

114TH CONGRESS
2D SESSION

S. 2938

To direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2016

Mr. DAINES (for himself, Mr. ENZI, and Mr. BARRASSO) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders, 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 “Certainty for States
5 and Tribes Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COMMITTEE.—The term “Committee”
 2 means the Royalty Policy Committee reestablished
 3 under section 3(a).

4 (2) BOARD.—The term “Board” means the
 5 State and Tribal Resources Board established under
 6 section 3(c).

7 (3) INDIAN TRIBE.—The term “Indian tribe”
 8 has the meaning given the term in section 4 of the
 9 Indian Self-Determination and Education Assistance
 10 Act (25 U.S.C. 450b).

11 (4) SECRETARY.—The term “Secretary” means
 12 the Secretary of the Interior.

13 **SEC. 3. RECONSTITUTION OF THE ROYALTY POLICY.**

14 (a) IN GENERAL.—Not later than 90 days after the
 15 date of enactment of this Act, the Secretary shall reestab-
 16 lish the Royalty Policy Committee in accordance with the
 17 charter of the Secretary dated March 26, 2010, except as
 18 otherwise provided in this Act.

19 (b) CORRECTIONS AND UPDATES.—In reestablishing
 20 the Committee, the Secretary shall make appropriate tech-
 21 nical corrections and updates to the charter of the Com-
 22 mittee, including by revising—

23 (1) all references to the Minerals Management
 24 Service or the Minerals Revenue Management so as
 25 to refer to the Office of Natural Resources Revenue;

1 (2) the estimated number and frequency of
2 meetings of the Committee so that the Committee
3 shall meet not less frequently than once each year;
4 and

5 (3) the non-Federal membership of the Com-
6 mittee to include—

7 (A) not fewer than 5 members rep-
8 resenting Governors of States that receive more
9 than \$10,000,000 annually in royalty revenues
10 from Federal leases; and

11 (B) not more than 5 members representing
12 Indian tribes that are mineral-producing Indian
13 tribes under—

14 (i) the Act of May 11, 1938 (com-
15 monly known as the “Indian Mineral Leas-
16 ing Act of 1938”) (25 U.S.C. 396a et
17 seq.);

18 (ii) title XXVI of the Energy Policy
19 Act of 1992 (25 U.S.C. 3501 et seq.);

20 (iii) the Indian Mineral Development
21 Act of 1982 (25 U.S.C. 2101 et seq.); or

22 (iv) any other law relating to mineral
23 development that is specific to one or more
24 Indian tribes.

25 (c) ESTABLISHMENT OF SUBCOMMITTEE.—

1 (1) IN GENERAL.—The Secretary shall establish
 2 a subcommittee of the Committee, to be known as
 3 the “State and Tribal Resources Board”.

4 (2) MEMBERSHIP.—The Board shall be com-
 5 prised of the non-Federal members of the Committee
 6 described in subsection (b)(3).

7 **SEC. 4. REVIEW OF REGULATIONS AND POLICIES.**

8 (a) CONSULTATION AND REPORT.—

9 (1) IN GENERAL.—With respect to any pro-
 10 posed regulation or policy relating to mineral leasing
 11 policy for Federal land or Indian land for explo-
 12 ration, development, or production of oil, gas, or coal
 13 (including valuation methodologies and royalty and
 14 lease rates for oil, gas, or coal), not later than 180
 15 days after the applicable date described in para-
 16 graph (2), the Committee shall—

17 (A) assess the proposed regulation or pol-
 18 icy; and

19 (B) issue a report that describes the poten-
 20 tial impact of the proposed regulation or policy,
 21 including any State and tribal budgetary and
 22 economic impacts described in subsection (b).

23 (2) DATE DESCRIBED.—The date referred to in
 24 paragraph (1) is, as applicable—

(A) with respect to a proposed regulation or policy issued on or after the date of enactment of this Act, the date of the issuance by the Secretary of the proposed regulation or policy; and

(B) with respect to a proposed regulation or policy that is pending as of the date of enactment of this Act, the date of the enactment of this Act.

(b) STATE AND TRIBAL IMPACT DETERMINATION.—

(1) IN GENERAL.—To the maximum extent practicable, before any proposed regulation described in subsection (a)(1) is issued as a final rule, the Board shall publish a determination of the impact of the regulation on school funding, public safety, and other essential State or Indian tribal government services.

(2) DELAY REQUEST.—If the Board determines that a regulation described in paragraph (1) will have a negative State or tribal budgetary or economic impact, the Board may request a delay in the issuance of the proposed regulation as a final rule for the purposes of further—

(A) stakeholder consultation;

(B) budgetary review; and

1 (C) development of a proposal to mitigate
2 the negative budgetary or economic impact.

3 (3) LIMITATION.—A delay under paragraph (2)
4 shall not exceed a 180-day period beginning on the
5 date on which the Board requested the delay.

