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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. APPRAISALS.

(a) Amendment.—Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by add-
“SEC. 2607. APPRAISAL REFORMS.

“(a) Options to Indian Tribes.—With respect to a transaction involving Indian land or the trust assets of an Indian tribe that requires the approval of the Secretary, any appraisal relating to fair market value required to be conducted under applicable law, regulation, or policy may be completed by—

“(1) the Secretary;

“(2) the affected Indian tribe; or

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

“(b) Time Limit on Secretarial Review and Action.—Not later than 30 days after the date on which the Secretary receives an appraisal conducted by or for an Indian tribe pursuant to paragraphs (2) or (3) of subsection (a), the Secretary shall—

“(1) review the appraisal; and

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

“(c) Failure of Secretary to Approve or Disapprove.—If, after 60 days, the Secretary has failed to approve or disapprove any appraisal received, the appraisal shall be deemed approved.

“(d) Option to Indian Tribes to Waive Appraisal.—
“(1) An Indian tribe wishing to waive the requirements of subsection (a), may do so after it has satisfied the requirements of paragraphs (2) and (3).

“(2) An Indian tribe wishing to forego the necessity of a waiver pursuant to this section must provide to the Secretary a written resolution, statement, or other unambiguous indication of tribal intent, duly approved by the governing body of the Indian tribe.

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

“(e) DEFINITION.—For purposes of this subsection, the term ‘appraisal’ includes appraisals and other estimates of value.

“(f) REGULATIONS.—The Secretary shall develop regulations for implementing this section, including standards the Secretary shall use for approving or disapproving an appraisal.”.

note) is amended by adding at the end of the items relating to title XXVI the following:

“Sec. 2607. Appraisal reforms.”.

SEC. 3. STANDARDIZATION.

As soon as practicable after the date of the enactment of this Act, the Secretary of the Interior shall implement procedures to ensure that each agency within the Department of the Interior that is involved in the review, approval, and oversight of oil and gas activities on Indian lands shall use a uniform system of reference numbers and tracking systems for oil and gas wells.

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

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

“(b) REVIEW OF MAJOR FEDERAL ACTIONS ON INDIAN LANDS.—

“(1) IN GENERAL.—For any major Federal action on Indian lands of an Indian tribe requiring the preparation of a statement under subsection (a)(2)(C), the statement shall only be available for review and comment by the members of the Indian tribe and by any other individual residing within the affected area.
“(2) REGULATIONS.—The Chairman of the Council on Environmental Quality shall develop regulations to implement this section, including descriptions of affected areas for specific major Federal actions, in consultation with Indian tribes.

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

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

SEC. 5. JUDICIAL REVIEW.

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

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

(1) shall be brought in the United States District Court for the District of Columbia; and
(2) shall be resolved as expeditiously as possible, and in any event not more than 180 days after such cause of action is filed.

(e) Appellate Review.—An interlocutory order or final judgment, decree or order of the district court in an energy related action may be reviewed by the U.S. Court of Appeals for the District of Columbia Circuit. The D.C. Circuit Court of Appeals shall resolve such appeal as expeditiously as possible, and in any event not more than 180 days after such interlocutory order or final judgment, decree or order of the district court was issued.

(d) Limitation on Certain Payments.—Notwithstanding section 1304 of title 31, United States Code, no award may be made under section 504 of title 5, United States Code, or under section 2412 of title 28, United States Code, and no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay any fees or other expenses under such sections, to any person or party in an energy related action.

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

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

(1) AGENCY ACTION.—The term “agency ac-

tion” has the same meaning given such term in sec-

tion 551 of title 5, United States Code.

