

Union Calendar No. 208

114TH CONGRESS
1ST SESSION

H. R. 538

[Report No. 114–276]

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

OCTOBER 1, 2015

Additional sponsor: Mr. GOSAR

OCTOBER 1, 2015

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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:

10 **“SEC. 2607. APPRAISAL REFORMS.**

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

17 “(1) the Secretary;

18 “(2) the affected Indian tribe; or

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

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

1 “(1) review the appraisal; and

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

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

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

10 “(1) An Indian tribe wishing to waive the re-
11 quirements of subsection (a), may do so after it has
12 satisfied the requirements of paragraphs (2) and
13 (3).

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

20 “(3) The unambiguous indication of intent pro-
21 vided by the Indian tribe to the Secretary under
22 paragraph (2) must include an express waiver by the
23 Indian tribe of any claims for damages it might have
24 against the United States as a result of the lack of
25 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. 2607. Appraisal reforms.”.

12 **SEC. 3. 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. 4. 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 6 of that Act, shall give the Secretary any additional
22 authority over energy projects on Alaska Native
23 Claims Settlement Act lands.”.

1 **SEC. 5. JUDICIAL REVIEW.**

2 (a) **TIME FOR FILING COMPLAINT.**—Any energy re-
3 lated action must be filed not later than the end of the
4 60-day period beginning on the date of the final agency
5 action. Any energy related action not filed within this time
6 period shall be barred.

7 (b) **DISTRICT COURT VENUE AND DEADLINE.**—All
8 energy related actions—

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

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

14 (c) **APPELLATE REVIEW.**—An interlocutory order or
15 final judgment, decree or order of the district court in an
16 energy related action may be reviewed by the U.S. Court
17 of Appeals for the District of Columbia Circuit. The D.C.
18 Circuit Court of Appeals shall resolve such appeal as expe-
19 ditiously as possible, and in any event not more than 180
20 days after such interlocutory order or final judgment, de-
21 cree or order of the district court was issued.

22 (d) **LIMITATION ON CERTAIN PAYMENTS.**—Notwith-
23 standing section 1304 of title 31, United States Code, no
24 award may be made under section 504 of title 5, United
25 States Code, or under section 2412 of title 28, United
26 States Code, and no amounts may be obligated or ex-

1 pended from the Claims and Judgment Fund of the
2 United States Treasury to pay any fees or other expenses
3 under such sections, to any person or party in an energy
4 related action.

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

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

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

22 (2) INDIAN LAND.—The term “Indian Land”
23 has the same meaning given such term in section
24 203(c)(3) of the Energy Policy Act of 2005 (Public
25 Law 109–58; 25 U.S.C. 3501), including lands

1 owned by Native Corporations under the Alaska Na-
2 tive Claims Settlement Act (Public Law 92–203; 43
3 U.S.C. 1601).

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

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

8 (B) seeks judicial review of a final agency
9 action to issue a permit, license, or other form
10 of agency permission allowing:

11 (i) any person or entity to conduct ac-
12 tivities on Indian Land, which activities in-
13 volve the exploration, development, produc-
14 tion or transportation of oil, gas, coal,
15 shale gas, oil shale, geothermal resources,
16 wind or solar resources, underground coal
17 gasification, biomass, or the generation of
18 electricity; or

19 (ii) any Indian Tribe, or any organiza-
20 tion of two or more entities, at least one
21 of which is an Indian tribe, to conduct ac-
22 tivities involving the exploration, develop-
23 ment, production or transportation of oil,
24 gas, coal, shale gas, oil shale, geothermal
25 resources, wind or solar resources, under-

1 ground coal gasification, biomass, or the
2 generation of electricity, regardless of
3 where such activities are undertaken.

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

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

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

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

20 “(a) **IN GENERAL.**—For each of fiscal years 2016
21 through 2020, the Secretary shall enter into stewardship
22 contracts or other agreements, other than agreements that
23 are exclusively direct service contracts, with Indian tribes
24 to carry out demonstration projects to promote biomass
25 energy production (including biofuel, heat, and electricity

1 generation) on Indian forest land and in nearby commu-
2 nities by providing reliable supplies of woody biomass from
3 Federal land.

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

6 “(c) DEMONSTRATION PROJECTS.—In each fiscal
7 year for which projects are authorized, the Secretary shall
8 enter into contracts or other agreements described in sub-
9 section (a) to carry out at least 4 new demonstration
10 projects that meet the eligibility criteria described in sub-
11 section (d).

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

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

18 “(2) that includes a description of—

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

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

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

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

5 “(A) increase the availability or reliability
6 of local or regional energy;

7 “(B) enhance the economic development of
8 the Indian tribe;

9 “(C) improve the connection of electric
10 power transmission facilities serving the Indian
11 tribe with other electric transmission facilities;

12 “(D) improve the forest health or water-
13 sheds of Federal land or Indian forest land or
14 rangeland; or

15 “(E) otherwise promote the use of woody
16 biomass; and

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

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

21 “(1) ensure that the criteria described in sub-
22 section (c) are publicly available by not later than
23 120 days after the date of enactment of this section;
24 and

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

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

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

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

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

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

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

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

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

4 Unless otherwise explicitly exempted by Federal law
5 enacted after the date of the enactment of this Act, any
6 activity conducted or resources harvested or produced pur-
7 suant to a tribal resource management plan or an inte-
8 grated resource management plan approved by the Sec-
9 retary of the Interior under the National Indian Forest
10 Resources Management Act (25 U.S.C. 3101 et seq.) or
11 the American Indian Agricultural Resource Management
12 Act (25 U.S.C. 3701 et seq.), shall be considered a sus-
13 tainable management practice for purposes of any Federal
14 standard, benefit, or requirement that requires a dem-
15 onstration of such sustainability.

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

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

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

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

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

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

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

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

10 No rule promulgated by the Department of the Inte-
11 rior regarding hydraulic fracturing used in the develop-
12 ment or production of oil or gas resources shall have any
13 effect on any land held in trust or restricted status for
14 the benefit of Indians except with the express consent of
15 the beneficiary on whose behalf such land is held in trust
16 or restricted status.

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