



Gilbert, Regina <regina.gilbert@bia.gov>

FW: Trust commission: energy legislation

1 message

Sarah Palmer <palmer@ecr.gov>
To: "Gilbert, Regina" <Regina.Gilbert@bia.gov>

Tue, Dec 10, 2013 at 11:32 AM

-----Original Message-----

From: Moorehead, Paul [mailto:Paul.Moorehead@dbr.com]
Sent: Friday, February 15, 2013 12:51 PM
To: Sarah Palmer
Subject: RE: Trust commission: energy legislation

Hi Sarah,

Sorry for the delay. Attached are the two Indian energy bills that were introduced and considered but not enacted last session.

Undoubtedly, they will be re-introduced this year.

Nice to see you in Seattle. Thanks again.

Paul

Paul Moorehead | Drinker Biddle & Reath LLP
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(202) 230-5174 DIRECT | (202) 842-8465 FAX | paul.moorehead@dbr.com www.drinkerbiddle.com

-----Original Message-----

From: Sarah Palmer [mailto:palmer@ecr.gov]
Sent: Wednesday, February 13, 2013 6:40 PM
To: Moorehead, Paul
Subject: Re: Trust commission: energy legislation

That works. Thanks!

Sent from my iPhone

On Feb 13, 2013, at 3:33 PM, "Moorehead, Paul" <Paul.Moorehead@dbr.com> wrote:

> Sure. As we wait for re-introduction this year, I can send you the two bills from last session. How's that sound?

>

> Paul

>

> ----- Original Message -----

> From: Sarah Palmer [mailto:palmer@ecr.gov]
> Sent: Wednesday, February 13, 2013 04:35 PM
> To: Moorehead, Paul

> Subject: Trust commission: energy legislation

>

> Hi Paul,

> Can you send me a copy of the energy legislation for the trust commission?

>

> Thanks,

> Sarah

>

> Sent from my iPhone

>

>

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2 attachments



IndianEnergy-S.1684(112thCongress) (3091490_1).DOCX

49K



IndianEnergy-H.R.3973(112thCongress) (3091491_1).DOCX

31K

Calendar No. 575
112th CONGRESS
2d Session
S. 1684
[Report No. 112-263]

To amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes.

IN THE SENATE OF THE UNITED STATES

October 12, 2011

Mr. BARRASSO (for himself, Mr. AKAKA, Mr. MCCAIN, Mr. HOEVEN, Mr. THUNE, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

December 21, 2012

Reported by Mr. AKAKA, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `Indian Tribal Energy Development and Self-Determination Act Amendments of [Struck out->] 2011 [<-Struck out] 2012'.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I--INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT AMENDMENTS

- Sec. 101. Indian tribal energy resource development.
- Sec. 102. Indian tribal energy resource regulation.
- Sec. 103. Tribal energy resource agreements.
- [Struck out->] Sec. 104. Conforming amendments. [<-Struck out]
- Sec. 104. Technical assistance for Indian tribal governments.*
- Sec. 105. Indian energy efficiency.*
- Sec. 106. Conforming amendments.*

TITLE II--MISCELLANEOUS AMENDMENTS

- Sec. 201. Issuance of preliminary permits or licenses.
- [Struck out->] Sec. 202. Tribal biomass demonstration project.
- [<-Struck out]
- Sec. 202. Tribal biomass demonstration project.*
- Sec. 203. Weatherization program.
- Sec. 204. Appraisals.*
- Sec. 205. Leases of restricted lands for Navajo Nation.*

TITLE I--INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT AMENDMENTS

SEC. 101. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

(a) In General- Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) is amended--

(1) in paragraph (2)--

(A) in subparagraph (C), by striking `and' after the semicolon;

(B) in subparagraph (D), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(E) consult with each applicable Indian tribe before adopting or approving a well spacing program or plan applicable to the energy resources of that Indian tribe or the members of that Indian tribe.'; and

(2) by adding at the end the following:

`(4) PLANNING-

`(A) IN GENERAL- In carrying out the program established by paragraph (1), the Secretary shall provide technical

assistance to interested Indian tribes to develop energy plans, including--

- ` (i) plans for electrification;
 - ` (ii) plans for oil and gas permitting, renewable energy permitting, energy efficiency, electricity generation, transmission planning, water planning, and other planning relating to energy issues;
 - ` (iii) plans for the development of energy resources and to ensure the protection of natural, historic, and cultural resources; and
 - ` (iv) any other plans that would assist an Indian tribe in the development or use of energy resources.
- ` (B) COOPERATION- In establishing the program under paragraph (1), the Secretary shall work in cooperation with the Office of Indian Energy Policy and Programs of the Department of Energy.'

(b) Department of Energy Indian Energy Education Planning and Management Assistance Program- Section 2602(b)(2) of the Energy Policy Act of 1992 (25 U.S.C. 3502(b)(2)) is amended--

- (1) in the matter preceding subparagraph (A), by inserting `, intertribal organization,' after `Indian tribe';
- (2) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and
- (3) by inserting after subparagraph (B) the following:
 - ` (C) activities to increase the capacity of Indian tribes to manage energy development and energy efficiency programs;'

(c) Department of Energy Loan Guarantee Program- Section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)) is amended--

- (1) in paragraph (1), by inserting `or a tribal energy development organization' after `Indian tribe';
- (2) in paragraph (3)--
 - (A) in the matter preceding subparagraph (A), by striking `guarantee' and inserting `guaranteed';
 - (B) in subparagraph (A), by striking `or';
 - (C) in subparagraph (B), by striking the period at the end and inserting `; or'; and
 - (D) by adding at the end the following:
 - ` (C) a tribal energy development organization, from funds of the tribal energy development organization.'; and
- (3) in paragraph (5), by striking `The Secretary of Energy may' and inserting `Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination

Act Amendments of [Struck out->] 2011 [<-Struck out] 2012, the Secretary of Energy shall'.

