

**Calendar No. 719**

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3235**

To amend the Act titled “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”, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

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IN THE SENATE OF THE UNITED STATES

APRIL 20, 2010

Mr. DORGAN (for himself, Mr. JOHNSON, Mr. TESTER, Mr. UDALL of New Mexico, Mr. BAUCUS, Mr. BINGAMAN, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

DECEMBER 20, 2010

Reported by Mr. DORGAN, with an amendment

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

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**A BILL**

To amend the Act titled “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”, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Helping Expedite and  
 5       Advance Responsible Tribal Homeownership Act of 2010”  
 6       or the “HEARTH Act of 2010”.

7       **SEC. 2. APPROVAL OF, AND REGULATIONS RELATED TO,**  
 8                 **TRIBAL LEASES.**

9       The first section of the Act titled “An Act to author-  
 10       ize the leasing of restricted Indian lands for public, reli-  
 11       gious, educational, recreational, residential, business, and  
 12       other purposes requiring the grant of long-term leases”,  
 13       approved August 9, 1955 (25 U.S.C. 415) is amended as  
 14       follows:

15               (1) In subsection (d)—

16                       (A) by striking paragraph (2) and insert-  
 17                       ing the following:

18                       “~~(2)~~ the term ‘Indian tribe’ has the meaning  
 19                       given such term in section ~~102~~ of the Federally Rec-  
 20                       ognized Indian Tribe List Act of 1994 (25 U.S.C.  
 21                       ~~479a~~);”;

22                       (B) in paragraph ~~(3)~~—

23                               (i) in the matter preceding subpara-  
 24                               graph (A), by striking “Navajo Indian”;

1 (ii) in subparagraph (A), by striking  
 2 “the Navajo Nation” and inserting “an In-  
 3 dian tribe”;

4 (iii) in subparagraph (B), by striking  
 5 “Navajo Indians or members of another  
 6 Indian tribe” and inserting “an Indian  
 7 tribe or a member of an Indian tribe”; and

8 (iv) in subparagraph (C)(i), by strik-  
 9 ing “Navajo Indian” and inserting “mem-  
 10 ber of an Indian tribe”;

11 (C) in paragraph (4), by striking “the  
 12 Navajo Nation” and inserting “an applicable  
 13 Indian tribe”;

14 (D) by striking paragraph (5) and redesign-  
 15 ating paragraphs (6), (7), and (8) as para-  
 16 graphs (5), (6), and (7), respectively;

17 (E) in paragraph (5) (as redesignated), by  
 18 striking “the Navajo Nation” and inserting “an  
 19 Indian tribe”; and

20 (F) in paragraph (7) (as redesignated)—

21 (i) by striking “the Navajo Nation”;  
 22 and

23 (ii) by striking “with Navajo Nation  
 24 law” and inserting “with applicable tribal  
 25 law”.

1 (2) In subsection (c)—

2 (A) by amending the subsection heading to  
3 read as follows: “APPROVAL OF LEASES—TRIB-  
4 AL DISCRETION.—”;

5 (B) in paragraph (1)—

6 (i) in the matter preceding subpara-  
7 graph (A), by striking “Any leases by the  
8 Navajo Nation” and inserting “At the dis-  
9 cretion of any Indian tribe, any leases by  
10 the applicable Indian tribe”;

11 (ii) by striking “except a lease for the  
12 exploration, development, or extraction of  
13 any mineral resources,”; and

14 (iii) in subparagraph (B), by striking  
15 “Navajo Nation” and inserting “applicable  
16 Indian tribe”;

17 (C) in paragraph (2), by striking “Nav-  
18 ajo”;

19 (D) in paragraph (3)—

20 (i) in the second sentence, by insert-  
21 ing “, similar to the process established by  
22 the Department of the Interior under the  
23 National Environmental Policy Act of  
24 1969 (42 U.S.C. 4321 et seq.)” after  
25 “process”;

1           (ii) in the third sentence, by striking  
2           “the regulations of the Navajo Nation”  
3           and inserting “such regulations”; and

4           (iii) in the fifth sentence, by striking  
5           “with the Navajo Nation” and inserting  
6           “with the applicable Indian tribe”;

7           (E) in paragraph (4), by striking “Navajo  
8           Nation” each place it appears and inserting  
9           “applicable Indian tribe”;

10          (F) in paragraph (5)—

11           (i) by striking “paragraph (1), includ-  
12           ing the Navajo Nation.” and inserting  
13           “paragraph (1).”; and

14           (ii) by striking the second sentence  
15           and inserting “Pursuant to the Secretary’s  
16           authority to fulfill the trust obligation of  
17           the United States to the applicable Indian  
18           tribe as defined in other statutory or regu-  
19           latory authorizations, the Secretary may,  
20           upon reasonable notice from the applicable  
21           Indian tribe and in the discretion of the  
22           Secretary, enforce the provisions of a lease  
23           or cancel a lease.”;

24          (G) in paragraph (6)(A)—

1 (i) by striking “of the Navajo Nation”  
 2 and inserting “of the applicable Indian  
 3 tribe”; and

4 (ii) by striking “Navajo Nation tribal”  
 5 and inserting “tribal”; and

6 (H) in paragraph (6)(B), by striking  
 7 “Navajo Nation” each place it appears and in-  
 8 serting “applicable Indian tribe”.

