

115TH CONGRESS  
1ST SESSION

# H. R. 210

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

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

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## 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 En-  
5 ergy Act”.

6 **SEC. 2. APPRAISALS.**

7 (a) AMENDMENT.—Title XXVI of the Energy Policy  
8 Act of 1992 (25 U.S.C. 3501 et seq.) is amended by add-  
9 ing at the end the following:

1 **“SEC. 2607. APPRAISAL REFORMS.**

2 “(a) **OPTIONS TO INDIAN TRIBES.**—With respect to  
3 a transaction involving Indian land or the trust assets of  
4 an Indian tribe that requires the approval of the Sec-  
5 retary, any appraisal relating to fair market value required  
6 to be conducted under applicable law, regulation, or policy  
7 may be completed by—

8 “(1) the Secretary;

9 “(2) the affected Indian tribe; or

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

12 “(b) **TIME LIMIT ON SECRETARIAL REVIEW AND AC-**  
13 **TION.**—Not later than 30 days after the date on which  
14 the Secretary receives an appraisal conducted by or for  
15 an Indian tribe pursuant to paragraphs (2) or (3) of sub-  
16 section (a), the Secretary shall—

17 “(1) review the appraisal; and

18 “(2) provide to the Indian tribe a written notice  
19 of approval or disapproval of the appraisal.

20 “(c) **FAILURE OF SECRETARY TO APPROVE OR DIS-**  
21 **APPROVE.**—If, after 60 days, the Secretary has failed to  
22 approve or disapprove any appraisal received, the ap-  
23 praisal shall be deemed approved.

24 “(d) **OPTION TO INDIAN TRIBES TO WAIVE AP-**  
25 **PRAISAL.**—

1           “(1) An Indian tribe wishing to waive the re-  
2           quirements of subsection (a), may do so after it has  
3           satisfied the requirements of paragraphs (2) and  
4           (3).

5           “(2) An Indian tribe wishing to forego the ne-  
6           cessity of a waiver pursuant to this section must  
7           provide to the Secretary a written resolution, state-  
8           ment, or other unambiguous indication of tribal in-  
9           tent, duly approved by the governing body of the In-  
10          dian tribe.

11          “(3) The unambiguous indication of intent pro-  
12          vided by the Indian tribe to the Secretary under  
13          paragraph (2) must include an express waiver by the  
14          Indian tribe of any claims for damages it might have  
15          against the United States as a result of the lack of  
16          an appraisal undertaken.

17          “(e) DEFINITION.—For purposes of this subsection,  
18          the term ‘appraisal’ includes appraisals and other esti-  
19          mates of value.

20          “(f) REGULATIONS.—The Secretary shall develop  
21          regulations for implementing this section, including stand-  
22          ards the Secretary shall use for approving or disapproving  
23          an appraisal.”.

24          (b) CONFORMING AMENDMENT.—The table of con-  
25          tents of the Energy Policy Act of 1992 (42 U.S.C. 13201

1 note) is amended by adding at the end of the items relat-  
 2 ing to title XXVI the following:

“Sec. 2607. Appraisal reforms.”.

3 **SEC. 3. STANDARDIZATION.**

4 As soon as practicable after the date of the enactment  
 5 of this Act, the Secretary of the Interior shall implement  
 6 procedures to ensure that each agency within the Depart-  
 7 ment of the Interior that is involved in the review, ap-  
 8 proval, and oversight of oil and gas activities on Indian  
 9 lands shall use a uniform system of reference numbers and  
 10 tracking systems for oil and gas wells.

11 **SEC. 4. ENVIRONMENTAL REVIEWS OF MAJOR FEDERAL**  
 12 **ACTIONS ON INDIAN LANDS.**

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

17 “(b) REVIEW OF MAJOR FEDERAL ACTIONS ON IN-  
 18 DIAN LANDS.—

19 “(1) REVIEW AND COMMENT.—

20 “(A) IN GENERAL.—Except as provided in  
 21 subparagraph (B), the statement required  
 22 under subsection (a)(2)(C) for a major Federal  
 23 action regarding an activity on Indian lands of  
 24 an Indian tribe shall only be available for re-  
 25 view and comment by the members of the In-

1           dian tribe, other individuals residing within the  
2           affected area, and State, federally recognized  
3           tribal, and local governments within the af-  
4           fected area.

5           “(B) EXCEPTION.—Subparagraph (A)  
6           shall not apply to a statement for a major Fed-  
7           eral action regarding an activity on Indian  
8           lands of an Indian tribe related to gaming  
9           under the Indian Gaming Regulatory Act.

10          “(2) REGULATIONS.—The Chairman of the  
11          Council on Environmental Quality shall develop reg-  
12          ulations to implement this section, including descrip-  
13          tions of affected areas for specific major Federal ac-  
14          tions, in consultation with Indian tribes.

15          “(3) DEFINITIONS.—In this subsection, each of  
16          the terms ‘Indian land’ and ‘Indian tribe’ has the  
17          meaning given that term in section 2601 of the En-  
18          ergy Policy Act of 1992 (25 U.S.C. 3501).

