

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 205

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IN THE SENATE OF THE UNITED STATES

MAY 16, 2012

Received; read twice and referred to the Committee on Indian Affairs

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## 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.

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 Home Ownership Act of  
6 2012” or the “HEARTH Act of 2012”.

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

9       The first section of the Act titled “An Act to author-  
10 ize the leasing of restricted Indian lands for public, reli-  
11 gious, educational, recreational, residential, business, and  
12 other purposes requiring the grant of long-term leases”,  
13 approved August 9, 1955 (25 U.S.C. 415), is amended  
14 as follows:

15           (1) In subsection (d)—

16                   (A) in paragraph (4), by striking “the  
17 Navajo Nation” and inserting “an applicable  
18 Indian tribe”;

19                   (B) in paragraph (6), by striking “the  
20 Navajo Nation” and inserting “an Indian  
21 tribe”;

22                   (C) in paragraph (7), by striking “and”  
23 after the semicolon at the end;

24                   (D) in paragraph (8)—

25                           (i) by striking “the Navajo Nation”;

1 (ii) by striking “with Navajo Nation  
2 law” and inserting “with applicable tribal  
3 law”; and

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

6 (E) by adding at the end the following:

7 “(9) the term ‘Indian tribe’ has the meaning  
8 given such term in section 102 of the Federally Rec-  
9 ognized Indian Tribe List Act of 1994 (25 U.S.C.  
10 479a); and

11 “(10) the term ‘individually owned allotted  
12 land’ means a parcel of land that—

13 “(A)(i) is located within the jurisdiction of  
14 an Indian tribe; or

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

18 “(B) is allotted to a member of an Indian  
19 tribe.”.

20 (2) By adding at the end the following:

21 “(h) TRIBAL APPROVAL OF LEASES.—

22 “(1) IN GENERAL.—At the discretion of any In-  
23 dian tribe, any lease by the Indian tribe for the pur-  
24 poses authorized under subsection (a) (including any  
25 amendments to subsection (a)), except a lease for

1 the exploration, development, or extraction of any  
2 mineral resources, shall not require the approval of  
3 the Secretary, if the lease is executed under the trib-  
4 al regulations approved by the Secretary under this  
5 subsection and the term of the lease does not ex-  
6 ceed—

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

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

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

20 “(3) AUTHORITY OF SECRETARY OVER TRIBAL  
21 REGULATIONS.—

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

1           “(B) CONSIDERATIONS FOR APPROVAL.—

2           The Secretary shall approve any tribal regula-  
3           tion issued in accordance with paragraph (1), if  
4           the tribal regulations—

5                   “(i) are consistent with any regula-  
6                   tions issued by the Secretary under sub-  
7                   section (a) (including any amendments to  
8                   the subsection or regulations); and

9                   “(ii) provide for an environmental re-  
10                  view process that includes—

11                           “(I) the identification and eval-  
12                           uation of any significant effects of the  
13                           proposed action on the environment;  
14                           and

15                           “(II) a process for ensuring  
16                           that—

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

23                                   “(bb) the Indian tribe pro-  
24                                   vides responses to relevant and  
25                                   substantive public comments on

1 any such impacts before the In-  
2 dian tribe approves the lease.

3 “(C) TECHNICAL ASSISTANCE.—The Sec-  
4 retary may provide technical assistance, upon  
5 request of the Indian tribe, for development of  
6 a regulatory environmental review process  
7 under subparagraph (B)(ii).

8 “(D) INDIAN SELF-DETERMINATION  
9 ACT.—The technical assistance to be provided  
10 by the Secretary pursuant to subparagraph (C)  
11 may be made available through contracts,  
12 grants, or agreements entered into in accord-  
13 ance with, and made available to entities eligi-  
14 ble for, such contracts, grants, or agreements  
15 under the Indian Self-Determination Act (25  
16 U.S.C. 450 et seq.).

17 “(4) REVIEW PROCESS.—

18 “(A) IN GENERAL.—Not later than 120  
19 days after the date on which the tribal regula-  
20 tions described in paragraph (1) are submitted  
21 to the Secretary, the Secretary shall review and  
22 approve or disapprove the regulations.

23 “(B) WRITTEN DOCUMENTATION.—If the  
24 Secretary disapproves the tribal regulations de-  
25 scribed in paragraph (1), the Secretary shall in-

1           clude written documentation with the dis-  
2           approval notification that describes the basis for  
3           the disapproval.

