tribe or tribal
37 organization shall not be required—

38 “(A) to maintain separate records tracing any services or activities conducted under
39 the approved plan of the Indian tribe or tribal organization to the individual programs

1 under which funds were authorized or transferred;

2 “(B) to allocate expenditures among the individual programs; or

3 “(C) to audit expenditures by original program source.”; and

4 (B) by striking subsection (b) and inserting the following:

5 “(b) Overage.—

6 “(1) IN GENERAL.—Subject to paragraph (2), any funds transferred to a tribe or tribal
7 organization pursuant to this Act that are not obligated or expended prior to the beginning
8 of the fiscal year immediately following the fiscal year for which the funds were
9 appropriated shall remain available for obligation or expenditure without fiscal year
10 limitation.

11 “(2) REQUIREMENTS.—Funds described in paragraph (1) shall be required to be obligated
12 or expended consistent with the plan of the tribe or tribal organization, but no additional
13 justification or documentation of the purposes shall be required to be provided by the tribe
14 or tribal organization as a condition of receiving or expending the funds.”; and

15 (6) by amending section 16 (25 U.S.C. 3415) to read as follows:

16 **“SEC. 16. REPORT ON STATUTORY OBSTACLES TO**
17 **PROGRAM INTEGRATION.**

18 “(a) In General.—Not later than 3 years after the date of enactment of the [short title of this
19 Act], the advisory committee established pursuant to section 11(b)(2) shall submit to the
20 Committee on Indian Affairs and the Committee on Finance of the Senate and the Committee on
21 Natural Resources and the Committee on Education and Labor of the House of Representatives a
22 report on the implementation and administration of this Act and any inter-agency or Federal–
23 tribal conflicts in the administration of this Act.

24 “(b) Requirements.—The report shall identify any barriers to the ability of tribal governments
25 to integrate more effectively the employment, training, and related services of the tribal
26 governments in a manner consistent with the purposes of this Act.”

27 **SEC. 5. NATIVE INITIATIVES.**

28 (a) In General.—Section 104 of the Community Development Banking and Financial
29 Institutions Act of 1994 (12 U.S.C. 4703) is amended by adding at the end the following:

30 “(l) Native Initiatives.—

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

32 “(A) EMERGING NATIVE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The
33 term ‘emerging Native community development financial institution’ means an entity
34 that—

35 “(i) primarily serves a Native community; and

36 “(ii) demonstrates to the satisfaction of the Fund that the entity has a reasonable
37 plan to achieve certification as a Native community development financial
38 institution.

1 “(B) INDIAN TRIBE.—The terms ‘Indian’ and ‘Indian tribe’ have the meaning given
2 the terms in section 4 of the Indian Self Determination and Education Assistance Act
3 (25 U. S. C. 450b).

4 “(C) NATIVE COMMUNITY.—The term ‘Native community’ means targeted
5 populations comprising—

6 “(i) Indian tribes; or

7 “(ii) Native Hawaiians, as that term is defined in section 116 of the Carl D.
8 Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2326).

9 “(D) NATIVE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term
10 ‘Native community development financial institution’ means a community
11 development financial institution that primarily serves a Native community.

12 “(2) ESTABLISHMENT AND PURPOSES.—

13 “(A) IN GENERAL.—Not later than 90 days after the date of enactment of this
14 subsection, the Administrator shall establish the Native Initiatives as a component of
15 the Fund.

16 “(B) PURPOSES.—The purposes of the Native Initiatives are—

17 “(i) to assist Native community development financial institutions to overcome
18 barriers preventing access to credit, capital, and financial services in Native
19 communities;

20 “(ii) to foster the development of new Native community development financial
21 institutions, strengthen the operational capacity of existing Native community
22 development financial institutions, and guide Native community development
23 financial institutions in the establishment of important financial education and
24 asset building programs for the applicable Native communities;

25 “(iii) to provide seed capital for loan products to new and emerging Native
26 community development financial institutions; and

27 “(iv) to serve as the point of contact for an authorized Native community
28 representative with respect to issues relating to access to credit, capital, and
29 financial services in Native communities.

