

INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-  
DETERMINATION ACT AMENDMENTS OF 2017

---

NOVEMBER 30, 2018.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

---

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany S. 245]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 245) to amend the Indian Tribal Energy Development and Self Determination Act of 2005, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 245 is to amend the Indian Tribal Energy Development and Self Determination Act of 2005.

BACKGROUND AND NEED FOR LEGISLATION

For several years Congress has heard from concerned Indian tribes that certain federal laws governing the development of tribal energy resources are complex and often lead to significant cost, delay and uncertainty for all parties to tribal energy transactions. These costs, delays, and uncertainties tend to discourage development of tribal trust energy resources and drive development investments to private or non-tribal lands that are not subject to these same federal laws.

Title V of the Energy Policy Act of 2005, which authorized tribal energy resource agreements (TERA),<sup>1</sup> was intended to address these concerns by removing much of the bureaucracy and shifting the approval requirements for these transactions from the Sec-

---

<sup>1</sup>Public Law 109-58, 25 U.S.C. 3504.

retary of the Interior to Indian tribes. However, no tribe has successfully undertaken energy lease management of its trust lands under the TERA process. Title I of S. 245 contains significant amendments to the law authorizing TERAs to facilitate a tribe's application for and the Secretary of the Interior's approval of them.

S. 245 would also remove other federal disincentives to developing tribal trust energy resources and assist Indian tribes interested in pursuing the development of these resources consistent with the federal policy of promoting Indian self-determination.

### *Impediments to Tribal Energy Development*

For decades, tribes and individual Indian landowners have consistently struggled with overbearing federal laws governing leases of their trust lands. Generally, federal law requires the approval of the Department of the Interior before a lease between an energy developer and a tribe is deemed valid. For example, under the Indian Land Mineral Leasing Act of 1982,<sup>2</sup> an individual tribal member or tribe may only lease their trust lands for mineral development "subject to the approval of the Secretary [of the Interior]".<sup>3</sup> Because of this law, the Department of the Interior developed increasingly complex and burdensome rules regarding the approval of leases on Indian land. The increase in rules often leads to National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) reviews, expensive applications for permits to drill, lengthy appraisals, and an increasing number of layers of sluggish bureaucratic review often across various government agencies. As the reviews begin to pile up, the ability to delay, appeal, or sue to slow development on Indian lands increases exponentially.

This cumbersome bureaucratic design continuously hurts tribes, including many historically-impooverished communities, from tapping into the economic potential of the resources found on their tribal lands. Because tribes with large energy resources tend to live on or near rural areas, development of these resources is consistently one of the only ways tribes can provide jobs and constant revenue for the tribe and its members as well as a thriving energy supply for themselves and the surrounding community. Full access to these energy resources could allow tribes to tap into their full economic potential.

In June 2015, the Government Accountability Office (GAO) authored a report titled, "Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands".<sup>4</sup> Throughout the report, GAO outlined various shortcomings of the Department of the Interior's management of energy development on Indian lands that, in numerous situations "can increase costs and project development times, resulting in missed development opportunities, lost revenue, and jeopardized viability of projects."<sup>5</sup>

These repeated instances of stifling Indian energy development lead to GAO placing Indian energy on its biennial "high risk" list for waste, fraud, and abuse in March 2017. In the report, GAO stated, "BIA has in recent years continued to mismanage Indian

<sup>2</sup> 25 U.S.C. 2101 et seq.

<sup>3</sup> 25 U.S.C. 2102.

<sup>4</sup> <https://www.gao.gov/products/GAO-15-502>.

<sup>5</sup> Id. summary page.

energy resources held in trust, thereby limiting opportunities for tribes and their members to use those resources to create economic benefits and improve their communities.”<sup>6</sup>

As mentioned above, tribal energy resource agreements (TERAs) were authorized under the Energy Policy Act of 2005.<sup>7</sup> Under a TERA, a tribe may, without review and approval of the Secretary of the Interior, lease and grant rights-of-way on its trust land for energy-related purposes if these actions are conducted under tribal rules approved in advance by the Secretary of the Interior. Such tribal rules shall be approved by the Secretary if they include appropriate conditions for the orderly conduct of leasing of trust lands by the tribe, a demonstration of the tribe’s capacity to manage its resources, and a tribal environmental review process. Outside of certain duties for the Secretary to monitor the tribe’s compliance with the TERA, a tribe can manage its energy resources on a day-to-day basis without the constant governance of the lease by Interior agencies.

Removing a layer of federal agency oversight of trust lands creates a greater incentive for the productive development of a tribe’s energy resources, benefiting its members, creating job opportunities for a tribe’s community and for those living in the surrounding community, and increasing the supply of energy resources to fuel the United States’ economy.

More than a decade after the passage of the Energy Policy Act of 2005, no tribe has successfully applied for and a received a TERA. GAO cited a few reasons for this result, some of which include uncertainty surrounding TERA regulations promulgated by the Department of the Interior, limited tribal capacity and the costs of taking on activities currently controlled by federal agencies, and a complex application process.

In the 112th Congress, the Subcommittee on Indian and Alaska Native Affairs held five<sup>8</sup> Indian energy-related hearings. In the 113th Congress, Rep. Don Young (R-AK) introduced H.R. 1548, the Native American Energy Act. The Natural Resources Committee reported the bill and included an amended version as part of a larger energy package which passed the House.<sup>9</sup> In the 114th Congress, H.R. 538, the Native American Energy Act, passed the House on October 8, 2015, with bipartisan support and was then referred to the Senate Committee on Indian Affairs. No further action occurred on the standalone bill; however, H.R. 538 was included in the House passed amendment to S. 2012, the North American Energy Security and Infrastructure Act of 2016. No further action occurred in the conference to S. 2012 before the end of the 114th Congress.

In the 115th Congress, the Natural Resources Committee marked up H.R. 210 on October 4, 2017, and reported the bill on

<sup>6</sup> [https://www.gao.gov/highrisk/improving\\_federal\\_management\\_serve\\_tribes/why\\_did\\_study](https://www.gao.gov/highrisk/improving_federal_management_serve_tribes/why_did_study).

<sup>7</sup> Public Law 109–58; 25 U.S.C. 3501 et seq.

<sup>8</sup> <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=229900>;

<https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=240525>;

<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=278663>;

<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=286987>;

<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=289030>.

<sup>9</sup> See H.R. 2, the American Energy Solutions for Lower Costs and More American Jobs Act, 113th Congress (2014), and H.R. 1965, Federal Lands Jobs and Energy Security Act of 2013 (2013).

October 23, 2018. H.R. 210 contains similar but not identical legislative language to S. 245.

## SECTION-BY-SECTION ANALYSIS

### *Section 1. Short title*

This act may be cited as the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.

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

### *Section 101. Indian tribal energy resource development*

Amends the Energy Policy Act of 1992<sup>10</sup> by directing the Secretary of the Interior to provide tribes with any technical assistance necessary for planning energy resource development programs.

The Indian energy education planning and management assistance program under the Department of Energy (DOE) is expanded so intertribal organizations can be eligible for the offered grants. The grants can also be used to upgrade tribes' capacity to oversee energy development and efficiency programs.

Tribal energy development organizations will also be eligible for DOE energy development loan guarantees.