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

8           “(5) FEDERAL ENVIRONMENTAL REVIEW.—  
9           Notwithstanding paragraphs (3) and (4), if an In-  
10          dian tribe carries out a project or activity funded by  
11          a Federal agency, the Indian tribe shall have the au-  
12          thority to rely on the environmental review process  
13          of the applicable Federal agency rather than any  
14          tribal environmental review process under this sub-  
15          section.

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

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

22                 “(B) in the case of tribal regulations or a  
23                 lease that allows for lease payments to be made  
24                 directly to the Indian tribe, documentation of  
25                 the lease payments that are sufficient to enable

1 the Secretary to discharge the trust responsi-  
2 bility of the United States under paragraph (7).

3 “(7) TRUST RESPONSIBILITY.—

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

8 “(B) AUTHORITY OF SECRETARY.—Pursu-  
9 ant to the authority of the Secretary to fulfill  
10 the trust obligation of the United States to the  
11 applicable Indian tribe under Federal law (in-  
12 cluding regulations), the Secretary may, upon  
13 reasonable notice from the applicable Indian  
14 tribe and at the discretion of the Secretary, en-  
15 force the provisions of, or cancel, any lease exe-  
16 cuted by the Indian tribe under paragraph (1).

17 “(8) COMPLIANCE.—

18 “(A) IN GENERAL.—An interested party,  
19 after exhausting of any applicable tribal rem-  
20 edies, may submit a petition to the Secretary,  
21 at such time and in such form as the Secretary  
22 determines to be appropriate, to review the  
23 compliance of the applicable Indian tribe with  
24 any tribal regulations approved by the Sec-  
25 retary under this subsection.



1           “(B) VIOLATIONS.—If, after carrying out  
2 a review under subparagraph (A), the Secretary  
3 determines that the tribal regulations were vio-  
4 lated, the Secretary may take any action the  
5 Secretary determines to be necessary to remedy  
6 the violation, including rescinding the approval  
7 of the tribal regulations and reassuming respon-  
8 sibility for the approval of leases of tribal trust  
9 lands.

10           “(C) DOCUMENTATION.—If the Secretary  
11 determines that a violation of the tribal regula-  
12 tions has occurred and a remedy is necessary,  
13 the Secretary shall—

14           “(i) make a written determination  
15 with respect to the regulations that have  
16 been violated;

17           “(ii) provide the applicable Indian  
18 tribe with a written notice of the alleged  
19 violation together with such written deter-  
20 mination; and

21           “(iii) prior to the exercise of any rem-  
22 edy, the rescission of the approval of the  
23 regulation involved, or the reassumption of  
24 lease approval responsibilities, provide the  
25 applicable Indian tribe with—

1                   “(I) a hearing that is on the  
2                   record; and

3                   “(II) a reasonable opportunity to  
4                   cure the alleged violation.

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

8 **SEC. 3. LAND TITLE REPORTS.**

9           (a) IN GENERAL.—The Bureau of Indian Affairs  
10 shall prepare and submit to the Committee on Natural Re-  
11 sources of the House of Representatives and the Com-  
12 mittee on Indian Affairs of the Senate a report regarding  
13 the history and experience of Indian tribes that have cho-  
14 sen to assume responsibility for operating the Indian Land  
15 Title and Records Office (referred to in this section as  
16 the “LTRO”) functions from the Bureau of Indian Af-  
17 fairs.

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

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

1           (1) Whether and how tribal management of the  
2           LTRO functions has expedited the processing and  
3           issuance of Indian land title certifications as com-  
4           pared to the period during which the Bureau of In-  
5           dian Affairs managed the programs.

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

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

12          (4) Whether tribal management of the LTRO  
13          functions resulted in a transfer of financial resources  
14          and manpower from the Bureau of Indian Affairs to  
15          the managing Indian tribes and, if so, what trans-  
16          fers were undertaken.

17          (5) Whether, in appropriate circumstances and  
18          with the approval of geographically proximate Indian  
19          tribes, the LTRO functions may be performed by a

1 single Indian tribe or a tribal consortium in a cost  
2 effective manner.

Passed the House of Representatives May 15, 2012.

Attest: KAREN L. HAAS,  
*Clerk.*