

115TH CONGRESS
1ST SESSION

S. 1288

To amend the Federal Water Pollution Control Act to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting Indian land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2017

Mr. SULLIVAN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting Indian land, 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. PRESERVATION LEASING OF INDIAN LAND.**

4 (a) IN GENERAL.—Section 404 of the Federal Water
5 Pollution Control Act (33 U.S.C. 1344) is amended by
6 adding at the end the following:

7 “(u) PRESERVATION LEASING OF INDIAN LAND.—

8 “(1) DEFINITIONS.—In this subsection:

1 “(A) INDIAN LAND.—The term ‘Indian
2 land’ means land owned by, operated by, or oth-
3 erwise belonging to an Indian tribe.

4 “(B) INDIAN TRIBE.—The term ‘Indian
5 tribe’ has the meaning given the term in section
6 4 of the Indian Self-Determination and Edu-
7 cation Assistance Act (25 U.S.C. 5304).

8 “(C) PERMITTED ACTIVITY.—The term
9 ‘permitted activity’ means a discharge of
10 dredged or fill material for which a permit is
11 issued under this section.

12 “(D) PERMITTEE.—The term ‘permittee’
13 means a person that is issued a permit under
14 this section.

15 “(E) PRESERVATION LEASE.—The term
16 ‘preservation lease’ means an agreement under
17 which a permittee leases wetlands or other
18 aquatic sites on Indian land for the sole pur-
19 pose of preserving the wetlands or other aquatic
20 sites in an undisturbed state during the term of
21 the lease to mitigate for a permitted activity.

22 “(2) PRESERVATION LEASING OF INDIAN
23 LAND.—The Secretary shall allow a permittee to sat-
24 isfy compensatory mitigation requirements for a per-
25 mitted activity by entering into a preservation lease

1 with an Indian tribe, if the permitted activity affects
2 wetlands that are located in the same watershed as
3 the Indian land to be leased.

4 “(3) TERM.—In order to satisfy compensatory
5 mitigation requirements, the term of a preservation
6 lease—

7 “(A) shall be not less than the life of the
8 permitted activity; and

9 “(B) shall be adjusted to account for the
10 cessation, in whole or in part, of the impacts
11 caused by the permitted activity.

12 “(4) SITUATIONS IN WHICH A PERMITTEE
13 CEASES TO MAINTAIN PERMITTED ACTIVITY.—

14 “(A) PERMIT MODIFICATIONS.—If a per-
15 mittee enters into a preservation lease with an
16 Indian tribe under this subsection and subse-
17 quently ceases to maintain the permitted activ-
18 ity or seeks to abandon the permitted activity
19 without a good faith transfer the permittee
20 shall obtain a permit modification from the Sec-
21 retary, which may require restoration and reha-
22 bilitation of the area.

23 “(B) CONSULTATION WITH AN INDIAN
24 TRIBE.—Before making a determination under
25 subparagraph (A) as to whether, and to what

1 degree, restoration and rehabilitation are re-
2 quired, the Secretary shall consult, and fully
3 consider, the position of the Indian tribe that is
4 a party to any preservation lease relating to the
5 permitted activity.

6 “(C) RESTORATION AND REHABILITATION
7 PLANS.—

8 “(i) IN GENERAL.—If the Secretary
9 determines under subparagraph (A) that
10 restoration and rehabilitation are required,
11 the Secretary may require the permittee to
12 submit to the Secretary and the Indian
13 tribe a plan for conducting the restoration
14 and rehabilitation.

15 “(ii) CONTENTS.—A restoration and
16 rehabilitation plan submitted under clause
17 (i) shall include, at a minimum, goals and
18 objectives, performance standards, and
19 plans for site treatment, reporting, reme-
20 dial work, and monitoring to ensure that
21 performance standards are met.

22 “(D) REVERSION OF LAND.—After activi-
23 ties conducted under a restoration and rehabili-
24 tation plan submitted under subparagraph
25 (C)(i) have been completed and the hydrological

1 functions and fish and wildlife habitat of the
2 area impacted by the permitted activity have
3 been restored pursuant to the restoration and
4 rehabilitation plan, the land subject to the lease
5 shall revert back to the Indian tribe without re-
6 striction.”.

7 (b) APPLICABILITY.—The amendment made by sub-
8 section (a) shall apply to permits issued under section 404
9 of the Federal Water Pollution Control Act (33 U.S.C.
10 1344) after the date of enactment of this Act.

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