

## TITLE V—INDIAN ENERGY

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

**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 2005”.

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

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

10 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

11 “SEC. 217. (a) ESTABLISHMENT.—

12 “(1) There is established within the Depart-  
13 ment an Office of Indian Energy Policy and Pro-  
14 grams (referred to in this section as the ‘Office’).

15 “(2) The Office shall be headed by a Director,  
16 to be appointed by the Secretary and compensated  
17 at a rate equal to that of level IV of the Executive  
18 Schedule under section 5315 of title 5, United  
19 States Code.

20 “(b) DUTIES OF DIRECTOR.—The Director, in ac-  
21 cordance with Federal policies promoting Indian self-de-  
22 termination and the purposes of this Act, shall provide,

1 direct, foster, coordinate, and implement energy planning,  
2 education, management, conservation, and delivery pro-  
3 grams of the Department that—

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

6 “(2) reduce or stabilize energy costs;

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

10 “(4) bring electrical power and service to In-  
11 dian land and the homes of tribal members that  
12 are—

13 “(A) located on Indian land; or

14 “(B) acquired, constructed, or improved  
15 (in whole or in part) with Federal funds.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) The table of contents of the Department of  
18 Energy Organization Act (42 U.S.C. prec. 7101) is  
19 amended—

20 (A) in the item relating to section 209, by  
21 striking “SECTION” and inserting “SEC.”; and

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

“Sec. 213. Establishment of policy for National Nuclear Security  
Administration.

“Sec. 214. Establishment of security, counterintelligence, and in-  
telligence policies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

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

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

6 **SEC. 503. INDIAN ENERGY.**

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

10           **“TITLE XXVI—INDIAN ENERGY**

11           **“SEC. 2601. DEFINITIONS.**

12           “In this title:

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

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

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

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

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

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

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

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

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

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

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

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

1           regardless of whether the community is  
2           located—

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

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

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

11           “(B) For the purpose of paragraph (11) and  
12          sections 2603(b)(3) and 2604, the term ‘Indian  
13          tribe’ does not include any Native Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(b) DEPARTMENT OF ENERGY INDIAN ENERGY  
12 EDUCATION PLANNING AND MANAGEMENT ASSISTANCE  
13 PROGRAM.—

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

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

22 “(A) energy, energy efficiency, and energy  
23 conservation programs;

24 “(B) studies and other activities sup-  
25 porting tribal acquisitions of energy supplies,



1 services, and facilities, including the creation of  
2 tribal utilities to assist in securing electricity to  
3 promote electrification of homes and businesses  
4 on Indian land;

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

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

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

19 “(i) geologic sequestration;

20 “(ii) forest sequestration;

21 “(iii) agricultural sequestration; and

22 “(iv) any other sequestration opportunities  
23 the Director considers to be appropriate.

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

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

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

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

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

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

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

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

4           “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE  
5 PROGRAM.—

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

13          “(2) In evaluating energy development pro-  
14          posals for which the Secretary of Energy may pro-  
15          vide a loan guarantee under paragraph (1), the Sec-  
16          retary of Energy shall give priority to any project  
17          that uses a new technology, such as coal gasification,  
18          carbon capture and sequestration, or renewable en-  
19          ergy-based electricity generation, if competing pro-  
20          posals are similar with respect to the level at which  
21          the proposals meet or exceed the criteria established  
22          by the Secretary of Energy for the loan guarantee  
23          program.

24          “(3) A loan guarantee under this subsection  
25          shall be made by—

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

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

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

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

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

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

19          “(d) PREFERENCE.—

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

1 zation the majority of the interest in which is owned  
2 and controlled by 1 or more Indian tribes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17          “(c) OTHER ASSISTANCE.—

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

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

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

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

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

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

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

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

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

24 “(B) construction or operation of—

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

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

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

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

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

18           “(i) 30 years; or

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

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



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

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

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

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

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

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

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

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

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

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

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

16 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(iii) a process for ensuring that—

