

112TH CONGRESS  
1ST SESSION

# S. 1293

To direct the Secretary of Commerce to establish a demonstration program to adapt the lessons of providing foreign aid to underdeveloped economies to the provision of Federal economic development assistance to certain similarly situated individuals, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 29, 2011

Ms. MURKOWSKI (for herself, Mr. BEGICH, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To direct the Secretary of Commerce to establish a demonstration program to adapt the lessons of providing foreign aid to underdeveloped economies to the provision of Federal economic development assistance to certain similarly situated individuals, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Native American Chal-  
5       lenge Demonstration Project Act of 2011”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) the efforts of the United States to foster job  
2           creation, community, economic, and business devel-  
3           opment in geographically remote Native American  
4           communities is often hampered by fragmentation of  
5           authority, responsibility, and performance under var-  
6           ious Federal economic development assistance pro-  
7           grams;

8           (2) the effectiveness of Federal and tribal ef-  
9           forts to generate jobs and employment opportunities  
10          in traditional Native American communities, home  
11          to indigenous people for thousands of years, depends  
12          on better, more flexible, and more cooperative ar-  
13          rangements among the various Federal agencies and  
14          Indian tribes; and

15          (3) the United States has committed to a policy  
16          of tribal self-governance that—

17                 (A) respects the value of self-determination  
18                 of Native people; and

19                 (B) is well-suited to delivery of aid in the  
20                 form of compacts that recognize self-governance  
21                 yet provide a basis for more effective delivery of  
22                 economic development aid.

23 **SEC. 3. PURPOSES.**

24          The purposes of this Act are—

1           (1) to increase opportunities for job creation  
2           and long-term economic development by establishing  
3           a demonstration project designed to adapt the les-  
4           sons of foreign aid to underdeveloped economies,  
5           such as the experience of the Millennium Challenge  
6           Corporation, to the provision of Federal economic  
7           development assistance to similarly situated remote  
8           Native American communities;

9           (2) to enable Indian tribes and tribal organiza-  
10          tions to use available Federal assistance more effec-  
11          tively and efficiently;

12          (3) to reduce joblessness in a manner consistent  
13          with the policy of self-determination, including fur-  
14          thering tribal self-governance; and

15          (4) to demonstrate the manner in which Fed-  
16          eral economic development assistance to certain re-  
17          mote Native American communities may be adminis-  
18          tered effectively in a manner that—

19                (A) promotes the creation of jobs, eco-  
20                nomic growth, and the elimination of poverty;

21                (B) strengthens good governance, entrepre-  
22                neurship, and investment in Native American  
23                communities; and

24                (C) promotes sustainable economic growth  
25                in a manner that promotes self-determination

1           and self-sufficiency among remote Native Amer-  
2           ican communities while preserving the cultural  
3           values of those communities.

4 **SEC. 4. DEFINITIONS.**

5       In this Act:

6           (1) **COMMITMENT TO DEVELOPMENT.**—The  
7           term “commitment to development” means a com-  
8           mitment to job creation, poverty reduction, and eco-  
9           nomic growth, as demonstrated through activities  
10          for—

11                   (A) entrepreneurship and job creation;

12                   (B) an increase in worker productivity and  
13           innovation; or

14                   (C) private sector development.

15          (2) **COMPACT.**—The term “compact” means a  
16          binding agreement with the United States, with a  
17          term not to exceed 5 years, entered into pursuant to  
18          this Act.

19          (3) **DEMONSTRATION PROJECT.**—The term  
20          “demonstration project” means the Native American  
21          Millennium Challenge Demonstration Project estab-  
22          lished under section 5(a).

23          (4) **ECONOMIC DEVELOPMENT STRATEGY.**—The  
24          term “economic development strategy” means a  
25          strategy—

1 (A) written by an eligible entity and de-  
2 signed to create jobs, achieve sustainable eco-  
3 nomic growth, and reduce poverty over a de-  
4 fined period; and

5 (B) developed in consultation with public  
6 and private sector entities, as appropriate to  
7 the geographical area and intended beneficiaries  
8 of the compact.