30 “(3) ACTIVITIES.—

31 “(A) IN GENERAL.—Through the Native Initiatives, the Fund shall provide to
32 emerging and existing Native community development financial institutions—

33 “(i) outreach in accordance with section 105(c);

34 “(ii) financial assistance and technical assistance in accordance with section
35 108; and

36 “(iii) training in accordance with section 109.

37 “(B) MATCHING REQUIREMENTS.—In providing assistance under this subsection, the
38 Secretary may apply matching requirements under section 108(e) at the discretion of
39 the Secretary.

1 “(4) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this
2 subsection, the Administrator shall prescribe regulations and guidelines to carry out this
3 subsection.

4 “(5) CONSULTATION WITH TRIBAL GOVERNMENTS.—In reviewing the performance of any
5 assisted Native community development financial institution, the Fund shall conduct regular
6 and meaningful consultation with, and seek input from, any appropriate authorized Native
7 community.

8 “(6) REPORT.—Each year, the Fund shall submit to the Committee on Indian Affairs and
9 the Committee on Banking, Housing, and Urban Development of the Senate and the
10 Committee on Natural Resources and the Committee on Financial Services of the House of
11 Representatives a report on the Native Initiatives regarding the effectiveness of the program
12 developed under this subsection.”.

13 (b) Conforming Amendment.—Section 121(a)(5) of the Community Development Banking
14 and Financial Institutions Act of 1994 (12 U.S.C. 4718(a)(5)) is amended by inserting before the
15 period at the end the following: “, including funds, in an amount of not less than 10 percent of
16 the amounts appropriated to the Fund for any fiscal year under paragraph (1), to carry out section
17 104(l).”.

18 SEC. 6. BUY INDIAN.

19 (a) In General.—Section 23 of the Act of June 25, 1910 (25 U.S.C. 47) (commonly known as
20 the “Buy Indian Act”) is amended—

21 (1) in the first sentence, by striking “So far as may be” and inserting the following:

22 “(a) In General.—To the maximum extent”;

23 (2) in the second sentence, by striking “Participation” and inserting the following:

24 “(k) Developmental Assistance.—

25 “(1) IN GENERAL.—Participation”;

26 (3) in the last sentence, by striking “For the purposes of this section—” and inserting the
27 following:

28 “(2) SPECIFICATIONS.—For purposes of paragraph (1)—”; and

29 (4) by inserting after subsection (a) (as designated by paragraph (1)) the following:

30 “(b) Requirements.—To the maximum extent practicable and notwithstanding any other
31 provision of law, in any case in which funds are appropriated for the benefit of Indians, the
32 Secretary shall direct that Indian labor shall be employed and any contract to fulfill requirements
33 for goods or services, manufacturing, or construction, renovation, or demolition work (including,
34 at a minimum, housing, schools, other facilities, roads, bridges, and other infrastructure projects)
35 shall be awarded to an Indian organization or economic enterprise (as those terms are defined in
36 section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)).

37 “(c) Advertisement.—To the maximum extent practicable, contracts to which this section
38 applies shall be advertised sufficiently in advance of the selection process and the date that
39 contract performance is required in a manner that permits a subsequent open market

1 advertisement of the contract if the contract cannot be awarded under the limited competition
2 provided in this section.

3 “(d) Implementation.—To implement the contracting directive under subsection (a), a
4 contracting officer—

5 “(1) shall limit the competition for award of a contract to Indian economic enterprises
6 if—

7 “(A) there is a reasonable expectation that offers will be obtained from at least 3
8 unaffiliated responsible offerors; and

9 “(B) the contract can be awarded at a fair and reasonable price;

10 “(2) shall consider the extent to which the offerors will provide positive economic
11 impact, including training and employment of Indians in connection with contract
12 performance and in subcontracting any work under the contract, on 1 or more Indian
13 reservations (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452);

14 “(3) may, if only 1 offer is received under a competition limited to Indian economic
15 enterprises, negotiate an award of the contract at a fair and reasonable price to the offering
16 Indian economic enterprise; and

17 “(4) shall not make an award of any contract subject to this section until the prospective
18 awardee has submitted an acceptable plan for contract performance that will maximize the
19 use of qualified Indian labor, supplies, and economic enterprises as subcontractors.