SEC. 102. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

Section 2603(c) of the Energy Policy Act of 1992 (25 U.S.C. 3503(c)) is amended--

- (1) in paragraph (1), by striking `on the request of an Indian tribe, the Indian tribe' and inserting `on the request of an Indian tribe or a tribal energy development organization, the Indian tribe or tribal energy development organization'; and
- (2) in paragraph (2)(B), by inserting `or tribal energy development organization' after `Indian tribe'.

SEC. 103. TRIBAL ENERGY RESOURCE AGREEMENTS.

(a) Amendment- Section 2604 of the Energy Policy Act of 1992 (25 U.S.C. 3504) is amended--

(1) in subsection (a)--

(A) in paragraph (1)--

(i) in subparagraph (A), by striking `or' after the semicolon at the end;

(ii) in subparagraph (B)--

(I) by striking clause (i) and inserting the following:

`(i) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land; or'; and

(II) in clause (ii)--

(aa) by inserting `, at least a portion of which have been' after `energy resources';

(bb) by inserting `or produced from' after `developed on'; and

(cc) by striking `and' after the semicolon at the end and inserting `or'; and

(iii) by adding at the end the following:

`(C) pooling, unitization, or communitization of the energy mineral resources of the Indian tribe located on tribal land with any other energy mineral resource (including energy mineral resources owned by the Indian tribe or an individual Indian in fee, trust, or restricted status or by any

other persons or entities) if the owner of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement; and'; and

(B) by striking paragraph (2) and inserting the following:

` (2) a lease or business agreement described in paragraph (1) shall not require review by, or the approval of, the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), or any other provision of law, if the lease or business agreement--

` (A) was executed--

` (i) in accordance with the requirements of a tribal energy resource agreement in effect under subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); or

` (ii) by the Indian tribe and a tribal energy development organization--

` (I) for which the Indian tribe has obtained certification pursuant to subsection (h); and

` (II) the majority of the interest in which is, and continues to be throughout the full term or renewal term (if any) of the lease or business agreement, owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes); and

` (B) has a term that does not exceed--

` (i) 30 years; or

` (ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities.';

(2) by striking subsection (b) and inserting the following:

` (b) Rights-of-Way- An Indian tribe may grant a right-of-way over tribal land without review or approval by the Secretary if the right-of-way--

` (1) serves--

` (A) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land;

` (B) a facility located on tribal land that extracts, produces, processes, or refines energy resources; or

resource agreement shall take effect, unless the Secretary disapproves the revised tribal energy resource agreement under subparagraph (B).';

(ii) in subparagraph (B)--

(I) by striking '(B)' and all that follows through 'if--' and inserting the following:

'(B) DISAPPROVAL- The Secretary shall disapprove a tribal energy resource agreement submitted pursuant to paragraph (1) or (4)(B) only if--';

(II) by striking clause (i) and inserting the following:

'(i) the Secretary determines that the Indian tribe has not demonstrated that the Indian tribe has sufficient capacity to regulate the development of the specific 1 or more energy resources identified for development under the tribal energy resource agreement submitted by the Indian tribe;';

(III) by redesignating clause (iii) as clause (iv) and indenting appropriately;

(IV) by striking clause (ii) and inserting the following:

'(ii) a provision of the tribal energy resource agreement would violate applicable Federal law (including regulations) or a treaty applicable to the Indian tribe;

'(iii) the tribal energy resource agreement does not include 1 or more provisions required under subparagraph (D); or'; and

(V) in clause (iv) (as redesignated by subclause (III))--

(aa) in the matter preceding subclause (I), by striking 'includes' and all that follows through 'section--' and inserting 'does not include provisions that, with respect to any lease, business agreement, or right-of-way to which the tribal energy resource agreement applies--'; and

(bb) in subclause (XVI)(bb), by striking 'or tribal';

(iii) in subparagraph (C)--

(I) in the matter preceding clause (i), by inserting 'the approval of' after 'with respect to';

(II) by striking clause (ii) and inserting the following:

(II) in clause (ii), by striking `determination' and inserting `determinations'; and
(III) in clause (iii), in the matter preceding subclause (I) by striking `agreement' the first place it appears and all that follows through `, including' and inserting `agreement pursuant to clause (i), the Secretary shall only take such action as the Secretary determines necessary to address the claims of noncompliance made in the petition, including';

(iv) in subparagraph (E)(i), by striking `the manner in which' and inserting `, with respect to each claim made in the petition, how'; and

(v) by adding at the end the following:

`(G) Notwithstanding any other provision of this paragraph, the Secretary shall dismiss any petition from an interested party that has agreed with the Indian tribe to a resolution of the claims presented in the petition of that party.';

(5) by redesignating subsection (g) as subsection (j); and

(6) by inserting after subsection (f) the following:

- `(g) Financial Assistance in Lieu of Activities by the Secretary-
- `(1) IN GENERAL- Any amounts that the Secretary would otherwise expend to operate or carry out any program, function, service, or activity (or any portion of a program, function, service, or activity) of the Department that, as a result of an Indian tribe carrying out activities under a tribal energy resource agreement, the Secretary does not expend, the Secretary shall, at the request of the Indian tribe, make available to the Indian tribe in accordance with this subsection.
 - `(2) ANNUAL FUNDING AGREEMENTS- The Secretary shall make the amounts described in paragraph (1) available to an Indian tribe through an annual written funding agreement that is negotiated and entered into with the Indian tribe that is separate from the tribal energy resource agreement.
 - `(3) EFFECT OF APPROPRIATIONS- Notwithstanding paragraph (1)--
 - `(A) the provision of amounts to an Indian tribe under this subsection is subject to the availability of appropriations; and
 - `(B) the Secretary shall not be required to reduce amounts for programs, functions, services, or activities that serve any other Indian tribe to make amounts available to an Indian tribe under this subsection.

