

114TH CONGRESS
1ST SESSION

H. R. 538

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

JANUARY 26, 2015

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. APPRAISALS.**

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

1 **“SEC. 2607. APPRAISAL REFORMS.**

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

8 “(1) the Secretary;

9 “(2) the affected Indian tribe; or

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

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

17 “(1) review the appraisal; and

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

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

24 “(d) OPTION TO INDIAN TRIBES TO WAIVE AP-
25 PRAISAL.—

1 “(1) An Indian tribe wishing to waive the re-
2 quirements of subsection (a), may do so after it has
3 satisfied the requirements of paragraphs (2) and
4 (3).

5 “(2) An Indian tribe wishing to forego the ne-
6 cessity of a waiver pursuant to this section must
7 provide to the Secretary a written resolution, state-
8 ment, or other unambiguous indication of tribal in-
9 tent, duly approved by the governing body of the In-
10 dian tribe.

11 “(3) The unambiguous indication of intent pro-
12 vided by the Indian tribe to the Secretary under
13 paragraph (2) must include an express waiver by the
14 Indian tribe of any claims for damages it might have
15 against the United States as a result of the lack of
16 an appraisal undertaken.

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

20 “(f) REGULATIONS.—The Secretary shall develop
21 regulations for implementing this section, including stand-
22 ards the Secretary shall use for approving or disapproving
23 an appraisal.”.

24 (b) CONFORMING AMENDMENT.—The table of con-
25 tents of the Energy Policy Act of 1992 (42 U.S.C. 13201

1 note) is amended by adding at the end of the items relat-
 2 ing to title XXVI the following:

“Sec. 2607. Appraisal reforms.”.

3 **SEC. 3. STANDARDIZATION.**

4 As soon as practicable after the date of the enactment
 5 of this Act, the Secretary of the Interior shall implement
 6 procedures to ensure that each agency within the Depart-
 7 ment of the Interior that is involved in the review, ap-
 8 proval, and oversight of oil and gas activities on Indian
 9 lands shall use a uniform system of reference numbers and
 10 tracking systems for oil and gas wells.

11 **SEC. 4. ENVIRONMENTAL REVIEWS OF MAJOR FEDERAL**
 12 **ACTIONS ON INDIAN LANDS.**

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

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

19 “(1) IN GENERAL.—For any major Federal ac-
 20 tion on Indian lands of an Indian tribe requiring the
 21 preparation of a statement under subsection
 22 (a)(2)(C), the statement shall only be available for
 23 review and comment by the members of the Indian
 24 tribe and by any other individual residing within the
 25 affected area.

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

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

10 “(4) CLARIFICATION OF AUTHORITY.—Nothing
11 in the Native American Energy Act, except section
12 6 of that Act, shall give the Secretary any additional
13 authority over energy projects on Alaska Native
14 Claims Settlement Act lands.”.

15 **SEC. 5. JUDICIAL REVIEW.**

16 (a) TIME FOR FILING COMPLAINT.—Any energy re-
17 lated action must be filed not later than the end of the
18 60-day period beginning on the date of the final agency
19 action. Any energy related action not filed within this time
20 period shall be barred.

21 (b) DISTRICT COURT VENUE AND DEADLINE.—All
22 energy related actions—

23 (1) shall be brought in the United States Dis-
24 trict Court for the District of Columbia; and

1 (2) shall be resolved as expeditiously as pos-
2 sible, and in any event not more than 180 days after
3 such cause of action is filed.

4 (c) APPELLATE REVIEW.—An interlocutory order or
5 final judgment, decree or order of the district court in an
6 energy related action may be reviewed by the U.S. Court
7 of Appeals for the District of Columbia Circuit. The D.C.
8 Circuit Court of Appeals shall resolve such appeal as expe-
9 ditiously as possible, and in any event not more than 180
10 days after such interlocutory order or final judgment, de-
11 cree or order of the district court was issued.

