

112TH CONGRESS
2D SESSION

H. R. 3973

To facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2012

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, 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 En-
5 ergy Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of Contents.
- Sec. 3. Appraisals.
- Sec. 4. Standardization.

- Sec. 5. Environmental reviews of major Federal actions on Indian lands.
 Sec. 6. Indian Energy Development Offices.
 Sec. 7. BLM Oil and Gas Fees.
 Sec. 8. Bonding requirements and nonpayment of attorneys' fees to promote Indian energy projects.
 Sec. 9. Tribal biomass demonstration project.
 Sec. 10. Tribal Resource Management Plans.
 Sec. 11. Leases of Restricted Lands for the Navajo Nation.

1 **SEC. 3. APPRAISALS.**

2 (a) AMENDMENT.—Title XXVI of the Energy Policy
 3 Act of 1992 (25 U.S.C. 3501 et seq.) is amended by add-
 4 ing at the end the following:

5 **“SEC. 2608. APPRAISAL REFORMS.**

6 “(a) OPTIONS TO INDIAN TRIBES.—With respect to
 7 a transaction involving Indian land or the trust assets of
 8 an Indian tribe that requires the approval of the Sec-
 9 retary, any appraisal relating to fair market value required
 10 to be conducted under applicable law, regulation, or policy
 11 may be completed by—

12 “(1) the Secretary;

13 “(2) the affected Indian tribe; or

14 “(3) a certified, third-party appraiser pursuant
 15 to a contract with the Indian tribe.

16 “(b) TIME LIMIT ON SECRETARIAL REVIEW AND AC-
 17 TION.—Not later than 30 days after the date on which
 18 the Secretary receives an appraisal conducted by or for
 19 an Indian tribe pursuant to paragraphs (2) or (3) of sub-
 20 section (a), the Secretary shall—

21 “(1) review the appraisal; and

1 “(2) provide to the Indian tribe a written notice
2 of approval or disapproval of the appraisal.

3 “(c) FAILURE OF SECRETARY TO APPROVE OR DIS-
4 APPROVE.—If, after 60 days, the Secretary has failed to
5 approve or disapprove any appraisal received, the ap-
6 praisal shall be deemed approved.

7 “(d) OPTION TO INDIAN TRIBES TO WAIVE AP-
8 PRAISAL.—

9 “(1) An Indian tribe wishing to waive the re-
10 quirements of subsection (a), may do so after it has
11 satisfied the requirements of subsections (2) and (3)
12 below.

13 “(2) An Indian tribe wishing to forego the ne-
14 cessity of a waiver pursuant to this section must
15 provide to the Secretary a written resolution, state-
16 ment, or other unambiguous indication of tribal in-
17 tent, duly approved by the governing body of the In-
18 dian tribe.

19 “(3) The unambiguous indication of intent pro-
20 vided by the Indian tribe to the Secretary under
21 paragraph (2) must include an express waiver by the
22 Indian tribe of any claims for damages it might have
23 against the United States as a result of the lack of
24 an appraisal undertaken.

1 “(e) DEFINITION.—For purposes of this subsection,
2 the term ‘appraisal’ includes appraisals and other esti-
3 mates of value.

4 “(f) REGULATIONS.—The Secretary shall develop
5 regulations for implementing this section, including stand-
6 ards the Secretary shall use for approving or disapproving
7 an appraisal.”.

8 (b) CONFORMING AMENDMENT.—The table of con-
9 tents of the Energy Policy Act of 1992 (42 U.S.C. 13201
10 note) is amended by adding at the end of the items relat-
11 ing to title XXVI the following:

“Sec. 2608. Appraisal Reforms.”.

12 **SEC. 4. STANDARDIZATION.**

13 As soon as practicable after the date of the enactment
14 of this Act, the Secretary of the Interior shall implement
15 procedures to ensure that each agency within the Depart-
16 ment of the Interior that is involved in the review, ap-
17 proval, and oversight of oil and gas activities on Indian
18 lands shall use a uniform system of reference numbers and
19 tracking systems for oil and gas wells.

20 **SEC. 5. ENVIRONMENTAL REVIEWS OF MAJOR FEDERAL**
21 **ACTIONS ON INDIAN LANDS.**

22 Section 102 of the National Environmental Policy
23 Act of 1969 (42 U.S.C. 4332) is amended by inserting
24 “(a) IN GENERAL.—” before the first sentence, and by
25 adding at the end the following:

1 “(b) REVIEW OF MAJOR FEDERAL ACTIONS ON IN-
2 DIAN LANDS.—

3 “(1) IN GENERAL.—For any major Federal ac-
4 tion on Indian lands of an Indian tribe requiring the
5 preparation of a statement under subsection
6 (a)(2)(C), the statement shall only be available for
7 review and comment by the members of the Indian
8 tribe and by any other individual residing within the
9 affected area.