(1) section 2604(g) of the Energy Policy Act of 1992 (25 U.S.C. 3504(g)) including the manner in which the Secretary, at the request of an Indian tribe, shall--

(A) identify the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) that the Secretary will not have to operate or carry out as a result of the Indian tribe carrying out activities under a tribal energy resource agreement;

(B) identify the amounts that the Secretary would have otherwise expended to operate or carry out each program, function, service, and activity (or any portion of a program, function, service, or activity) identified pursuant to subparagraph (A); and

(C) provide to the Indian tribe a list of the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) identified pursuant subparagraph (A) and the amounts associated with each program, function, service, and activity (or any portion of a program, function, service, or activity) identified pursuant to subparagraph (B); and

(2) section 2604(h) of the Energy Policy Act of 1992 (25 U.S.C. 3504(h)), including the process to be followed by, and any applicable criteria and documentation required for, an Indian tribe to request and obtain the certification described in that section.

[Struck out->] SEC. 104. CONFORMING AMENDMENTS. [<-Struck out]

[Struck out->] (a) Definition of Tribal Energy Development Organization- Section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501) is amended by striking paragraph (11) and inserting the following: **[<-Struck out]**

[Struck out->] `(11) Tribal ENERGY DEV ELOPMENT ORGANIZATION- The term `tribal energy development organization' means-- **[<-Struck out]**

[Struck out->] `(11) The term `tribal energy development organization' means-- **[<-Struck out]**

[Struck out->] `(A) any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (25 U.S.C. 503) (commonly known as the `Oklahoma Indian Welfare Act')); or **[<-Struck out]**

[Struck out->] `(B) any organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 2602 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(B) of section 2604.'. [~~Struck out~~]

[Struck out->] (b) Indian Tribal Energy Resource Development- Section 2602 of the Energy Policy Act of 1992 (25 U.S.C. 3502) is amended-- [~~Struck out~~]

[Struck out->] (1) in subsection (a)-- [~~Struck out~~]

[Struck out->] (A) in paragraph (1), by striking `tribal energy resource development organizations' and inserting `tribal energy development organizations'; and [~~Struck out~~]

[Struck out->] (B) in paragraph (2), by striking `tribal energy resource development organizations' each place it appears and inserting `tribal energy development organizations'; and [~~Struck out~~]

[Struck out->] (2) in subsection (b)(2), by striking `tribal energy resource development organization' and inserting `tribal energy development organization'. [~~Struck out~~]

[Struck out->] (c) Wind and Hydropower Feasibility Study- Section 2606(c)(3) of the Energy Policy Act of 1992 (25 U.S.C. 3506(c)(3)) is amended by striking `energy resource development' and inserting `energy development'. [~~Struck out~~]

[Struck out->] (d) Conforming Amendments- Section 2604(e) of the Energy Policy Act of 1992 (25 U.S.C. 3504(e)) is amended-- [~~Struck out~~]

[Struck out->] (1) in paragraph (1)-- [~~Struck out~~]

[Struck out->] (A) by striking `(1) On the date' and inserting the following: [~~Struck out~~]

[Struck out->] `(1) IN GENERAL- On the date'; and [~~Struck out~~]

[Struck out->] (B) by striking `for approval'; [~~Struck out~~]

[Struck out->] (2) in paragraph (2)(B)(iv) (as redesignated by section 4(a)(4)(A)(ii)(III))-- [~~Struck out~~]

[Struck out->] (A) in subclause (XIV), by inserting `and' after the semicolon at the end; [~~Struck out~~]

[Struck out->] (B) by striking subclause (XV); and [~~Struck out~~]

[Struck out->] (C) by redesignating subclause (XVI) as subclause (XV); [~~Struck out~~]

[Struck out->] (3) in paragraph (3)-- [~~Struck out~~]

[Struck out->] (A) by striking `(3) The Secretary' and inserting the following: [~~Struck out~~]

[Struck out->] `(3) NOTICE AND COMMENT; SECRETARIAL REVIEW- The Secretary'; and [~~Struck out~~]

[Struck out->] (B) by striking `for approval'; [~~Struck out~~]

[Struck out->] (4) in paragraph (4), by striking `(4) If the Secretary' and inserting the following: [~~Struck out~~]

[Struck out->] `(4) ACTION IN CASE OF DISAPPROVAL- If the Secretary'; [~~Struck out~~]

[Struck out->] (5) in paragraph (5)-- [~~Struck out~~]

[Struck out->] (A) by striking `(5) If an Indian tribe' and inserting the following: [~~Struck out~~]

[Struck out->] `(5) PROVISION OF DOCUMENTS TO SECRETARY- If an Indian tribe'; and [~~Struck out~~]

[Struck out->] (B) in the matter preceding subparagraph (A), by striking `approved' and inserting `in effect'; [~~Struck out~~]

[Struck out->] (6) in paragraph (6)-- [~~Struck out~~]

[Struck out->] (A) by striking `(6)(A) In carrying out' and inserting the following: [~~Struck out~~]

[Struck out->] `(6) SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION- [~~Struck out~~]

[Struck out->] `(A) In carrying out'; [~~Struck out~~]

[Struck out->] (B) in subparagraph (A), by indenting clauses (i) and (ii) appropriately; [~~Struck out~~]

[Struck out->] (C) in subparagraph (B), by striking `approved' and inserting `in effect'; and [~~Struck out~~]

[Struck out->] (D) in subparagraph (D)-- [~~Struck out~~]

[Struck out->] (i) in clause (i), by striking `an approved tribal energy resource agreement' and inserting `a tribal energy resource agreement in effect under this section'; and [~~Struck out~~]