20 “(e) Other Circumstances.—

21 “(1) IN GENERAL.—If it is not feasible for competition to be limited as provided in
22 subsection (d) and the contracting officer elects to award the contract after full and open
23 competition, the contract shall be awarded to any responsible Indian economic enterprise
24 submitting the lowest bid submitted by a responsible Indian economic enterprise, if that bid
25 does not exceed the bid submitted by any other responsible bidder by more than 10 percent.

26 “(2) OTHER DETERMINATIVE FACTOR.—If a factor other than price is determinative in the
27 award of a contract, the contracting officer shall use a comparable method to provide a
28 preference to Indian economic enterprises in the selection process.

29 “(f) Waiver.—The requirements of this section may be waived only if—

30 “(1) there are extraordinary circumstances; and

31 “(2) the Assistant Secretary of the Interior for Indian Affairs makes the waiver
32 determination.

33 “(g) Utilization.—The Secretary shall provide a preference to an Indian economic enterprise in
34 the award of a contract that does not involve funds appropriated for the benefit of Indians by an
35 agency within the Department of the Interior if the Secretary determines that the preference will
36 help fulfill the special responsibilities of the Secretary to 1 or more Indian tribes.

37 “(h) Appropriated for the Benefit of Indians.—For purposes of this section, funds awarded or
38 distributed under a contract are appropriated for the benefit of Indians if—

39 “(1) Indians are the primary beneficiaries of the contract; and

1 “(2) the majority of the activity to be undertaken under the contract takes place on or near
2 boundaries of reservations (as defined in section 3 of the Indian Financing Act of 1974 (25
3 U.S.C. 1452).

4 “(i) Other Agencies.—Nothing in this section precludes the Indian Health Service or the
5 Administration of Native Americans within the Department of Health and Human Services, the
6 Office of Native American Programs in the Department of Housing and Urban Development, or
7 any other Federal agency from using, at the discretion of the agency, the preferences provided
8 under this section in cases in which funds are appropriated for the benefit of Indians.

9 “(j) Certification.—

10 “(1) IN GENERAL.—An Indian economic enterprise seeking a contract award pursuant to
11 this section shall—

12 “(A) certify that the enterprise is an Indian economic enterprise eligible for award of
13 a contract or subcontract under this section; and

14 “(B) submit an affidavit certifying compliance with the requirements set out by the
15 agency awarding the contract or subcontract.

16 “(2) INVESTIGATION.—Nothing in this section prohibits the Secretary of the Interior, in
17 conducting a pre-award review, from—

18 “(A) investigating the eligibility of an enterprise; or

19 “(B) determining at that stage that an apparent awardee is, in fact, not eligible for
20 award under this section.

21 “(3) PROTEST.—The regulations of the Department of the Interior implementing this
22 section and providing for protest to challenge and enter an Indian economic enterprise
23 certification shall provide that the eligible protestors include—

24 “(A) the tribe on whose reservation the contract is to be carried out; and

25 “(B) any other offerors eligible to submit offers for contract award under this
26 section.

27 “(4) ENFORCEMENT.—This section shall be subject to the relevant provisions of—

28 “(A) the Act of August 27, 1935 (25 U.S.C. 305 et seq.) (commonly known as the
29 ‘Indian Arts and Crafts Act’); and

30 “(B) section 1159 of title 18, United States Code.”.

31 (b) Database.—

32 (1) DEFINITIONS.—In this section:

33 (A) DATA CENTER.—The term “Data Center” means the Indian Economic Enterprise
34 Data Center established under paragraph (2).

35 (B) ELIGIBLE ENTITY.—The term “eligible entity” means a tribal, private, public, or
36 educational institution with experience in Indian business development.

37 (C) INDIAN ECONOMIC ENTERPRISE.—The term “Indian economic enterprise” has the
38 meaning given the term in section 3 of the Indian Financing Act of 1974 (25 U.S.C.

1 1452).

2 (2) ESTABLISHMENT.—The Secretary shall enter into 1 or more contracts with an eligible
3 entity to establish and operate an Indian Economic Enterprise Data Center.

4 (3) RESPONSIBILITIES.—The responsibilities of the Data Center shall include—

5 (A) listing Indian economic enterprises eligible for various Federal minority
6 preference programs;

7 (B) listing the businesses in which the enterprises are engaged;

8 (C) listing the experience of the enterprises in fulfilling contract obligations;

9 (D) listing the capabilities of the enterprises;

10 (E) verifying preference information and documentation submitted to the Data
11 Center;

12 (F) listing advance procurement information for the purposes of bid matching
13 contract opportunities to contractor capabilities;

14 (G) listing known front organizations or fraudulent operators; and

15 (H) providing such additional information as the Secretary considers to be
16 appropriate.