### *Section 103. Tribal Energy Resource Agreements*

Amends Section 2604 of the Energy Policy Act of 1992 in numerous ways relating to TERAs. Section 103 also changes the requirements for determining if a tribe has the capacity to operate a TERA. It not only requires the Secretary of the Interior to make the determination, but also places a 120-day time limit on the decision. A tribe is deemed to have sufficient capacity to operate a TERA if the tribe has a preexisting record of operating environmental programs and the tribe has successfully carried out approval of surface leases without any compliance violations.

Subsection (a)(1) outlines that an applicable lease or business agreement may also directly include electricity-producing facilities that run on renewable resources, if a portion of such resources have been produced or developed on tribal land. It also permits leases and agreements that include provisions on communitization, voluntary pooling, or unitization of an Indian tribe's energy resources with resources from another party.

Subsection (a)(1) also provides that an agreement between a TERA and a tribe does not require the approval of Secretary if the lease or agreement is for a term that does not exceed 30 years (or in the case of an oil or gas lease, 10 years).

Subsection (a)(2) broadens "applicable right-of-way" to include facilities to produce electricity via renewable resources. It also provides that a right-of-way between an Indian tribe and a TERA for a lease or agreement that does not exceed 30 years is not required to be reviewed or approved by the Secretary.

Subsection (a)(4) provides that a TERA takes effect 271 days after submission by an Indian tribe unless the Secretary of the Interior directly disapproves of it before then. A subsequent TERA

<sup>10</sup>25 U.S.C. 3502(a).

submission takes effect unless rejected by the Secretary in 90 days before it takes effect. The reasons for rejection of a TERA by the Secretary must be one of the following: the Indian tribe has failed to demonstrate capacity for the agreement, the TERA would “violate applicable Federal law or an existing treaty of the Indian tribe”, or the TERA does not include any provisions mandated by Section 2604(e) of the Energy Policy Act of 1992.

Subsection (a)(6) requires the Secretary of the Interior to provide funding to an Indian tribe in an amount equal to any savings that the United States will realize because of the Indian tribe carrying out a TERA. The funding would be made available under a separate funding agreement. This section also provides the requirements for certification as a tribal energy development organization.

*Section 104. Technical assistance for Indian Tribal Governments*

This section requires the Secretary of Energy to work with the Directors of the National Laboratories to make all technical and scientific resources of the DOE available for tribal energy projects and activities.

*Section 105. Conforming amendments*

Amends the Energy Policy Act of 1992 to make it consistent with the amendments previously made by Sections 101, 102, and 103 of S. 245. It also expands the definition of tribal energy development organization to include business organizations that are wholly owned by an Indian tribe.

TITLE II—MISCELLANEOUS AMENDMENTS

*Section 201. Issuance of preliminary permits or licenses*

Amends the Federal Power Act<sup>11</sup> to require the Federal Regulatory Commission (FERC) to give tribes, in addition to States and municipalities, preference for the receipt of preliminary hydroelectric licenses.

*Section 202. Tribal biomass demonstration project*

Amends the Tribal Forest Protection Act of 2004<sup>12</sup> to create a demonstration project for Indian tribes and Alaska Natives to promote biomass energy production on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from federal land.

*Section 203. Weatherization program*

The Energy Conservation and Production Act<sup>13</sup> is amended by changing requirements for direct home weatherization grants to tribes. While the amount authorized to be reserved from State funding remains whole, direct funding requested by a tribal organization and approved by the Secretary of Energy (if it is deemed that low-income members of the Indian tribe would be better served by the direct funding than through the State) is authorized.

Creates an expectation that a tribally-designated housing entity in good standing under the Native American Housing Assistance

<sup>11</sup> 16 U.S.C. 800(a).

<sup>12</sup> 25 U.S.C. 3115(a) et seq.

<sup>13</sup> 42 U.S.C. 6863(d).

and Self-Determination Act of 1996<sup>14</sup> would automatically qualify as equally or better serving low-income tribal members.

*Section 204. Appraisals*

This section facilitates the appraisal of a tribe's trust or restricted lands for any transaction relating to the energy resources of such lands. Under Section 204, an appraisal may be conducted by the Secretary of the Interior, by a tribe or by a third-party appraiser contracted by a tribe.

The Secretary has 45 days to review and approve any such appraisal, unless the appraisal fails to meet set standards set forth in subsection (d). Upon disapproval, the Secretary must give written notice to the tribe, as well as a detailed list of why the appraisal failed and steps to take to correct the deficiency leading to its disapproval.

*Section 205. Leases of restricted lands for Navajo Nation*

Enhances Navajo Nation leasing authority. The Indian Long-Term Leasing Act<sup>15</sup> requires separate review and approval for each non-mineral lease of a tribe's land, triggering a lengthy, detailed review by the federal bureaucracy, and the potential preparation of an environmental review under the National Environmental Policy Act. In the 112th Congress, the HEARTH Act<sup>16</sup> was enacted to allow any tribe to develop non-mineral leasing rules, and when such rules are approved by the Secretary of the Interior, the tribe may then execute leases without further Departmental involvement. It also increases the maximum amount of time commercial and agricultural leases can be signed by Navajo Nation on projects that do not require prior Interior approval (from 25 years to 99 years).

This section allows the Navajo Nation to execute mineral and geothermal leases in a manner like the HEARTH Act. The terms of such leases may be for 25 years with an option to renew for one term of up to 25 years.

Amends 25 U.S.C. 415(e) to permit the Navajo to execute 99-year leases for business or agricultural purposes.

*Section 206. Extension of tribal lease period for the Crow Tribe of Montana*

Amends the Long-Term Leasing Act to allow the Crow Tribe of Montana to enter into leases of their land held in trust for a term up to 99 years.

*Section 207. Trust status of lease payments*

Creates provisions for money held by the Department of the Interior in connection with the review and approval of a sale, lease, permit, or other conveyance of Indian land, unless the money originates from competitive bidding. If so, only money paid by the successful bidder will be held in trust.

<sup>14</sup>25 U.S.C. 4101 et seq.

<sup>15</sup>25 U.S.C. 415.

<sup>16</sup>See Public Law 112–151, the *Helping Expedite and Advance Responsible Tribal Homeownership Act* (2012).

All contracts or other conveyance described in this section, along with all income produced from investment related to it, will be distributed to the Indian tribe or individual Indian landowners.

#### COMMITTEE ACTION

S. 245 was introduced on January 20, 2017, by Senator John Hoeven (R-ND). The Senate passed the bill by unanimous consent on November 29, 2017. In the House of Representatives, the bill was referred primarily to the Committee on Natural Resources, and additionally to the Committee on Energy and Commerce. Within the Committee on Natural Resources, the bill was referred to the Subcommittee on Indian, Insular and Alaska Native Affairs and the Subcommittee on Energy and Mineral Resources. On November 15, 2018, the Committee on Natural Resources met to consider the bill. The Subcommittees were discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 27, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 245, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*S. 245—Indian Tribal Energy Development and Self-Determination Act Amendments of 2017*

S. 245 would make various amendments to existing federal energy programs on tribal lands. Under current law, a tribe may enter into a tribal energy resource agreement (TERA) with the federal government to allow the tribe to complete and manage business agreements with third parties for such purposes as rights-of-way for energy projects and oil and gas leases. Under a TERA a tribe manages activities that would otherwise be carried out by the Department of the Interior (DOI). S. 245 would allow that under most circumstances a TERA application would automatically be approved 270 days after submission to DOI. Under the act, DOI also would be required to pay a tribe operating under a TERA agreement for carrying out management activities. CBO estimates that implementing that provision would have no net effect on the federal budget because any amounts paid to tribes would have been spent by DOI to conduct the same work.