[Struck out->] (ii) in clause (ii), by striking `approved by the Secretary' and inserting `in effect'; and [~~Struck out~~]

[Struck out->] (7) in paragraph (7)-- [~~Struck out~~]

[Struck out->] (A) by striking `(7)(A) In this paragraph' and inserting the following: [~~Struck out~~]

[Struck out->] `(7) PETITIONS BY INTERESTED PARTIES- [~~Struck out~~]

[Struck out->] `(A) In this paragraph'; [~~Struck out~~]

[Struck out->] (B) in subparagraph (A), by striking
`approved by the Secretary' and inserting `in effect'; [~~-~~
Struck out]

[Struck out->] (C) in subparagraph (B), by striking
`approved by the Secretary' and inserting `in effect'; and
[~~-~~Struck out]

[Struck out->] (D) in subparagraph (D)(iii)-- [~~-~~Struck
out]

[Struck out->] (i) in subclause (I), by striking
`approved'; and [~~-~~Struck out]

[Struck out->] (ii) in subclause (II)-- [~~-~~Struck
out]

[Struck out->] (I) by striking `approval of' in
the first place it appears; and [~~-~~Struck out]

[Struck out->] (II) by striking `subsection (a)
or (b)' and inserting `subsection (a)(2)(A)(i)
or (b)(2)(A)'. [~~-~~Struck out]

SEC. 104. TECHNICAL ASSISTANCE FOR INDIAN TRIBAL GOVERNMENTS.

*Section 2602(b) of the Energy Policy Act of 1992 (25 U.S.C. 3502(b))
is amended--*

*(1) by redesignating paragraphs (3) through (6) as paragraphs
(4) through (7), respectively; and*

(2) by inserting after paragraph (2) the following:

*`(3) TECHNICAL AND SCIENTIFIC RESOURCES- In addition to
providing grants to Indian tribes under this subsection, the
Secretary shall collaborate with the Directors of the National
Laboratories in making the full array of technical and scientific
resources of the Department of Energy available for tribal energy
activities and projects.'*

SEC. 105. INDIAN ENERGY EFFICIENCY.

*Part D of title III of the Energy Policy and Conservation Act (42 U.S.C.
6321 et seq.) is amended by adding at the end the following:*

***`*SEC. 367. INDIAN ENERGY EFFICIENCY PROGRAM.**

*`(a) Definition of Indian Tribe- In this section, the term `Indian tribe'
has the meaning given the term in section 4 of the Indian Self-
Determination and Education Assistance Act (25 U.S.C. 450b).*

` (b) Purpose- The purpose of the grants provided under subsection (d) shall be to assist Indian tribes in implementing strategies--

` (1) to reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible entities in a manner that--

` (A) is environmentally sustainable; and

` (B) to the maximum extent practicable, maximizes benefits for Indian tribes and tribal members;

` (2) to increase the energy efficiency of Indian tribes and tribal members; and

` (3) to improve energy efficiency in--

` (A) the transportation sector;

` (B) the building sector; and

` (C) other appropriate sectors.

` (c) Tribal Allocation- Of the amount of funds authorized to be appropriated for each fiscal year under section 365(f) to carry out this part, the Secretary shall allocate not less than 2.5 percent of the funds for each fiscal year to be distributed to Indian tribes in accordance with subsection (d).

` (d) Grants- Of the amounts available for distribution under subsection (c), the Secretary shall establish a competitive process for providing grants under this section that gives priority to projects that--

` (1) increase energy efficiency and energy conservation rather than new energy generation projects;

` (2) integrate cost-effective renewable energy with energy efficiency;

` (3) move beyond the planning stage and are ready for implementation;

` (4) clearly articulate and demonstrate the ability to achieve measurable goals;

` (5) have the potential to make an impact in the government buildings, infrastructure, communities, and land of an Indian tribe; and

` (6) maximize the creation or retention of jobs on Indian land.

` (e) Use of Funds- An Indian tribe may use a grant received under this section to carry out activities to achieve the purposes described in subsection (b), including--

` (1) the development and implementation of energy efficiency and conservation strategies;

` (2) the retention of technical consultant services to assist the Indian tribe in the development of an energy efficiency and conservation strategy, including--

` (A) the formulation of energy efficiency, energy conservation, and energy usage goals;

- ` (B) CONTENTS- A proposed strategy described in subparagraph (A) shall include a description of--
 - ` (i) the goals of the Indian tribe for increased energy efficiency and conservation in the jurisdiction of the Indian tribe; and
 - ` (ii) the manner in which--
 - ` (I) the proposed strategy complies with the restrictions described in subsection (e); and
 - ` (II) a grant will allow the Indian tribe fulfill the goals of the proposed strategy.
- ` (2) APPROVAL-
 - ` (A) IN GENERAL- The Secretary shall approve or disapprove a proposed strategy under paragraph (1) by not later than 120 days after the date of submission of the proposed strategy.
 - ` (B) DISAPPROVAL- If the Secretary disapproves a proposed strategy under paragraph (1)--
 - ` (i) the Secretary shall provide to the Indian tribe the reasons for the disapproval; and
 - ` (ii) the Indian tribe may revise and resubmit the proposed strategy as many times as necessary, until the Secretary approves a proposed strategy.
 - ` (C) REQUIREMENT- The Secretary shall not provide to an Indian tribe a grant under this section until a proposed strategy is approved by the Secretary.
- ` (3) LIMITATIONS ON USE OF FUNDS- Of the amounts provided to an Indian tribe under this section, an Indian tribe may use for administrative expenses, excluding the cost of the reporting requirements of this section, an amount equal to the greater of--
 - ` (A) 10 percent of the administrative expenses; or
 - ` (B) \$75,000.
- ` (4) ANNUAL REPORT- Not later than 2 years after the date on which funds are initially provided to an Indian tribe under this section, and annually thereafter, the Indian tribe shall submit to the Secretary a report describing--
 - ` (A) the status of development and implementation of the energy efficiency and conservation strategy; and
 - ` (B) to the maximum extent practicable, an assessment of energy efficiency gains within the jurisdiction of the Indian tribe.'.