17 (4) INFORMATION DISSEMINATION.—Each year, the Data Center shall provide a list of
18 Indian economic enterprises eligible for various minority preferences to—

19 (A) the Federal agencies that administer the preferences; and

20 (B) any private entities that request the list.

21 (5) ELIGIBLE ENTITIES.—Entities eligible to enter into a contract under paragraph (2) shall
22 be tribal, private, public, or educational institutions with experience in Indian business
23 development.

24 (c) Reporting Requirements.—Each year, the Secretary of the Interior shall submit to the
25 Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the
26 House of Representatives a report describing the status of Indian economic enterprises under this
27 section and section 23 of the Act of June 25, 1910 (25 U.S.C. 47) (commonly known as the “Buy
28 Indian Act”) across the entire Department of the Interior and the information from the Data
29 Center.

30 SEC. 7. NATIVE AMERICAN SMALL BUSINESS 31 DEVELOPMENT PROGRAM.

32 The Small Business Act (15 U.S.C. 631 et seq.) is amended—

33 (1) by redesignating section 44 as section 45; and

34 (2) by inserting after section 43 (15 U.S.C. 657o) the following:

35 “SEC. 44. NATIVE AMERICAN SMALL BUSINESS 36 DEVELOPMENT PROGRAM.

1 “(a) Definitions.—In this section:

2 “(1) ALASKA NATIVE.—The term ‘Alaska Native’ has the meaning given the term
3 ‘Native’ in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

4 “(2) ALASKA NATIVE CORPORATION.—The term ‘Alaska Native corporation’ has the
5 meaning given the term ‘Native Corporation’ in section 3 of the Alaska Native Claims
6 Settlement Act (43 U.S.C. 1602).

7 “(3) ASSISTANT ADMINISTRATOR.—The term ‘Assistant Administrator’ means the
8 Assistant Administrator of the Office of Native American Affairs established under
9 subsection (b).

10 “(4) CENTER; NATIVE AMERICAN BUSINESS CENTER.—The terms ‘center’ and ‘Native
11 American business center’ mean a center established under subsection (c).

12 “(5) ELIGIBLE APPLICANT.—The term ‘eligible applicant’ means—

13 “(A) an Indian tribe;

14 “(B) a tribal college;

15 “(C) an Alaska Native corporation; or

16 “(D) a private, nonprofit organization—

17 “(i) that provides business and financial or procurement technical assistance to
18 any entity described in subparagraph (A), (B), or (C); and

19 “(ii) the majority of members of the board of directors of which are members of
20 an Indian tribe; or

21 “(E) a small business development center, women’s business center, or other private
22 organization participating in a joint project.

23 “(6) INDIAN.—The term ‘Indian’ means a member of an Indian tribe.

24 “(7) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given that term in section 4
25 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

26 “(8) JOINT PROJECT.—The term ‘joint project’ means a project that—

27 “(A) combines the resources and expertise of 2 or more distinct entities at a physical
28 location dedicated to assisting the Native American community; and

29 “(B) submits to the Administration a joint application that contains—

30 “(i) a certification that each participant of the project—

31 “(I) is an eligible applicant;

32 “(II) employs an executive director or program manager to manage the
33 center; and

34 “(ii) information demonstrating a record of commitment to providing assistance
35 to Native Americans and;

36 “(iii) information demonstrating that the participants in the joint project have
37 the ability and resources to meet the needs, including the cultural needs, of the

1 Native Americans to be served by the project.

2 “(9) NATIVE AMERICAN BUSINESS ENTERPRISE CENTER.—The term ‘Native American
3 Business Enterprise Center’ means an entity providing business development assistance to
4 federally recognized tribes and Native Americans under a grant from the Minority Business
5 Development Agency of the Department of Commerce.

6 “(10) NATIVE AMERICAN SMALL BUSINESS CONCERN.—The term ‘Native American small
7 business concern’ means a small business concern that is owned and controlled by—

8 “(A) a member of a federally recognized Indian tribe; or

9 “(B) a federally recognized Indian tribe or Alaska Native corporation.

