

Union Calendar No. 775

115TH CONGRESS
2D SESSION

H. R. 210

[Report No. 115–993]

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 3, 2017

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

OCTOBER 23, 2018

Additional sponsors: Mr. SESSIONS and Mr. CRAMER

OCTOBER 23, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on January 3, 2017]

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 Energy*
 5 *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 adding*
 9 *at the end the following:*

10 **“SEC. 2607. APPRAISAL REFORMS.**

11 *“(a) OPTIONS TO INDIAN TRIBES.—With respect to a*
 12 *transaction involving Indian land or the trust assets of an*
 13 *Indian tribe that requires the approval of the Secretary,*
 14 *any appraisal relating to fair market value required to be*
 15 *conducted under applicable law, regulation, or policy may*
 16 *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 the*
 23 *Secretary receives an appraisal conducted by or for an In-*
 24 *dian tribe pursuant to paragraphs (2) or (3) of subsection*
 25 *(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 ap-*
6 *prove or disapprove any appraisal received, the appraisal*
7 *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 (3).*

13 “(2) *An Indian tribe wishing to forego the neces-*
14 *sity of a waiver pursuant to this section must provide*
15 *to the Secretary a written resolution, statement, or*
16 *other unambiguous indication of tribal intent, duly*
17 *approved by the governing body of the Indian tribe.*

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

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

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

8 (b) *CONFORMING AMENDMENT.*—The table of contents
 9 of the *Energy Policy Act of 1992* (42 U.S.C. 13201 note)
 10 is amended by adding at the end of the items relating to
 11 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 AC-** 21 **TIONS ON INDIAN LANDS.**

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

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

3 “(1) *REVIEW AND COMMENT.*—

4 “(A) *IN GENERAL.*—*Except as provided in*
5 *subparagraph (B), the statement required under*
6 *subsection (a)(2)(C) for a major Federal action*
7 *regarding an activity on Indian lands of an In-*
8 *Indian tribe shall only be available for review and*
9 *comment by—*

10 “(i) *Indian tribes in the affected area*
11 *and individual members of those tribes*
12 *wherever they reside;*

13 “(ii) *Other individuals who reside in*
14 *the affected area; and*

15 “(iii) *State and local governments*
16 *within the affected area.*

17 “(B) *EXCEPTION.*—*Subparagraph (A) shall*
18 *not apply to a statement for a major Federal ac-*
19 *tion regarding an activity on Indian lands of an*
20 *Indian tribe related to gaming under the Indian*
21 *Gaming Regulatory Act.*

22 “(2) *REGULATIONS.*—*The Chairman of the*
23 *Council on Environmental Quality shall develop reg-*
24 *ulations to implement this section, including descrip-*

1 *tions of affected areas for specific major Federal ac-*
 2 *tions, in consultation with Indian tribes.*

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

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

12 **SEC. 5. JUDICIAL REVIEW.**

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

18 (b) *DISTRICT COURT VENUE AND DEADLINE.*—*All en-*
 19 *ergy related actions—*

20 (1) *shall be brought in the United States District*
 21 *Court for the District of Columbia; and*

22 (2) *shall be resolved as expeditiously as possible,*
 23 *and in any event not more than 180 days after such*
 24 *cause of action is filed.*

1 (c) *APPELLATE REVIEW.*—*An interlocutory order or*
2 *final judgment, decree or order of the district court in an*
3 *energy related action may be reviewed by the United States*
4 *Court of Appeals for the District of Columbia Circuit. The*
5 *District of Columbia Circuit Court of Appeals shall resolve*
6 *such appeal as expeditiously as possible, and in any event*
7 *not more than 180 days after such interlocutory order or*
8 *final judgment, decree or order of the district court was*
9 *issued.*

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

18 (e) *LEGAL FEES.*—*In any energy related action in*
19 *which the plaintiff does not ultimately prevail, the court*
20 *shall award to the defendant (including any intervenor-de-*
21 *fendants), other than the United States, fees and other ex-*
22 *penses incurred by that party in connection with the energy*
23 *related action, unless the court finds that the position of*
24 *the plaintiff was substantially justified or that special cir-*
25 *cumstances make an award unjust. Whether or not the posi-*

1 *tion of the plaintiff was substantially justified shall be de-*
 2 *termined on the basis of the administrative record, as a*
 3 *whole, which is made in the energy related action for which*
 4 *fees and other expenses are sought.*

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

7 (1) *AGENCY ACTION.—The term “agency action”*
 8 *has the same meaning given such term in section 551*
 9 *of title 5, United States Code.*

10 (2) *INDIAN LAND.—The term “Indian Land” has*
 11 *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 owned*
 14 *by Native Corporations under the Alaska Native*
 15 *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 to issue a permit, license, or other form*
 23 *of agency permission allowing:*

24 (i) *any person or entity to conduct ac-*
 25 *tivities on Indian Land, which activities*

1 *involve the exploration, development, pro-*
2 *duction or transportation of oil, gas, coal,*
3 *shale gas, oil shale, geothermal resources,*
4 *wind or solar resources, underground coal*
5 *gasification, biomass, or the generation of*
6 *electricity; or*

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

17 (4) *ULTIMATELY PREVAIL.—The phrase “ulti-*
18 *mately prevail” means, in a final enforceable judg-*
19 *ment, the court rules in the party’s favor on at least*
20 *one cause of action which is an underlying rationale*
21 *for the preliminary injunction, administrative stay,*
22 *or other relief requested by the party, and does not in-*
23 *clude circumstances where the final agency action is*
24 *modified or amended by the issuing agency unless*
25 *such modification or amendment is required pursuant*

1 to a final enforceable judgment of the court or a
2 court-ordered consent decree.