9 (5) ELIGIBLE ENTITY.—The term “eligible enti-  
10 ty” means—

11 (A) an Indian tribe;

12 (B) a tribal organization;

13 (C) a consortium of Indian tribes or tribal  
14 organizations; and

15 (D) after consultation with the Secretary  
16 of the Interior, a Native Hawaiian organization.

17 (6) INDIAN TRIBE.—The term “Indian tribe”  
18 has the meaning given the term in section 4 of the  
19 Indian Self-Determination and Education Assistance  
20 Act (25 U.S.C. 450b).

21 (7) SECRETARY.—The term “Secretary” means  
22 the Secretary of Commerce.

23 (8) TRIBAL ORGANIZATION.—The term “tribal  
24 organization” has the meaning given the term in

1 section 4 of the Indian Self-Determination and Edu-  
2 cation Assistance Act (25 U.S.C. 450b).

3 **SEC. 5. NATIVE AMERICAN MILLENNIUM CHALLENGE DEM-**  
4 **ONSTRATION PROJECT.**

5 (a) ESTABLISHMENT.—The Secretary shall establish  
6 and implement in the Department of Commerce a dem-  
7 onstration project, to be known as the “Native American  
8 Millennium Challenge Demonstration Project”.

9 (b) LEAD AGENCY.—

10 (1) IN GENERAL.—The lead agency for carrying  
11 out this Act and the demonstration project shall be  
12 the Department of Commerce.

13 (2) MEMORANDUM OF UNDERSTANDING.—The  
14 Secretary shall establish a Memorandum of Under-  
15 standing with participating Federal agencies that de-  
16 fines responsibilities under this Act.

17 (c) FORM OF ASSISTANCE UNDER A COMPACT.—As-  
18 sistance under the demonstration project—

19 (1) shall be provided in the form of multiyear  
20 funding agreements established under the applicable  
21 compact;

22 (2) may not be provided in the form of loans;

23 (3) may not be used for gaming activities cov-  
24 ered by the Indian Gaming Regulatory Act (25  
25 U.S.C. 2701 et seq.); and

1           (4) shall be provided in a manner that author-  
2 izes the eligible entity, the Secretary, and the heads  
3 of other Federal agencies—

4           (A) to reallocate, reprogram, or modify  
5 budget allocations and amounts for use by the  
6 eligible entity under the terms of the compact;  
7 and

8           (B) specify the procedures to be used.

9 (d) COORDINATION.—

10           (1) IN GENERAL.—To improve the effectiveness  
11 of Federal economic development assistance by en-  
12 couraging the coordination of that assistance in re-  
13 mote Native American communities and except as  
14 specifically prohibited by any other provision of law  
15 (including regulations), the provision of assistance  
16 under this section may be coordinated with Federal  
17 economic development assistance provided for Indian  
18 tribes and members of Indian tribes by—

19           (A) the Department of Agriculture;

20           (B) the Department of Commerce;

21           (C) the Department of Energy;

22           (D) the Department of Health and Human  
23 Services (other than the Indian Health Service);

24           (E) the Department of Housing and Urban  
25 Development (excluding any economic assist-

1           ance under title I of the Native American  
2           Housing Assistance and Self-Determination Act  
3           of 1996 (25 U.S.C. 4111 et seq.);

4                   (F) the Department of the Interior;

5                   (G) the Small Business Administration;

6           and

7                   (H) any other Federal agencies and instru-  
8           mentalities that the Secretary determines to be  
9           appropriate.

10           (2) INTEGRATED FUNDING.—On execution of a  
11           compact with an eligible entity, the Secretary, in co-  
12           operation with the heads of other Federal agencies  
13           and in accordance with paragraph (1), shall—

14                   (A) provide unified accounting, budgeting,  
15           and auditing standards for all Federal funding  
16           and programs covered by this Act; and

17                   (B) may authorize the eligible entity to co-  
18           ordinate the federally funded economic develop-  
19           ment assistance programs of the eligible entity  
20           in a manner that integrates the program serv-  
21           ices into a single, coordinated program.