SEC. 106. CONFORMING AMENDMENTS.

(a) Definition of Tribal Energy Development Organization- Section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501) is amended by striking paragraph (11) and inserting the following:

“(11) The term ‘tribal energy development organization’ means-

“(A) any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (25 U.S.C. 503) (commonly known as the ‘Oklahoma Indian Welfare Act’)); or

“(B) any organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 2602 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(B) of section 2604.’.

(b) Indian Tribal Energy Resource Development- Section 2602 of the Energy Policy Act of 1992 (25 U.S.C. 3502) is amended--

(1) in subsection (a)--

(A) in paragraph (1), by striking ‘tribal energy resource development organizations’ and inserting ‘tribal energy development organizations’; and

(B) in paragraph (2), by striking ‘tribal energy resource development organizations’ each place it appears and inserting ‘tribal energy development organizations’; and

(2) in subsection (b)(2), by striking ‘tribal energy resource development organization’ and inserting ‘tribal energy development organization’.

(c) Wind and Hydropower Feasibility Study- Section 2606(c)(3) of the Energy Policy Act of 1992 (25 U.S.C. 3506(c)(3)) is amended by striking ‘energy resource development’ and inserting ‘energy development’.

(d) Conforming Amendments- Section 2604(e) of the Energy Policy Act of 1992 (25 U.S.C. 3504(e)) is amended--

(1) in paragraph (1)--

(A) by striking ‘(1) On the date’ and inserting the following:

‘(1) IN GENERAL- On the date’; and

(B) by striking ‘for approval’;

- (2) in paragraph (2)(B)(iv) (as redesignated by section 4(a)(4)(A)(ii)(III))--
- (A) in subclause (XIV), by inserting `and' after the semicolon at the end;
 - (B) by striking subclause (XV); and
 - (C) by redesignating subclause (XVI) as subclause (XV);
- (3) in paragraph (3)--
- (A) by striking `(3) The Secretary' and inserting the following:
` (3) NOTICE AND COMMENT; SECRETARIAL REVIEW- The Secretary'; and
 - (B) by striking `for approval';
- (4) in paragraph (4), by striking `(4) If the Secretary' and inserting the following:
` (4) ACTION IN CASE OF DISAPPROVAL- If the Secretary';
- (5) in paragraph (5)--
- (A) by striking `(5) If an Indian tribe' and inserting the following:
` (5) PROVISION OF DOCUMENTS TO SECRETARY- If an Indian tribe'; and
 - (B) in the matter preceding subparagraph (A), by striking `approved' and inserting `in effect';
- (6) in paragraph (6)--
- (A) by striking `(6)(A) In carrying out' and inserting the following:
` (6) SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION-
` (A) In carrying out';
 - (B) in subparagraph (A), by indenting clauses (i) and (ii) appropriately;
 - (C) in subparagraph (B), by striking `approved' and inserting `in effect'; and
 - (D) in subparagraph (D)--
 - (i) in clause (i), by striking `an approved tribal energy resource agreement' and inserting `a tribal energy resource agreement in effect under this section'; and
 - (ii) in clause (ii), by striking `approved by the Secretary' and inserting `in effect'; and
- (7) in paragraph (7)--
- (A) by striking `(7)(A) In this paragraph' and inserting the following:
` (7) PETITIONS BY INTERESTED PARTIES-
` (A) In this paragraph';

(B) in subparagraph (A), by striking `approved by the Secretary' and inserting `in effect';
(C) in subparagraph (B), by striking `approved by the Secretary' and inserting `in effect'; and
(D) in subparagraph (D)(iii)--
(i) in subclause (I), by striking `approved'; and
(ii) in subclause (II)--
(I) by striking `approval of' in the first place it appears; and
(II) by striking `subsection (a) or (b)' and inserting `subsection (a)(2)(A)(i) or (b)(2)(A)'.

TITLE II--MISCELLANEOUS AMENDMENTS

SEC. 201. ISSUANCE OF PRELIMINARY PERMITS OR LICENSES.

(a) In General- Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) is amended by striking `States and municipalities' and inserting `States, Indian tribes, and municipalities'.

(b) Applicability- The amendment made by subsection (a) shall not affect--

(1) any preliminary permit or original license issued before the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of [Struck out->] 2011 [~~Struck out~~] 2012; or

(2) an application for an original license, if the Commission has issued a notice accepting that application for filing pursuant to section 4.32(d) of title 18, Code of Federal Regulations (or successor regulations), before the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of [Struck out->] 2011 [~~Struck out~~] 2012.