24 “(I) the public is informed of,  
25 and has an opportunity to comment

1 on, the environmental impacts of the  
2 proposed action; and

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

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

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

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

22 “(i) provisions requiring the Secretary  
23 to conduct a periodic review and evaluation  
24 to monitor the performance of the activi-  
25 ties of the Indian tribe associated with the



1 development of energy resources under the  
2 tribal energy resource agreement; and

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

21 “(E) Periodic review and evaluation under  
22 subparagraph (D) shall be conducted on an an-  
23 nual basis, except that, after the third annual  
24 review and evaluation, the Secretary and the  
25 Indian tribe may mutually agree to amend the

1 tribal energy resource agreement to authorize  
2 the review and evaluation under subparagraph  
3 (D) to be conducted once every 2 years.

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

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

12 “(A) notify the Indian tribe in writing of  
13 the basis for the disapproval;

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

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

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

1 under regulations promulgated under paragraph (8),  
2 provide to the Secretary—

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

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

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

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

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

24 “(B) Except as provided in subsections (a)(2),  
25 (b), and (c), and subparagraph (D), nothing in this

1 section absolves the United States from any respon-  
2 sibility to an Indian or an Indian tribe, including a  
3 responsibility under the trust relationship, or any  
4 treaty or other law of the United States, an Execu-  
5 tive order, or an agreement between the United  
6 States and any Indian tribe.

7 “(C) The Secretary shall continue to fulfill the  
8 trust obligation of the United States to ensure that  
9 the rights and interests of an Indian tribe are pro-  
10 tected if—

11 “(i) any other party to a lease, business  
12 agreement, or right-of-way violates any applica-  
13 ble Federal law or the terms of any lease, busi-  
14 ness agreement, or right-of-way under this sec-  
15 tion; or

16 “(ii) any provision in a lease, business  
17 agreement, or right-of-way violates the tribal  
18 energy resource agreement pursuant to which  
19 the lease, business agreement, or right-of-way  
20 was executed.

21 “(D)(i) In this subparagraph, the term ‘nego-  
22 tiated term’ means any term or provision that is ne-  
23 gotiated by an Indian tribe and any other party to  
24 a lease, business agreement, or right-of-way entered

1 into pursuant to an approved tribal energy resource  
2 agreement.

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

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

19 “(B) After exhaustion of any tribal remedy, and  
20 in accordance with regulations promulgated by the  
21 Secretary under paragraph (8), an interested party  
22 may submit to the Secretary a petition to review the  
23 compliance by an Indian tribe with a tribal energy  
24 resource agreement of the Indian tribe approved by  
25 the Secretary under paragraph (2).

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

4                   “(I) provide to the Indian tribe a copy of  
5                   the petition; and

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

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

12           “(iii) The Secretary shall act in accordance with  
13          subparagraphs (D) and (E) only if the Indian  
14          tribe—

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

18                   “(II) fails, refuses, or is unable to cure or  
19                   otherwise resolve each claim made in the peti-  
20                   tion within a reasonable period, as determined  
21                   by the Secretary, after the expiration of the pe-  
22                   riod described in clause (ii).

23           “(D)(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.

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

9 “(iii) Subject to subparagraph (E), if the Sec-  
10 retary determines that the Indian tribe is not in  
11 compliance with the tribal energy resource agree-  
12 ment, the Secretary shall take such action as the  
13 Secretary determines to be necessary to ensure com-  
14 pliance with the tribal energy resource agreement,  
15 including—

16 “(I) temporarily suspending any activity  
17 under a lease, business agreement, or right-of-  
18 way under this section until the Indian tribe is  
19 in compliance with the approved tribal energy  
20 resource agreement; or

21 “(II) rescinding approval of all or part of  
22 the tribal energy resource agreement, and if all  
23 of the agreement is rescinded, reassuming the  
24 responsibility for approval of any future leases,

1 business agreements, or rights-of-way described  
2 in subsection (a) or (b).

