

**[DISCUSSION DRAFT]**

SEPTEMBER 28, 2003

1           **TITLE V—INDIAN ENERGY**

2   **SEC. 501. SHORT TITLE.**

3           This title may be cited as the “Indian Tribal Energy  
4 Development and Self-Determination Act of 2003”.

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-  
20 termination and the purposes of this Act, shall provide,  
21 direct, foster, coordinate, and implement energy planning,  
22 education, management, conservation, and delivery pro-  
23 grams of the Department that—

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

3           “(2) reduce or stabilize energy costs;

4           “(3) enhance and strengthen Indian tribal en-  
5 ergy and economic infrastructure relating to natural  
6 resource development and electrification; and

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

11 (b) CONFORMING AMENDMENTS.—

12           (1) The table of contents of the Department of  
13 Energy Organization Act (42 U.S.C. prec. 7101) is  
14 amended—

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

17           (B) by striking the items relating to sec-  
18 tions 213 through 216 and inserting the fol-  
19 lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Adminis-  
tration.

“Sec. 214. Establishment of security, counterintelligence, and intelligence  
policies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

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

20           (2) Section 5315 of title 5, United States Code,  
21 is amended by inserting “Director, Office of Indian  
22 Energy Policy and Programs, Department of En-

1       ergy.” after “Inspector General, Department of En-  
2       ergy.”.

3   **SEC. 503. INDIAN ENERGY.**

4       (a) Title XXVI of the Energy Policy Act of 1992 (25  
5 U.S.C. 3501 et seq.) is amended to read as follows:

6    **“TITLE XXVI—INDIAN ENERGY**

7   **“SEC. 2601. DEFINITIONS.**

8       “For purposes of this title:

9           “(1) The term ‘Director’ means the Director of  
10       the Office of Indian Energy Policy and Programs,  
11       Department of Energy.

12           “(2) The term ‘Indian land’ means—

13               “(A) any land located within the bound-  
14       aries of an Indian reservation, pueblo, or  
15       rancheria;

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

19                   “(i) in trust by the United States for  
20       the benefit of an Indian tribe or an indi-  
21       vidual Indian;

22                   “(ii) by an Indian tribe or an indi-  
23       vidual Indian, subject to restriction against  
24       alienation under laws of the United States;

25       or

1                   “(iii) by a dependent Indian commu-  
2                   nity; and

3                   “(C) land that is owned by an Indian tribe  
4                   and was conveyed by the United States to a  
5                   Native Corporation pursuant to the Alaska Na-  
6                   tive Claims Settlement Act (43 U.S.C. 1601 et  
7                   seq.), or that was conveyed by the United  
8                   States to a Native Corporation in exchange for  
9                   such land.

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

11                   “(A) an Indian reservation in existence in  
12                   any State or States as of the date of enactment  
13                   of this paragraph;

14                   “(B) a public domain Indian allotment;  
15                   and

16                   “(C) a dependent Indian community lo-  
17                   cated within the borders of the United States,  
18                   regardless of whether the community is  
19                   located—

20                   “(i) on original or acquired territory  
21                   of the community; or

22                   “(ii) within or outside the boundaries  
23                   of any particular State.

24                  “(4) The term ‘Indian tribe’ has the meaning  
25                  given the term in section 4 of the Indian Self-Deter-

1       mination and Education Assistance Act (25 U.S.C.  
2       450b), except that the term ‘Indian tribe’, for the  
3       purpose of paragraph (11) and sections 2603(b)(3)  
4       and 2604, shall not include any Native Corporation.

5           “(5) The term ‘integration of energy resources’  
6       means any project or activity that promotes the loca-  
7       tion and operation of a facility (including any pipe-  
8       line, gathering system, transportation system or fa-  
9       cility, or electric transmission or distribution facility)  
10      on or near Indian land to process, refine, generate  
11      electricity from, or otherwise develop energy re-  
12      sources on, Indian land.

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

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

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

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

1           “(10) The term ‘tribal energy resource develop-  
2           ment organization’ means an organization of 2 or  
3           more entities, at least 1 of which is an Indian tribe,  
4           that has the written consent of the governing bodies  
5           of all Indian tribes participating in the organization  
6           to apply for a grant, loan, or other assistance au-  
7           thorized by section 2602.

