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H. R. 205

One Hundred Twelfth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the third day of January, two thousand and twelve

An Act

To amend the Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012" or the "HEARTH Act of 2012".

SEC. 2. APPROVAL OF, AND REGULATIONS RELATED TO, TRIBAL LEASES.

The first section of the Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (25 U.S.C. 415), is amended as follows:

(1) In subsection (d)—

(A) in paragraph (4), by striking "the Navajo Nation" and inserting "an applicable Indian tribe";

(B) in paragraph (6), by striking "the Navajo Nation" and inserting "an Indian tribe";

(C) in paragraph (7), by striking "and" after the semicolon at the end;

(D) in paragraph (8)—

(i) by striking "the Navajo Nation";

(ii) by striking "with Navajo Nation law" and inserting "with applicable tribal law"; and

(iii) by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

"(9) the term 'Indian tribe' has the meaning given such term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a); and

"(10) the term 'individually owned allotted land' means a parcel of land that—

"(A)(i) is located within the jurisdiction of an Indian tribe; or

"(ii) is held in trust or restricted status by the United States for the benefit of an Indian tribe or a member of an Indian tribe; and

"(B) is allotted to a member of an Indian tribe.".

(2) By adding at the end the following:

"(h) TRIBAL APPROVAL OF LEASES.—

"(1) IN GENERAL.—At the discretion of any Indian tribe, any lease by the Indian tribe for the purposes authorized under subsection (a) (including any amendments to subsection (a)), except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary, if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed—

"(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years; and

"(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years, if such a term is provided for by the regulations issued by the Indian tribe.

"(2) ALLOTTED LAND.—Paragraph (1) shall not apply to any lease of individually owned Indian allotted land.

"(3) AUTHORITY OF SECRETARY OVER TRIBAL REGULATIONS.—

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

"(B) CONSIDERATIONS FOR APPROVAL.—The Secretary shall approve any tribal regulation issued in accordance with paragraph (1), if the tribal regulations—

"(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

"(ii) provide for an environmental review process that includes—

"(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

"(II) a process for ensuring that—

"(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

"(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

"(C) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance, upon request of the Indian tribe, for development of a regulatory environmental review process under subparagraph (B)(ii).

"(D) INDIAN SELF-DETERMINATION ACT.—The technical assistance to be provided by the Secretary pursuant to subparagraph (C) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

"(4) REVIEW PROCESS.—

"(A) IN GENERAL.—Not later than 120 days after the date on which the tribal regulations described in paragraph (1) are submitted to the Secretary, the Secretary shall review and approve or disapprove the regulations.

"(B) WRITTEN DOCUMENTATION.—If the Secretary disapproves the tribal regulations described in paragraph (1), the Secretary shall include written documentation with the disapproval notification that describes the basis for the disapproval.

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

"(5) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

"(6) DOCUMENTATION.—If an Indian tribe executes a lease pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with—

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

"(B) in the case of tribal regulations or a lease that allows for lease payments to be made directly to the Indian tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

"(7) TRUST RESPONSIBILITY.—

"(A) IN GENERAL.—The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).

"(B) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

"(8) COMPLIANCE.—

"(A) IN GENERAL.—An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

"(B) VIOLATIONS.—If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust lands.

"(C) DOCUMENTATION.—If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall—

"(i) make a written determination with respect to the regulations that have been violated;

"(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

"(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of lease approval responsibilities, provide the applicable Indian tribe with—

"(I) a hearing that is on the record; and

"(II) a reasonable opportunity to cure the alleged violation.

"(9) SAVINGS CLAUSE.—Nothing in this subsection shall affect subsection (e) or any tribal regulations issued under that subsection.".

SEC. 3. LAND TITLE REPORTS.

(a) IN GENERAL.—The Bureau of Indian Affairs shall prepare and submit to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate a report regarding the history and experience of Indian tribes that have chosen to assume responsibility for operating the Indian Land Title and Records Office (referred to in this section as the "LTRO") functions from the Bureau of Indian Affairs.

(b) CONSULTATION.—In conducting the review under subsection (a), the Bureau of Indian Affairs shall consult with the Department of Housing and Urban Development Office of Native American Programs and the Indian tribes that are managing LTRO functions (referred to in this section as the "managing Indian tribes").

(c) CONTENTS.—The review under subsection (a) shall include an analysis of the following factors:

(1) Whether and how tribal management of the LTRO functions has expedited the processing and issuance of Indian land title certifications as compared to the period during which the Bureau of Indian Affairs managed the programs.

(2) Whether and how tribal management of the LTRO functions has increased home ownership among the population of the managing Indian tribe.

(3) What internal preparations and processes were required of the managing Indian tribes prior to assuming management of the LTRO functions.

(4) Whether tribal management of the LTRO functions resulted in a transfer of financial resources and manpower from the Bureau of Indian Affairs to the managing Indian tribes and, if so, what transfers were undertaken.

(5) Whether, in appropriate circumstances and with the approval of geographically proximate Indian tribes, the LTRO

functions may be performed by a single Indian tribe or a tribal consortium in a cost effective manner.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.