(c) Definition of Indian Tribe- For purposes of section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) (as amended by subsection (a)), the term `Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

[Struck out->] SEC. 202. TRIBAL BIOMASS DEMONSTRATION PROJECT. [~~Struck out~~]

[Struck out->] The Tribal Forest Protection Act of 2004 (Public Law 108-278; 118 Stat. 868) is amended-- [~~Struck out~~]

[Struck out->] (1) in section 2(a), by striking `In this section' and inserting `In this Act'; and [~~Struck out~~]
[Struck out->] (2) by adding at the end the following: [~~Struck out~~]

[Struck out->] `SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT. [~~Struck out~~]

[Struck out->] `(a) In General- For each of fiscal years 2013 through 2017, the Secretary shall enter into stewardship contracts or similar agreements (excluding 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. [~~Struck out~~]

[Struck out->] `(b) Demonstration Projects- In each fiscal year for which projects are authorized, at least 4 new demonstration projects that meet the eligibility criteria described in subsection (c) shall be carried out under contracts or agreements described in subsection (a). [~~Struck out~~]

[Struck out->] `(c) Eligibility Criteria- To be eligible to enter into a contract or agreement under this subsection, an Indian tribe shall submit to the Secretary an application-- [~~Struck out~~]

[Struck out->] `(1) containing such information as the Secretary may require; and [~~Struck out~~]

[Struck out->] `(2) that includes a description of-- [~~Struck out~~]

[Struck out->] `(A) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; and [~~Struck out~~]

[Struck out->] `(B) the demonstration project proposed to be carried out by the Indian tribe. [~~Struck out~~]

[Struck out->] `(d) Selection- In evaluating the applications submitted under subsection (c), the Secretary shall-- [~~Struck out~~]

[Struck out->] `(1) take into consideration-- [~~Struck out~~]

[Struck out->] `(A) the factors set forth in paragraphs (1) and (2) of section 2(e); and [~~Struck out~~]

[Struck out->] `(B) whether a proposed project would-- [~~Struck out~~]

[Struck out->] `(i) increase the availability or reliability of local or regional energy; [~~Struck out~~]

[Struck out->] `(ii) enhance the economic development of the Indian tribe; [~~Struck out~~]

[Struck out->] `(iii) result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities; [<-Struck out]

[Struck out->] `(iv) improve the forest health or watersheds of Federal land or Indian forest land or rangeland; [<-Struck out]

[Struck out->] `(v) demonstrate new investments in infrastructure; or [<-Struck out]

[Struck out->] `(vi) otherwise promote the use of woody biomass; and [<-Struck out]

[Struck out->] `(2) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale. [<-Struck out]

[Struck out->] `(e) Implementation- The Secretary shall-- [<-Struck out]

[Struck out->] `(1) ensure that the criteria described in subsection (c) are publicly available by not later than 120 days after the date of enactment of this section; and [<-Struck out]

[Struck out->] `(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. [<-Struck out]

[Struck out->] `(f) Report- Not later than September 20, 2015, the Secretary shall submit to Congress a report that describes, with respect to the reporting period-- [<-Struck out]

[Struck out->] `(1) each individual tribal application received under this section; and [<-Struck out]

[Struck out->] `(2) each contract and agreement entered into pursuant to this section. [<-Struck out]

[Struck out->] `(g) 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.

[<-Struck out]

[Struck out->] `(h) Term- A contract or agreement entered into under this section-- [<-Struck out]

[Struck out->] `(1) shall be for a term of not more than 20 years; and [<-Struck out]

[Struck out->] `(2) may be renewed in accordance with this section for not more than an additional 10 years.'. [<-Struck out]

SEC. 202. TRIBAL BIOMASS DEMONSTRATION PROJECT.

(a) Purpose- The purpose of this section is to establish a biomass demonstration project for federally recognized Indian tribes and Alaska Native corporations to promote biomass energy production.

(b) Tribal Biomass Demonstration Project- The Tribal Forest Protection Act of 2004 (Public Law 108-278; 118 Stat. 868) is amended--

(1) in section 2(a), by striking `In this section' and inserting `In this Act'; and

(2) by adding at the end the following:

` SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.

` (a) Stewardship Contracts or Similar Agreements- For each of fiscal years 2013 through 2017, the Secretary shall enter into stewardship contracts or similar agreements (excluding 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) Demonstration Projects- In each fiscal year for which projects are authorized, at least 4 new demonstration projects that meet the eligibility criteria described in subsection (c) shall be carried out under contracts or agreements described in subsection (a).

` (c) Eligibility Criteria- To be eligible to enter into a contract or agreement under this section, 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.

` (d) Selection- In evaluating the applications submitted under subsection (c), the Secretary shall--

` (1) take into consideration--

` (A) the factors set forth in paragraphs (1) and (2) of section 2(e); and

` (B) whether a proposed project would--

` (i) increase the availability or reliability of local or regional energy;

` (ii) enhance the economic development of the Indian tribe;

(i) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(ii) public lands (as defined in section 103 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(C) FOREST LAND- The term `forest land' means land that--

(i) is conveyed to an Alaska Native corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(ii)(I) is considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover (including commercial and noncommercial timberland and woodland), regardless of whether a formal inspection and land classification action has been taken; or

(II) formerly had a forest or vegetative cover that is capable of restoration.

(D) SECRETARY- The term `Secretary' means--

(i) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

(ii) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

(2) AGREEMENTS- For each of fiscal years 2013 through 2017, the Secretary shall enter into a stewardship contract or similar agreement (excluding a direct service contract) with 1 or more Alaska Native corporations to carry out a demonstration project to promote biomass energy production (including biofuel, heat, and electricity generation) on forest land of the Alaska Native corporations and in nearby communities by providing reliable supplies of woody biomass from Federal land.

(3) DEMONSTRATION PROJECTS- In each fiscal year for which projects are authorized, at least 1 new demonstration project that meets the eligibility criteria described in paragraph (4) shall be carried out under contracts or agreements described in paragraph (2).

(4) ELIGIBILITY CRITERIA- To be eligible to enter into a contract or agreement under this subsection, an Alaska Native corporation shall submit to the Secretary an application--

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

(B) that includes a description of--

(i) the forest land or rangeland under the jurisdiction of the Alaska Native corporation; and

(ii) the demonstration project proposed to be carried out by the Alaska Native corporation.