8           “(11) The term ‘tribal land’ means any land or  
9           interests in land owned by any Indian tribe, title to  
10          which is held in trust by the United States or which  
11          is subject to a restriction against alienation under  
12          laws of the United States.

13   **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**  
14                           **MENT.**

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

16               “(1) To assist Indian tribes in the development  
17               of energy resources and further the goal of Indian  
18               self-determination, the Secretary shall establish and  
19               implement an Indian energy resource development  
20               program to assist consenting Indian tribes and tribal  
21               energy resource development organizations in achiev-  
22               ing the purposes of this title.

23               “(2) In carrying out the Program, the Sec-  
24               retary shall—

1           “(A) provide development grants to Indian  
2           tribes and tribal energy resource development  
3           organizations for use in developing or obtaining  
4           the managerial and technical capacity needed to  
5           develop energy resources on Indian land, and to  
6           properly account for resulting energy produc-  
7           tion and revenues;

8           “(B) provide grants to Indian tribes and  
9           tribal energy resource development organiza-  
10          tions for use in carrying out projects to pro-  
11          mote the integration of energy resources, and to  
12          process, use, or develop those energy resources,  
13          on Indian land; and

14          “(C) provide low-interest loans to Indian  
15          tribes and tribal energy resource development  
16          organizations for use in the promotion of en-  
17          ergy resource development on Indian land and  
18          integration of energy resources.

19          “(3) There are authorized to be appropriated to  
20          carry out this subsection such sums as are necessary  
21          for each of fiscal years 2004 through 2014.

22          “(b) INDIAN ENERGY EDUCATION PLANNING AND  
23          MANAGEMENT ASSISTANCE.—

24                 “(1) The Director shall establish programs to  
25                 assist consenting Indian tribes in meeting energy

1 education, research and development, planning, and  
2 management needs.

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

7 “(A) energy, energy efficiency, and energy  
8 conservation programs;

9 “(B) studies and other activities sup-  
10 porting tribal acquisitions of energy supplies,  
11 services, and facilities;

12 “(C) planning, construction, development,  
13 operation, maintenance, and improvement of  
14 tribal electrical generation, transmission, and  
15 distribution facilities located on Indian land;  
16 and

17 “(D) development, construction, and inter-  
18 connection of electric power transmission facili-  
19 ties located on Indian land with other electric  
20 transmission facilities.

21 “(3)(A) The Director may develop, in consulta-  
22 tion with Indian tribes, a formula for providing  
23 grants under this subsection.

24 “(B) In providing a grant under this sub-  
25 section, the Director shall give priority to an applica-

1       tion received from an Indian tribe with inadequate  
2       electric service (as determined by the Director).

3               “(4) The Secretary of Energy may promulgate  
4       such regulations as necessary to carry out this sub-  
5       section.

6               “(5) There is authorized to be appropriated to  
7       carry out this subsection \$20,000,000 for each of  
8       fiscal years 2004 through 2014.

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

11               “(1) Subject to paragraph (3), the Secretary of  
12      Energy may provide loan guarantees (as defined in  
13      section 502 of the Federal Credit Reform Act of  
14      1990 (2 U.S.C. 661a)) for not more than 90 percent  
15      of the unpaid principal and interest due on any loan  
16      made to any Indian tribe for energy development.

17               “(2) A loan guarantee under this subsection  
18      shall be made by—

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

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

23               “(3) The aggregate outstanding amount guar-  
24      anteed by the Secretary of Energy at any time under  
25      this subsection shall not exceed \$2,000,000,000.

1           “(4) The Secretary of Energy may promulgate  
2 such regulations as the Secretary of Energy deter-  
3 mines are necessary to carry out this subsection.

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

7           “(6) Not later than 1 year from the date of en-  
8 actment of this section, the Secretary of Energy  
9 shall report to the Congress on the financing re-  
10 quirements of Indian tribes for energy development  
11 on Indian land.