(2) INDIAN LAND.—The term “Indian Land”

has the same meaning given such term in section

203(c)(3) of the Energy Policy Act of 2005 (Public

Law 109–58; 25 U.S.C. 3501), including lands

owned by Native Corporations under the Alaska Na-

tive Claims Settlement Act (Public Law 92–203; 43


(3) ENERGY RELATED ACTION.—The term “en-

ergy related action” means a cause of action that—

(A) is filed on or after the effective date of

this Act; and
(B) seeks judicial review of a final agency action to issue a permit, license, or other form of agency permission allowing:

(i) any person or entity to conduct activities on Indian Land, which activities involve the exploration, development, production or transportation of oil, gas, coal, shale gas, oil shale, geothermal resources, wind or solar resources, underground coal gasification, biomass, or the generation of electricity; or

(ii) any Indian Tribe, or any organization of two or more entities, at least one of which is an Indian tribe, to conduct activities involving the exploration, development, production or transportation of oil, gas, coal, shale gas, oil shale, geothermal resources, wind or solar resources, underground coal gasification, biomass, or the generation of electricity, regardless of where such activities are undertaken.

(4) ULTIMATELY PREVAIL.—The phrase “ultimately prevail” means, in a final enforceable judgment, the court rules in the party’s favor on at least one cause of action which is an underlying rationale
for the preliminary injunction, administrative stay, or other relief requested by the party, and does not include circumstances where the final agency action is modified or amended by the issuing agency unless such modification or amendment is required pursuant to a final enforceable judgment of the court or a court-ordered consent decree.

SEC. 6. TRIBAL BIOMASS DEMONSTRATION PROJECT.

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

“SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.

“(a) In General.—For each of fiscal years 2016 through 2020, the Secretary shall enter into stewardship contracts or other agreements, other than agreements that are exclusively direct service contracts, with Indian tribes to carry out demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.

“(b) Definitions.—The definitions in section 2 shall apply to this section.

“(c) Demonstration Projects.—In each fiscal year for which projects are authorized, the Secretary shall
enter into contracts or other agreements described in subsection (a) to carry out at least 4 new demonstration projects that meet the eligibility criteria described in subsection (d).

“(d) ELIGIBILITY CRITERIA.—To be eligible to enter into a contract or other agreement under this subsection, an Indian tribe shall submit to the Secretary an application—

“(1) containing such information as the Secretary may require; and

“(2) that includes a description of—

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

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

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

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

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

“(B) enhance the economic development of the Indian tribe;
“(C) improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

“(D) improve the forest health or watersheds of Federal land or Indian forest land or rangeland; or

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

“(2) shall exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.

“(f) IMPLEMENTATION.—The Secretary shall—

“(1) ensure that the criteria described in subsection (e) are publicly available by not later than 120 days after the date of enactment of this section; and

“(2) to the maximum extent practicable, consult with Indian tribes and appropriate intertribal organizations likely to be affected in developing the application and otherwise carrying out this section.

“(g) REPORT.—Not later than one year subsequent to the date of enactment of this section, the Secretary shall submit to Congress a report that describes, with respect to the reporting period—
“(1) each individual tribal application received under this section; and

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

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

“(i) TERM.—A stewardship contract or other agreement entered into under this section—

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

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

SEC. 7. TRIBAL RESOURCE MANAGEMENT PLANS.

Unless otherwise explicitly exempted by Federal law enacted after the date of the enactment of this Act, any activity conducted or resources harvested or produced pursuant to a tribal resource management plan or an integrated resource management plan approved by the Secretary of the Interior under the National Indian Forest
Resources Management Act (25 U.S.C. 3101 et seq.) or the American Indian Agricultural Resource Management Act (25 U.S.C. 3701 et seq.), shall be considered a sustainable management practice for purposes of any Federal standard, benefit, or requirement that requires a demonstration of such sustainability.

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

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

(1) by striking “, except a lease for” and inserting “, including leases for”;

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

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

(4) by adding at the end the following:

“(C) in the case of a lease for the exploration, development, or extraction of mineral resources, including geothermal resources, 25 years, except that any such lease may include an option to renew for one additional term not to exceed 25 years.”.
SEC. 9. NONAPPLICABILITY OF CERTAIN RULES.

No rule promulgated by the Department of the Interior regarding hydraulic fracturing used in the development or production of oil or gas resources shall have any effect on any land held in trust or restricted status for the benefit of Indians except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.