

112TH CONGRESS
1ST SESSION

S. 703

To amend the Long-Term Leasing Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 31, 2011

Mr. BARRASSO (for himself, Mr. AKAKA, Mr. THUNE, Mr. JOHNSON of South Dakota, Mr. TESTER, and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Long-Term Leasing Act, 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 “Helping Expedite and
5 Advance Responsible Tribal Homeownership Act of 2011”
6 or the “HEARTH Act of 2011”.

7 **SEC. 2. APPROVAL OF, AND PROVISIONS RELATING TO,**
8 **TRIBAL LEASES.**

9 (a) DEFINITIONS.—Subsection (d) of the first section
10 of the Act of August 9, 1955 (25 U.S.C. 415(d)) (com-

1 monly known as the “Long-Term Leasing Act”), is
 2 amended—

3 (1) in paragraph (4), by striking “the Navajo
 4 Nation” and inserting “an applicable Indian tribe”;

5 (2) in paragraph (6), by striking “the Navajo
 6 Nation” and inserting “an Indian tribe”;

7 (3) in paragraph (7), by striking “and” after
 8 the semicolon at the end;

9 (4) in paragraph (8)—

10 (A) by striking “the Navajo Nation”;

11 (B) by striking “with Navajo Nation law”
 12 and inserting “with applicable tribal law”; and

13 (C) by striking the period at the end and
 14 inserting “; and”; and

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

16 “(9) the term ‘Indian tribe’ has the meaning
 17 given the term in section 102 of the Federally Rec-
 18 ognized Indian Tribe List Act of 1994 (25 U.S.C.
 19 479a).”.

20 (b) TRIBAL APPROVAL OF LEASES.—The first sec-
 21 tion of the Act of August 9, 1955 (25 U.S.C. 415) (com-
 22 monly known as the “Long-Term Leasing Act”), is
 23 amended by adding at the end the following:

24 “(h) TRIBAL APPROVAL OF LEASES.—

1 “(1) IN GENERAL.—Subject to paragraph (2)
2 and at the discretion of any Indian tribe, any lease
3 by the Indian tribe for the purposes authorized
4 under subsection (a), except a lease for the explo-
5 ration, development, or extraction of any mineral re-
6 sources, shall not require the approval of the Sec-
7 retary if the lease is executed under the tribal regu-
8 lations approved by the Secretary under this sub-
9 section and the term of the lease does not exceed—

10 “(A) in the case of a business or agricul-
11 tural lease, 25 years, except that any such lease
12 may include an option to renew for up to 2 ad-
13 ditional terms, each of which may not exceed 25
14 years; and

15 “(B) in the case of a lease for public, reli-
16 gious, educational, recreational, or residential
17 purposes, 75 years, if such a term is provided
18 for by the regulations issued by the Indian
19 tribe.

20 “(2) ALLOTTED LAND.—Paragraph (1) shall
21 not apply to any lease of land (including an interest
22 in land) held in trust for an individual Indian.

23 “(3) AUTHORITY OF SECRETARY OVER TRIBAL
24 REGULATIONS.—

1 “(A) IN GENERAL.—The Secretary shall
2 have the authority to approve or disapprove any
3 tribal regulations issued in accordance with
4 paragraph (1).

5 “(B) CONSIDERATIONS FOR APPROVAL.—
6 The Secretary shall approve any tribal regula-
7 tion issued in accordance with paragraph (1), if
8 the tribal regulations—

9 “(i) are consistent with any regula-
10 tions issued by the Secretary under sub-
11 section (a); and

12 “(ii) provide for an environmental re-
13 view process that includes—

14 “(I) the identification and eval-
15 uation of any significant effects of the
16 proposed action on the environment;
17 and

18 “(II) a process for ensuring
19 that—

20 “(aa) the public is informed
21 of, and has a reasonable oppor-
22 tunity to comment on, any sig-
23 nificant environmental impacts of
24 the proposed action identified by
25 the Indian tribe; and

1 “(bb) the Indian tribe pro-
2 vides responses to relevant and
3 substantive public comments on
4 those impacts before the Indian
5 tribe approves the lease.

6 “(4) REVIEW PROCESS.—

7 “(A) IN GENERAL.—Not later than 120
8 days after the date on which the tribal regula-
9 tions described in paragraph (1) are submitted
10 to the Secretary, the Secretary shall review and
11 approve or disapprove the regulations.

12 “(B) WRITTEN DOCUMENTATION.—If the
13 Secretary disapproves the tribal regulations de-
14 scribed in paragraph (1), the Secretary shall in-
15 clude written documentation with the dis-
16 approval notification that describes the basis for
17 the disapproval.

18 “(C) EXTENSION.—The deadline described
19 in subparagraph (A) may be extended by the
20 Secretary, after consultation with the Indian
21 tribe.

22 “(5) FEDERAL ENVIRONMENTAL REVIEW.—
23 Notwithstanding paragraphs (3) and (4), if an In-
24 dian tribe carries out a project or activity funded by
25 a Federal agency, the Indian tribe shall have the au-

1 thority to rely on the environmental review process
2 of the applicable Federal agency rather than any
3 tribal environmental review process under this sub-
4 section.