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

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

8 “(ii) provide the Indian tribe with a writ-  
9 ten notice of the violations together with the  
10 written determination; and

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

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

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

23 “(A) criteria to be used in determining the  
24 capacity of an Indian tribe under paragraph  
25 (2)(B)(i), including the experience of the Indian



1           tribe in managing natural resources and finan-  
2           cial and administrative resources available for  
3           use by the Indian tribe in implementing the ap-  
4           proved tribal energy resource agreement of the  
5           Indian tribe;

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

8           “(i) voluntarily rescind a tribal energy  
9           resource agreement approved by the Sec-  
10          retary under this subsection; and

11          “(ii) return to the Secretary the re-  
12          sponsibility to approve any future lease,  
13          business agreement, or right-of-way under  
14          this subsection;

15          “(C) provisions establishing the scope of,  
16          and procedures for, the periodic review and  
17          evaluation described in subparagraphs (D) and  
18          (E) of paragraph (2), including provisions for  
19          review of transactions, reports, site inspections,  
20          and any other review activities the Secretary  
21          determines to be appropriate; and

22          “(D) provisions describing final agency ac-  
23          tions after exhaustion of administrative appeals  
24          from determinations of the Secretary under  
25          paragraph (7).

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

3 “(1) any Federal environmental law;

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

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

9 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated to the Secretary such  
11 sums as are necessary for each of fiscal years 2006  
12 through 2016 to carry out this section and to make grants  
13 or provide other appropriate assistance to Indian tribes  
14 to assist the Indian tribes in developing and implementing  
15 tribal energy resource agreements in accordance with this  
16 section.

17 **“SEC. 2605. FEDERAL POWER MARKETING ADMINISTRA-**  
18 **TIONS.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) The term “Administrator” means the Ad-  
21 ministrator of the Bonneville Power Administration  
22 and the Administrator of the Western Area Power  
23 Administration.

24 “(2) The term “power marketing administra-  
25 tion” means—

1 “(A) the Bonneville Power Administration;

2 “(B) the Western Area Power Administra-  
3 tion; and

4 “(C) any other power administration the  
5 power allocation of which is used by or for the  
6 benefit of an Indian tribe located in the service  
7 area of the administration.

8 “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY  
9 DEVELOPMENT.—Each Administrator shall encourage In-  
10 dian tribal energy development by taking such actions as  
11 the Administrators determine to be appropriate, including  
12 administration of programs of the power marketing ad-  
13 ministration, in accordance with this section.

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

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

20 “(2) power allocations from the Western Area  
21 Power Administration to Indian tribes may be used  
22 to meet firming and reserve needs of Indian-owned  
23 energy projects on Indian land;

24 “(3) the Administrator of the Western Area  
25 Power Administration may purchase non-federally

1 generated power from Indian tribes to meet the  
2 firming and reserve requirements of the Western  
3 Area Power Administration; and

4 “(4) each Administrator shall not—

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

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

9 “(d) ASSISTANCE FOR TRANSMISSION SYSTEM  
10 USE.—

11 “(1) An Administrator may provide technical  
12 assistance to Indian tribes seeking to use the high-  
13 voltage transmission system for delivery of electric  
14 power.

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

17 “(A) by the Secretary of Energy using  
18 nonreimbursable funds appropriated for that  
19 purpose; or

20 “(B) by any appropriate Indian tribe.

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

1           “(1) describes the use by Indian tribes of Fed-  
2           eral power allocations of the power marketing ad-  
3           ministration (or power sold by the Southwestern  
4           Power Administration) to or for the benefit of In-  
5           dian tribes in a service area of the power marketing  
6           administration; and

7           “(2) identifies—

8                   “(A) the quantity of power allocated to, or  
9                   used for the benefit of, Indian tribes by the  
10                  Western Area Power Administration;

11                  “(B) the quantity of power sold to Indian  
12                  tribes by any other power marketing adminis-  
13                  tration; and

14                  “(C) barriers that impede tribal access to  
15                  and use of Federal power, including an assess-  
16                  ment of opportunities to remove those barriers  
17                  and improve the ability of power marketing ad-  
18                  ministrations to deliver Federal power.

