

Union Calendar No. 506

112TH CONGRESS
2^D SESSION

H. R. 3973

[Report No. 112-692]

To facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2012

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

OCTOBER 23, 2012

Additional sponsors: Mr. GOSAR and Mr. BERG

OCTOBER 23, 2012

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

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

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

A BILL

To facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Native American Energy*
 5 *Act”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of Contents.

Sec. 3. Appraisals.

Sec. 4. Standardization.

Sec. 5. Environmental reviews of major Federal actions on Indian lands.

Sec. 6. Indian Energy Development Offices.

Sec. 7. BLM Oil and Gas Fees.

Sec. 8. Bonding requirements and nonpayment of attorneys’ fees to promote in-
Indian energy projects.

Sec. 9. Tribal biomass demonstration project.

Sec. 10. Tribal Resource Management Plans.

Sec. 11. Leases of Restricted Lands for the Navajo Nation.

Sec. 12. Nonapplicability of certain rules.

8 **SEC. 3. APPRAISALS.**

9 *(a) AMENDMENT.—Title XXVI of the Energy Policy*
 10 *Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding*
 11 *at the end the following:*

12 **“SEC. 2607. APPRAISAL REFORMS.**

13 *“(a) OPTIONS TO INDIAN TRIBES.—With respect to a*
 14 *transaction involving Indian land or the trust assets of an*
 15 *Indian tribe that requires the approval of the Secretary,*
 16 *any appraisal relating to fair market value required to be*
 17 *conducted under applicable law, regulation, or policy may*
 18 *be completed by—*

19 *“(1) the Secretary;*

1 “(2) *the affected Indian tribe; or*

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

4 “(b) *TIME LIMIT ON SECRETARIAL REVIEW AND AC-*
5 *TION.—Not later than 30 days after the date on which the*
6 *Secretary receives an appraisal conducted by or for an In-*
7 *dian tribe pursuant to paragraphs (2) or (3) of subsection*
8 *(a), the Secretary shall—*

9 “(1) *review the appraisal; and*

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

12 “(c) *FAILURE OF SECRETARY TO APPROVE OR DIS-*
13 *APPROVE.—If, after 60 days, the Secretary has failed to ap-*
14 *prove or disapprove any appraisal received, the appraisal*
15 *shall be deemed approved.*

16 “(d) *OPTION TO INDIAN TRIBES TO WAIVE AP-*
17 *PRAISAL.—*

18 “(1) *An Indian tribe wishing to waive the re-*
19 *quirements of subsection (a), may do so after it has*
20 *satisfied the requirements of subsections (2) and (3)*
21 *below.*

22 “(2) *An Indian tribe wishing to forego the neces-*
23 *sity of a waiver pursuant to this section must provide*
24 *to the Secretary a written resolution, statement, or*

1 *other unambiguous indication of tribal intent, duly*
 2 *approved by the governing body of the Indian tribe.*

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

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

12 *“(f) REGULATIONS.—The Secretary shall develop regu-*
 13 *lations for implementing this section, including standards*
 14 *the Secretary shall use for approving or disapproving an*
 15 *appraisal.”.*

16 *(b) CONFORMING AMENDMENT.—The table of contents*
 17 *of the Energy Policy Act of 1992 (42 U.S.C. 13201 note)*
 18 *is amended by adding at the end of the items relating to*
 19 *title XXVI the following:*

“Sec. 2607. Appraisal reforms.”.

20 **SEC. 4. STANDARDIZATION.**

21 *As soon as practicable after the date of the enactment*
 22 *of this Act, the Secretary of the Interior shall implement*
 23 *procedures to ensure that each agency within the Depart-*
 24 *ment of the Interior that is involved in the review, ap-*
 25 *proval, and oversight of oil and gas activities on Indian*

1 *lands shall use a uniform system of reference numbers and*
 2 *tracking systems for oil and gas wells.*