10 “(11) NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.—The term ‘Native
11 American small business development program’ means the program established under
12 subsection (c).

13 “(12) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the same
14 meaning as in section 3.

15 “(13) SMALL BUSINESS DEVELOPMENT CENTER.—The term ‘small business development
16 center’ means a small business development center described in section 21.

17 “(14) TRIBAL COLLEGE.—The term ‘tribal college’ has the meaning given the term
18 ‘tribally controlled college or university’ in section 2(a) of the Tribally Controlled
19 Community College Assistance Act of 1978 (25 U.S.C. 1801(a)).

20 “(15) TRIBAL LAND.—The term ‘tribal land’ has the meaning given the term ‘reservation’
21 in section 3 of the Indian Financing Act (25 U.S.C. 1452).

22 “(b) Office of Native American Affairs.—

23 “(1) ESTABLISHMENT.—There is established within the Administration the Office of
24 Native American Affairs, which, under the direction of the Assistant Administrator, shall
25 implement the programs of the Administration for the development of business enterprises
26 by Native Americans.

27 “(2) PURPOSE.—The purpose of the Office of Native American Affairs is to assist Native
28 American entrepreneurs—

29 “(A) to start, operate, and increase the business of small business concerns;

30 “(B) to develop management and technical skills;

31 “(C) to seek Federal procurement opportunities;

32 “(D) to increase employment opportunities for Native Americans through the
33 establishment and expansion of small business concerns; and

34 “(E) to increase the access of Native Americans to capital markets.

35 “(3) ASSISTANT ADMINISTRATOR.—

36 “(A) APPOINTMENT.—The Administrator shall appoint a qualified individual to
37 serve as Assistant Administrator of the Office of Native American Affairs in
38 accordance with this paragraph.

1 “(B) QUALIFICATIONS.—The Assistant Administrator appointed under subparagraph
2 (A) shall have—

3 “(i) knowledge of Native American culture; and

4 “(ii) experience providing culturally tailored small business development
5 assistance to Native Americans.

6 “(C) EMPLOYMENT STATUS.—The Administrator shall establish the position of
7 Assistant Administrator as—

8 “(i) a position at GS–15 of the General Schedule; or

9 “(ii) a Senior Executive Service position to be filled by a noncareer appointee,
10 as defined under section 3132(a)(7) of title 5, United States Code.

11 “(D) RESPONSIBILITIES AND DUTIES.—The Assistant Administrator shall—

12 “(i) in consultation with the Associate Administrator for Entrepreneurial
13 Development, administer and manage the Native American small business
14 development program;

15 “(ii) recommend the annual administrative and program budgets for the Office
16 of Native American Affairs;

17 “(iii) consult with Native American business centers in carrying out the Native
18 American small business development program;

19 “(iv) recommend appropriate funding levels;

20 “(v) review the annual budgets submitted by each applicant for the Native
21 American small business development program;

22 “(vi) select applicants to participate in the Native American small business
23 development program;

24 “(vii) implement this section; and

25 “(viii) maintain a clearinghouse for the dissemination and exchange of
26 information between Native American business centers.

27 “(E) CONSULTATION REQUIREMENTS.—In carrying out the responsibilities and duties
28 described in this paragraph, the Assistant Administrator shall confer with and seek the
29 advice of—

30 “(i) officials of the Administration working in areas served by Native American
31 business centers;

32 “(ii) representatives of Indian tribes;

33 “(iii) tribal colleges;

34 “(iv) Alaska Native corporations; and

35 “(v) tribal organizations.

36 “(c) Native American Small Business Development Program.—

37 “(1) FINANCIAL ASSISTANCE.—

1 “(A) IN GENERAL.—The Administration, acting through the Assistant Administrator,
2 shall provide financial assistance to eligible applicants to establish Native American
3 business centers in accordance with this section.

4 “(B) USE OF FUNDS.—The financial and resource assistance provided under this
5 subsection shall be used to establish a Native American business center to overcome
6 obstacles impeding the establishment, development, and expansion of small business
7 concerns, in accordance with this section, by—

8 “(i) American Indians living on or near tribal land; and

9 “(ii) Alaska Natives living on or near Alaska native village communities.