12           “(d) FEDERAL AGENCIES INDIAN ENERGY PREF-  
13 ERENCE.—

14           “(1) In purchasing electricity or any other en-  
15 ergy product or byproduct, a Federal agency or de-  
16 partment may give preference to an energy and re-  
17 source production enterprise, partnership, consor-  
18 tium, corporation, or other type of business organi-  
19 zation the majority of the interest in which is owned  
20 and controlled by 1 or more Indian tribes.

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

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

1                   “(B) obtain less than prevailing market  
2                   terms and conditions.

3   **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**  
4                   **TION.**

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

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

10                  “(1) by an Indian tribe for the development of  
11   a tribal energy resource inventory or tribal energy  
12   resource on Indian land;

13                  “(2) by an Indian tribe for the development of  
14   a feasibility study or other report necessary to the  
15   development of energy resources on Indian land;

16                  “(3) by an Indian tribe for the development and  
17   enforcement of tribal laws (including regulations) re-  
18   lating to tribal energy resource development and the  
19   development of technical infrastructure to protect  
20   the environment under applicable law; or

21                  “(4) by a Native Corporation for the develop-  
22   ment and implementation of corporate policies and  
23   the development of technical infrastructure to pro-  
24   tect the environment under applicable law; and



1 pose of energy resource development on tribal land,  
2 including a lease or business agreement for—

3 “(A) exploration for, extraction of, proc-  
4 essing of, or other development of the Indian  
5 tribe’s energy mineral resources located on trib-  
6 al land; and

7 “(B) construction or operation of an elec-  
8 tric generation, transmission, or distribution fa-  
9 cility located on tribal land or a facility to proc-  
10 ess or refine energy resources developed on trib-  
11 al land; and

12 “(2) such lease or business agreement described  
13 in paragraph (1) shall not require the approval of  
14 the Secretary under section 2103 of the Revised  
15 Statutes (25 U.S.C. 81) or any other provision of  
16 law, if—

17 “(A) the lease or business agreement is ex-  
18 ecuted pursuant to a tribal energy resource  
19 agreement approved by the Secretary under  
20 subsection (e);

21 “(B) the term of the lease or business  
22 agreement does not exceed—

23 “(i) 30 years; or

24 “(ii) in the case of a lease for the pro-  
25 duction of oil resources, gas resources, or

1                   both, 10 years and as long thereafter as oil  
2                   or gas is produced in paying quantities;  
3                   and

4                   “(C) the Indian tribe has entered into a  
5                   tribal energy resource agreement with the Sec-  
6                   retary, as described in subsection (e), relating  
7                   to the development of energy resources on tribal  
8                   land (including the periodic review and evalua-  
9                   tion of the activities of the Indian tribe under  
10                  the agreement, to be conducted pursuant to the  
11                  provisions required by subsection (e)(2)(D)(i)).

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

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

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

22                  “(3) the pipeline or electric transmission or dis-  
23                  tribution line serves—

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

1           “(B) a facility located on tribal land that  
2           processes or refines energy resources developed  
3           on tribal land; and

4           “(4) the Indian tribe has entered into a tribal  
5           energy resource agreement with the Secretary, as de-  
6           scribed in subsection (e), relating to the development  
7           of energy resources on tribal land (including the  
8           periodic review and evaluation of the Indian tribe’s  
9           activities under such agreement described in sub-  
10          paragraphs (D) and (E) of subsection (e)(2)).

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

15          “(d) VALIDITY.—No lease, business agreement, or  
16         right-of-way relating to the development of tribal energy  
17         resources pursuant to the provisions of this section shall  
18         be valid unless the lease, business agreement, or right-of-  
19         way is authorized by the provisions of a tribal energy re-  
20         source agreement approved by the Secretary under sub-  
21         section (e)(2).

22          “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

23                 “(1) On promulgation of regulations under  
24                 paragraph (8), an Indian tribe may submit to the  
25                 Secretary for approval a tribal energy resource

1 agreement governing leases, business agreements,  
2 and rights-of-way under this section.