10 “(2) REGULATIONS.—The Chairman of the
11 Council on Environmental Quality shall develop reg-
12 ulations to implement this section, including descrip-
13 tions of affected areas for specific major Federal ac-
14 tions, in consultation with Indian tribes.

15 “(3) DEFINITIONS.—In this subsection, each of
16 the terms ‘Indian land’ and ‘Indian tribe’ has the
17 meaning given that term in section 2601 of the En-
18 ergy Policy Act of 1992 (25 U.S.C. 3501).

19 “(4) CLARIFICATION OF AUTHORITY.—Nothing
20 in the Native American Energy Act, except section
21 8 of that Act, shall give the Secretary any additional
22 authority over energy projects on Alaska Native
23 Claims Settlement Act lands.”.

1 **SEC. 6. INDIAN ENERGY DEVELOPMENT OFFICES.**

2 Section 2602(a) of the Energy Policy Act of 1992
3 (25 U.S.C. 3502(a)) is amended—

4 (1) by redesignating paragraph (3) as para-
5 graph (4);

6 (2) by inserting after paragraph (2) the fol-
7 lowing:

8 “(3) INDIAN ENERGY DEVELOPMENT OF-
9 FICES.—

10 “(A) ESTABLISHMENT.—To assist the Sec-
11 retary in carrying out the Program, the Sec-
12 retary shall establish within the Department of
13 the Interior not less than 5 offices.

14 “(B) NAMING.—Each office established
15 under subparagraph (A) shall be known as an
16 ‘Indian Energy Development Office’.

17 “(C) LOCATION.—The Secretary shall lo-
18 cate each Indian Energy Development Office—

19 “(i) within a regional or agency office
20 of the Bureau of Indian Affairs; and

21 “(ii) to the maximum extent prac-
22 ticable, in an area in which there exists a
23 high quantity of tribal energy development
24 opportunities, as determined by the Sec-
25 retary in consultation with Indian tribes.

1 “(D) DIRECTORS.—Each Indian Energy
2 Development Office established under this para-
3 graph shall be headed by a director.

4 “(E) DUTIES.—The director of each In-
5 dian Energy Development Office shall—

6 “(i) provide energy-related informa-
7 tion and resources to Indian tribes and
8 tribal members;

9 “(ii) coordinate meetings and out-
10 reach among Indian tribes, tribal members,
11 energy companies, and relevant Federal,
12 State, and tribal agencies;

13 “(iii) oversee, and ensure the timely
14 processing of, Indian energy applications,
15 permits, licenses, and other documents
16 that are subject to development, review, or
17 processing by—

18 “(I) the Bureau of Indian Af-
19 fairs;

20 “(II) the Bureau of Land Man-
21 agement;

22 “(III) the National Park Service;

23 “(IV) the United States Fish and
24 Wildlife Service;

25 “(V) the Bureau of Reclamation;

1 “(VI) the Minerals Management
2 Service; or

3 “(VII) the Office of Special
4 Trustee for American Indians of the
5 Department of the Interior; and

6 “(iv) consult with Indian tribes that
7 will be served by an Indian Energy Devel-
8 opment Office to determine what services,
9 information, facilities, or programs would
10 best expedite the responsible development
11 of energy resources.

12 “(F) STAFF.—Each Indian Energy Devel-
13 opment Office established under this paragraph
14 shall be adequately staffed to meet the demand
15 for energy permitting in the region or agency
16 where the office is established.”.

17 **SEC. 7. BLM OIL AND GAS FEES.**

18 The Secretary of the Interior, acting through the Bu-
19 reau of Land Management, shall not collect any fee for
20 any of the following:

21 (1) For an application for a permit to drill on
22 Indian land.

23 (2) To conduct any oil or gas inspection activity
24 on Indian land.

1 (3) On any oil or gas lease for nonproducing
2 acreage on Indian land.

3 **SEC. 8. BONDING REQUIREMENTS AND NONPAYMENT OF**
4 **ATTORNEYS' FEES TO PROMOTE INDIAN EN-**
5 **ERGY PROJECTS.**

6 (a) IN GENERAL.—A plaintiff who obtains a prelimi-
7 nary injunction or administrative stay in an energy related
8 action, but does not ultimately prevail on the merits of
9 the energy related action, shall be liable for damages sus-
10 tained by a defendant who—

11 (1) opposed the preliminary injunction or ad-
12 ministrative stay; and

13 (2) was harmed by the preliminary injunction
14 or administrative stay.