10 “(2) 5-YEAR PROJECTS.—

11 “(A) IN GENERAL.—Each Native American business center that receives assistance
12 under paragraph (1)(A) shall conduct a 5-year project that offers culturally tailored
13 business development assistance in the form of—

14 “(i) financial education, including training and counseling in—

15 “(I) applying for and securing business credit and investment capital;

16 “(II) preparing and presenting financial statements; and

17 “(III) managing cash flow and other financial operations of a business
18 concern;

19 “(ii) management education, including training and counseling in planning,
20 organizing, staffing, directing, and controlling each major activity and function of
21 a small business concern; and

22 “(iii) marketing education, including training and counseling in—

23 “(I) identifying and segmenting domestic and international market
24 opportunities;

25 “(II) preparing and executing marketing plans;

26 “(III) developing pricing strategies;

27 “(IV) locating contract opportunities;

28 “(V) negotiating contracts; and

29 “(VI) using varying public relations and advertising techniques.

30 “(B) BUSINESS DEVELOPMENT ASSISTANCE RECIPIENTS.—The business development
31 assistance under subparagraph (A) shall be offered to prospective and current owners
32 of small business concerns that are owned by—

33 “(i) Indians or Indian tribes; or

34 “(ii) Alaska Natives or Alaska Native corporations.

35 “(3) FORM OF FEDERAL FINANCIAL ASSISTANCE.—

36 “(A) DOCUMENTATION.—

1 “(i) IN GENERAL.—The financial assistance to Native American business
2 centers authorized under this subsection may be made by grant, contract, or
3 cooperative agreement.

4 “(ii) EXCEPTION.—Financial assistance under this subsection to Alaska Native
5 corporations may only be made by grant or cooperative agreement.

6 “(B) PAYMENTS.—

7 “(i) TIMING.—Payments made under this subsection may be disbursed in
8 periodic installments, at the request of the recipient.

9 “(ii) ADVANCE.—The Administrator may disburse not more than 25 percent of
10 the annual amount of Federal financial assistance awarded to a Native American
11 business center after notice of the award has been issued.

12 “(C) FEDERAL SHARE.—

13 “(i) IN GENERAL.—

14 “(I) INITIAL FINANCIAL ASSISTANCE.—Except as provided in subclause
15 (II), an eligible applicant that receives financial assistance under this
16 subsection shall provide non-Federal contributions for the operation of the
17 Native American business center established by the eligible applicant in an
18 amount equal to—

19 “(aa) in each of the first and second years of the project, not less than
20 33 percent of the amount of the financial assistance received under this
21 subsection; and

22 “(bb) in each of the third through fifth years of the project, not less
23 than 50 percent of the amount of the financial assistance received under
24 this subsection.

25 “(II) RENEWALS.—An eligible applicant that receives a renewal of
26 financial assistance under this subsection shall provide non-Federal
27 contributions for the operation of a Native American business center
28 established by the eligible applicant in an amount equal to not less than 50
29 percent of the amount of the financial assistance received under this
30 subsection.

31 “(4) CONTRACT AND COOPERATIVE AGREEMENT AUTHORITY.—A Native American
32 business center may enter into a contract or cooperative agreement with a Federal
33 department or agency to provide specific assistance to Native American and other
34 underserved small business concerns located on or near tribal land, to the extent that the
35 contract or cooperative agreement is consistent with and does not duplicate the terms of any
36 assistance received by the Native American business center from the Administration.

37 “(5) APPLICATION PROCESS.—

38 “(A) SUBMISSION OF A 5-YEAR PLAN.—Each applicant for assistance under
39 paragraph (1) shall submit a 5-year plan to the Administration on proposed assistance
40 and training activities.

1 “(B) CRITERIA.—

2 “(i) IN GENERAL.—The Administrator shall evaluate applicants for financial
3 assistance under this subsection in accordance with selection criteria that are—

4 “(I) established before the date on which eligible applicants are required to
5 submit the applications;

6 “(II) stated in terms of relative importance; and

7 “(III) publicly available and stated in each solicitation for applications for
8 financial assistance under this subsection made by the Administrator.