Under the act, the Department of Energy would collaborate with the national laboratories to provide technical assistance to tribal governments. The act would establish a pilot program for tribes to use nonmarketable timber from neighboring federal lands for energy development. Using information from the department, CBO estimates that implementing those provisions would cost \$1 million; such spending would be subject to the availability of appropriations.

Enacting S. 245 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 245 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 245 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Tribes would benefit from greater flexibility and assistance authorized by the bill for energy development. Any costs to tribes would be incurred voluntarily as a condition of assistance or of participating in a voluntary federal program.

On May 3, 2017, CBO transmitted a cost estimate for S. 245, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, as ordered reported by the Senate Committee on Indian Affairs on February 8, 2017. The two versions of S. 245 are similar and CBO's estimates of their budgetary effects are the same.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Indian Tribal Energy Development and Self Determination Act of 2005.

## EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

## COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## COMPLIANCE WITH H. RES. 5

**Directed Rule Making.** Section 103 of the bill directs the Secretary of the Interior to promulgate regulations to implement the changes to the TERA program made by that section. Section 204 directs the Secretary of the Interior to promulgate regulations regarding appraisals of minerals and energy resources on lands 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.

**Duplication of Existing Programs.** This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**ENERGY POLICY ACT OF 1992**

\* \* \* \* \*

**TITLE XXVI—INDIAN ENERGY****SEC. 2601. DEFINITIONS.**

In this title:

- (1) The term “Director” means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.
- (2) The term “Indian land” means—
  - (A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

- (B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—
- (i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;
  - (ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or
  - (iii) by a dependent Indian community; and
- (C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.
- (3) The term “Indian reservation” includes—
- (A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;
  - (B) a public domain Indian allotment; and
  - (C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—
    - (i) on original or acquired territory of the community; or
    - (ii) within or outside the boundaries of any State or States.
- (4)(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).
- (B) For the purpose of paragraph (12) and sections 2603(b)(1)(C) and 2604, the term “Indian tribe” does not include any Native Corporation.
- (5) The term “integration of energy resources” means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.
- (6) The term “Native Corporation” has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).
- (7) The term “organization” means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.
- (8) The term “Program” means the Indian energy resource development program established under section 2602(a).
- (9) *The term “qualified Indian tribe” means an Indian tribe that has—*
- (A) *carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the application without material audit exception (or without any material audit exceptions that were not*

*corrected within the 3-year period) relating to the management of tribal land or natural resources; or*

*(B) substantial experience in the administration, review, or evaluation of energy resource leases or agreements or has otherwise substantially participated in the administration, management, or development of energy resources located on the tribal land of the Indian tribe.*

[(9)] (10) The term “Secretary” means the Secretary of the Interior.

[(10)] (11) The term “sequestration” means the long-term separation, isolation, or removal of greenhouse gases from the atmosphere, including through a biological or geologic method such as reforestation or an underground reservoir.

[(11)] The term “tribal energy resource development organization” means an organization of two or more entities, at least one 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.】

(12) *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 Act of June 18, 1934 (25 U.S.C. 5124) (commonly known as the “Indian Reorganization Act”) or section 3 of the Act of June 26, 1936 (49 Stat. 1967, chapter 831) (commonly known as the “Oklahoma Indian Welfare Act”)); and*

*(B) any organization of two or more entities, at least one 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.*

[(12)] (13) The term “tribal land” means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under laws of the United States.

#### **SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.**

(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and 【tribal energy resource development organizations】 *tribal energy development organizations* in achieving the purposes of this title.

(2) In carrying out the Program, the Secretary shall—

(A) provide development grants to Indian tribes and 【tribal energy resource development organizations】 *tribal energy development organizations* for use in developing or

obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and **tribal energy resource development organizations** *tribal energy development organizations* for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land;

(C) provide low-interest loans to Indian tribes and **tribal energy resource development organizations** *tribal energy development organizations* for use in the promotion of energy resource development on Indian land and integration of energy resources; **and**

(D) provide grants and technical assistance to an appropriate tribal environmental organization, as determined by the Secretary, that represents multiple Indian tribes to establish a national resource center to develop tribal capacity to establish and carry out tribal environmental programs in support of energy-related programs and activities under this title, including—

(i) training programs for tribal environmental officials, program managers, and other governmental representatives;

(ii) the development of model environmental policies and tribal laws, including tribal environmental review codes, and the creation and maintenance of a clearinghouse of best environmental management practices; and

(iii) recommended standards for reviewing the implementation of tribal environmental laws and policies within tribal judicial or other tribal appeals systems~~].~~; and

*(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.*

(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2006 through 2016.

(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.—

(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe, *intertribal organization*, or **tribal energy resource development organization** *tribal energy development organization* for use in carrying out—

(A) energy, energy efficiency, and energy conservation programs;

(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;

(C) *activities to increase the capacity of Indian tribes to manage energy development and energy efficiency programs;*

**[(C)]** (D) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

**[(D)]** (E) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

(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.*

**[(3)]** (4)(A) The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to participate in carbon sequestration practices on Indian land, including—

(i) geologic sequestration;

(ii) forest sequestration;

(iii) agricultural sequestration; and

(iv) any other sequestration opportunities the Director considers to be appropriate.

(B) The activities carried out under subparagraph (A) shall be—

(i) coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy;

(ii) conducted to determine methods consistent with existing standardized measurement protocols to account and report the quantity of carbon dioxide or other greenhouse

gases sequestered in projects that may be implemented on Indian land; and

(iii) reviewed periodically to collect and distribute to Indian tribes information on carbon sequestration practices that will increase the sequestration of carbon without threatening the social and economic well-being of Indian tribes.

[(4)] (5)(A) The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.

(B) In providing a grant under this subsection, the Director shall give priority to any application received from an Indian tribe with inadequate electric service (as determined by the Director).

(C) In providing a grant under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Director shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Director determines to be appropriate.

[(5)] (6) The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

[(6)] (7) There is authorized to be appropriated to carry out this subsection \$20,000,000 for each of fiscal years 2006 through 2016.

(c) DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM.—

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe or a tribal energy development organization for energy development.

(2) In providing a loan guarantee under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Secretary of Energy shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Secretary determines to be appropriate.

(3) A loan [guarantee] *guaranteed* under this subsection shall be made by—

(A) a financial institution subject to examination by the Secretary of Energy; [or]

(B) an Indian tribe, from funds of the Indian tribe[.]; or

(C) a tribal energy development organization, from funds of the tribal energy development organization.

(4) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed \$2,000,000,000.

(5) [The Secretary of Energy may] *Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, the Secretary of Energy shall issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.*

(6) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(7) Not later than 1 year after the date of enactment of this section, the Secretary of Energy shall submit to Congress a report on the financing requirements of Indian tribes for energy development on Indian land.

(d) PREFERENCE.—

(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

(2) In carrying out this subsection, a Federal agency or department shall not—

(A) pay more than the prevailing market price for an energy product or byproduct; or

(B) obtain less than prevailing market terms and conditions.

**SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.**

(a) GRANTS.—The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

(b) USE OF FUNDS.—Funds from a grant provided under this section may be used—

(1)(A) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

(B) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

(C) by an Indian tribe (other than an Indian Tribe in the State of Alaska, except the Metlakatla Indian Community) for—

(i) the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development; and

(ii) the development of technical infrastructure to protect the environment under applicable law; or

(D) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

(2) by an Indian tribe for the training of employees that—

(A) are engaged in the development of energy resources on Indian land; or

(B) are responsible for protecting the environment.

