



H.R. 538: Native American Energy Act (Rep. Young, R-AK)

CONTACT: [Nicholas Rodman](#), 202-226-8576

FLOOR SCHEDULE:

SCHEDULED FOR CONSIDERATION ON OCTOBER 8, 2015, UNDER A CLOSED [RULE](#)

TOPLINE SUMMARY:

[H. 538](#) would expedite energy development on tribal lands by requiring the Secretary of the Interior to act on appraisals of whether a project would benefit a tribe within 30 days and reforming the judicial review process for energy projects to which a tribe is a partner.

COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 538 would have no significant effect on federal spending. Because H.R. 538 would prohibit the federal government from paying attorneys' fees for lawsuits regarding energy projects on tribal lands, enacting the bill would affect direct spending and pay-as-you-go procedures apply.

CONSERVATIVE CONCERNS:

There are no substantive concerns regarding the resolution.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 538 would require the Department to act on an appraisal within 30 days of receipt and would further stipulate that if the Department has failed to approve or disapprove any appraisal received after 60 days, the appraisal would be deemed approved. A tribe would be able to waive an appraisal if it provides to the Secretary a written resolution, statement, or other unambiguous indication of tribal intent, approved by the Indian tribe's governing body. The bill would amend the [National Environmental Policy Act of 1969](#) by requiring for any major federal action on Indian lands, the preparation of a statement to be made available for review and comment by the members of the Indian tribe and by any other individual residing within the affected area. The bill would require the Chairman of the Council on Environmental Quality shall develop regulations to implement changes to the review process of major federal actions on Indian lands set forth in the legislation.

H.R. 538 would additionally reform the process of judicial review for an energy related action involving a tribe. Any judicial challenge to a project would have to be filed not later than 60 days after the final agency

action. Any energy related action not filed within this time period would be barred. Further, the measure would require all legal challenges to such projects to be adjudicated by the D.C. District Court, appealable to the D.C. Circuit Court.

The bill would additionally amend the [Tribal Forest Protection Act of 2004](#) to direct the Secretary of the Interior to enter into stewardship contracts with Indian tribes from FY2016 to FY2020 to carry out at least four demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing tribes with reliable supplies of woody biomass from federal lands.

The bill amends the [Long-Term Leasing Act](#) by allowing the Navajo Nation to enter into mineral resource leases on their restricted lands without the Department of Interior's approval. The bill also stipulates that no rule promulgated by the Department regarding hydraulic fracturing used in the development or production of oil or gas resources would have any effect on any land held in trust or restricted status for the benefit of Indians except with the express consent of the Indian beneficiary.

The House report accompanying H.R. 538 (H. Rept. 114-276) can be found [here](#). According to the report, “the current federal regulatory scheme obstructs historically impoverished tribes from fully realizing the huge economic potential of developing their assets. Because 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.”

AMENDMENTS MADE IN ORDER:

- [#1 Young \(R-AK\)](#) (Manager’s Amendment): would stipulate that the statement required for a major federal action regarding an activity on Indian lands would only be available for review and comment by the members of the Indian tribe, other individuals residing within the affected area, and State, federally recognized tribal, and local governments within the affected area, but would not apply to a statement for a major federal action regarding an activity on Indian lands related to gaming.
- [#5 Lujan Grisham \(D-NM\)](#): would authorize the Secretary of the Interior and the Secretary of Agriculture to carry out demonstration projects by which federally recognized Indian tribes or tribal organizations may contract to perform administrative, management, and other functions of programs of the [Tribal Forest Protection Act of 2004](#).

COMMITTEE ACTION:

The bill was introduced on January 26, 2015 and was referred to the House Committee on Natural Resources. The bill was then reported by the committee on October 1, 2015.

ADMINISTRATION POSITION:

The White House statement of administration policy can be found [here](#).

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clause 3.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

###