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

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

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

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

16 “(b) *DEFINITIONS.*—The definitions in section 2 shall
17 *apply to this section.*

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

23 “(d) *ELIGIBILITY CRITERIA.*—To be eligible to enter
24 *into a contract or other agreement under this subsection,*

1 *an Indian tribe shall submit to the Secretary an applica-*
2 *tion—*

3 “(1) *containing such information as the Sec-*
4 *retary may require; and*

5 “(2) *that includes a description of—*

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

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

10 “(e) *SELECTION.—In evaluating the applications sub-*
11 *mitted under subsection (c), the Secretary—*

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

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

18 “(B) *enhance the economic development of*
19 *the Indian tribe;*

20 “(C) *improve the connection of electric*
21 *power transmission facilities serving the Indian*
22 *tribe with other electric transmission facilities;*

23 “(D) *improve the forest health or watersheds*
24 *of Federal land or Indian forest land or range-*
25 *land; or*

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

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

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

7 “(1) ensure that the criteria described in sub-
8 section (c) are publicly available by not later than
9 120 days after the date of enactment of this section;
10 and

11 “(2) to the maximum extent practicable, consult
12 with Indian tribes and appropriate intertribal orga-
13 nizations likely to be affected in developing the appli-
14 cation and otherwise carrying out this section.

15 “(g) REPORT.—Not later than one year subsequent to
16 the date of enactment of this section, the Secretary shall
17 submit to Congress a report that describes, with respect to
18 the reporting period—

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

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

23 “(h) INCORPORATION OF MANAGEMENT PLANS.—In
24 carrying out a contract or agreement under this section,
25 on receipt of a request from an Indian tribe, the Secretary

1 *shall incorporate into the contract or agreement, to the ex-*
 2 *tent practicable, management plans (including forest man-*
 3 *agement and integrated resource management plans) in ef-*
 4 *fect on the Indian forest land or rangeland of the respective*
 5 *Indian tribe.*

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

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

10 “(2) *may be renewed in accordance with this sec-*
 11 *tion for not more than an additional 10 years.*

12 **“SEC. 4. TRIBAL FOREST MANAGEMENT DEMONSTRATION**
 13 **PROJECT.**

14 “*The Secretary of the Interior and the Secretary of Ag-*
 15 *riculture may carry out demonstration projects by which*
 16 *federally recognized Indian tribes or tribal organizations*
 17 *may contract to perform administrative, management, and*
 18 *other functions of programs of the Tribal Forest Protection*
 19 *Act of 2004 (25 U.S.C. 3115a et seq.) through contracts en-*
 20 *tered into under the Indian Self-Determination and Edu-*
 21 *cation Assistance Act (25 U.S.C. 450 et seq.).”.*

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

23 *Unless otherwise explicitly exempted by Federal law*
 24 *enacted after the date of the enactment of this Act, any ac-*
 25 *tivity conducted or resources harvested or produced pursu-*

1 *ant to a tribal resource management plan or an integrated*
 2 *resource management plan approved by the Secretary of the*
 3 *Interior under the National Indian Forest Resources Man-*
 4 *agement Act (25 U.S.C. 3101 et seq.) or the American In-*
 5 *dian Agricultural Resource Management Act (25 U.S.C.*
 6 *3701 et seq.) shall be considered a sustainable management*
 7 *practice for purposes of any Federal standard, benefit, or*
 8 *requirement that requires a demonstration of such sustain-*
 9 *ability.*

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

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

15 *(1) by striking “, except a lease for” and insert-*
 16 *ing “, including leases for”;*

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

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

22 *(4) by adding at the end the following:*

23 *“(C) in the case of a lease for the exploration, de-*
 24 *velopment, or extraction of mineral resources, includ-*
 25 *ing geothermal resources, 25 years, except that any*

1 *such lease may include an option to renew for one ad-*
2 *ditional term not to exceed 25 years.”.*

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

4 *No rule promulgated by the Department of the Interior*
5 *regarding hydraulic fracturing used in the development or*
6 *production of oil or gas resources shall have any effect on*
7 *any land held in trust or restricted status for the benefit*
8 *of Indians except with the express consent of the beneficiary*
9 *on whose behalf such land is held in trust or restricted sta-*
10 *tus.*

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