22           (e) PROGRAMS AFFECTED.—The programs that may  
23           be integrated under the demonstration project include any  
24           program—

1           (1) under which an eligible entity is eligible for  
2 receipt of funds under a statutory or administrative  
3 formula for economic development purposes; and

4           (2) for which there is no specific statutory or  
5 regulatory prohibition preventing agency or depart-  
6 mental participation.

7 (f) WAIVER AUTHORITY.—

8           (1) IN GENERAL.—On receipt of an executed  
9 compact, the Secretary shall consult with the eligible  
10 entity that is a party to the compact and the Sec-  
11 retary of each Federal agency that provides funds to  
12 be used to implement the compact to identify any  
13 potentially necessary or advisable waiver of statutory  
14 requirements or applicable regulations, policies, or  
15 procedures necessary to enable the eligible entity to  
16 implement the compact.

17           (2) WAIVER.—Notwithstanding any other provi-  
18 sion of law, on the request of an eligible entity that  
19 has entered into a compact pursuant to this Act, the  
20 Secretary of each affected agency shall waive any  
21 applicable statutory, regulatory, or administrative  
22 requirement, regulation, policy, or procedure promul-  
23 gated by that agency that has been identified by  
24 participating agencies and eligible entities as impair-  
25 ing the purposes of this Act.

1 (g) MATCHING REQUIREMENTS.—For the purposes  
2 of matching requirements under Federal law, funds pro-  
3 vided under funding agreements entered into pursuant to  
4 this Act, and all funds provided under contracts or grants  
5 made pursuant to this Act, shall be treated as non-Federal  
6 funds.

7 (h) NO REDUCTION IN AMOUNTS.—In no case shall  
8 the amount of Federal funds available to an eligible entity  
9 involved in any demonstration project be reduced as a re-  
10 sult of the enactment of this Act.

11 (i) INTERAGENCY TRANSFER OF FUNDS AUTHOR-  
12 IZED.—The Secretary of a participating Federal agency  
13 may take such action as is necessary to provide for an  
14 interagency transfer of funds to further the purposes of  
15 this Act.

16 **SEC. 6. NATIVE AMERICAN CHALLENGE COMPACTS.**

17 (a) NATIVE AMERICAN CHALLENGE COMPACTS.—

18 (1) PROCEDURES.—

19 (A) IN GENERAL.—The Secretary shall de-  
20 velop a selection process for proposals for com-  
21 pacts submitted by eligible entities.

22 (B) SELECTION PROCESS.—On completion  
23 of a selection process, the Secretary shall enter  
24 into such compacts as are selected in accord-  
25 ance with the selection process.

1 (2) APPLICATION PROCESS.—

2 (A) IN GENERAL.—The Secretary shall de-  
3 velop an application process for eligible entities  
4 to enter into Native American Challenge Com-  
5 pacts under this Act.

6 (B) APPLICATION PROCESS.—

7 (i) IN GENERAL.—An eligible entity  
8 shall inform the Secretary of the intent of  
9 the eligible entity to enter into a Native  
10 American Challenge compact by resolution  
11 or other official action by the governing  
12 body of the eligible entity.

13 (ii) PLANNING PHASE.—Each eligible  
14 entity that seeks to enter into a compact  
15 shall complete a planning phase that in-  
16 cludes—

17 (I) legal and budgetary research;

18 (II) organizational preparation;

19 and

20 (III) the development of an eco-  
21 nomic development strategy.