9 “(ii) CONSIDERATIONS.—The criteria required by this subparagraph shall
10 include—

11 “(I) the experience of the applicant in conducting programs or ongoing
12 efforts designed to impart or upgrade the business skills of current or
13 potential owners of Native American small business concerns;

14 “(II) the ability of the applicant to commence a project within a minimum
15 amount of time;

16 “(III) the ability of the applicant to provide quality training and services to
17 a significant number of Native Americans;

18 “(IV) previous assistance from the Administration to provide services in
19 Native American communities;

20 “(V) the proposed location for the Native American business center, with
21 priority given based on the proximity of the center to the population being
22 served and to achieve a broad geographic dispersion of the centers; and

23 “(VI) demonstrated experience in providing technical assistance, including
24 financial, marketing, and management assistance.

25 “(6) CONDITIONS FOR PARTICIPATION.—Each eligible applicant desiring a grant under this
26 subsection shall submit an application to the Administrator that contains—

27 “(A) a certification that the applicant—

28 “(i) is an eligible applicant;

29 “(ii) employs an executive director or program manager to manage the Native
30 American business center; and

31 “(iii) agrees—

32 “(I) to a site visit by the Administrator as part of the final selection
33 process;

34 “(II) to an annual programmatic and financial examination; and

35 “(III) to the maximum extent practicable, to remedy any problems
36 identified pursuant to that site visit or examination;

37 “(B) information demonstrating that the applicant has the ability and resources to
38 meet the needs, including cultural needs, of the Native Americans to be served by the

1 grant;

2 “(C) information relating to proposed assistance that the grant will provide,
3 including—

4 “(i) the number of individuals to be assisted; and

5 “(ii) the number of hours of counseling, training, and workshops to be
6 provided;

7 “(D) information demonstrating the effectiveness and experience of the applicant
8 in—

9 “(i) conducting financial, management, and marketing assistance programs
10 designed to educate or improve the business skills of current or prospective
11 Native American business owners;

12 “(ii) providing training and services to a representative number of Native
13 Americans;

14 “(iii) using resource partners of the Administration and other entities, including
15 institutions of higher education, Indian tribes, or tribal colleges; and

16 “(iv) the prudent management of finances and staffing;

17 “(E) the location at which the applicant will provide training and services to Native
18 Americans;

19 “(F) a 5-year plan that describes—

20 “(i) the number of Native Americans and Native American small business
21 concerns to be served by the grant;

22 “(ii) if the Native American business center is located in the continental United
23 States, the number of Native Americans to be served by the grant; and

24 “(iii) the training and services to be provided to a representative number of
25 Native Americans; and

26 “(G) if the applicant is a joint project—

27 “(i) a certification that each participant in the joint project is an eligible
28 applicant;

29 “(ii) information demonstrating a record of commitment to providing assistance
30 to Native Americans; and

31 “(iii) information demonstrating that the participants in the joint project have
32 the ability and resources to meet the needs, including the cultural needs, of the
33 Native Americans to be served by the grant.

34 “(7) REVIEW OF APPLICATIONS.—The Administrator shall approve or disapprove each
35 completed application submitted under this subsection not later than 60 days after the date
36 on which the eligible applicant submits the application.

37 “(8) PROGRAM EXAMINATION.—

38 “(A) IN GENERAL.—Each Native American business center established under this

1 subsection shall annually provide to the Administrator an itemized cost breakdown of
2 actual expenditures made during the preceding year.

3 “(B) ADMINISTRATION ACTION.—Based on information received under subparagraph
4 (A), the Administration shall—

5 “(i) develop and implement an annual programmatic and financial examination
6 of each Native American business center assisted pursuant to this subsection; and

7 “(ii) analyze the results of each examination conducted under clause (i) to
8 determine the programmatic and financial viability of each Native American
9 business center.