(5) SELECTION- In evaluating the applications submitted under paragraph (4), the Secretary shall--

(A) take into consideration whether a proposed project would--

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

(ii) enhance the economic development of the Alaska Native corporation;

(iii) result in or improve the connection of electric power transmission facilities serving the Alaska Native corporation with other electric transmission facilities;

(iv) improve the forest health or watersheds of Federal land or Alaska Native corporation forest land or rangeland;

(v) demonstrate new investments in infrastructure;
or

(vi) otherwise promote the use of woody biomass;
and

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

(6) IMPLEMENTATION- The Secretary shall--

(A) ensure that the criteria described in paragraph (4) are publicly available by not later than 120 days after the date of enactment of this subsection; and

(B) to the maximum extent practicable, consult with Alaska Native corporations and appropriate Alaska Native organizations likely to be affected in developing the application and otherwise carrying out this subsection.

(7) REPORT- Not later than September 20, 2015, the Secretary shall submit to Congress a report that describes, with respect to the reporting period--

(A) each individual application received under this subsection; and

(B) each contract and agreement entered into pursuant to this subsection.

(8) TERM- A contract or agreement entered into under this subsection--

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

(B) may be renewed in accordance with this subsection for not more than an additional 10 years.

SEC. 203. WEATHERIZATION PROGRAM.

Section 413(d) of the Energy Conservation and Production Act (42 U.S.C. 6863(d)) is amended--

(1) by striking paragraph (1) and inserting the following:

^ (1) RESERVATION OF AMOUNTS-

^ (A) IN GENERAL- Subject to subparagraph (B) and notwithstanding any other provision of this part, the Secretary shall reserve from amounts that would otherwise be allocated to a State under this part not less than 100 percent, but not more than 150 percent, of an amount which bears the same proportion to the allocation of that State for the applicable fiscal year as the population of all low-income members of an Indian tribe in that State bears to the population of all low-income individuals in that State.

^ (B) RESTRICTIONS- Subparagraph (A) shall apply only if-

-

^ (i) the tribal organization serving the low-income members of the applicable Indian tribe requests that the Secretary make a grant directly; and

^ (ii) the Secretary determines that the low-income members of the applicable Indian tribe would be equally or better served by making a grant directly than a grant made to the State in which the low-income members reside.';

(2) in paragraph (2)--

(A) by striking `The sums' and inserting

^ ADMINISTRATION- The amounts';

(B) by striking `on the basis of his determination';

(C) by striking `individuals for whom such a determination has been made' and inserting `low-income members of the Indian tribe'; and

(D) by striking `he' and inserting `the Secretary'; and

(3) in paragraph (3), by striking `In order' and inserting

^ APPLICATION- In order'.

SEC. 204. APPRAISALS.

(a) In General- Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding at the end the following:

SEC. 2607. APPRAISALS.

(a) In General- For any transaction that requires approval of the Secretary and involves mineral or energy resources held in trust by the United States for the benefit of an Indian tribe or by an Indian tribe subject to Federal restrictions against alienation, any appraisal relating to fair market value of those resources required to be prepared under applicable law may be prepared 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) Secretarial Review and Approval- Not later than 45 days after the date on which the Secretary receives an appraisal prepared by or for an Indian tribe under paragraph (2) or (3) of subsection (a), the Secretary shall--

(1) review the appraisal; and

(2) approve the appraisal unless the Secretary determines that the appraisal fails to meet the standards set forth in regulations promulgated under subsection (d).

(c) Notice of Disapproval- If the Secretary determines that an appraisal submitted for approval under subsection (b) should be disapproved, the Secretary shall give written notice of the disapproval to the Indian tribe and a description of--

(1) each reason for the disapproval; and

(2) how the appraisal should be corrected or otherwise cured to meet the applicable standards set forth in the regulations promulgated under subsection (d).

(d) Regulations- The Secretary shall promulgate regulations to carry out this section, including standards the Secretary shall use for approving or disapproving the appraisal described in subsection (a).'

SEC. 205. LEASES OF RESTRICTED LANDS FOR NAVAJO NATION.

(a) In General- Subsection (e)(1) of the first section of the Act of August 9, 1955 (commonly known as the 'Long-Term Leasing Act') (25 U.S.C. 415(e)(1)), is amended--

(1) by striking ` , except a lease for' and inserting ` , including a lease for';

(2) by striking subparagraph (A) and inserting the following:
` (A) in the case of a business or agricultural lease, 99 years;';

(3) in subparagraph (B), by striking the period at the end 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 any mineral resource (including geothermal resources), 25 years, except that--
` (i) any such lease may include an option to renew for 1 additional term of not to exceed 25 years; and
` (ii) any such lease for the exploration, development, or extraction of an oil or gas resource shall be for a term of not to exceed 10 years, plus such additional period as the Navajo Nation determines to be appropriate in any case in which an oil or gas resource is produced in a paying quantity.'.

(b) GAO Report- Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to Congress a report describing the progress made in carrying out the amendment made by subsection (a)(4).

Calendar No. 575

112th CONGRESS
2d Session
S. 1684
[Report No. 112-263]
A BILL

To amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes.

December 21, 2012

Reported with amendments

Union Calendar No. 506
112th CONGRESS
2d Session
H. R. 3973
[Report No. 112-692]

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

February 7, 2012

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

October 23, 2012

Additional sponsors: Mr. GOSAR and Mr. BERG

October 23, 2012

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 italic]

[For text of introduced bill, see copy of bill as introduced on February 7, 2012]

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 Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Native American Energy Act'.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.*
- Sec. 2. Table of Contents.*
- Sec. 3. Appraisals.*
- Sec. 4. Standardization.*
- Sec. 5. Environmental reviews of major Federal actions on Indian lands.*
- Sec. 6. Indian Energy Development Offices.*
- Sec. 7. BLM Oil and Gas Fees.*
- Sec. 8. Bonding requirements and nonpayment of attorneys' fees to promote indian energy projects.*
- Sec. 9. Tribal biomass demonstration project.*
- Sec. 10. Tribal Resource Management Plans.*
- Sec. 11. Leases of Restricted Lands for the Navajo Nation.*
- Sec. 12. Nonapplicability of certain rules.*

SEC. 3. APPRAISALS.