6 (c) REVISION OF PROPOSED REGULATION.—

7 (1) IN GENERAL.—Before any proposed regula-
8 tion described in subsection (a)(1) may be issued as
9 a final rule, the Secretary shall take into account
10 any negative State or tribal budgetary or economic
11 impact determined by the Committee under sub-
12 section (a)(1) and revise the proposed regulation to
13 avoid the negative impact.

14 (2) FINAL RULE.—Any final regulation subject
15 to paragraph (1) shall include—

16 (A) a summary of the report required
17 under subsection (a)(1)(B); and

18 (B) a clear explanation of why the rec-
19 ommendations of that report (including the
20 State and tribal determination under subsection
21 (b)(1)) were or were not taken into account in
22 the finalization of the regulation.

23 (d) REPORT TO CONGRESS.—The Secretary shall
24 submit to the Chairmen and Ranking Members of the
25 Committee on Energy and Natural Resources and the

1 Committee on Indian Affairs of the Senate and the Com-
 2 mittee on Natural Resources of the House of Representa-
 3 tives a report regarding the explanation under subsection
 4 (c)(2)(B) of why the recommendations of the report under
 5 subsection (a)(1)(B) (including the State and tribal deter-
 6 mination under subsection (b)(1)) were or were not taken
 7 into account in the finalization of the regulation.

8 **SEC. 5. SPECIAL REVIEW OF PROGRAMMATIC ENVIRON-**
 9 **MENTAL IMPACT STATEMENT.**

10 (a) PARTICIPANTS IN PROGRAMMATIC REVIEW.—

11 (1) IN GENERAL.—In carrying out the pro-
 12 grammatic review of coal leasing on Federal land as
 13 described in section 4 of Secretarial Order 3338,
 14 issued by the Secretary on January 15, 2016, and
 15 entitled “Discretionary Programmatic Environ-
 16 mental Impact Statement to Modernize the Federal
 17 Coal Program”, the Secretary shall confer with, and
 18 take into consideration the views of, representatives
 19 appointed to the review board described in para-
 20 graph (2).

21 (2) REVIEW BOARD.—Each Governor of a State
 22 in which more than \$10,000,000 in revenue is col-
 23 lected annually by the United States as bonus bids,
 24 royalties, and rentals, and fees for production of coal
 25 under leases of Federal land, may appoint not more

1 than 3 representatives to a review board to carry out
2 the programmatic review described in paragraph (1),
3 not fewer than one of whom shall be a member of
4 the Board.

5 (3) DEADLINE.—

6 (A) IN GENERAL.—The Secretary shall
7 complete the programmatic review described in
8 paragraph (1) not later than January 15, 2019.

9 (B) FAILURE TO MEET DEADLINE.—If the
10 programmatic review is not completed by the
11 deadline described in subparagraph (A), the
12 programmatic review shall be considered to be
13 complete as of that deadline.

14 (b) TERMINATION OF OTHER PROGRAMMATIC RE-
15 VIEW.—Beginning on January 16, 2019, no Federal funds
16 may be used to carry out the programmatic review de-
17 scribed in subsection (a)(1).

18 (c) NO IMPLEMENTATION REQUIREMENT.—Nothing
19 in this section requires the Secretary to conduct or com-
20 plete the programmatic review or keep in effect the pause
21 or moratorium on the issuance of new Federal coal leases
22 under the Secretarial order described in subsection (a)(1)
23 after January 20, 2017.

24 (d) TERMINATION OF MORATORIUM.—Effective Jan-
25 uary 16, 2019—

1 (1) the pause or moratorium on the issuance of
2 new Federal coal leases under the Secretarial order
3 referred to in subsection (a)(1) is terminated; and
4 (2) that Secretarial order shall have no force or
5 effect.

6 **SEC. 6. GRANDFATHERING OF COAL LEASES ON APPLICA-**
7 **TION AND COAL LEASE MODIFICATIONS.**

8 Nothing in Secretarial Order 3338, issued by the Sec-
9 retary on January 15, 2016, and entitled “Discretionary
10 Programmatic Environmental Impact Statement to Mod-
11 ernize the Federal Coal Program” shall be considered to
12 prohibit or restrict any issuance of a coal lease on applica-
13 tion, or modification to a coal lease on application pursu-
14 ant to subpart 3432 of part 3430 of title 43, Code of Fed-
15 eral Regulations (or successor regulations), for which the
16 Bureau of Land Management has begun a review under
17 section 102 of the National Environmental Policy Act of
18 1969 (42 U.S.C. 4332) as of January 15, 2016.

19 **SEC. 7. DEADLINE FOR COAL LEASE SALES AND MODIFICA-**
20 **TIONS.**

21 Not later than 1 year after the date on which the
22 Secretary completes the analysis required under section
23 102 of the National Environmental Policy Act of 1969 (42
24 U.S.C. 4332) for an application for a coal lease, or an
25 application for a modification to a coal lease pursuant to

1 subpart 3432 of part 3430 of title 43, Code of Federal
2 Regulations (or successor regulations), accepted by the
3 Secretary, the Secretary shall conduct the lease sale and
4 issue the lease, or approve the modification, unless the ap-
5 plicant indicates in writing that the applicant no longer
6 seeks the lease or modification to the lease.

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