(c) OTHER ASSISTANCE.—

(1) In carrying out the obligations of the United States under this title, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that [on the request of an Indian tribe, the Indian tribe] *on the request of an Indian tribe or a tribal energy development organization, the Indian tribe or tribal energy development organization shall have available scientific and technical information and exper-*

tise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

- (2) The Secretary may carry out paragraph (1)—
- (A) directly, through the use of Federal officials; or
  - (B) indirectly, by providing financial assistance to an Indian tribe or *tribal energy development organization* to secure independent assistance.

**SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.**

(a) LEASES AND BUSINESS AGREEMENTS.—In accordance with this section—

(1) an Indian tribe may, at the discretion of the Indian tribe, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the energy mineral resources of the Indian tribe located on tribal land; **[or]**

(B) construction or operation of—

**[(i) an electric generation, transmission, or distribution facility located on tribal land; or]**

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

*(ii) a facility to process or refine energy resources, at least a portion of which have been developed on or produced from tribal land; **[and]** or*

*(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, or, if appropriate, lessee, of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement; and*

**[(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—**

**[(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);**

**[(B) the term of the lease or business agreement 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; and**

**[(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evalua-**

tion of the activities of the Indian tribe under the agreement, to be conducted pursuant to subsection (e)(2)(D)(i)).**】**  
 (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 (including regulations), 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 for which the Indian tribe has obtained a certification pursuant to subsection (h); 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.*

**【(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—**An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without review or approval by the Secretary if—

**【(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);**

**【(2) the term of the right-of-way does not exceed 30 years;**

**【(3) the pipeline or electric transmission or distribution line serves—**

**【(A) an electric generation, transmission, or distribution facility located on tribal land; or**

**【(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and**

**【(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under an agreement described in subparagraphs (D) and (E) of subsection (e)(2)).**】****

*(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*

(C) *the purposes, or facilitates in carrying out the purposes, of any lease or agreement entered into for energy resource development on tribal land;*  
 (2) *was executed—*

(A) *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*

(B) *by the Indian tribe and a tribal energy development organization for which the Indian tribe has obtained a certification pursuant to subsection (h); and*

(3) *has a term that does not exceed 30 years.*

(c) **RENEWALS.**—A lease or business agreement entered into, or a right-of-way granted, by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

**[(d) VALIDITY.**—No lease, business agreement, or right-of-way relating to the development of tribal energy resources under this section shall be valid unless the lease, business agreement, or right-of-way is authorized by a tribal energy resource agreement approved by the Secretary under subsection (e)(2).**]**

(d) **VALIDITY.**—*No lease or business agreement entered into, or right-of-way granted, pursuant to this section shall be valid unless the lease, business agreement, or right-of-way is authorized by subsection (a) or (b).*

(e) **TRIBAL ENERGY RESOURCE AGREEMENTS.**—

**[(1) On the date on which regulations are promulgated under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.]**

(1) **IN GENERAL.**—

(A) **AUTHORIZATION.**—*On or after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, a qualified Indian tribe may submit to the Secretary a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.*

(B) **NOTICE OF COMPLETE PROPOSED AGREEMENT.**—*Not later than 60 days after the date on which the tribal energy resource agreement is submitted under subparagraph (A), the Secretary shall—*

(i) *notify the Indian tribe as to whether the agreement is complete or incomplete;*

(ii) *if the agreement is incomplete, notify the Indian tribe of what information or documentation is needed to complete the submission; and*

(iii) *identify and notify the Indian tribe of the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in the implementation of the tribal energy resource agreement, including the environmental review of individual projects.*

(C) *EFFECT.*—*Nothing in this paragraph precludes the Secretary from providing any financial assistance at any time to the Indian tribe to assist in the implementation of the tribal energy resource agreement.*

[(2)][(A) Not later than 270 days after the date on which the Secretary receives a tribal energy resource agreement from an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement from an Indian tribe under paragraph (4)(C) (or a later date, as agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.]

(2) *PROCEDURE.*—

(A) *EFFECTIVE DATE.*—

(i) *IN GENERAL.*—*On the date that is 271 days after the date on which the Secretary receives a tribal energy resource agreement from a qualified Indian tribe under paragraph (1), the tribal energy resource agreement shall take effect, unless the Secretary disapproves the tribal energy resource agreement under subparagraph (B).*

(ii) *REVISED TRIBAL ENERGY RESOURCE AGREEMENT*  
*On the date that is 91 days after the date on which the Secretary receives a revised tribal energy resource agreement from a qualified Indian tribe under paragraph (4)(B), the revised tribal energy resource agreement shall take effect, unless the Secretary disapproves the revised tribal energy resource agreement under subparagraph (B).*

[(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—]

[(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

[(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and]

(B) *DISAPPROVAL.*—*The Secretary shall disapprove a tribal energy resource agreement submitted pursuant to paragraph (1) or (4)(B) only if—*

(i) *a provision of the tribal energy resource agreement violates applicable Federal law (including regulations) or a treaty applicable to the Indian tribe;*

(ii) *the tribal energy resource agreement does not include one or more provisions required under subparagraph (D); or*

(iii) *the tribal energy resource agreement [includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—] does not include provisions that, with respect to any lease, business agreement, or right-of-way to which the tribal energy resource agreement applies—*

[(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

**[(II)]** address the term of the lease or business agreement or the term of conveyance of the right-of-way;

**[(III)]** *(I)* address amendments and renewals;

**[(IV)]** *(II)* address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

**[(V)]** address technical or other relevant requirements;

**[(VI)]** *(III)* establish requirements for environmental review in accordance with subparagraph (C);

**[(VII)]** *(IV)* ensure compliance with all applicable environmental laws, including a requirement that each lease, business agreement, and right-of-way state that the lessee, operator, or right-of-way grantee shall comply with all such laws;

**[(VIII)]** identify final approval authority;

**[(IX)]** *(V)* provide for public notification of final approvals;

**[(X)]** *(VI)* establish a process for consultation with any affected States regarding off-reservation impacts, if any, identified under subparagraph (C)(i);

**[(XI)]** *(VII)* describe the remedies for breach of the lease, business agreement, or right-of-way;

**[(XII)]** *(VIII)* require each lease, business agreement, and right-of-way to include a statement that, if any of its provisions violates an express term or requirement of the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed—

(aa) the provision shall be null and void; and

(bb) if the Secretary determines the provision to be material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

**[(XIII)]** *(IX)* require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations promulgated under paragraph (8);

**[(XIV)]** *(X)* include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary under paragraph (7)(B);

**[(XV)]** specify the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in implementation of the tribal energy resource agreement, including environmental review of individual projects; and

**[(XVI)]** *(XI)* in accordance with the regulations promulgated by the Secretary under paragraph (8), require that the Indian tribe, as soon as practicable

after receipt of a notice by the Indian tribe, give written notice to the Secretary of—

(aa) any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way entered into under the tribal energy resource agreement; and

(bb) any activity or occurrence under a lease, business agreement, or right-of-way that constitutes a violation of Federal [or tribal] environmental laws[.];

(XII) include a certification by the Indian tribe that the Indian tribe has—

(aa) carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the application without material audit exception (or without any material audit exceptions that were not corrected within the 3-year period) relating to the management of tribal land or natural resources; or

(bb) substantial experience in the administration, review, or evaluation of energy resource leases or agreements or has otherwise substantially participated in the administration, management, or development of energy resources located on the tribal land of the Indian tribe; and

(XIII) at the option of the Indian tribe, identify which functions, if any, authorizing any operational or development activities pursuant to a lease, right-of-way, or business agreement approved by the Indian tribe, that the Indian tribe intends to conduct.