(a) Amendment- Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding at the end the following:

' 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 subsections (2) and (3) below.

` (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.'

(b) Conforming Amendment- The table of contents of the Energy Policy Act of 1992 (42 U.S.C. 13201 note) is amended by adding at the end of the items relating to title XXVI the following:

` Sec. 2607. Appraisal reforms.'

SEC. 4. 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. 5. 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 8 of that Act, shall give the Secretary any additional authority over energy projects on Alaska Native Claims Settlement Act lands.'

SEC. 6. INDIAN ENERGY DEVELOPMENT OFFICES.

Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) is amended--

(1) by redesignating paragraph (3) as paragraph (4);

(2) by inserting after paragraph (2) the following:

`(3) INDIAN ENERGY DEVELOPMENT OFFICES-

`(A) ESTABLISHMENT- To assist the Secretary in carrying out the Program, the Secretary shall establish within the Department of the Interior not less than 5 offices.

`(B) NAMING- Each office established under subparagraph (A) shall be known as an `Indian Energy Development Office'.

`(C) LOCATION- The Secretary shall locate each Indian Energy Development Office--

`(i) within a regional or agency office of the Bureau of Indian Affairs; and

`(ii) to the maximum extent practicable, in an area in which there exists a high quantity of tribal energy development opportunities, as determined by the Secretary in consultation with Indian tribes.

`(D) DIRECTORS- Each Indian Energy Development Office established under this paragraph shall be headed by a director.

`(E) DUTIES- The director of each Indian Energy Development Office shall--

`(i) provide energy-related information and resources to Indian tribes and tribal members;

- ` (ii) coordinate meetings and outreach among Indian tribes, tribal members, energy companies, and relevant Federal, State, and tribal agencies;*
- ` (iii) oversee, and ensure the timely processing of, Indian energy applications, permits, licenses, and other documents that are subject to development, review, or processing by--*
 - ` (I) the Bureau of Indian Affairs;*
 - ` (II) the Bureau of Land Management;*
 - ` (III) the National Park Service;*
 - ` (IV) the United States Fish and Wildlife Service;*
 - ` (V) the Bureau of Reclamation;*
 - ` (VI) the Minerals Management Service; or*
 - ` (VII) the Office of Special Trustee for American Indians of the Department of the Interior; and*
- ` (iv) consult with Indian tribes that will be served by an Indian Energy Development Office to determine what services, information, facilities, or programs would best expedite the responsible development of energy resources.*
- ` (F) STAFF- Each Indian Energy Development Office established under this paragraph shall be adequately staffed to meet the demand for energy permitting in the region or agency where the office is established.'*

SEC. 7. BLM OIL AND GAS FEES.

The Secretary of the Interior, acting through the Bureau of Land Management, shall not collect any fee for any of the following:

- (1) For an application for a permit to drill on Indian land.*
- (2) To conduct any oil or gas inspection activity on Indian land.*
- (3) On any oil or gas lease for nonproducing acreage on Indian land.*

SEC. 8. BONDING REQUIREMENTS AND NONPAYMENT OF ATTORNEYS' FEES TO PROMOTE INDIAN ENERGY PROJECTS.

(a) In General- A plaintiff who obtains a preliminary injunction or administrative stay in an energy related action, but does not ultimately prevail on the merits of the energy related action, shall be liable for damages sustained by a defendant who--

- (1) opposed the preliminary injunction or administrative stay; and*
- (2) was harmed by the preliminary injunction or administrative stay.*

(b) Bond- Unless otherwise specifically exempted by Federal law, a court may not issue a preliminary injunction and an agency may not grant an administrative stay in an energy related action until the plaintiff posts with the court or the agency a surety bond or cash equivalent--

- (1) in an amount the court or agency decides is 30 percent of that amount that the court or agency considers is sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages, including but not limited to preliminary development costs, additional development costs, and reasonable attorney fees, that each defendant may sustain as a result of the preliminary injunction or administrative stay;*
- (2) written by a surety licensed to do business in the state in which the Indian Land or other land where the activities are undertaken is situated; and*
- (3) payable to each defendant opposing the preliminary injunction or administrative stay, in the event that the plaintiff does not prevail on the merits of the energy related action, Provided, that, if there is more than one plaintiff, the court or agency shall establish the amount of the bond required by this Subsection for each plaintiff in a fair and equitable manner.*

(c) 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 plaintiff related to an energy related action.

(d) Definitions- For the purposes of this section, the following definitions apply:

- (1) ADMINISTRATIVE STAY- The term `Administrative Stay' means a stay or other temporary remedy issued by a Federal agency, including the Department of the Interior, the Department of Agriculture, the Department of Energy, the Department of Commerce, and the Environmental Protection Agency.*
- (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*

Native Claims Settlement Act (Public Law 92-203; 43 U.S.C. 1601).

(3) ENERGY RELATED ACTION- The term `energy 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 (as defined in section 702 of title 5, United States Code), 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 ON THE MERITS- The phrase `Ultimately prevail on the merits' means, in a final enforceable judgment on the merits, the court rules in the plaintiff's favor on at least one cause of action which is an underlying rationale for the preliminary injunction, 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. 9. TRIBAL BIOMASS DEMONSTRATION PROJECT.

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

` SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.

`(a) In General- For each of fiscal years 2013 through 2017, 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 (c) 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 September 20, 2015, 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. 10. 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. 11. 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. 12. 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.

Union Calendar No. 506

112th CONGRESS
2d Session
H. R. 3973
[Report No. 112-692]
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.

October 23, 2012

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

END