15 (b) BOND.—Unless otherwise specifically exempted
16 by Federal law, a court may not issue a preliminary in-
17 junction and an agency may not grant an administrative
18 stay in an energy related action until the plaintiff posts
19 with the court or the agency a surety bond or cash equiva-
20 lent—

21 (1) in an amount the court or agency decides
22 is 30 percent of that amount that the court or agen-
23 cy considers is sufficient to compensate each defend-
24 ant opposing the preliminary injunction or adminis-
25 trative stay for damages, including but not limited

1 to preliminary development costs, additional develop-
2 ment costs, and reasonable attorney fees, that each
3 defendant may sustain as a result of the preliminary
4 injunction or administrative stay;

5 (2) written by a surety licensed to do business
6 in the state in which the Indian Land or other land
7 where the activities are undertaken is situated; and

8 (3) payable to each defendant opposing the pre-
9 liminary injunction or administrative stay, in the
10 event that the plaintiff does not prevail on the mer-
11 its of the energy related action, Provided, that, if
12 there is more than one plaintiff, the court or agency
13 shall establish the amount of the bond required by
14 this Subsection for each plaintiff in a fair and equi-
15 table manner.

16 (c) LIMITATION ON CERTAIN PAYMENTS.—Notwith-
17 standing section 1304 of title 31, United States Code, no
18 award may be made under section 504 of title 5, United
19 States Code, or under section 2412 of title 28, United
20 States Code, and no amounts may be obligated or ex-
21 pended from the Claims and Judgment Fund of the
22 United States Treasury to pay any fees or other expenses
23 under such sections to any plaintiff related to an energy
24 related action.

1 (d) DEFINITIONS.—For the purposes of this section,
2 the following definitions apply:

3 (1) ADMINISTRATIVE STAY.—The term “Ad-
4 ministrative Stay” means a stay or other temporary
5 remedy issued by a Federal agency, including the
6 Department of the Interior, the Department of Agri-
7 culture, the Department of Energy, the Department
8 of Commerce, and the Environmental Protection
9 Agency.

10 (2) INDIAN LAND.—The term “Indian Land”
11 has the same meaning given such term in section
12 203(c)(3) of the Energy Policy Act of 2005 (Public
13 Law 109–58; 25 U.S.C. 3501), including lands
14 owned by Native Corporations under the Alaska Na-
15 tive Claims Settlement Act (Public Law 92–203; 43
16 U.S.C. 1601).

17 (3) ENERGY RELATED ACTION.—The term “en-
18 ergy related action” means a cause of action that—

19 (A) is filed on or after the effective date of
20 this Act; and

21 (B) seeks judicial review of a final agency
22 action (as defined in section 702 of title 5,
23 United States Code), to issue a permit, license,
24 or other form of agency permission allowing:

1 (i) any person or entity to conduct ac-
2 tivities on Indian Land, which activities in-
3 volve the exploration, development, produc-
4 tion or transportation of oil, gas, coal,
5 shale gas, oil shale, geothermal resources,
6 wind or solar resources, underground coal
7 gasification, biomass, or the generation of
8 electricity, or

9 (ii) any Indian Tribe, or any organiza-
10 tion of two or more entities, at least one
11 of which is an Indian tribe, to conduct ac-
12 tivities involving the exploration, develop-
13 ment, production or transportation of oil,
14 gas, coal, shale gas, oil shale, geothermal
15 resources, wind or solar resources, under-
16 ground coal gasification, biomass, or the
17 generation of electricity, regardless of
18 where such activities are undertaken.

19 (C) ULTIMATELY PREVAIL ON THE MER-
20 ITS.—The phrase “Ultimately prevail on the
21 merits” means, in a final enforceable judgment
22 on the merits, the court rules in the plaintiff’s
23 favor on at least one cause of action which is
24 an underlying rationale for the preliminary in-
25 junction, and does not include circumstances

1 where the final agency action is modified or
2 amended by the issuing agency unless such
3 modification or amendment is required pursu-
4 ant to a final enforceable judgment of the court
5 or a court-ordered consent decree.

6 **SEC. 9. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

7 The Tribal Forest Protection Act of 2004 (25 U.S.C.
8 3115a) is amended by inserting after section 2 the fol-
9 lowing:

10 **“SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

11 “(a) IN GENERAL.—For each of fiscal years 2013
12 through 2017, the Secretary shall enter into stewardship
13 contracts or other agreements, other than agreements that
14 are exclusively direct service contracts, with Indian tribes
15 to carry out demonstration projects to promote biomass
16 energy production (including biofuel, heat, and electricity
17 generation) on Indian forest land and in nearby commu-
18 nities by providing reliable supplies of woody biomass from
19 Federal land.