22 (C) CRITERIA FOR THE SELECTION OF EL-  
23 IGIBLE ENTITIES.—In establishing criteria for  
24 the selection of eligible entities under this sec-

1           tion, the Secretary shall consider whether an el-  
2           igible entity—

3                   (i) has successfully completed the  
4                   planning phase described in subparagraph  
5                   (B)(ii);

6                   (ii) has demonstrated financial sta-  
7                   bility and financial management capacity  
8                   as evidenced by the eligible entity having  
9                   no material audit exceptions for the 3 fis-  
10                  cal years preceding the fiscal year for  
11                  which the requested participation is being  
12                  made; and

13                  (iii) has a plan to demonstrate ac-  
14                  countability for the use of funds provided  
15                  under this Act.

16           (D) PRIORITY AND CONSIDERATIONS.—

17                   (i) PRIORITY.—In selecting eligible  
18                   entities under this section, the Secretary  
19                   shall give priority to rural and remote eli-  
20                   gible entities for which the average unem-  
21                   ployment rate or rate of poverty for Native  
22                   Americans residing in census districts in  
23                   which the eligible entity is located is at or  
24                   near the highest average unemployment

1 rate or rate of poverty in the applicable  
2 State.

3 (ii) CONSIDERATIONS.—In selecting  
4 eligible entities under this section, the Sec-  
5 retary shall take into consideration—

6 (I) the purposes of this Act, giv-  
7 ing priority to job creation, entrepre-  
8 neurship, and long-term sustainable  
9 economic growth in the communities  
10 of the eligible entity;

11 (II) the remote and rural nature,  
12 general economic status, and poverty  
13 rate of the communities to be served;  
14 and

15 (III) the commitment of the eligi-  
16 ble entity to improve short-term eco-  
17 nomic conditions and create long-term  
18 sustainable development of the com-  
19 munities to be served.

20 (b) ASSISTANCE FOR DEVELOPMENT OF COM-  
21 PACTS.—The Secretary may make grants to any eligible  
22 entity to facilitate the development and planning of a com-  
23 pact between the United States and the eligible entity.

24 (c) ELEMENTS OF A COMPACT.—

1           (1) IN GENERAL.—A compact shall be nego-  
2           tiated between the eligible entity and the Secretary.

3           (2) REQUIREMENTS.—A compact shall contain  
4           elements necessary to achieve the economic develop-  
5           ment strategy, including—

6                   (A) a description of the specific objectives  
7                   for the reduction of poverty through the cre-  
8                   ation of jobs and economic development that is  
9                   expected to be achieved throughout the duration  
10                  of the compact, including a description of the  
11                  respective roles and responsibilities of the eligi-  
12                  ble entity and the United States in the achieve-  
13                  ment of those objectives;

14                  (B) an identification of the programs to be  
15                  included in the compact and a description of—

16                          (i) the manner in which the programs  
17                          are to be integrated and delivered; and

18                          (ii) the results expected from the plan;

19                  (C) an identification of any private finan-  
20                  cial support or partnerships with industry or  
21                  the private market to achieve development;

22                  (D) a list and description of—

23                          (i) regular benchmarks to measure  
24                          progress toward achieving the specific ob-  
25                          jectives; and

1 (ii) a methodology for analysis of the  
2 results;

3 (E) an identification of intended bene-  
4 ficiaries, disaggregated by income level, gender,  
5 and age, to the maximum extent practicable;

6 (F) an identification of any statutory pro-  
7 visions, regulations, policies, or procedures that  
8 need to be waived to implement the plan;

9 (G) a multiyear financial plan to guide the  
10 implementation of the compact;

11 (H) a description of proposed mechanisms  
12 to execute the plan;

13 (I) a requirement that the compact be ap-  
14 proved by the governing body of the affected el-  
15 igible entity;

16 (J) a plan to ensure appropriate fiscal ac-  
17 countability for the funds included in the com-  
18 pact; and

19 (K) a requirement for annual reports as  
20 described in section 7(b).

21 (d) RENEGOTIATION.—At any time during the dura-  
22 tion of a compact, Federal programs may be added or re-  
23 moved from the compact in furtherance of the economic  
24 development strategy.