3 “(2)(A) Not later than 180 days after the date  
4 on which the Secretary receives a tribal energy re-  
5 source agreement submitted by an Indian tribe  
6 under paragraph (1), or within 60 days after the  
7 Secretary receives a revised tribal energy resource  
8 agreement submitted by an Indian tribe under para-  
9 graph (4)(C), (or such later date as may be agreed  
10 to by the Secretary and the Indian tribe), the Sec-  
11 retary shall approve or disapprove the tribal energy  
12 resource agreement.

13 “(B) The Secretary shall approve a tribal en-  
14 ergy resource agreement submitted under paragraph  
15 (1) if—

16 “(i) the Secretary determines that the In-  
17 dian tribe has demonstrated that the Indian  
18 tribe has sufficient capacity to regulate the de-  
19 velopment of energy resources of the Indian  
20 tribe;

21 “(ii) the tribal energy resource agreement  
22 includes provisions required under subpara-  
23 graph (D); and

24 “(iii) the tribal energy resource agreement  
25 includes provisions that, with respect to a lease,

1 business agreement, or right-of-way under this  
2 section—

3 “(I) ensure the acquisition of nec-  
4 essary information from the applicant for  
5 the lease, business agreement, or right-of-  
6 way;

7 “(II) address the term of the lease or  
8 business agreement or the term of convey-  
9 ance of the right-of-way;

10 “(III) address amendments and re-  
11 newals;

12 “(IV) address the economic return to  
13 the tribe under leases, business agree-  
14 ments, and rights-of-way;

15 “(V) address technical or other rel-  
16 evant requirements;

17 “(VI) establish requirements for envi-  
18 ronmental review in accordance with sub-  
19 paragraph (C);

20 “(VII) ensure compliance with all ap-  
21 plicable environmental laws;

22 “(VIII) identify final approval author-  
23 ity;

24 “(IX) provide for public notification of  
25 final approvals;

1           “(X) establish a process for consulta-  
2           tion with any affected States concerning  
3           off-reservation impacts, if any, identified  
4           pursuant to the provisions required under  
5           subparagraph (C)(i);

6           “(XI) describe the remedies for  
7           breach of the lease, business agreement, or  
8           right-of-way;

9           “(XII) require each lease, business  
10          agreement, and right-of-way to include a  
11          statement that, in the event that any of its  
12          provisions violates an express term or re-  
13          quirement set forth in the tribal energy re-  
14          source agreement pursuant to which it was  
15          executed—

16                 “(aa) such provision shall be null  
17                 and void; and

18                 “(bb) if the Secretary determines  
19                 such provision to be material, the Sec-  
20                 retary shall have the authority to sus-  
21                 pend or rescind the lease, business  
22                 agreement, or right-of-way or take  
23                 other appropriate action that the Sec-  
24                 retary determines to be in the best in-  
25                 terest of the Indian tribe;

1           “(XIII) require each lease, business  
2           agreement, and right-of-way to provide  
3           that it will not become effective prior to  
4           the date on which a copy of the executed  
5           lease, business agreement, or right-of-way  
6           is delivered to the Secretary in accordance  
7           with regulations adopted pursuant to this  
8           subsection; and

9           “(XIV) include citations to tribal  
10          laws, regulations, or procedures, if any,  
11          that set out tribal remedies that must be  
12          exhausted before a petition may be sub-  
13          mitted to the Secretary pursuant to para-  
14          graph (7)(B).

15          “(C) Tribal energy resource agreements sub-  
16          mitted under paragraph (1) shall establish, and in-  
17          clude provisions to ensure compliance with, an envi-  
18          ronmental review process that, with respect to a  
19          lease, business agreement, or right-of-way under this  
20          section, provides for—

21                 “(i) the identification and evaluation of all  
22                 significant environmental impacts (as compared  
23                 with a no-action alternative), including effects  
24                 on cultural resources;

1           “(ii) the identification of proposed mitiga-  
2           tion;

3           “(iii) a process for ensuring that the public  
4           is informed of and has an opportunity to com-  
5           ment on the environmental impacts of the pro-  
6           posed action before tribal approval of the lease,  
7           business agreement, or right-of-way; and

8           “(iv) sufficient administrative support and  
9           technical capability to carry out the environ-  
10          mental review process.