19           “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
20           are authorized to be appropriated to carry out this section  
21           \$750,000, non-reimbursable, to remain available until ex-  
22           pended.

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

24           “(a) STUDY.—The Secretary of Energy, in coordina-  
25           tion with the Secretary of the Army and the Secretary,

1 shall conduct a study of the cost and feasibility of devel-  
2 oping a demonstration project that uses wind energy gen-  
3 erated by Indian tribes and hydropower generated by the  
4 Army Corps of Engineers on the Missouri River to supply  
5 firming power to the Western Area Power Administration.

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

7 “(1) determine the feasibility of blending wind  
8 energy and hydropower generated from the Missouri  
9 River dams operated by the Army Corps of Engi-  
10 neers;

11 “(2) review historical and projected require-  
12 ments for, and patterns of availability and use of,  
13 firming power;

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

17 “(4) determine seasonal capacity needs and as-  
18 sociated transmission upgrades for integration of  
19 tribal wind generation; and

20 “(5) include an independent tribal engineer as  
21 a study team member.

22 “(c) REPORT.—Not later than 1 year after the date  
23 of enactment of the Energy Policy Act of 2005, the Sec-  
24 retary and the Secretary of the Army shall submit to Con-

1 gress a report that describes the results of the study,  
2 including—

3 “(1) an analysis of the potential energy cost or  
4 benefits to the customers of the Western Area Power  
5 Administration through the use of combined wind  
6 and hydropower;

7 “(2) an evaluation of whether a combined wind  
8 and hydropower system can reduce reservoir fluctua-  
9 tion, enhance efficient and reliable energy produc-  
10 tion, and provide Missouri River management flexi-  
11 bility;

12 “(3) recommendations for a demonstration  
13 project to be carried out by the Western Area Power  
14 Administration, in partnership with an Indian tribal  
15 government or tribal energy resource development  
16 organization, to demonstrate the feasibility and po-  
17 tential of using wind energy produced on Indian  
18 land to supply firming energy to the Western Area  
19 Power Administration or any other Federal power  
20 marketing agency; and

21 “(4) an identification of—

22 “(A) the economic and environmental costs  
23 of, or benefits to be realized through, a Fed-  
24 eral-tribal partnership; and

1           “(B) the manner in which a Federal-tribal  
2           partnership could contribute to the energy secu-  
3           rity of the United States.

4           “(d) FUNDING.—

5           “(1) AUTHORIZATION OF APPROPRIATIONS.—

6           There is authorized to be appropriated to carry out  
7           this section \$1,000,000, to remain available until ex-  
8           pended.

9           “(2) NONREIMBURSABILITY.—Costs incurred  
10          by the Secretary in carrying out this section shall be  
11          nonreimbursable.”.

12          (b) CONFORMING AMENDMENTS.—The table of con-  
13          tents for the Energy Policy Act of 1992 is amended by  
14          striking the items relating to title XXVI and inserting the  
15          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 in-  
          volving energy development or transmission.

          “Sec. 2605. Federal Power Marketing Administrations.

          “Sec. 2606. Wind and hydropower feasibility study.”.

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

17                               **AND ELECTRIFICATION.**

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



1 ergy Policy Act of 1992, as amended by this Act, for ac-  
2 tivities associated with the development of a transmission  
3 line from the Four Corners Area to southern Nevada, in-  
4 cluding related power generation opportunities.

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

7 (1) in subsection (a)—

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

10 (B) in the third sentence, by striking  
11 “2006” and inserting “2011”; and

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

14 **SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**  
15 **HOUSING.**

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

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

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

1           (3) the use and implementation of such other  
2           similar technologies and innovations as the Secretary  
3           of Housing and Urban Development considers to be  
4           appropriate.

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

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

11           In carrying out this Act and the amendments made  
12           by this Act, the Secretary of Energy and the Secretary  
13           shall, as appropriate and to the maximum extent prac-  
14           ticable, involve and consult with Indian tribes in a manner  
15           that is consistent with the Federal trust and the govern-  
16           ment-to-government relationships between Indian tribes  
17           and the United States.