(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for, at a minimum—

[(i) the identification and evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources;

[(ii) the identification of proposed mitigation measures, if any, and incorporation of appropriate mitigation measures into the lease, business agreement, or right-of-way;]

(i) a process for ensuring that—

(I) the public is informed of, and has reasonable opportunity to comment on, any significant environmental impacts of the proposed action; and

(II) the Indian tribe provides responses to relevant and substantive public comments on any impacts described in subclause (I) before the Indian tribe approves the lease, business agreement, or right-of-way;

[(iii) (ii) a process for ensuring that—

(I) the public is informed of, and has an opportunity to comment on, the environmental impacts of the proposed action; and

(II) responses to relevant and substantive comments are provided, before tribal approval of the lease, business agreement, or right-of-way;

[(iv)] (iii) sufficient administrative support and technical capability to carry out the environmental review process; and

[(v)] (iv) oversight by the Indian tribe of energy development activities by any other party under any lease, business agreement, or right-of-way entered into pursuant to the tribal energy resource agreement, to determine whether the activities are in compliance with the tribal energy resource agreement and applicable Federal environmental laws.

(D) A tribal energy resource agreement between the Secretary and an Indian tribe under this subsection shall include—

(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources under the tribal energy resource agreement; and

(ii) if a periodic review and evaluation, or an investigation, by the Secretary of any breach or violation described in a notice provided by the Indian tribe to the Secretary in accordance with [subparagraph (B)(iii)(XVI)] *subparagraph (B)(iv)(XI)*, results in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take actions determined by the Secretary to be necessary to protect the asset, including reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and any condition that caused the jeopardy are corrected.

(E) Periodic review and evaluation under subparagraph (D) shall be conducted on an annual basis, except that, after the third annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation under subparagraph (D) to be conducted once every 2 years.

(F) *EFFECTIVE PERIOD.*—*A tribal energy resource agreement that takes effect pursuant to this subsection shall remain in effect to the extent any provision of the tribal energy resource agreement is consistent with applicable Federal law (including regulations), unless the tribal energy resource agreement is—*

*(i) rescinded by the Secretary pursuant to paragraph (7)(D)(iii)(II); or*

*(ii) voluntarily rescinded by the Indian tribe pursuant to the regulations promulgated under paragraph (8)(B) (or successor regulations).*

**[(3) The Secretary]**

(3) *NOTICE AND COMMENT; SECRETARIAL REVIEW.*—*The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted [for approval] under paragraph (1). The Secretary's review of a tribal energy resource agreement shall be limited to activities specified by the provisions of the tribal energy resource agreement.*

**[(4) If the Secretary]**

(4) *ACTION IN CASE OF DISAPPROVAL.*—*If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the [date of disapproval—] date of disapproval, provide the Indian tribe with—*

**[(A) notify the Indian tribe in writing of the basis for the disapproval;**

**[(B) identify what changes or other actions are required to address the concerns of the Secretary; and**

**[(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.]**

*(A) a detailed, written explanation of—*

*(i) each reason for the disapproval; and*

*(ii) the revisions or changes to the tribal energy resource agreement necessary to address each reason; and*

*(B) an opportunity to revise and resubmit the tribal energy resource agreement.*

**[(5) If an Indian tribe]**

(5) *PROVISION OF DOCUMENTS TO SECRETARY.*—*If an Indian tribe executes a lease or business agreement, or grants a right-of-way, in accordance with a tribal energy resource agreement [approved] in effect under this subsection, the Indian tribe shall, in accordance with the process and requirements under regulations promulgated under paragraph (8), provide to the Secretary—*

*(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and*

*(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the Indian tribe under, the lease, business agreement, or right-of-way.*

**[(6)(A) In carrying out]**

(6) *SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION.*—

*(A) In carrying out this section, the Secretary shall—*

*(i) act in accordance with the trust responsibility of the United States relating to mineral and other trust resources; and*

*(ii) act in good faith and in the best interests of the Indian tribes.*

**[(B) Subject to]**

(B) *Subject only to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements [approved] in effect under this section, and the provisions of [subparagraph (D)] subparagraphs (C) and (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe.*

(C) The Secretary shall continue to fulfill the trust obligation of the United States *to perform the obligations of the Secretary under this section and to ensure that the rights and interests of an Indian tribe are protected if—*

(i) any other party to a lease, business agreement, or right-of-way violates any applicable Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

(ii) any provision in a lease, business agreement, or right-of-way violates the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

(D)(i) In this subparagraph, the term “negotiated term” means any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to [an approved tribal energy resource agreement] *a tribal energy resource agreement in effect under this section.*

(ii) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement [approved by the Secretary] *in effect under paragraph (2).*

(iii) *Nothing in this section absolves, limits, or otherwise affects the liability, if any, of the United States for any—*

(I) *term of any lease, business agreement, or right-of-way under this section that is not a negotiated term; or*

(II) *losses that are not the result of a negotiated term, including losses resulting from the failure of the Secretary to perform an obligation of the Secretary under this section.*

**[(7)(A) In this paragraph]**

(7) *PETITIONS BY INTERESTED PARTIES.—*

(A) *In this paragraph, the term “interested party” means any person (including an entity) that [has demonstrated] the Secretary determines has demonstrated with substantial evidence that an interest of the person has sustained, or will sustain, an adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe [approved by the Secretary] in effect under paragraph (2).*

(B) After exhaustion of **any tribal remedy** *all remedies (if any) provided under the laws of the Indian tribe*, and in accordance with regulations promulgated by the Secretary under paragraph (8), an interested party may submit to the Secretary a petition to review the compliance by an Indian tribe with a tribal energy resource agreement of the Indian tribe **approved by the Secretary** *in effect* under paragraph (2).

(C)(i) Not later than 20 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall—

- (I) provide to the Indian tribe a copy of the petition; and
- (II) consult with the Indian tribe regarding any non-compliance alleged in the petition.

(ii) Not later than 45 days after the date on which a consultation under clause (i)(II) takes place, the Indian tribe shall respond to any claim made in a petition under subparagraph (B).

(iii) The Secretary shall act in accordance with subparagraphs (D) and (E) only if the Indian tribe—

- (I) denies, or fails to respond to, each claim made in the petition within the period described in clause (ii); or
- (II) fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the period described in clause (ii).