11          “(D) A tribal energy resource agreement nego-  
12          tiated between the Secretary and an Indian tribe in  
13          accordance with this subsection shall include—

14               “(i) provisions requiring the Secretary to  
15               conduct a periodic review and evaluation to  
16               monitor the performance of the Indian tribe’s  
17               activities associated with the development of en-  
18               ergy resources under the tribal energy resource  
19               agreement; and

20               “(ii) when such review and evaluation re-  
21               sult in a finding by the Secretary of imminent  
22               jeopardy to a physical trust asset arising from  
23               a violation of the tribal energy resource agree-  
24               ment or applicable Federal laws, provisions au-  
25               thorizing the Secretary to take appropriate ac-

1           tions determined by the Secretary to be nec-  
2           essary to protect such asset, which actions may  
3           include reassumption of responsibility for activi-  
4           ties associated with the development of energy  
5           resources on tribal land until the violation and  
6           conditions that gave rise to such jeopardy have  
7           been corrected.

8           “(E) The periodic review and evaluation de-  
9           scribed in subparagraph (D) shall be conducted on  
10          an annual basis, except that, after the third such an-  
11          nual review and evaluation, the Secretary and the  
12          Indian tribe may mutually agree to amend the tribal  
13          energy resource agreement to authorize the review  
14          and evaluation required by subparagraph (D) to be  
15          conducted once every 2 years.

16          “(3) The Secretary shall provide notice and op-  
17          portunity for public comment on tribal energy re-  
18          source agreements submitted for approval under  
19          paragraph (1). The Secretary’s review of a tribal en-  
20          ergy resource agreement under the National Envi-  
21          ronmental Policy Act of 1969 (42 U.S.C. 4321 et  
22          seq.) shall be limited to the direct effects of that ap-  
23          proval.

24          “(4) If the Secretary disapproves a tribal en-  
25          ergy resource agreement submitted by an Indian

1       tribe under paragraph (1), the Secretary shall, with-  
2       in 10 days of the date of disapproval—

3               “(A) notify the Indian tribe in writing of  
4               the basis for the disapproval;

5               “(B) identify what changes or other ac-  
6               tions are required to address the concerns of  
7               the Secretary; and

8               “(C) provide the Indian tribe with an op-  
9               portunity to revise and resubmit the tribal en-  
10              ergy resource agreement.

11             “(5) If an Indian tribe executes a lease or busi-  
12             ness agreement or grants a right-of-way in accord-  
13             ance with a tribal energy resource agreement ap-  
14             proved under this subsection, the Indian tribe shall,  
15             in accordance with the process and requirements set  
16             forth in the Secretary’s regulations adopted pursu-  
17             ant to paragraph (8), provide to the Secretary—

18               “(A) a copy of the lease, business agree-  
19               ment, or right-of-way document (including all  
20               amendments to and renewals of the document);  
21               and

22               “(B) in the case of a tribal energy resource  
23               agreement or a lease, business agreement, or  
24               right-of-way that permits payments to be made  
25               directly to the Indian tribe, information and

1 documentation of those payments sufficient to  
2 enable the Secretary to discharge the trust re-  
3 sponsibility of the United States to enforce the  
4 terms of, and protect the Indian tribe's rights  
5 under, the lease, business agreement, or right-  
6 of-way.

7 “(6)(A) For purposes of the activities to be un-  
8 dertaken by the Secretary pursuant to this section,  
9 the Secretary shall—

10 “(i) carry out such activities in a manner  
11 consistent with the trust responsibility of the  
12 United States relating to mineral and other  
13 trust resources; and

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

16 “(B) Subject to the provisions of subsections  
17 (a)(2), (b), and (c) waiving the requirement of Sec-  
18 retarial approval of leases, business agreements, and  
19 rights-of-way executed pursuant to tribal energy re-  
20 source agreements approved under this section, and  
21 the provisions of subparagraph (D), nothing in this  
22 section shall absolve the United States from any re-  
23 sponsibility to Indians or Indian tribes, including,  
24 but not limited to, those which derive from the trust  
25 relationship or from any treaties, statutes, and other

1 laws of the United States, Executive Orders, or  
2 agreements between the United States and any In-  
3 dian tribe.