19          “(4) CLARIFICATION OF AUTHORITY.—Nothing  
20          in the Native American Energy Act, except section  
21          6 of that Act, shall give the Secretary any additional  
22          authority over energy projects on Alaska Native  
23          Claims Settlement Act lands.”.

1 **SEC. 5. JUDICIAL REVIEW.**

2 (a) **TIME FOR FILING COMPLAINT.**—Any energy re-  
3 lated action must be filed not later than the end of the  
4 60-day period beginning on the date of the final agency  
5 action. Any energy related action not filed within this time  
6 period shall be barred.

7 (b) **DISTRICT COURT VENUE AND DEADLINE.**—All  
8 energy related actions—

9 (1) shall be brought in the United States Dis-  
10 trict Court for the District of Columbia; and

11 (2) shall be resolved as expeditiously as pos-  
12 sible, and in any event not more than 180 days after  
13 such cause of action is filed.

14 (c) **APPELLATE REVIEW.**—An interlocutory order or  
15 final judgment, decree or order of the district court in an  
16 energy related action may be reviewed by the United  
17 States Court of Appeals for the District of Columbia Cir-  
18 cuit. The District of Columbia Circuit Court of Appeals  
19 shall resolve such appeal as expeditiously as possible, and  
20 in any event not more than 180 days after such interlocu-  
21 tory order or final judgment, decree or order of the district  
22 court was issued.

23 (d) **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  
26 States Code, or under section 2412 of title 28, United

1 States Code, and no amounts may be obligated or ex-  
2 pended from the Claims and Judgment Fund of the  
3 United States Treasury to pay any fees or other expenses  
4 under such sections, to any person or party in an energy  
5 related action.

6 (e) LEGAL FEES.—In any energy related action in  
7 which the plaintiff does not ultimately prevail, the court  
8 shall award to the defendant (including any intervenor-  
9 defendants), other than the United States, fees and other  
10 expenses incurred by that party in connection with the en-  
11 ergy related action, unless the court finds that the position  
12 of the plaintiff was substantially justified or that special  
13 circumstances make an award unjust. Whether or not the  
14 position of the plaintiff was substantially justified shall be  
15 determined on the basis of the administrative record, as  
16 a whole, which is made in the energy related action for  
17 which fees and other expenses are sought.

18 (f) DEFINITIONS.—For the purposes of this section,  
19 the following definitions apply:

20 (1) AGENCY ACTION.—The term “agency ac-  
21 tion” has the same meaning given such term in sec-  
22 tion 551 of title 5, United States Code.

23 (2) INDIAN LAND.—The term “Indian Land”  
24 has the same meaning given such term in section  
25 203(c)(3) of the Energy Policy Act of 2005 (Public

1 Law 109–58; 25 U.S.C. 3501), including lands  
2 owned by Native Corporations under the Alaska Na-  
3 tive Claims Settlement Act (Public Law 92–203; 43  
4 U.S.C. 1601).

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

7 (A) is filed on or after the effective date of  
8 this Act; and

9 (B) seeks judicial review of a final agency  
10 action to issue a permit, license, or other form  
11 of agency permission allowing:

12 (i) any person or entity to conduct ac-  
13 tivities on Indian Land, which activities in-  
14 volve the exploration, development, produc-  
15 tion or transportation of oil, gas, coal,  
16 shale gas, oil shale, geothermal resources,  
17 wind or solar resources, underground coal  
18 gasification, biomass, or the generation of  
19 electricity; or

20 (ii) any Indian Tribe, or any organiza-  
21 tion of two or more entities, at least one  
22 of which is an Indian tribe, to conduct ac-  
23 tivities involving the exploration, develop-  
24 ment, production or transportation of oil,  
25 gas, coal, shale gas, oil shale, geothermal



1 resources, wind or solar resources, under-  
2 ground coal gasification, biomass, or the  
3 generation of electricity, regardless of  
4 where such activities are undertaken.

5 (4) **ULTIMATELY PREVAIL.**—The phrase “ulti-  
6 mately prevail” means, in a final enforceable judg-  
7 ment, the court rules in the party’s favor on at least  
8 one cause of action which is an underlying rationale  
9 for the preliminary injunction, administrative stay,  
10 or other relief requested by the party, and does not  
11 include circumstances where the final agency action  
12 is modified or amended by the issuing agency unless  
13 such modification or amendment is required pursu-  
14 ant to a final enforceable judgment of the court or  
15 a court-ordered consent decree.

16 **SEC. 6. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

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

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

21 “(a) **IN GENERAL.**—For each of fiscal years 2016  
22 through 2020, the Secretary shall enter into stewardship  
23 contracts or other agreements, other than agreements that  
24 are exclusively direct service contracts, with Indian tribes  
25 to carry out demonstration projects to promote biomass

1 energy production (including biofuel, heat, and electricity  
2 generation) on Indian forest land and in nearby commu-  
3 nities by providing reliable supplies of woody biomass from  
4 Federal land.

5 “(b) DEFINITIONS.—The definitions in section 2  
6 shall apply to this section.