10 “(C) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to renew a
11 grant, contract, or cooperative agreement with a Native American business center, the
12 Administration—

13 “(i) shall consider the results of the most recent examination of the center under
14 subparagraph (B), and, to a lesser extent, previous examinations; and

15 “(ii) may withhold the renewal, if the Administrator determines that—

16 “(I) the center has failed to provide the information required to be
17 provided under subparagraph (A), or the information provided by the center
18 is inadequate;

19 “(II) the center has failed to provide adequate information required to be
20 provided by the center for purposes of the report of the Administrator under
21 subparagraph (E);

22 “(III) the center has failed to comply with a requirement for participation
23 in the Native American small business development program, as determined
24 by the Administrator, including—

25 “(aa) failure to acquire or properly document a non-Federal share;

26 “(bb) failure to establish an appropriate partnership or program for
27 marketing and outreach to reach new Native American small business
28 concerns;

29 “(cc) failure to achieve results described in a financial assistance
30 agreement; and

31 “(dd) failure to provide to the Administrator a description of the
32 amount and sources of any non-Federal funding received by the center;

33 “(IV) the center has failed to carry out the 5-year plan under in paragraph
34 (6)(F); or

35 “(V) the center cannot make the certification described in paragraph
36 (6)(A).

37 “(D) CONTINUING CONTRACT AND COOPERATIVE AGREEMENT AUTHORITY.—

38 “(i) IN GENERAL.—The authority of the Administrator to enter into contracts or
39 cooperative agreements in accordance with this subsection shall be in effect for

1 each fiscal year only to the extent and in the amounts as are provided in advance
2 in appropriations Acts.

3 “(ii) RENEWAL.—After the Administrator has entered into a contract or
4 cooperative agreement with any Native American business center under this
5 subsection, the Administrator may not suspend, terminate, or fail to renew or
6 extend any such contract or cooperative agreement unless the Administrator—

7 “(I) provides the center with written notification that describes the reasons
8 for the action of the Administrator; and

9 “(II) affords the center an opportunity for a hearing, appeal, or other
10 administrative proceeding under chapter 5 of title 5, United States Code.

11 “(E) ANNUAL MANAGEMENT REPORT.—

12 “(i) IN GENERAL.—The Administration shall prepare and submit to the
13 Committee on Small Business and Entrepreneurship and the Committee on Indian
14 Affairs of the Senate and the Committee on Small Business and the Committee on
15 Natural Resources of the House of Representatives an annual report on the
16 effectiveness of all projects conducted by Native American business centers under
17 this subsection and any pilot programs administered by the Office of Native
18 American Affairs.

19 “(ii) CONTENTS.—Each report submitted under clause (i) shall include, with
20 respect to each Native American business center receiving financial assistance
21 under this subsection—

22 “(I) the number of individuals receiving assistance from the Native
23 American business center;

24 “(II) the number of startup business concerns established with the
25 assistance of the Native American business center;

26 “(III) the number of existing businesses in the area served by the Native
27 American business center seeking to expand employment;

28 “(IV) the number of jobs established or maintained, on an annual basis, by
29 Native American small business concerns assisted by the center since
30 receiving funding under this section;

31 “(V) to the maximum extent practicable, the amount of the capital
32 investment and loan financing used by emerging and expanding businesses
33 that were assisted by a Native American business center; and

34 “(VI) the most recent examination, as required under subparagraph (B),
35 and the determination made by the Administration under that subparagraph.

36 “(9) ANNUAL REPORTS.—Each Native American business center receiving financial
37 assistance under this subsection shall submit to the Administrator an annual report on the
38 services provided with the financial assistance, including—

39 “(A) the number of individuals assisted, categorized by ethnicity;

40 “(B) the number of hours spent providing counseling and training for those

1 individuals;

2 “(C) the number of startup small business concerns established or maintained with
3 the assistance of the Native American business center;

4 “(D) the gross receipts of small business concerns assisted by the Native American
5 business center;

6 “(E) the number of jobs established or maintained by small business concerns
7 assisted by the Native American business center; and

8 “(F) the number of jobs for Native Americans established or maintained at small
9 business concerns assisted by the Native American business center.

10 “(10) RECORD RETENTION.—

11 “(A) APPLICATIONS.—The Administrator shall maintain a copy of each application
12 submitted under this subsection for not less than 7 years.

13 “(B) ANNUAL REPORTS.—The Administrator shall maintain copies of the
14 certification submitted under paragraph (6)(A) indefinitely.

15 “(d) Authorization of Appropriations.—

16 “(1) IN GENERAL.—There is authorized to be appropriated to carry out the Native
17 American small business development program \$10,000,000 for each of fiscal years 2011
18 through 2013.

19 “(2) ADMINISTRATION.—Not more than 10 percent of funds appropriated for a fiscal year
20 may be used for the costs of administering the programs under this section.”