

114TH CONGRESS
1ST SESSION

H. R. 538

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2015

Received; read twice and referred to the Committee on Indian Affairs

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Native American En-
3 ergy Act”.

4 **SEC. 2. APPRAISALS.**

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

8 **“SEC. 2607. APPRAISAL REFORMS.**

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

15 “(1) the Secretary;

16 “(2) the affected Indian tribe; or

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

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

24 “(1) review the appraisal; and

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

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

5 “(d) OPTION TO INDIAN TRIBES TO WAIVE AP-
6 PRAISAL.—

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

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

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

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

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

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

“Sec. 2607. Appraisal reforms.”.

9 **SEC. 3. STANDARDIZATION.**

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

17 **SEC. 4. ENVIRONMENTAL REVIEWS OF MAJOR FEDERAL**
18 **ACTIONS ON INDIAN LANDS.**

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

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

25 “(1) REVIEW AND COMMENT.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the statement required
3 under subsection (a)(2)(C) for a major Federal
4 action regarding an activity on Indian lands of
5 an Indian tribe shall only be available for re-
6 view and comment by the members of the In-
7 dian tribe, other individuals residing within the
8 affected area, and State, federally recognized
9 tribal, and local governments within the af-
10 fected area.

11 “(B) EXCEPTION.—Subparagraph (A)
12 shall not apply to a statement for a major Fed-
13 eral action regarding an activity on Indian
14 lands of an Indian tribe related to gaming
15 under the Indian Gaming Regulatory Act.

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

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

1 “(4) CLARIFICATION OF AUTHORITY.—Nothing
2 in the Native American Energy Act, except section
3 6 of that Act, shall give the Secretary any additional
4 authority over energy projects on Alaska Native
5 Claims Settlement Act lands.”.

6 **SEC. 5. JUDICIAL REVIEW.**

7 (a) TIME FOR FILING COMPLAINT.—Any energy re-
8 lated action must be filed not later than the end of the
9 60-day period beginning on the date of the final agency
10 action. Any energy related action not filed within this time
11 period shall be barred.

12 (b) DISTRICT COURT VENUE AND DEADLINE.—All
13 energy related actions—

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

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

19 (c) APPELLATE REVIEW.—An interlocutory order or
20 final judgment, decree or order of the district court in an
21 energy related action may be reviewed by the United
22 States Court of Appeals for the District of Columbia Cir-
23 cuit. The District of Columbia Circuit Court of Appeals
24 shall resolve such appeal as expeditiously as possible, and
25 in any event not more than 180 days after such interlocu-

1 tory order or final judgment, decree or order of the district
2 court was issued.

3 (d) LIMITATION ON CERTAIN PAYMENTS.—Notwith-
4 standing section 1304 of title 31, United States Code, no
5 award may be made under section 504 of title 5, United
6 States Code, or under section 2412 of title 28, United
7 States Code, and no amounts may be obligated or ex-
8 pended from the Claims and Judgment Fund of the
9 United States Treasury to pay any fees or other expenses
10 under such sections, to any person or party in an energy
11 related action.

12 (e) LEGAL FEES.—In any energy related action in
13 which the plaintiff does not ultimately prevail, the court
14 shall award to the defendant (including any intervenor-
15 defendants), other than the United States, fees and other
16 expenses incurred by that party in connection with the en-
17 ergy related action, unless the court finds that the position
18 of the plaintiff was substantially justified or that special
19 circumstances make an award unjust. Whether or not the
20 position of the plaintiff was substantially justified shall be
21 determined on the basis of the administrative record, as
22 a whole, which is made in the energy related action for
23 which fees and other expenses are sought.

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

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

4 (2) INDIAN LAND.—The term “Indian Land”
5 has the same meaning given such term in section
6 203(c)(3) of the Energy Policy Act of 2005 (Public
7 Law 109–58; 25 U.S.C. 3501), including lands
8 owned by Native Corporations under the Alaska Na-
9 tive Claims Settlement Act (Public Law 92–203; 43
10 U.S.C. 1601).