7 “(c) DEMONSTRATION PROJECTS.—In each fiscal  
8 year for which projects are authorized, the Secretary shall  
9 enter into contracts or other agreements described in sub-  
10 section (a) to carry out at least 4 new demonstration  
11 projects that meet the eligibility criteria described in sub-  
12 section (d).

13 “(d) ELIGIBILITY CRITERIA.—To be eligible to enter  
14 into a contract or other agreement under this subsection,  
15 an Indian tribe shall submit to the Secretary an applica-  
16 tion—

17 “(1) containing such information as the Sec-  
18 retary may require; and

19 “(2) that includes a description of—

20 “(A) the Indian forest land or rangeland  
21 under the jurisdiction of the Indian tribe; and

22 “(B) the demonstration project proposed  
23 to be carried out by the Indian tribe.

24 “(e) SELECTION.—In evaluating the applications  
25 submitted under subsection (c), the Secretary—

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

5                   “(A) increase the availability or reliability  
6                   of local or regional energy;

7                   “(B) enhance the economic development of  
8                   the Indian tribe;

9                   “(C) improve the connection of electric  
10                  power transmission facilities serving the Indian  
11                  tribe with other electric transmission facilities;

12                  “(D) improve the forest health or water-  
13                  sheds of Federal land or Indian forest land or  
14                  rangeland; or

15                  “(E) otherwise promote the use of woody  
16                  biomass; and

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

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

21                   “(1) ensure that the criteria described in sub-  
22                   section (c) are publicly available by not later than  
23                   120 days after the date of enactment of this section;  
24                   and

1           “(2) to the maximum extent practicable, consult  
2           with Indian tribes and appropriate intertribal orga-  
3           nizations likely to be affected in developing the ap-  
4           plication and otherwise carrying out this section.

5           “(g) REPORT.—Not later than one year subsequent  
6           to the date of enactment of this section, the Secretary  
7           shall submit to Congress a report that describes, with re-  
8           spect to the reporting period—

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

11          “(2) each contract and agreement entered into  
12          pursuant to this section.

13          “(h) INCORPORATION OF MANAGEMENT PLANS.—In  
14          carrying out a contract or agreement under this section,  
15          on receipt of a request from an Indian tribe, the Secretary  
16          shall incorporate into the contract or agreement, to the  
17          extent practicable, management plans (including forest  
18          management and integrated resource management plans)  
19          in effect on the Indian forest land or rangeland of the re-  
20          spective Indian tribe.

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

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

1           “(2) may be renewed in accordance with this  
2           section for not more than an additional 10 years.

3   **“SEC. 4. TRIBAL FOREST MANAGEMENT DEMONSTRATION**  
4                           **PROJECT.**

5           “The Secretary of the Interior and the Secretary of  
6 Agriculture may carry out demonstration projects by  
7 which federally recognized Indian tribes or tribal organiza-  
8 tions may contract to perform administrative, manage-  
9 ment, and other functions of programs of the Tribal For-  
10 est Protection Act of 2004 (25 U.S.C. 3115a et seq.)  
11 through contracts entered into under the Indian Self-De-  
12 termination and Education Assistance Act (25 U.S.C. 450  
13 et seq.).”.

14   **SEC. 7. TRIBAL RESOURCE MANAGEMENT PLANS.**

15           Unless otherwise explicitly exempted by Federal law  
16 enacted after the date of the enactment of this Act, any  
17 activity conducted or resources harvested or produced pur-  
18 suant to a tribal resource management plan or an inte-  
19 grated resource management plan approved by the Sec-  
20 retary of the Interior under the National Indian Forest  
21 Resources Management Act (25 U.S.C. 3101 et seq.) or  
22 the American Indian Agricultural Resource Management  
23 Act (25 U.S.C. 3701 et seq.) shall be considered a sustain-  
24 able management practice for purposes of any Federal

1 standard, benefit, or requirement that requires a dem-  
2 onstration of such sustainability.

3 **SEC. 8. LEASES OF RESTRICTED LANDS FOR THE NAVAJO**  
4 **NATION.**

5 Subsection (e)(1) of the first section of the Act of  
6 August 9, 1955 (25 U.S.C. 415(e)(1); commonly referred  
7 to as the “Long-Term Leasing Act”), is amended—

8 (1) by striking “, except a lease for” and insert-  
9 ing “, including leases for”;

10 (2) in subparagraph (A), by striking “25” the  
11 first place it appears and all that follows and insert-  
12 ing “99 years;”;

13 (3) in subparagraph (B), by striking the period  
14 and inserting “; and”; and

15 (4) by adding at the end the following:

16 “(C) in the case of a lease for the exploration,  
17 development, or extraction of mineral resources, in-  
18 cluding geothermal resources, 25 years, except that  
19 any such lease may include an option to renew for  
20 one additional term not to exceed 25 years.”.

21 **SEC. 9. NONAPPLICABILITY OF CERTAIN RULES.**

22 No rule promulgated by the Department of the Inte-  
23 rior regarding hydraulic fracturing used in the develop-  
24 ment or production of oil or gas resources shall have any  
25 effect on any land held in trust or restricted status for

- 1 the benefit of Indians except with the express consent of
- 2 the beneficiary on whose behalf such land is held in trust
- 3 or restricted status.

○