3 **SEC. 5. ENVIRONMENTAL REVIEWS OF MAJOR FEDERAL AC-**
 4 **TIONS ON INDIAN LANDS.**

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

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

11 *“(1) IN GENERAL.—For any major Federal ac-*
 12 *tion on Indian lands of an Indian tribe requiring the*
 13 *preparation of a statement under subsection*
 14 *(a)(2)(C), the statement shall only be available for re-*
 15 *view and comment by the members of the Indian tribe*
 16 *and by any other individual residing within the af-*
 17 *ected area.*

18 *“(2) REGULATIONS.—The Chairman of the*
 19 *Council on Environmental Quality shall develop reg-*
 20 *ulations to implement this section, including descrip-*
 21 *tions of affected areas for specific major Federal ac-*
 22 *tions, in consultation with Indian tribes.*

23 *“(3) DEFINITIONS.—In this subsection, each of*
 24 *the terms ‘Indian land’ and ‘Indian tribe’ has the*

1 *meaning given that term in section 2601 of the En-*
 2 *ergy Policy Act of 1992 (25 U.S.C. 3501).*

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

8 **SEC. 6. INDIAN ENERGY DEVELOPMENT OFFICES.**

9 *Section 2602(a) of the Energy Policy Act of 1992 (25*
 10 *U.S.C. 3502(a)) is amended—*

11 (1) *by redesignating paragraph (3) as para-*
 12 *graph (4);*

13 (2) *by inserting after paragraph (2) the fol-*
 14 *lowing:*

15 “(3) *INDIAN ENERGY DEVELOPMENT OFFICES.—*

16 “(A) *ESTABLISHMENT.—To assist the Sec-*
 17 *retary in carrying out the Program, the Sec-*
 18 *retary shall establish within the Department of*
 19 *the Interior not less than 5 offices.*

20 “(B) *NAMING.—Each office established*
 21 *under subparagraph (A) shall be known as an*
 22 *‘Indian Energy Development Office’.*

23 “(C) *LOCATION.—The Secretary shall locate*
 24 *each Indian Energy Development Office—*

1 “(i) *within a regional or agency office*
2 *of the Bureau of Indian Affairs; and*

3 “(ii) *to the maximum extent prac-*
4 *ticable, in an area in which there exists a*
5 *high quantity of tribal energy development*
6 *opportunities, as determined by the Sec-*
7 *retary in consultation with Indian tribes.*

8 “(D) *DIRECTORS.—Each Indian Energy*
9 *Development Office established under this para-*
10 *graph shall be headed by a director.*

11 “(E) *DUTIES.—The director of each Indian*
12 *Energy Development Office shall—*

13 “(i) *provide energy-related information*
14 *and resources to Indian tribes and tribal*
15 *members;*

16 “(ii) *coordinate meetings and outreach*
17 *among Indian tribes, tribal members, en-*
18 *ergy companies, and relevant Federal,*
19 *State, and tribal agencies;*

20 “(iii) *oversee, and ensure the timely*
21 *processing of, Indian energy applications,*
22 *permits, licenses, and other documents that*
23 *are subject to development, review, or proc-*
24 *essing by—*

25 “(I) *the Bureau of Indian Affairs;*

1 “(II) the Bureau of Land Man-
2 agement;

3 “(III) the National Park Service;

4 “(IV) the United States Fish and
5 Wildlife Service;

6 “(V) the Bureau of Reclamation;

7 “(VI) the Minerals Management
8 Service; or

9 “(VII) the Office of Special Trust-
10 ee for American Indians of the Depart-
11 ment of the Interior; and

12 “(iv) consult with Indian tribes that
13 will be served by an Indian Energy Devel-
14 opment Office to determine what services,
15 information, facilities, or programs would
16 best expedite the responsible development of
17 energy resources.

18 “(F) STAFF.—Each Indian Energy Devel-
19 opment Office established under this paragraph
20 shall be adequately staffed to meet the demand
21 for energy permitting in the region or agency
22 where the office is established.”.