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

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

15 (B) seeks judicial review of a final agency
16 action to issue a permit, license, or other form
17 of agency permission allowing:

18 (i) any person or entity to conduct ac-
19 tivities on Indian Land, which activities in-
20 volve the exploration, development, produc-
21 tion or transportation of oil, gas, coal,
22 shale gas, oil shale, geothermal resources,
23 wind or solar resources, underground coal
24 gasification, biomass, or the generation of
25 electricity; or

1 (ii) any Indian Tribe, or any organiza-
2 tion of two or more entities, at least one
3 of which is an Indian tribe, to conduct ac-
4 tivities involving the exploration, develop-
5 ment, production or transportation of oil,
6 gas, coal, shale gas, oil shale, geothermal
7 resources, wind or solar resources, under-
8 ground coal gasification, biomass, or the
9 generation of electricity, regardless of
10 where such activities are undertaken.

11 (4) **ULTIMATELY PREVAIL.**—The phrase “ulti-
12 mately prevail” means, in a final enforceable judg-
13 ment, the court rules in the party’s favor on at least
14 one cause of action which is an underlying rationale
15 for the preliminary injunction, administrative stay,
16 or other relief requested by the party, and does not
17 include circumstances where the final agency action
18 is modified or amended by the issuing agency unless
19 such modification or amendment is required pursu-
20 ant to a final enforceable judgment of the court or
21 a court-ordered consent decree.

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

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

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

2 “(a) IN GENERAL.—For each of fiscal years 2016
3 through 2020, the Secretary shall enter into stewardship
4 contracts or other agreements, other than agreements that
5 are exclusively direct service contracts, with Indian tribes
6 to carry out demonstration projects to promote biomass
7 energy production (including biofuel, heat, and electricity
8 generation) on Indian forest land and in nearby commu-
9 nities by providing reliable supplies of woody biomass from
10 Federal land.

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

13 “(c) DEMONSTRATION PROJECTS.—In each fiscal
14 year for which projects are authorized, the Secretary shall
15 enter into contracts or other agreements described in sub-
16 section (a) to carry out at least 4 new demonstration
17 projects that meet the eligibility criteria described in sub-
18 section (d).

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

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

25 “(2) that includes a description of—

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

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

5 “(e) SELECTION.—In evaluating the applications
6 submitted under subsection (e), the Secretary—

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

11 “(A) increase the availability or reliability
12 of local or regional energy;

13 “(B) enhance the economic development of
14 the Indian tribe;

15 “(C) improve the connection of electric
16 power transmission facilities serving the Indian
17 tribe with other electric transmission facilities;

18 “(D) improve the forest health or water-
19 sheds of Federal land or Indian forest land or
20 rangeland; or

21 “(E) otherwise promote the use of woody
22 biomass; and

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

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

2 “(1) ensure that the criteria described in sub-
3 section (c) are publicly available by not later than
4 120 days after the date of enactment of this section;
5 and

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

10 “(g) REPORT.—Not later than one year subsequent
11 to the date of enactment of this section, the Secretary
12 shall submit to Congress a report that describes, with re-
13 spect to the reporting period—

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

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

18 “(h) INCORPORATION OF MANAGEMENT PLANS.—In
19 carrying out a contract or agreement under this section,
20 on receipt of a request from an Indian tribe, the Secretary
21 shall incorporate into the contract or agreement, to the
22 extent practicable, management plans (including forest
23 management and integrated resource management plans)
24 in effect on the Indian forest land or rangeland of the re-
25 spective Indian tribe.

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

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

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

7 **“SEC. 4. TRIBAL FOREST MANAGEMENT DEMONSTRATION**
8 **PROJECT.**

9 “The Secretary of the Interior and the Secretary of
10 Agriculture may carry out demonstration projects by
11 which federally recognized Indian tribes or tribal organiza-
12 tions may contract to perform administrative, manage-
13 ment, and other functions of programs of the Tribal For-
14 est Protection Act of 2004 (25 U.S.C. 3115a et seq.)
15 through contracts entered into under the Indian Self-De-
16 termination and Education Assistance Act (25 U.S.C. 450
17 et seq.).”.

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

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

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

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

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

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

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

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

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

19 “(C) in the case of a lease for the exploration,
20 development, or extraction of mineral resources, in-
21 cluding geothermal resources, 25 years, except that
22 any such lease may include an option to renew for
23 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.

 Passed the House of Representatives October 8,
2015.

Attest:

KAREN L. HAAS,
Clerk.