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

21 (e) LEGAL FEES.—In any energy related action in
22 which the plaintiff does not ultimately prevail, the court
23 shall award to the defendant (including any intervenor-
24 defendants), other than the United States, fees and other
25 expenses incurred by that party in connection with the en-

1 ergy related action, unless the court finds that the position
 2 of the plaintiff was substantially justified or that special
 3 circumstances make an award unjust. Whether or not the
 4 position of the plaintiff was substantially justified shall be
 5 determined on the basis of the administrative record, as
 6 a whole, which is made in the energy related action for
 7 which fees and other expenses are sought.

8 (f) DEFINITIONS.—For the purposes of this section,
 9 the following definitions apply:

10 (1) AGENCY ACTION.—The term “agency ac-
 11 tion” has the same meaning given such term in sec-
 12 tion 551 of title 5, United States Code.

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

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

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

1 (B) seeks judicial review of a final agency
2 action to issue a permit, license, or other form
3 of agency permission allowing:

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

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

22 (4) ULTIMATELY PREVAIL.—The phrase “ulti-
23 mately prevail” means, in a final enforceable judg-
24 ment, the court rules in the party’s favor on at least
25 one cause of action which is an underlying rationale

1 for the preliminary injunction, administrative stay,
2 or other relief requested by the party, and does not
3 include circumstances where the final agency action
4 is modified or amended by the issuing agency unless
5 such modification or amendment is required pursu-
6 ant to a final enforceable judgment of the court or
7 a court-ordered consent decree.

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

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

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

13 “(a) IN GENERAL.—For each of fiscal years 2016
14 through 2020, the Secretary shall enter into stewardship
15 contracts or other agreements, other than agreements that
16 are exclusively direct service contracts, with Indian tribes
17 to carry out demonstration projects to promote biomass
18 energy production (including biofuel, heat, and electricity
19 generation) on Indian forest land and in nearby commu-
20 nities by providing reliable supplies of woody biomass from
21 Federal land.

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

24 “(c) DEMONSTRATION PROJECTS.—In each fiscal
25 year for which projects are authorized, the Secretary shall

1 enter into contracts or other agreements described in sub-
2 section (a) to carry out at least 4 new demonstration
3 projects that meet the eligibility criteria described in sub-
4 section (d).

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

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

11 “(2) that includes a description of—

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

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

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

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

22 “(A) increase the availability or reliability
23 of local or regional energy;

24 “(B) enhance the economic development of
25 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 one year subsequent
22 to the date of enactment of this section, the Secretary
23 shall submit to Congress a report that describes, with re-
24 spect to the reporting period—

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

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

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

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

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

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

19 **SEC. 7. TRIBAL RESOURCE MANAGEMENT PLANS.**

20 Unless otherwise explicitly exempted by Federal law
21 enacted after the date of the enactment of this Act, any
22 activity conducted or resources harvested or produced pur-
23 suant to a tribal resource management plan or an inte-
24 grated resource management plan approved by the Sec-
25 retary of the Interior under the National Indian Forest

1 Resources Management Act (25 U.S.C. 3101 et seq.) or
 2 the American Indian Agricultural Resource Management
 3 Act (25 U.S.C. 3701 et seq.), shall be considered a sus-
 4 tainable management practice for purposes of any Federal
 5 standard, benefit, or requirement that requires a dem-
 6 onstration of such sustainability.

7 **SEC. 8. LEASES OF RESTRICTED LANDS FOR THE NAVAJO**
 8 **NATION.**

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

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

14 (2) in subparagraph (A), by striking “25” the
 15 first place it appears and all that follows and insert-
 16 ing “99 years;”;

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

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

20 “(C) in the case of a lease for the exploration,
 21 development, or extraction of mineral resources, in-
 22 cluding geothermal resources, 25 years, except that
 23 any such lease may include an option to renew for
 24 one additional term not to exceed 25 years.”.

1 **SEC. 9. NONAPPLICABILITY OF CERTAIN RULES.**

2 No rule promulgated by the Department of the Inte-
3 rior regarding hydraulic fracturing used in the develop-
4 ment or production of oil or gas resources shall have any
5 effect on any land held in trust or restricted status for
6 the benefit of Indians except with the express consent of
7 the beneficiary on whose behalf such land is held in trust
8 or restricted status.

○