9 (A) in paragraph (4), by striking “the Nav-  
 10 ajo Nation” and inserting “an applicable Indian  
 11 tribe”;

12 (B) in paragraph (6), by striking “the Nav-  
 13 ajo Nation” and inserting “an Indian tribe”;

14 (C) in paragraph (7), by striking “and”  
 15 after the semicolon at the end;

16 (D) in paragraph (8)—

17 (i) by striking “the Navajo Nation”;

18 (ii) by striking “with Navajo Nation  
 19 law” and inserting “with applicable tribal  
 20 law”; and

21 (iii) by striking the period at the end  
 22 and inserting a semicolon; and

23 (E) by adding at the end the following:

24 “(9) the term ‘Indian tribe’ has the meaning  
 25 given such term in section 102 of the Federally Recog-

1        *nized Indian Tribe List Act of 1994 (25 U.S.C.*  
 2        *479a); and*

3                *“(10) the term ‘individually owned allotted land’*  
 4        *means a parcel of land that—*

5                *“(A)(i) is located within the jurisdiction of*  
 6        *an Indian tribe; or*

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

10               *“(B) is allotted to a member of an Indian*  
 11        *tribe.”.*

12               *(2) By adding at the end the following:*

13        *“(h) TRIBAL APPROVAL OF LEASES.—*

14               *“(1) IN GENERAL.—At the discretion of any In-*  
 15        *dian tribe, any lease by the Indian tribe for the pur-*  
 16        *poses authorized under subsection (a) (including any*  
 17        *amendments to subsection (a)), except a lease for the*  
 18        *exploration, development, or extraction of any min-*  
 19        *eral resources, shall not require the approval of the*  
 20        *Secretary, if the lease is executed under the tribal reg-*  
 21        *ulations approved by the Secretary under this sub-*  
 22        *section and the term of the lease does not exceed—*

23               *“(A) in the case of a business or agricul-*  
 24        *tural lease, 25 years, except that any such lease*  
 25        *may include an option to renew for up to 2 ad-*

1        *ditional terms, each of which may not exceed 25*  
 2        *years; and*

3                *“(B) in the case of a lease for public, reli-*  
 4        *gious, educational, recreational, or residential*  
 5        *purposes, 75 years, if such a term is provided for*  
 6        *by the regulations issued by the Indian tribe.*

7                *“(2) ALLOTTED LAND.—Paragraph (1) shall not*  
 8        *apply to any lease of individually owned Indian al-*  
 9        *lotted land.*

10               *“(3) AUTHORITY OF SECRETARY OVER TRIBAL*  
 11        *REGULATIONS.—*

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

16               *“(B) CONSIDERATIONS FOR APPROVAL.—*  
 17        *The Secretary shall approve any tribal regula-*  
 18        *tion issued in accordance with paragraph (1), if*  
 19        *the tribal regulations—*

20               *“(i) are consistent with any regula-*  
 21        *tions issued by the Secretary under sub-*  
 22        *section (a) (including any amendments to*  
 23        *the subsection or regulations); and*

24               *“(ii) provide for an environmental re-*  
 25        *view process that includes—*



1                   “(I) the identification and evalua-  
 2                   tion of any significant effects of the  
 3                   proposed action on the environment;  
 4                   and

5                   “(II) a process for ensuring  
 6                   that—

7                   “(aa) the public is informed  
 8                   of, and has a reasonable oppor-  
 9                   tunity to comment on, any sig-  
 10                  nificant environmental impacts of  
 11                  the proposed action identified by  
 12                  the Indian tribe; and

13                  “(bb) the Indian tribe pro-  
 14                  vides responses to relevant and  
 15                  substantive public comments on  
 16                  any such impacts before the In-  
 17                  dian tribe approves the lease.

18                  “(4) REVIEW PROCESS.—

19                  “(A) IN GENERAL.—Not later than 120  
 20                  days after the date on which the tribal regula-  
 21                  tions described in paragraph (1) are submitted  
 22                  to the Secretary, the Secretary shall review and  
 23                  approve or disapprove the regulations.

24                  “(B) WRITTEN DOCUMENTATION.—If the  
 25                  Secretary disapproves the tribal regulations de-

1       scribed in paragraph (1), the Secretary shall in-  
2       clude written documentation with the dis-  
3       approval notification that describes the basis for  
4       the disapproval.