(D)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall **determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.** *determine—*

- (I) whether the petitioner is an interested party; and*
- (II) if the petitioner is an interested party, whether the Indian tribe is not in compliance with the tribal energy resource agreement as alleged in the petition.*

(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the **determination** *determinations* under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

(iii) Subject to subparagraph (E), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource **agreement**, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, **including** *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—*

- (I) temporarily suspending any activity under a lease, business agreement, or right-of-way under this section until the Indian tribe is in compliance with the **approved** tribal energy resource agreement; or
- (II) rescinding **approval of** all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way de-

- scribed in **【subsection (a) or (b)】** *subsection (a)(2)(A)(i) or (b)(2)(A)*.
- (E) Before taking an action described in subparagraph (D)(iii), the Secretary shall—
- (i) make a written determination that describes **【the manner in which】**, *with respect to each claim made in the petition, how* the tribal energy resource agreement has been violated;
  - (ii) provide the Indian tribe with a written notice of the violations together with the written determination; and
  - (iii) before taking any action described in subparagraph (D)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.
- (F) An Indian tribe described in subparagraph (E) shall retain all rights to appeal under any regulation promulgated by the Secretary.
- (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.*
- (8) Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Secretary shall promulgate regulations that implement this subsection, including—
- 【(A) criteria to be used in determining the capacity of an Indian tribe under paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;】**
- 【(B)】** (A) a process and requirements in accordance with which an Indian tribe may—
- (i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; **【and】**
  - (ii) return to the Secretary the responsibility to approve any future lease, business agreement, or right-of-way under this subsection; *and*
  - (iii) *amend an approved tribal energy resource agreement to assume authority for approving leases, business agreements, or rights-of-way for development of another energy resource that is not included in an approved tribal energy resource agreement without being required to apply for a new tribal energy resource agreement;*
- 【(C)】** (B) provisions establishing the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and
- 【(D)】** (C) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

(9) *EFFECT.*—*Nothing in this section authorizes the Secretary to deny a tribal energy resource agreement or any amendment to a tribal energy resource agreement, or to limit the effect or implementation of this section, due to lack of promulgated regulations.*

(f) *NO EFFECT ON OTHER LAW.*—*Nothing in this section affects the application of—*

(1) any Federal environmental law;

(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(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.*

(4) *DETERMINATION.*—

(A) *IN GENERAL.*—*The Secretary shall calculate the amounts under paragraph (1) in accordance with the regulations adopted under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.*

(B) *APPLICABILITY.*—*The effective date or implementation of a tribal energy resource agreement under this section shall not be delayed or otherwise affected by—*

(i) *a delay in the promulgation of regulations under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017;*

(ii) *the period of time needed by the Secretary to make the calculation required under paragraph (1); or*

(iii) *the adoption of a funding agreement under paragraph (2).*

(h) *CERTIFICATION OF TRIBAL ENERGY DEVELOPMENT ORGANIZATION.*—

(1) *IN GENERAL.*—Not later than 90 days after the date on which an Indian tribe submits an application for certification of a tribal energy development organization in accordance with regulations promulgated under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, the Secretary shall approve or disapprove the application.

(2) *REQUIREMENTS.*—The Secretary shall approve an application for certification if—

(A)(i) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.); and

(ii) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the application, the contract or compact—

(I) has been carried out by the Indian tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period); and

(II) has included programs or activities relating to the management of tribal land; and

(B)(i) the tribal energy development organization is organized under the laws of the Indian tribe;

(ii)(I) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and one or more other Indian tribes) the tribal land of which is being developed; and

(II) the organizing document of the tribal energy development organization requires that the Indian tribe with jurisdiction over the land maintain at all times the controlling interest in the tribal energy development organization;

(iii) the organizing document of the tribal energy development organization requires that the Indian tribe (or the Indian tribe and one or more other Indian tribes) the tribal land of which is being developed own and control at all times a majority of the interest in the tribal energy development organization; and

(iv) the organizing document of the tribal energy development organization includes a statement that the organization shall be subject to the jurisdiction, laws, and authority of the Indian tribe.

(3) *ACTION BY SECRETARY.*—If the Secretary approves an application for certification pursuant to paragraph (2), the Secretary shall, not more than 10 days after making the determination—

(A) issue a certification stating that—

(i) the tribal energy development organization is organized under the laws of the Indian tribe and subject to the jurisdiction, laws, and authority of the Indian tribe;

(ii) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and one or more

*other Indian tribes) the tribal land of which is being developed;*

*(iii) the organizing document of the tribal energy development organization requires that the Indian tribe with jurisdiction over the land maintain at all times the controlling interest in the tribal energy development organization;*

*(iv) the organizing document of the tribal energy development organization requires that the Indian tribe (or the Indian tribe and one or more other Indian tribes the tribal land of which is being developed) own and control at all times a majority of the interest in the tribal energy development organization; and*

*(v) the certification is issued pursuant this subsection;*

*(B) deliver a copy of the certification to the Indian tribe; and*

*(C) publish the certification in the Federal Register.*

*(i) SOVEREIGN IMMUNITY.—Nothing in this section waives the sovereign immunity of an Indian tribe.*

[(g)] *(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to carry out this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with this section.*

\* \* \* \* \*

**SEC. 2606. WIND AND HYDROPOWER FEASIBILITY STUDY.**

(a) **STUDY.**—The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that uses wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) **SCOPE OF STUDY.**—The study shall—

(1) determine the economic and engineering feasibility of blending wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers, including an assessment of the costs and benefits of blending wind energy and hydropower compared to current sources used for firming power to the Western Area Power Administration;

(2) review historical and projected requirements for, patterns of availability and use of, and reasons for historical patterns concerning the availability of firming power;

(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation and identify costs associated with these activities;

(5) include an independent tribal engineer and a Western Area Power Administration customer representative as study team members; and

(6) incorporate, to the extent appropriate, the results of the Dakotas Wind Transmission study prepared by the Western Area Power Administration.

(c) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Secretary of Energy, the Secretary, and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

(1) an analysis and comparison of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;

(2) an economic and engineering evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) if found feasible, recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal **[energy resource development]** *energy development* organization, and Western Area Power Administration customers to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration; and

(4) an identification of—

(A) the economic and environmental costs of, or benefits to be realized through, a Federal-tribal-customer partnership; and

(B) the manner in which a Federal-tribal-customer partnership could contribute to the energy security of the United States.

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000, to remain available until expended.

(2) NONREIMBURSABILITY.—Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

**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).

\* \* \* \* \*

---

**FEDERAL POWER ACT**

**PART I**

\* \* \* \* \*

SEC. 7. (a) In issuing preliminary permits hereunder or original licenses where no preliminary permit has been issued, the Commission shall give preference to applications therefor by **States and municipalities** *States, Indian tribes, and municipalities*, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

(b) Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development.

(c) Whenever after notice and opportunity for hearing in the Commission determines that the United States should exercise its right upon or after the expiration of any license to take over any project or projects for public purposes, the Commission shall not issue a new license to the original licensee or to a new licensee but shall submit its recommendation to Congress together with such information as it may consider appropriate.

\* \* \* \* \*

---

**TRIBAL FOREST PROTECTION ACT OF 2004**

\* \* \* \* \*

**SEC. 2. TRIBAL FOREST ASSETS PROTECTION.****(a) DEFINITIONS.—[In this section] *In this Act*:****(1) FEDERAL LAND.—The term “Federal land” means—**

(A) 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

(B) public lands (as defined in section 103 of the Federal Land Policy and 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.

**(2) INDIAN FOREST LAND OR RANGELAND.—The term “Indian forest land or rangeland” means land that—**

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or

(II) has a cover of grasses, brush, or any similar vegetation; or

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

**(3) INDIAN TRIBE.—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).****(4) SECRETARY.—The term “Secretary” means—**

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

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

**(b) AUTHORITY TO PROTECT INDIAN FOREST LAND OR RANGELAND.—**

(1) **IN GENERAL.—**Not later than 120 days after the date on which an Indian tribe submits to the Secretary a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c), the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).

(2) **ENVIRONMENTAL ANALYSIS.—**Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).

(3) ACTIVITIES.—Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is—

- (A) under the jurisdiction of the Secretary; and
- (B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.