1 **SEC. 7. BLM OIL AND GAS FEES.**

2 *The Secretary of the Interior, acting through the Bu-*
3 *reau of Land Management, shall not collect any fee for any*
4 *of the following:*

5 (1) *For an application for a permit to drill on*
6 *Indian land.*

7 (2) *To conduct any oil or gas inspection activity*
8 *on Indian land.*

9 (3) *On any oil or gas lease for nonproducing*
10 *acreage on Indian land.*

11 **SEC. 8. BONDING REQUIREMENTS AND NONPAYMENT OF**
12 **ATTORNEYS' FEES TO PROMOTE INDIAN EN-**
13 **ERGY PROJECTS.**

14 (a) *IN GENERAL.*—*A plaintiff who obtains a prelimi-*
15 *nary injunction or administrative stay in an energy related*
16 *action, but does not ultimately prevail on the merits of the*
17 *energy related action, shall be liable for damages sustained*
18 *by a defendant who—*

19 (1) *opposed the preliminary injunction or ad-*
20 *ministrative stay; and*

21 (2) *was harmed by the preliminary injunction*
22 *or administrative stay.*

23 (b) *BOND.*—*Unless otherwise specifically exempted by*
24 *Federal law, a court may not issue a preliminary injunc-*
25 *tion and an agency may not grant an administrative stay*

1 *in an energy related action until the plaintiff posts with*
2 *the court or the agency a surety bond or cash equivalent—*

3 *(1) in an amount the court or agency decides is*
4 *30 percent of that amount that the court or agency*
5 *considers is sufficient to compensate each defendant*
6 *opposing the preliminary injunction or administra-*
7 *tive stay for damages, including but not limited to*
8 *preliminary development costs, additional develop-*
9 *ment costs, and reasonable attorney fees, that each de-*
10 *fendant may sustain as a result of the preliminary*
11 *injunction or administrative stay;*

12 *(2) written by a surety licensed to do business in*
13 *the state in which the Indian Land or other land*
14 *where the activities are undertaken is situated; and*

15 *(3) payable to each defendant opposing the pre-*
16 *liminary injunction or administrative stay, in the*
17 *event that the plaintiff does not prevail on the merits*
18 *of the energy related action, Provided, that, if there*
19 *is more than one plaintiff, the court or agency shall*
20 *establish the amount of the bond required by this Sub-*
21 *section for each plaintiff in a fair and equitable man-*
22 *ner.*

23 *(c) LIMITATION ON CERTAIN PAYMENTS.—Notwith-*
24 *standing section 1304 of title 31, United States Code, no*
25 *award may be made under section 504 of title 5, United*

1 *States Code, or under section 2412 of title 28, United States*
 2 *Code, and no amounts may be obligated or expended from*
 3 *the Claims and Judgment Fund of the United States Treas-*
 4 *ury to pay any fees or other expenses under such sections*
 5 *to any plaintiff related to an energy related action.*

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

8 (1) *ADMINISTRATIVE STAY.—The term “Admin-*
 9 *istrative Stay” means a stay or other temporary rem-*
 10 *edy issued by a Federal agency, including the Depart-*
 11 *ment of the Interior, the Department of Agriculture,*
 12 *the Department of Energy, the Department of Com-*
 13 *merce, and the Environmental Protection Agency.*

14 (2) *INDIAN LAND.—The term “Indian Land” has*
 15 *the same meaning given such term in section*
 16 *203(c)(3) of the Energy Policy Act of 2005 (Public*
 17 *Law 109–58; 25 U.S.C. 3501), including lands owned*
 18 *by Native Corporations under the Alaska Native*
 19 *Claims Settlement Act (Public Law 92–203; 43*
 20 *U.S.C. 1601).*

21 (3) *ENERGY RELATED ACTION.—The term “en-*
 22 *ergy related action” means a cause of action that—*

23 (A) *is filed on or after the effective date of*
 24 *this Act; and*

1 (B) seeks judicial review of a final agency
2 action (as defined in section 702 of title 5,
3 United States Code), to issue a permit, license,
4 or other form of agency permission allowing:

5 (i) any person or entity to conduct ac-
6 tivities on Indian Land, which activities
7 involve the exploration, development, pro-
8 duction or transportation of oil, gas, coal,
9 shale gas, oil shale, geothermal resources,
10 wind or solar resources, underground coal
11 gasification, biomass, or the generation of
12 electricity, or

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

23 (4) *ULTIMATELY PREVAIL ON THE MERITS*.—The
24 phrase “Ultimately prevail on the merits” means, in
25 a final enforceable judgment on the merits, the court

1 *rules in the plaintiff's favor on at least one cause of*
 2 *action which is an underlying rationale for the pre-*
 3 *liminary injunction, and does not include cir-*
 4 *cumstances where the final agency action is modified*
 5 *or amended by the issuing agency unless such modi-*
 6 *fication or amendment is required pursuant to a*
 7 *final enforceable judgment of the court or a court-or-*
 8 *dered consent decree.*

9 **SEC. 9. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

10 *The Tribal Forest Protection Act of 2004 (25 U.S.C.*
 11 *3115a) is amended by inserting after section 2 the fol-*
 12 *lowing:*

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

14 *“(a) IN GENERAL.—For each of fiscal years 2013*
 15 *through 2017, the Secretary shall enter into stewardship*
 16 *contracts or other agreements, other than agreements that*
 17 *are exclusively direct service contracts, with Indian tribes*
 18 *to carry out demonstration projects to promote biomass en-*
 19 *ergy production (including biofuel, heat, and electricity*
 20 *generation) on Indian forest land and in nearby commu-*
 21 *nities by providing reliable supplies of woody biomass from*
 22 *Federal land.*

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

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

6 “(d) *ELIGIBILITY CRITERIA.*—*To be eligible to enter*
 7 *into a contract or other agreement under this subsection,*
 8 *an Indian tribe shall submit to the Secretary an applica-*
 9 *tion—*

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

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

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

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

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

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

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

1 “(B) enhance the economic development of
2 the Indian tribe;

3 “(C) improve the connection of electric
4 power transmission facilities serving the Indian
5 tribe with other electric transmission facilities;

6 “(D) improve the forest health or watersheds
7 of Federal land or Indian forest land or range-
8 land; or

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

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

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

15 “(1) ensure that the criteria described in sub-
16 section (c) are publicly available by not later than
17 120 days after the date of enactment of this section;
18 and

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

23 “(g) REPORT.—Not later than September 20, 2015, the
24 Secretary shall submit to Congress a report that describes,
25 with respect to the reporting period—

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

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

5 “(h) *INCORPORATION OF MANAGEMENT PLANS.*—In
6 carrying out a contract or agreement under this section,
7 on receipt of a request from an Indian tribe, the Secretary
8 shall incorporate into the contract or agreement, to the ex-
9 tent practicable, management plans (including forest man-
10 agement and integrated resource management plans) in ef-
11 fect on the Indian forest land or rangeland of the respective
12 Indian tribe.

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

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

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

19 **SEC. 10. TRIBAL RESOURCE MANAGEMENT PLANS.**

20 Unless otherwise explicitly exempted by Federal law
21 enacted after the date of the enactment of this Act, any ac-
22 tivity conducted or resources harvested or produced pursu-
23 ant to a tribal resource management plan or an integrated
24 resource management plan approved by the Secretary of the
25 Interior under the National Indian Forest Resources Man-

1 *agement Act (25 U.S.C. 3101 et seq.) or the American In-*
 2 *dian Agricultural Resource Management Act (25 U.S.C.*
 3 *3701 et seq.), shall be considered a sustainable management*
 4 *practice for purposes of any Federal standard, benefit, or*
 5 *requirement that requires a demonstration of such sustain-*
 6 *ability.*

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

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

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

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

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

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

20 *“(C) in the case of a lease for the explo-*
 21 *ration, development, or extraction of mineral re-*
 22 *sources, including geothermal resources, 25 years,*
 23 *except that any such lease may include an op-*
 24 *tion to renew for one additional term not to ex-*
 25 *ceed 25 years.”.*

1 **SEC. 12. NONAPPLICABILITY OF CERTAIN RULES.**

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

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