4 “(C) The Secretary shall continue to have a  
5 trust obligation to ensure that the rights and inter-  
6 ests of an Indian tribe are protected in the event  
7 that—

8 “(i) any other party to any such lease,  
9 business agreement, or right-of-way violates any  
10 applicable provision of Federal law or the terms  
11 of any lease, business agreement, or right-of-  
12 way under this section; or

13 “(ii) any provision in such lease, business  
14 agreement, or right-of-way violates any express  
15 provision or requirement set forth in the tribal  
16 energy resource agreement pursuant to which  
17 the lease, business agreement, or right-of-way  
18 was executed.

19 “(D) Notwithstanding subparagraph (B), the  
20 United States shall not be liable to any party (in-  
21 cluding any Indian tribe) for any of the negotiated  
22 terms of, or any losses resulting from the negotiated  
23 terms of, a lease, business agreement, or right-of-  
24 way executed pursuant to and in accordance with a  
25 tribal energy resource agreement approved by the

1 Secretary under paragraph (2). For the purpose of  
2 this subparagraph, the term ‘negotiated terms’  
3 means any terms or provisions that are negotiated  
4 by an Indian tribe and any other party or parties to  
5 a lease, business agreement, or right-of-way entered  
6 into pursuant to an approved tribal energy resource  
7 agreement.

8 “(7)(A) In this paragraph, the term ‘interested  
9 party’ means any person or entity the interests of  
10 which have sustained or will sustain a significant ad-  
11 verse environmental impact as a result of the failure  
12 of an Indian tribe to comply with a tribal energy re-  
13 source agreement of the Indian tribe approved by  
14 the Secretary under paragraph (2).

15 “(B) After exhaustion of tribal remedies, and in  
16 accordance with the process and requirements set  
17 forth in regulations adopted by the Secretary pursu-  
18 ant to paragraph (8), an interested party may sub-  
19 mit to the Secretary a petition to review compliance  
20 of an Indian tribe with a tribal energy resource  
21 agreement of the Indian tribe approved by the Sec-  
22 retary under paragraph (2).

23 “(C)(i) Not later than 120 days after the date  
24 on which the Secretary receives a petition under sub-  
25 paragraph (B), the Secretary shall determine wheth-

1 er the Indian tribe is not in compliance with the  
2 tribal energy resource agreement, as alleged in the  
3 petition.

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

10 “(iii) Subject to subparagraph (D), if the Sec-  
11 retary determines that the Indian tribe is not in  
12 compliance with the tribal energy resource agree-  
13 ment as alleged in the petition, the Secretary shall  
14 take such action as is necessary to ensure compli-  
15 ance with the provisions of the tribal energy resource  
16 agreement, which action may include—

17 “(I) temporarily suspending some or all ac-  
18 tivities under a lease, business agreement, or  
19 right-of-way under this section until the Indian  
20 tribe or such activities are in compliance with  
21 the provisions of the approved tribal energy re-  
22 source agreement; or

23 “(II) rescinding approval of all or part of  
24 the tribal energy resource agreement, and if all  
25 of such agreement is rescinded, reassuming the

1 responsibility for approval of any future leases,  
2 business agreements, or rights-of-way described  
3 in subsections (a) and (b).

4 “(D) Prior to seeking to ensure compliance with  
5 the provisions of the tribal energy resource agree-  
6 ment of an Indian tribe under subparagraph (C)(iii),  
7 the Secretary shall—

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

11 “(ii) provide the Indian tribe with a writ-  
12 ten notice of the violations together with the  
13 written determination; and

14 “(iii) before taking any action described in  
15 subparagraph (C)(iii) or seeking any other rem-  
16 edy, provide the Indian tribe with a hearing and  
17 a reasonable opportunity to attain compliance  
18 with the tribal energy resource agreement.

19 “(E) An Indian tribe described in subparagraph  
20 (D) shall retain all rights to appeal as provided in  
21 regulations promulgated by the Secretary.