(c) SELECTION CRITERIA.—The criteria referred to in subsection (b), with respect to an Indian tribe, are whether—

(1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;

(2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—

- (A) poses a fire, disease, or other threat to—
  - (i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or
  - (ii) a tribal community; or
- (B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

(d) NOTICE OF DENIAL.—If the Secretary denies a tribal request under subsection (b)(1), the Secretary may issue a notice of denial to the Indian tribe, which—

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;

(2) identifies potential courses of action for overcoming specific issues that led to the denial; and

(3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

(e) PROPOSAL EVALUATION AND DETERMINATION FACTORS.—In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Secretary may—

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—

- (A) the status of the Indian tribe as an Indian tribe;
- (B) the trust status of the Indian forest land or rangeland of the Indian tribe;
- (C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;
- (D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

- (E) the indigenous knowledge and skills of members of the Indian tribe;
  - (F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;
  - (G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and
  - (H) the access by members of the Indian tribe to the land subject to the proposal.
- (f) **NO EFFECT ON EXISTING AUTHORITY.**—Nothing in this Act—
- (1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this Act; or
  - (2) invalidates any agreement or contract under that authority.
- (g) **REPORT.**—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this Act.

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

(a) **STEWARDSHIP CONTRACTS OR SIMILAR AGREEMENTS.**—*For each of fiscal years 2017 through 2021, 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;*

(iii) *result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;*

(iv) *improve the forest health or watersheds of Federal land or Indian forest land or rangeland;*

(v) *demonstrate new investments in infrastructure; or*

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

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

(e) **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.*

(f) **REPORT.**—*Not later than September 20, 2019, 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.*

(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 maximum 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.*

(h) **TERM.**—*A contract or 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.*

**ENERGY CONSERVATION AND PRODUCTION ACT**

\* \* \* \* \*

**TITLE IV—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS**

\* \* \* \* \*

**PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS**

\* \* \* \* \*

**WEATHERIZATION PROGRAM**

SEC. 413. (a) The Administrator shall develop and conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the

Secretary may, in accordance with this part and regulations promulgated under this part, make grants (1) to States, and (2) in accordance with the provisions of subsection (d), to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families.

(b)(1) The Secretary, after consultation with the Director, the Secretary of Housing and Urban Development, the Secretary of Health, Education, and Welfare, the Secretary of Labor, and the heads of such other Federal departments and agencies as the Secretary deems appropriate, shall develop and publish in the Federal Register for public comment, not later than 60 days after the date of enactment of this part, proposed regulations to carry out the provisions of this part. The Secretary shall take into consideration comments submitted regarding such proposed regulations and shall promulgate and publish final regulations for such purpose not later than 90 days after the date of such enactment. The development of regulations under this part shall be fully coordinated with the Director.

(2) The regulations promulgated pursuant to this section shall include provisions—

(A) prescribing, in coordination with the Secretary of Housing and Urban Development, the Secretary of Health, Education, and Welfare, and the Director of the National Bureau of Standards in the Department of Commerce, for use in various climatic, structural, and human need settings, standards for weatherization materials, energy conservation techniques, and balanced combinations thereof, which are designed to achieve a balance of a healthful dwelling environment and maximum practicable energy conservation;

(B) that provide guidance to the States in the implementation of this part, including guidance designed to ensure that a State establishes (i) procedures that provide protection under paragraph (5) to tenants paying for energy as a portion of their rent, and (ii) a process for monitoring compliance with its obligations pursuant to this part; and

(C) that secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part.

(3) The Secretary, in coordination with the Secretaries and Director described in paragraph (2)(A) and with the Director of the Community Services Administration and the Secretary of Agriculture, shall develop and publish in the Federal Register for public comment, not later than 60 days after the date of enactment of this paragraph, proposed amendments to the regulations prescribed under paragraph (1). Such amendments shall provide that the standards described in paragraph (2)(A) shall include a set of procedures to be applied to each dwelling unit to determine the optimum set of cost-effective measures, within the cost guidelines set for the program, to be installed in such dwelling unit. Such standards shall, in order to achieve such optimum savings of energy, take into consideration the following factors—

(A) the cost of the weatherization material;

(B) variation in climate; and

(C) the value of energy saved by the application of the weatherization material.

Such standards shall be utilized by the Secretary in carrying out this part, the Secretary of Agriculture in carrying out the weatherization program under section 504(c) of the Housing Act of 1949, and the Director of the Community Services Administration in carrying out weatherization programs under section 222(a)(12) of the Economic Opportunity Act of 1964. The Secretary shall take into consideration comments submitted regarding such proposed amendment and shall promulgate and publish final amended regulations not later than 120 days after the date of enactment of this paragraph.

(4) In carrying out paragraphs (2)(A) and (3), the Secretary shall establish the standards and procedures described in such paragraphs so that weatherization efforts being carried out under this part and under programs described in the fourth sentence of paragraph (3) will accomplish uniform results among the States in any area with a similar climatic condition.

(5) In any case in which a dwelling consists of a rental unit or rental units, the State, in the implementation of this part, shall ensure that—

(A) the benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

(B) for a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

(C) the enforcement of subparagraph (B) is provided through procedures established by the State by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and

(D) no undue or excessive enhancement will occur to the value of such dwelling units.

(6) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation from the owners of such buildings.

(c) If a State does not, within 90 days after the date on which final regulations are promulgated under this section, submit an application to the Secretary which meets the requirements set forth in section 414, any unit of general purpose local government of sufficient size (as determined by the Secretary), or a community action agency carrying out programs under title II of the Economic Opportunity Act of 1964, may, in lieu of such State, submit an application (meeting such requirements and subject to all other provisions of this part) for carrying out projects under this part within the geographical area which is subject to the jurisdiction of such government or is served by such agency. A State may, in accordance

with regulations promulgated under this part, submit an amended application.

(d) (1) Notwithstanding any other provision of this part, in any State in which the Secretary determines (after having taken into account the amount of funds made available to the State to carry out the purposes of this part) that the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State under this part, and if he further determines that the members of such tribe would be better served by means of a grant made directly to provide such assistance, he shall reserve from sums that would otherwise be allocated to such State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Indians for whom a determination under this subsection has been made bears to the population of all low-income persons in such State.】

(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.*

(C) *PRESUMPTION.*—*If the tribal organization requesting the grant is a tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) that has operated without material audit exceptions (or without any material audit exceptions that were not corrected within a 3-year period), the Secretary shall presume that the low-income members of the applicable Indian tribe would be equally or better served by making a grant directly to the tribal organization than by a grant made to the State in which the low-income members reside.*

(2) 【The sums】 *ADMINISTRATION.*—*The amounts reserved by the Secretary 【on the basis of his determination】 under this subsection shall be granted to the tribal organization serving the 【individuals for whom such a determination has been made】 low-income members of the Indian tribe, or, where there is no tribal organization, to such other entity as 【he】 the Secretary determines has the capacity to provide services pursuant to this part.*

(3) **[In order]** *APPLICATION.*—*In order* for a tribal organization or other entity to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary an application meeting the requirements set forth in section 414.

(e) Notwithstanding any other provision of law, the Secretary may transfer to the Director sums appropriated under this part to be utilized in order to carry out programs, under section 222(a)(12) of the Economic Opportunity Act of 1964, which further the purpose of this part.

