

[H.R. 538, Native American Energy Act](#)

FLOOR SITUATION

On Thursday, October 8, 2015, the House will consider [H.R. 538](#), *the Native American Energy Act*, under a [structured rule](#). H.R. 538 was introduced on January 26, 2015 by Rep. Don Young (R-AK) and was referred to the Committee on Natural Resources, which ordered the bill reported by a vote of 23 to 12 on September 10, 2015.

SUMMARY

H.R. 538 is designed to facilitate the development of energy on Indian lands by reducing federal regulations that impede such development. Specifically, the bill:

- Permits an appraisal of Indian land, at the discretion of a tribe, to be conducted by the Secretary of the Department of the Interior (DOI), the tribe, or a certified third-party appraiser. The Secretary must, within 30 days, both review the appraisal and provide the Indian tribe a written notice of approval or disapproval. Should the Secretary fail to approve or disapprove an appraisal within 60 days, the appraisal of the Indian land shall be deemed approved;
- Allows an Indian tribe to waive any appraisal as long as the tribe provides the Secretary: a written resolution, statement, or unambiguous indication of intent approved by the governing body of the tribe;
- Directs the Secretary to standardize how the seven bureaus within the Department of Interior track oil and gas activities on Indian lands;
- Amends the National Environmental Policy Act (NEPA) to specify that, for any environmental impact statement required for a major federal action on a tribe's lands, such statement shall be available for public review and comment only by members of the Indian tribe and by any other individuals residing within the affected area;
- Precludes lawsuits filed to block federal permits or leases for tribal or Alaska Native Corporation energy projects unless such suits are filed prior to the end of a 60-day period beginning on the date of the final agency action;

- Requires energy-related suits to be brought in the U.S. District Court for the District of Columbia and resolved not more than 180 days after such cause of action is filed;
- Precludes the use of taxpayer funds to reimburse fees or expenses for plaintiffs filing frivolous lawsuits and requires plaintiffs to pay fees and expenses to a defendant (other than the United States) unless they ultimately prevail, or unless the court finds the position of the plaintiff was substantially justified or special circumstances make an award unjust;
- Creates a demonstration project for Indian tribes to promote biomass energy production on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from federal land;
- Considers a tribe's forest practices to be 'sustainable' for all federal purposes if the tribe's land is managed under a tribal resource management plan or an integrated resource management plan;
- Authorizes the Navajo Nation to execute mineral leases on Navajo lands pursuant to its own laws and ordinances if such laws and ordinances have been approved by the Secretary of the Interior. Such authority was extended for non-mineral surface site leasing to all tribes under the HEARTH Act (P.L. 112-151, Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012); and,
- Prevents any rule promulgated by DOI regarding hydraulic fracturing for the production of oil and gas resources from having any effect on Indian owned land unless there is an expressed consent of the Indian beneficiary.

BACKGROUND

“Tribes and individual Indian landowners regularly encounter obstacles not encountered by private and state landowners in the development of their lands.”¹ Federal law generally requires approval by the Secretary of the DOI, though the Bureau of Indian Affairs (BIA), “for a tribe or individual Indian to execute a lease agreement on land the United States holds in trust for the respective tribe or individual.”² This approval requirement applies to energy development on Indian trust lands.

The current federal regulatory scheme “obstructs historically impoverished tribes from fully realizing the huge economic potential of developing their assets.”³ For example, a tribe or individual Indian may lease their trust lands for mineral development only with the Secretary’s approval. The DOI has developed sprawling rules for the approval of leases of Indian lands pursuant to this authority. The rules often trigger NEPA reviews, lengthy appraisals, expensive applications for permits to drill, and numerous other layers of dilatory bureaucratic review often involving multiple agencies. Each layer of review gives federal or private special interests an opportunity to interfere, delay, appeal, or sue to slow or stop permitting of natural resource development on Indian lands.⁴

¹ See [House Report 114-276](#) at 1.

² Id.

³ Id. at 2.

⁴ Id.

In June, the Government Accountability Office (GAO) [reported](#) that “Bureau of Indian Affairs' (BIA) management shortcomings and other factors—such as a complex regulatory framework, tribes' limited capital and infrastructure, and varied tribal capacity—have hindered Indian energy development.”⁵ GAO found that these shortcomings “can increase costs and project development times, resulting in missed development opportunities, lost revenue, and jeopardized viability of projects.”⁶

Furthermore, since tribes with large energy resources tend to be located in rural areas, “development of these resources offers one of the few non-government means available for them to create jobs and a revenue stream to meet member demands for tribal services or activities, investment in the local community, and new energy supply to meet consumer demand.”⁷ H.R. 538 streamlines federal regulations that impede the development of energy on these lands.

According to Chairman Bishop, “the current regulatory system obstructs historically impoverished tribes from realizing the full potential of developing the natural resources on their land. The Native American Energy Act breaks tribes free of these regulatory shackles. It streamlines permitting and gives them flexibility throughout the process, empowering tribes to experience the great economic gains that energy development brings.”⁸

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 538 would have no significant effect on federal spending. However, because H.R. 538 would prohibit the federal government from paying attorneys' fees under the Equal Access to Justice Act for lawsuits regarding energy projects on tribal lands, enacting the bill would affect direct spending and pay-as-you-go procedures apply. A portion of those payments comes from the Claims and Judgment Fund and is recorded in the budget as direct spending. CBO estimates that any reduction in those payments under H.R. 538 would be insignificant because historically such payments have been small. Enacting H.R. 538 would not affect revenues.

AMENDMENTS

- 1) Rep. Don Young (R-AK)—The [manager's amendment](#) clarifies that a state, tribes, and local governments in an affected area of a proposed federal action on Indian lands may continue as provided under current law to comment on an environmental impact statement required under the National Environmental Policy Act, and that Section 4 shall not limit any public comment on a federal action concerning gaming on Indian lands under the Indian Gaming Regulatory Act.
- 2) Rep. Michelle Lujan Grisham (D-NM)—The [amendment](#) allows the Forest Service to create a pilot program that would execute contracts with tribes to perform administrative, management, and other functions of programs of the Tribal Forest Protection Act of 2004.

⁵ See GAO report—“[Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands](#),” June 8, 2015 at Highlights.

⁶ Id.

⁷ [House Report 114-276](#) at 2.

⁸ See Press Release—“[Bishop: Native American Energy Act Corrects an Unjust Regulatory Scheme, is a Boon to Indian Country](#),” September 10, 2015.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.