22 “(8) Not later than 1 year after the date of en-  
23 actment of the Indian Tribal Energy Development  
24 and Self-Determination Act of 2003, the Secretary

1 shall promulgate regulations that implement the pro-  
2 visions of this subsection, including—

3 “(A) criteria to be used in determining the  
4 capacity of an Indian tribe described in para-  
5 graph (2)(B)(i), including the experience of the  
6 Indian tribe in managing natural resources and  
7 financial and administrative resources available  
8 for use by the Indian tribe in implementing the  
9 approved tribal energy resource agreement of  
10 the Indian tribe;

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

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

16 “(ii) return to the Secretary the re-  
17 sponsibility to approve any future leases,  
18 business agreements, and rights-of-way de-  
19 scribed in this subsection;

20 “(C) provisions setting forth the scope of,  
21 and procedures for, the periodic review and  
22 evaluation described in subparagraphs (D) and  
23 (E) of paragraph (2), including provisions for  
24 review of transactions, reports, site inspections,

1 and any other review activities the Secretary  
2 determines to be appropriate; and

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

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

9 “(1) any Federal environment law;

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

12 “(3) except as otherwise provided in this title,  
13 the Indian Mineral Development Act of 1982 (25  
14 U.S.C. 2101 et seq.) and the National Environ-  
15 mental Policy Act of 1969 (42 U.S.C. 4321 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 2004  
19 through 2014 to implement the provisions of this section  
20 and to make grants or provide other appropriate assist-  
21 ance to Indian tribes to assist the Indian tribes in devel-  
22 oping and implementing tribal energy resource agreements  
23 in accordance with the provisions of this section.

1 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

2 “(a) IN GENERAL.—The Secretary shall conduct a  
3 review of all activities being conducted under the Indian  
4 Mineral Development Act of 1982 (25 U.S.C. 2101 et  
5 seq.) as of that date.

6 “(b) REPORT.—Not later than 1 year after the date  
7 of enactment of the Indian Tribal Energy Development  
8 and Self-Determination Act of 2003, the Secretary shall  
9 submit to the Congress a report that includes—

10 “(1) the results of the review;

11 “(2) recommendations to ensure that Indian  
12 tribes have the opportunity to develop Indian energy  
13 resources; and

14 “(3) an analysis of the barriers to the develop-  
15 ment of energy resources on Indian land (including  
16 legal, fiscal, market, and other barriers), along with  
17 recommendations for the removal of those barriers.”.

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

“Sec. 2601. Definitions.

“Sec. 2602. Indian tribal energy resource development.

“Sec. 2603. Indian tribal energy resource regulation.

“Sec. 2604. Leases, business agreements, and rights-of-way involving en-  
ergy development or transmission.

“Sec. 2605. Indian mineral development review.”.

1 **SEC. 504. FOUR CORNERS TRANSMISSION LINE PROJECT.**

2 The Dine Power Authority, an enterprise of the Nav-  
3 ajo Nation, shall be eligible to receive grants and other  
4 assistance as authorized by section 502 of this title and  
5 section 2602 of the Energy Policy Act of 1992, as amend-  
6 ed by this title, for activities associated with the develop-  
7 ment of a transmission line from the Four Corners Area  
8 to southern Nevada, including related power generation  
9 opportunities.

10 **SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**  
11 **HOUSING.**

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

16 (1) the use of energy-efficient technologies and  
17 innovations (including the procurement of energy-ef-  
18 ficient refrigerators and other appliances);

19 (2) the promotion of shared savings contracts;  
20 and

21 (3) the use and implementation of such other  
22 similar technologies and innovations as the Secretary  
23 of Housing and Urban Development considers to be  
24 appropriate.

25 (b) AMENDMENT.—Section 202(2) of the Native  
26 American Housing and Self-Determination Act of 1996

1 (25 U.S.C. 4132(2)) is amended by inserting “improve-  
2 ment to achieve greater energy efficiency,” after “plan-  
3 ning,”.

4 **SEC. 506. CONSULTATION WITH INDIAN TRIBES.**

5       In carrying out this title and the amendments made  
6 by this title, the Secretary of Energy and the Secretary  
7 shall, as appropriate and to the maximum extent prac-  
8 ticable, involve and consult with Indian tribes in a manner  
9 that is consistent with the Federal trust and the govern-  
10 ment-to-government relationships between Indian tribes  
11 and the United States.