\* \* \* \* \*

### ACT OF AUGUST 9, 1955

AN ACT To authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Kalispel Indian Reservation and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians, the pueblo of Cochiti, Ohkay Owingeh pueblo, the pueblo of Pojoaque, the pueblo of Santa Clara, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai-Prescott Community Reservations, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms

Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, land held in trust for the Coquille Indian Tribe, land held in trust for the Confederated Tribes of Siletz Indians, land held in trust for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, land held in trust for the Klamath Tribes, and land held in trust for the Burns Paiute Tribe, and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, land held in trust for the Yurok Tribe, land held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, *land held in trust for the Crow Tribe of Montana*, and which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

(b) Any lease by the Tulalip Tribes, the Puyallup Tribe of Indians, the Swinomish Indian Tribal Community, or the Kalispel Tribe of Indians under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations pre-

viously approved by the Secretary of the Interior, or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3).

(c) LEASES INVOLVING THE HOPI TRIBE AND THE HOPI PARTITIONED LANDS ACCOMMODATION AGREEMENT.—Notwithstanding subsection (a), a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

(d) DEFINITIONS.—For purposes of this section—

(1) the term “Hopi Partitioned Lands” means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this subsection);

(2) the term “Navajo Indians” means members of the Navajo Tribe;

(3) the term “individually owned Navajo Indian allotted land” means a single parcel of land that—

(A) is located within the jurisdiction of the Navajo Nation;

(B) is held in trust or restricted status by the United States for the benefit of Navajo Indians or members of another Indian tribe; and

(C) was—

(i) allotted to a Navajo Indian; or

(ii) taken into trust or restricted status by the United States for an individual Indian;

(4) the term “interested party” means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a tribal trust land leasing decision made by an applicable Indian tribe;

(5) the term “Navajo Nation” means the Navajo Nation government that is in existence on the date of enactment of this Act or its successor;

(6) the term “petition” means a written request submitted to the Secretary for the review of an action (or inaction) of an Indian tribe that is claimed to be in violation of the approved tribal leasing regulations;

(7) the term “Secretary” means the Secretary of the Interior;

(8) the term “tribal regulations” means regulations enacted in accordance with applicable tribal law and approved by the Secretary;

(9) the term “Indian tribe” has the meaning given such term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a); and

(10) the term “individually owned allotted land” means a parcel of land that—

(A)(i) is located within the jurisdiction of an Indian tribe;

or

(ii) is held in trust or restricted status by the United States for the benefit of an Indian tribe or a member of an Indian tribe; and

(B) is allotted to a member of an Indian tribe.

(e)(1) Any leases by the Navajo Nation for purposes authorized under subsection (a), and any amendments thereto, except a lease

for], including a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed—

[(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and]

(A) *in the case of a business or agricultural lease, 99 years;*

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations[.]; and

(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.*

(2) Paragraph (1) shall not apply to individually owned Navajo Indian allotted land.

(3) The Secretary shall have the authority to approve or disapprove tribal regulations referred to under paragraph (1). The Secretary shall approve such tribal regulations if such regulations are consistent with the regulations of the Secretary under subsection (a), and any amendments thereto, and provide for an environmental review process. The Secretary shall review and approve or disapprove the regulations of the Navajo Nation within 120 days of the submission of such regulations to the Secretary. Any disapproval of such regulations by the Secretary shall be accompanied by written documentation that sets forth the basis for the disapproval. Such 120-day period may be extended by the Secretary after consultation with the Navajo Nation.

(4) If the Navajo Nation has executed a lease pursuant to tribal regulations under paragraph (1), the Navajo Nation shall provide the Secretary with—

(A) a copy of the lease and all amendments and renewals thereto; and

(B) in the case of regulations or a lease that permits payment to be made directly to the Navajo Nation, documentation of the lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (5).

(5) The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1), including the Navajo Nation. Nothing in this paragraph shall be construed to diminish the authority of the Secretary to take appropriate actions, including the cancellation of a lease, in

furtherance of the trust obligation of the United States to the Navajo Nation.

(6)(A) An interested party may, after exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Navajo Nation with any regulations approved under this subsection. If upon such review the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding the approval of the tribal regulations and re-assuming responsibility for the approval of leases for Navajo Nation tribal trust lands.

(B) If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the Navajo Nation with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulation involved and the reassumption of the lease approval responsibility, provide the Navajo Nation with a hearing on the record and a reasonable opportunity to cure the alleged violation.

(f) Any contract, including a lease or construction contract, affecting land within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such contract. Such contracts shall be considered within the meaning of “commerce” as defined and subject to the provisions of section 1 of title 9, United States Code. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of title 9, sections 1 through 14, United States Code, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of title 28, United States Code.

(g) LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.—

(1) IN GENERAL.—Notwithstanding subsection (a) and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

(2) CONDITIONS.—A lease entered into under paragraph (1)—

(A) shall commence during fiscal year 2011 for an initial term of 25 years;

(B) may be renewed for an additional term of 25 years; and

(C) shall specify in the terms of the lease an annual rental rate—

(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review re-

quirement under part 162 of title 25, Code of Federal Regulations (or any successor regulation).

(h) TRIBAL APPROVAL OF LEASES.—

(1) IN GENERAL.—At the discretion of any Indian tribe, any lease by the Indian tribe for the purposes authorized under subsection (a) (including any amendments to subsection (a)), except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary, if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed—

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years, if such a term is provided for by the regulations issued by the Indian tribe.

(2) ALLOTTED LAND.—Paragraph (1) shall not apply to any lease of individually owned Indian allotted land.

(3) AUTHORITY OF SECRETARY OVER TRIBAL REGULATIONS.—

(A) IN GENERAL.—The Secretary shall have the authority to approve or disapprove any tribal regulations issued in accordance with paragraph (1).

(B) CONSIDERATIONS FOR APPROVAL.—The Secretary shall approve any tribal regulation issued in accordance with paragraph (1), if the tribal regulations—

(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

(ii) provide for an environmental review process that includes—

(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

(II) a process for ensuring that—

(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

(C) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance, upon request of the Indian tribe, for development of a regulatory environmental review process under subparagraph (B)(ii).

(D) INDIAN SELF-DETERMINATION ACT.—The technical assistance to be provided by the Secretary pursuant to subparagraph (C) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, such contracts,

grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(4) REVIEW PROCESS.—

(A) IN GENERAL.—Not later than 120 days after the date on which the tribal regulations described in paragraph (1) are submitted to the Secretary, the Secretary shall review and approve or disapprove the regulations.

(B) WRITTEN DOCUMENTATION.—If the Secretary disapproves the tribal regulations described in paragraph (1), the Secretary shall include written documentation with the disapproval notification that describes the basis for the disapproval.

(C) EXTENSION.—The deadline described in subparagraph (A) may be extended by the Secretary, after consultation with the Indian tribe.

(5) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

(6) DOCUMENTATION.—If an Indian tribe executes a lease pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with—

(A) a copy of the lease, including any amendments or renewals to the lease; and

(B) in the case of tribal regulations or a lease that allows for lease payments to be made directly to the Indian tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

(7) TRUST RESPONSIBILITY.—

(A) IN GENERAL.—The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).

(B) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

(8) COMPLIANCE.—

(A) IN GENERAL.—An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

(B) VIOLATIONS.—If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the trib-

al regulations and reassuming responsibility for the approval of leases of tribal trust lands.

(C) DOCUMENTATION.—If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of lease approval responsibilities, provide the applicable Indian tribe with—

(I) a hearing that is on the record; and

(II) a reasonable opportunity to cure the alleged violation.

(9) SAVINGS CLAUSE.—Nothing in this subsection shall affect subsection (e) or any tribal regulations issued under that subsection.

\* \* \* \* \*