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

9               “(5) *FEDERAL ENVIRONMENTAL REVIEW.*—Not-  
10       withstanding paragraphs (3) and (4), if an Indian  
11       tribe carries out a project or activity funded by a  
12       Federal agency, the Indian tribe shall have the au-  
13       thority to rely on the environmental review process of  
14       the applicable Federal agency rather than any tribal  
15       environmental review process under this subsection.

16              “(6) *DOCUMENTATION.*—If an Indian tribe exe-  
17       cutes a lease pursuant to tribal regulations under  
18       paragraph (1), the Indian tribe shall provide the Sec-  
19       retary with—

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

22              “(B) in the case of tribal regulations or a  
23       lease that allows for lease payments to be made  
24       directly to the Indian tribe, documentation of the  
25       lease payments that are sufficient to enable the

1       *Secretary to discharge the trust responsibility of*  
2       *the United States under paragraph (7).*

3       “(7) *TRUST RESPONSIBILITY.*—

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

8               “(B) *AUTHORITY OF SECRETARY.*—*Pursu-*  
9       *ant to the authority of the Secretary to fulfill the*  
10       *trust obligation of the United States to the appli-*  
11       *cable Indian tribe under Federal law (including*  
12       *regulations), the Secretary may, upon reasonable*  
13       *notice from the applicable Indian tribe and at*  
14       *the discretion of the Secretary, enforce the provi-*  
15       *sions of, or cancel, any lease executed by the In-*  
16       *Indian tribe under paragraph (1).*

17       “(8) *COMPLIANCE.*—

18               “(A) *IN GENERAL.*—*An interested party,*  
19       *after exhausting of any applicable tribal rem-*  
20       *edies, may submit a petition to the Secretary, at*  
21       *such time and in such form as the Secretary de-*  
22       *termines to be appropriate, to review the compli-*  
23       *ance of the applicable Indian tribe with any*  
24       *tribal regulations approved by the Secretary*  
25       *under this subsection.*

1           “(B) VIOLATIONS.—If, after carrying out a  
2           review under subparagraph (A), the Secretary  
3           determines that the tribal regulations were vio-  
4           lated, the Secretary may take any action the  
5           Secretary determines to be necessary to remedy  
6           the violation, including rescinding the approval  
7           of the tribal regulations and reassuming respon-  
8           sibility for the approval of leases of tribal trust  
9           lands.

10           “(C) DOCUMENTATION.—If the Secretary  
11           determines that a violation of the tribal regula-  
12           tions has occurred and a remedy is necessary,  
13           the Secretary shall—

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

17                   “(ii) provide the applicable Indian  
18                   tribe with a written notice of the alleged  
19                   violation together with such written deter-  
20                   mination; and

21                   “(iii) prior to the exercise of any rem-  
22                   edy, the rescission of the approval of the  
23                   regulation involved, or the reassumption of  
24                   lease approval responsibilities, provide the  
25                   applicable Indian tribe with—

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

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

5                               “(9) SAVINGS CLAUSE.—Nothing in this sub-  
6                               section shall affect subsection (e) or any tribal regula-  
7                               tions issued under that subsection.”.

8   **SEC. 3. LAND TITLE REPORTS—REVIEW AND REPORT TO**  
9                               **CONGRESS.**

10       Not later than 180 days after funds are made avail-  
11   able for this section, the Bureau of Indian Affairs shall  
12   prepare and submit to the Committees on Financial Serv-  
13   ices and Natural Resources in the House of Representa-  
14   tives and the Committees on Banking, Housing, and  
15   Urban Affairs and Indian Affairs in the Senate a report  
16   regarding the history and experience of Indian tribes that  
17   have chosen to assume responsibility for operating the In-  
18   dian Land Title and Records Office (hereafter referred to  
19   as the “LTRO”) functions from the Bureau of Indian Af-  
20   fairs. In conducting the review, the Bureau of Indian Af-  
21   fairs shall consult with the Department of Housing and  
22   Urban Development Office of Native American Programs  
23   and those Indian tribes that are managing LTRO func-  
24   tions (hereafter referred to as the “managing Indian

1 tribes’). The review shall include an analysis of the fol-  
2 lowing factors:

3 (1) Whether and how tribal management of the  
4 LTRO functions has expedited the processing and  
5 issuance of Indian land title certifications as com-  
6 pared to when the Bureau of Indian Affairs man-  
7 aged these programs.

8 (2) Whether and how tribal management of the  
9 LTRO functions has increased home ownership  
10 among the managing Indian tribe’s population.

11 (3) What internal preparations and processes  
12 were required of the managing Indian tribes prior to  
13 assuming management of the LTRO functions.

14 (4) Whether tribal management of the LTRO  
15 functions resulting in a transfer of financial re-  
16 sources and manpower from the Bureau of Indian  
17 Affairs to the managing Indian tribes and, if so,  
18 what transfers were undertaken.

19 (5) Whether, in appropriate circumstances and  
20 with the approval of geographically proximate Indian  
21 tribes, the LTRO functions may be performed by a  
22 single Indian tribe or a tribal consortium in a cost  
23 effective manner.



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