25 (e) EXTENSIONS.—

1           (1) IN GENERAL.—If a compact is approaching  
2           expiration or has expired, the eligible entity that is  
3           a party to the compact and the United States may  
4           extend the compact for a period of not to exceed 10  
5           years.

6           (2) SUBSEQUENT COMPACTS.—An eligible enti-  
7           ty and the United States may renegotiate 1 or more  
8           subsequent compacts in accordance with this Act.

9           (f) SUSPENSION AND TERMINATION OF ASSIST-  
10          ANCE.—

11           (1) IN GENERAL.—The Secretary may suspend  
12           or terminate assistance, in whole or in part, for an  
13           eligible entity that has entered into a compact with  
14           the United States if the Secretary determines that—

15                   (A) the eligible entity has failed to meet  
16                   the responsibilities of the eligible entity under  
17                   the compact; or

18                   (B) the eligible entity has engaged in a  
19                   pattern of actions that is inconsistent with the  
20                   purposes of this Act.

21           (2) REINSTATEMENT.—The Secretary may re-  
22           instate assistance for an eligible entity only if the  
23           Secretary determines that the eligible entity has  
24           demonstrated a commitment to correcting each con-

1           dition for which assistance was suspended or termi-  
2           nated under paragraph (1).

3 **SEC. 7. PROGRAM ASSESSMENTS AND REPORTS.**

4           (a) **REPORTS OF ELIGIBLE ENTITIES.**—Each eligible  
5 entity shall prepare and submit to the Secretary an annual  
6 written report describing the assistance received by the eli-  
7 gible entity under this Act during the preceding fiscal year  
8 and an analysis of the results of the demonstration project  
9 as of the date of the report.

10          (b) **REPORT CONTENTS.**—A report required under  
11 subsection (a) shall include—

12               (1) a description of the amount of obligations  
13               and expenditures for assistance provided during the  
14               preceding fiscal year;

15               (2) a description of the programs and activities  
16               conducted by the eligible entity in furtherance of the  
17               economic development strategy of the eligible entity  
18               and the purposes of this Act;

19               (3) an assessment of the effectiveness of the as-  
20               sistance provided and progress made by the eligible  
21               entity toward achieving the economic development  
22               strategy of the eligible entity and the purposes of  
23               this Act;

24               (4) an assessment of whether the requirements  
25               described in section 6(c) are being met;

1           (5) an analysis of the potential for the dem-  
2           onstration project to provide lessons for other pro-  
3           grams consistent with the purposes of this Act; and

4           (6) such other information as the eligible entity  
5           considers to be relevant, taking into consideration  
6           the purposes of this Act.

7           (c) SUBMISSION TO CONGRESS.—The Secretary shall  
8           submit the reports required under subsection (a), with  
9           such other information as the Secretary considers to be  
10          relevant, on an annual basis to—

11           (1) the Committees on Energy and Commerce  
12           and Natural Resources of the House of Representa-  
13           tives; and

14           (2) the Committees on Indian Affairs, Com-  
15           merce, Science, and Transportation, and Energy and  
16           Natural Resources of the Senate.

17 **SEC. 8. RELATIONSHIP TO FEDERAL TRUST RESPONSIB-**  
18 **BILITY.**

19           Nothing in this Act diminishes the Federal trust re-  
20           sponsibility to Indian tribes, individual Indians, or relating  
21           to trust allotments.

22 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

23           (a) AUTHORIZATION OF APPROPRIATIONS.—There  
24           are authorized to be appropriated such sums as necessary  
25           to carry out this Act.

1           (b) ADMINISTRATIVE AND PROGRAM OVERSIGHT EX-  
2 PENSES.—Of the funds made available to carry out this  
3 Act, not more than 5 percent may be used by the Sec-  
4 retary for—

5           (1) the administrative expenses of carrying out  
6 this Act; and

7           (2) oversight of programs under this Act.

○