5 “(6) DOCUMENTATION.—If an Indian tribe exe-
6 cutes a lease pursuant to tribal regulations under
7 paragraph (1), the Indian tribe shall provide the
8 Secretary with—

9 “(A) a copy of the lease, including any
10 amendments or renewals to the lease; and

11 “(B) in the case of tribal regulations or a
12 lease that allows for lease payments to be made
13 directly to the Indian tribe, documentation of
14 the lease payments that are sufficient to enable
15 the Secretary to discharge the trust responsi-
16 bility of the United States under paragraph (7).

17 “(7) TRUST RESPONSIBILITY.—

18 “(A) IN GENERAL.—The United States
19 shall not be liable for losses sustained by any
20 party to a lease executed pursuant to tribal reg-
21 ulations under paragraph (1).

22 “(B) AUTHORITY OF SECRETARY.—Pursu-
23 ant to the authority of the Secretary to fulfill
24 the trust obligation of the United States to the
25 applicable Indian tribe under Federal law (in-

1 including regulations), the Secretary may, upon
2 reasonable notice from the applicable Indian
3 tribe and at the discretion of the Secretary, en-
4 force the provisions of, or cancel, any lease exe-
5 cuted by the Indian tribe under paragraph (1).

6 “(8) COMPLIANCE.—

7 “(A) IN GENERAL.—An interested party,
8 after exhausting of any applicable tribal rem-
9 edies, may submit a petition to the Secretary,
10 at such time and in such form as the Secretary
11 determines to be appropriate, to review the
12 compliance of the applicable Indian tribe with
13 any tribal regulations approved by the Sec-
14 retary under this subsection.

15 “(B) VIOLATIONS.—If, after carrying out
16 a review under subparagraph (A), the Secretary
17 determines that the tribal regulations were vio-
18 lated, the Secretary may take any action the
19 Secretary determines to be necessary to remedy
20 the violation, including rescinding the approval
21 of the tribal regulations and reassuming respon-
22 sibility for the approval of leases of tribal trust
23 lands.

24 “(C) DOCUMENTATION.—If the Secretary
25 determines that a violation of the tribal regula-

1 tions has occurred and a remedy is necessary,
2 the Secretary shall—

3 “(i) make a written determination
4 with respect to the regulations that have
5 been violated;

6 “(ii) provide the applicable Indian
7 tribe with a written notice of the alleged
8 violation together with such written deter-
9 mination; and

10 “(iii) prior to the exercise of any rem-
11 edy, the rescission of the approval of the
12 regulation involved, or the reassumption of
13 lease approval responsibilities, provide the
14 applicable Indian tribe with—

15 “(I) a hearing that is on the
16 record; and

17 “(II) a reasonable opportunity to
18 cure the alleged violation.

19 “(9) SAVINGS CLAUSE.—Nothing in this sub-
20 section shall affect subsection (e) or any tribal regu-
21 lations issued under that subsection.”.

22 (c) LAND TITLE REPORTS.—

23 (1) IN GENERAL.—Not later than 180 days
24 after the date on which funds are first made avail-
25 able to carry out this Act, the Bureau of Indian Af-

1 fairs shall prepare and submit to the Committees on
2 Financial Services and Natural Resources of the
3 House of Representatives and the Committees on
4 Banking, Housing, and Urban Affairs and Indian
5 Affairs of the Senate a report regarding the history
6 and experience of Indian tribes that have chosen to
7 assume responsibility for operating the Indian Land
8 Title and Records Office (referred to in this sub-
9 section as the “LTRO”) functions from the Bureau
10 of Indian Affairs.

11 (2) CONSULTATION.—In conducting the review
12 under paragraph (1), the Bureau of Indian Affairs
13 shall consult with the Department of Housing and
14 Urban Development Office of Native American Pro-
15 grams and the Indian tribes that are managing
16 LTRO functions (referred to in this subsection as
17 the “managing Indian tribes”).

18 (3) CONTENTS.—The review under paragraph
19 (1) shall include an analysis of the following factors:

20 (A) Whether and how tribal management
21 of the LTRO functions has expedited the proc-
22 essing and issuance of Indian land title certifi-
23 cations as compared to the period during which
24 the Bureau of Indian Affairs managed the pro-
25 grams.

1 (B) Whether and how tribal management
2 of the LTRO functions has increased home
3 ownership among the population of the man-
4 aging Indian tribe.

5 (C) What internal preparations and proc-
6 esses were required of the managing Indian
7 tribes prior to assuming management of the
8 LTRO functions.

9 (D) Whether tribal management of the
10 LTRO functions resulted in a transfer of finan-
11 cial resources and manpower from the Bureau
12 of Indian Affairs to the managing Indian tribes
13 and, if so, what transfers were undertaken.

14 (E) Whether, in appropriate circumstances
15 and with the approval of geographically proxi-
16 mate Indian tribes, the LTRO functions may be
17 performed by a single Indian tribe or a tribal
18 consortium in a cost effective manner.

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