

Subcommittee on Indian, Insular and Alaska Native Affairs  
Doug LaMalfa, Chairman  
Hearing Memorandum

July 20, 2018

**To:** All Subcommittee on Indian, Insular and Alaska Native Affairs Members

**From:** Majority Committee Staff  
Subcommittee on Indian, Insular and Alaska Native Affairs (x69725)

**Hearing:** **Legislative hearing on S. 1116 (Sen. John Hoeven)**, A bill to amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000, the Buy Indian Act, and the Native American Programs Act of 1974 to provide industry and economic development opportunities to Indian communities.  
**Tuesday, July 24, 2018, at 2:00 p.m. in 1324 Longworth HOB**

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*S. 1116 (Sen. John Hoeven), Indian Community Economic Enhancement Act of 2018*

**Summary of the bill**

S. 1116 was introduced by Sen. John Hoeven on May 11, 2017, and passed the Senate on March 22, 2018. The bill would amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000,<sup>1</sup> the Buy Indian Act,<sup>2</sup> and the Native American Programs Act<sup>3</sup> to provide industry and economic development opportunities to Indian communities.

**Cosponsors**

Sen. John McCain (R-AZ).

**Invited Witnesses**

*Mr. Darryl LaCounte*  
Acting Deputy Bureau Director  
Office of Trust Services  
Bureau of Indian Affairs  
Department of the Interior  
Washington, D.C.

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<sup>1</sup> 25 U.S.C. 4301 et seq.

<sup>2</sup> 25 U.S.C. 47.

<sup>3</sup> 42 U.S.C. 2991 et seq.

*Mr. Chris James*  
President and CEO  
National Center for American Indian Enterprise Development  
Mesa, AZ

*Mr. Michael G. Anderson*  
Executive Director  
Native American Contractors Association  
Washington, D.C.

## **Background**

For decades, Native American<sup>4</sup> communities have struggled with a wide array of difficulties relating to economic development on their land, including poor access to capital, remote and rural locations, and degradation of the local infrastructure. Only around half of all Native Americans (16 or older) residing on or near tribal communities have jobs, and a quarter of Native families earn an income that is below the federal poverty line.<sup>5</sup>

Today, approximately 56 million acres of land are held in trust by the United States (through the Department of the Interior) for the benefit of individual Indians and Indian tribes. Many of these lands are in remote areas, and none may be leased for business, agriculture, and mineral uses without the approval of the Secretary of the Interior.<sup>6</sup> Trust land is generally a prerequisite for a tribe to conduct gambling under the Indian Gaming Regulatory Act.<sup>7</sup>

The economies of Indian reservations in remote areas, where casinos may be a break-even proposition at best, suffer from great poverty. Many reservations and other Indian communities lack grocery stores, retail outlets, or banks. Residents may have to travel great distances (sometimes up to a two-hour drive) to buy groceries or go to a bank, while spending their disposable income on purchases off the reservation. Tribes have sought to keep dollars on their reservations to create sustainable economies, but they face a variety of challenges:

- *Federal Approval.* As discussed above, tribes and individual Indians may not lease their trust land without the permission of the Secretary of the Interior (this problem is not directly addressed by S. 1116).
- *Legal Systems and Infrastructure.* To attract businesses to the reservations, tribal governments need to provide business-friendly laws and independent court systems. Companies and investors, Indian and non-Indian alike, rely on governments to ensure fair competition, maintain law and order, and create laws and judicial systems that help enforce contracts and property rights. Not all tribal governments have enacted the kinds of business and commercial codes that businesses and banks need before they will locate

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<sup>4</sup> In this memo, the terms “Native American,” “Native,” and “Indian” are used interchangeably.

<sup>5</sup> 2013 American Indian Population and Labor Force Report, Department of Interior.

<sup>6</sup> 25 U.S.C. 177; 25 U.S.C. 415.

<sup>7</sup> 25 U.S.C. 2701 et seq.

and operate on reservations. Additionally, many components to tribal infrastructure need significant repair or replacement.