20 “(b) DEFINITIONS.—The definitions in section 2
21 shall apply to this section.

22 “(c) DEMONSTRATION PROJECTS.—In each fiscal
23 year for which projects are authorized, the Secretary shall
24 enter into contracts or other agreements described in sub-
25 section (a) to carry out at least 4 new demonstration

1 projects that meet the eligibility criteria described in sub-
2 section (d).

3 “(d) ELIGIBILITY CRITERIA.—To be eligible to enter
4 into a contract or other agreement under this subsection,
5 an Indian tribe shall submit to the Secretary an applica-
6 tion—

7 “(1) containing such information as the Sec-
8 retary may require; and

9 “(2) that includes a description of—

10 “(A) the Indian forest land or rangeland
11 under the jurisdiction of the Indian tribe; and

12 “(B) the demonstration project proposed
13 to be carried out by the Indian tribe.

14 “(e) SELECTION.—In evaluating the applications
15 submitted under subsection (c), the Secretary—

16 “(1) shall take into consideration the factors set
17 forth in paragraphs (1) and (2) of section 2(e) of
18 Public Law 108–278; and whether a proposed dem-
19 onstration project would—

20 “(A) increase the availability or reliability
21 of local or regional energy;

22 “(B) enhance the economic development of
23 the Indian tribe;

1 “(C) improve the connection of electric
2 power transmission facilities serving the Indian
3 tribe with other electric transmission facilities;

4 “(D) improve the forest health or water-
5 sheds of Federal land or Indian forest land or
6 rangeland; or

7 “(E) otherwise promote the use of woody
8 biomass; and

9 “(2) shall exclude from consideration any mer-
10 chantable logs that have been identified by the Sec-
11 retary for commercial sale.

12 “(f) IMPLEMENTATION.—The Secretary shall—

13 “(1) ensure that the criteria described in sub-
14 section (c) are publicly available by not later than
15 120 days after the date of enactment of this section;
16 and

17 “(2) to the maximum extent practicable, consult
18 with Indian tribes and appropriate intertribal orga-
19 nizations likely to be affected in developing the ap-
20 plication and otherwise carrying out this section.

21 “(g) REPORT.—Not later than September 20, 2015,
22 the Secretary shall submit to Congress a report that de-
23 scribes, with respect to the reporting period—

24 “(1) each individual tribal application received
25 under this section; and

1 “(2) each contract and agreement entered into
2 pursuant to this section.

3 “(h) INCORPORATION OF MANAGEMENT PLANS.—In
4 carrying out a contract or agreement under this section,
5 on receipt of a request from an Indian tribe, the Secretary
6 shall incorporate into the contract or agreement, to the
7 extent practicable, management plans (including forest
8 management and integrated resource management plans)
9 in effect on the Indian forest land or rangeland of the re-
10 spective Indian tribe.

11 “(i) TERM.—A stewardship contract or other agree-
12 ment entered into under this section—

13 “(1) shall be for a term of not more than 20
14 years; and

15 “(2) may be renewed in accordance with this
16 section for not more than an additional 10 years.”.

17 **SEC. 10. TRIBAL RESOURCE MANAGEMENT PLANS.**

18 Unless otherwise explicitly exempted by Federal law
19 enacted after the date of the enactment of this Act, any
20 activity conducted or resources harvested or produced pur-
21 suant to a tribal resource management plan or an inte-
22 grated resource management plan approved by the Sec-
23 retary of the Interior under the National Indian Forest
24 Resources Management Act (25 U.S.C. 3101 et seq.) or
25 the American Indian Agricultural Resource Management

1 Act (25 U.S.C. 3701 et seq.), shall be considered a sus-
2 tainable management practice for purposes of any Federal
3 standard, benefit, or requirement that requires a dem-
4 onstration of such sustainability.

5 **SEC. 11. LEASES OF RESTRICTED LANDS FOR THE NAVAJO**
6 **NATION.**

7 Subsection (e)(1) of the first section of the Act of
8 August 9, 1955, (25 U.S.C. 415(e)(1); commonly referred
9 to as the “Long-Term Leasing Act”) is amended—

10 (1) by striking “, except a lease for” and insert-
11 ing “, including leases for”;

12 (2) in subparagraph (A), by striking “25” and
13 all that follows and inserting “99 years;”;

14 (3) in subparagraph (B), by striking the period
15 and inserting “; and”; and

16 (4) by adding at the end the following:

17 “(C) in the case of a lease for the explo-
18 ration, development, or extraction of mineral re-
19 sources, including geothermal resources, 25
20 years, except that any such lease may include
21 an option to renew for one additional term not
22 to exceed 25 years.”.

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