- *Access to Capital.* In many Native American communities, there is a lack of equity resources, such as home equity or intergenerational family assets. Likewise, trust land cannot be used as collateral, so access to capital is complicated further in Indian Country. Even if access to private capital is available, it may come at a higher cost.
- *Remote Locations.* The remoteness of many Indian communities diminishes the possibility of building commercial markets for goods and services or developing many types of industrial or manufacturing economies.
- *Sovereign Immunity.* Under a legal doctrine developed by federal courts, Indian tribes enjoy sovereign immunity against States and private citizens. Such sovereign immunity exists on and off an Indian reservation. A tribe may not be sued unless its sovereign immunity is waived by the tribe or by Congress, which has not debated this issue in many years. Tribes consider sovereign immunity a valid exercise of self-governance which promotes economic development. Developers or investors unfamiliar with a tribe's use of sovereign immunity may be reluctant to engage in business ventures with it.

In recent years, Congress has enacted laws to grant tribes stronger, more comprehensive control over businesses, agricultural, and residential leasing of tribal lands through the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, or the HEARTH Act.<sup>8</sup> Congress has also enacted multiple laws to assist these communities in obtaining access to capital in the forms of loan guarantees, procurement programs, and community development financial institutions (CDFIs). One of these laws, the Native American Business Development, Trade Promotion, and Tourism Act of 2000,<sup>9</sup> aids tribes in business development and helping to ensure tribal businesses follow all legal and regulatory requirements, among other things.

While Congress has attempted to alleviate challenges experienced by tribal businesses, various challenges remain. As mentioned previously, many Indian reservations and communities are in predominantly rural, remote locations, and enticing entrepreneurs to fund and support businesses in these areas can be difficult.

Whether a federal program to provide direct federal assistance (including grants) to build tribal businesses is the answer to increasing tribal economic development, or legislation to remove federal regulatory obstacles inhibiting tribes from using their own resources to develop Indian businesses are issues open to discussion in the hearing on S.1116.

### **Major Provisions of S. 1116**

#### *Sec. 3. Native American Business Development, Trade Promotion, and Tourism Act of 2000.*

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<sup>8</sup> Public Law 112-151, 25 U.S.C. 415.

<sup>9</sup> 25 U.S.C. 4301 et seq.

- Amends current law to enhance the Office of Native American Business Development (ONABD) by establishing a budget, having the Director report directly to the Secretary of Commerce, and augmenting the Director’s duties, including: (1) advising the Department of Commerce regarding the relationship between the United States and Indian tribes; and (2) serving as the point of contact for tribes, tribal organizations, and members of tribes regarding economic development and doing business in Indian lands.
- The ONABD, the Office of the Assistant Secretary for Indian Affairs, and the CDFI Fund must coordinate to support economic development in Native American communities.
- Waives a matching funds requirement in a CDFI Fund assistance program benefiting Native American community development.
- Government Accountability Office must conduct a study that assesses: (1) current programs and services that assist Native American communities with business and economic development; (2) assistance provided to Native Americans pursuant to loan, bond, and tax incentive programs; and (3) alternative incentives for tribal governments to invest in a Native American community development investment fund or bank.

*Sec.4. Buy Indian Act.*

- Amends the Buy Indian Act (25 U.S.C. 47), to require the Departments of the Interior and Health and Human Services to use Native American labor and purchase Native American industry products when applicable and unless impracticable and unreasonable, and to require reporting to ensure full implementation of this authority.

*Sec. 5. Native American Programs Act of 1974.*

- Reauthorizes and amends the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.) to permit the Administration for Native Americans to award competitive economic development grant assistance to certain Native American CDFIs and to prioritize grants to develop tribal codes, court systems or master plans relating to economic development.

**Cost**

The CBO has estimated that S. 1116 would cost \$139 million, subject to appropriation, over the 2018-2022 period.<sup>10</sup>

**Administration Position**

On January 17, 2018, the Department of the Interior testified on H.R. 4506, which contains substantially similar language to that of S. 1116. The Department stated support of the underlying goals, but the Administration had concerns about several provisions that are duplicative of existing law or extend beyond our existing authorities. In response to the January 2018 hearing, the Department submitted amendments to H.R. 4506 to the Natural Resources Committee on May 4, 2018.

**Ramseyer (effect on current law)**

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<sup>10</sup> <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s1116.pdf>