



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 19, 2012

H.R. 3973 **Native American Energy Act**

As ordered reported by the House Committee on Natural Resources on May 16, 2012

SUMMARY

H.R. 3973 would make several changes related to environmental laws, energy programs, and the management of mineral resources on Native American reservations. CBO estimates that implementing the bill would cost \$58 million over the 2013-2017 period, assuming appropriation of the necessary amounts.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. However, CBO estimates that the net effects would be insignificant over the 2013-2022 period. Enacting H.R. 3973 would not affect revenues.

H.R. 3973 would impose an intergovernmental and private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), by requiring plaintiffs, including public and private entities, to post a bond when seeking a preliminary injunction to stop energy-related activities on Native American energy projects. CBO estimates that the costs for public and private entities would probably fall below the annual thresholds established in UMRA (\$73 million and \$146 million, respectively, in 2012, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3973 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars					2013- 2017
	2013	2014	2015	2016	2017	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	11	11	12	12	12	58
Estimated Outlays	9	13	12	12	12	58

BASIS OF ESTIMATE

For this estimate, CBO assumes that the legislation will be enacted near the end of 2012 and that the necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar programs.

H.R. 3973 would direct the Department of the Interior (DOI) to establish at least five Indian Energy Development Offices to provide energy-related resources and information to tribes and to oversee the processing of applications and permits for energy projects on tribal lands. Based on information provided by DOI, CBO estimates that each office would cost about \$2 million annually to operate when fully staffed. CBO estimates that this provision would cost \$43 million over the 2013-2017 period.

The bill would prohibit the Bureau of Land Management (BLM) from collecting fees for: applications for a permit to drill (APD) for oil or gas on tribal lands, oil or gas inspections on tribal lands, or nonproducing oil or gas leases on tribal lands. Under current law, BLM charges \$6,500 to process each APD. In 2011, BLM collected about \$3 million in APD fees for projects on Indian lands. BLM does not currently collect fees for oil or gas inspections or for nonproducing leases on tribal lands.

Those fees are authorized to be collected in annual appropriation acts, and therefore, the fee amounts are an offset to discretionary spending. CBO estimates that this provision of H.R. 3973 would reduce collections by \$15 million over the 2013-2017 period. That reduction in future collections for drilling permits would have the effect of increasing future net discretionary spending, assuming that future appropriation acts are consistent with the provisions of H.R. 3973.

CBO estimates that implementing other provisions of H.R. 3973 would have an insignificant impact on federal spending. Those provisions would:

- Require DOI to act on any appraisal of energy projects required under current law within 30 days and allow tribes to waive the requirement for appraisals under specified circumstances;
- Require DOI to use a uniform reference system for tracking oil and gas wells;
- Restrict the review of and the comments on environmental impact statements of projects on tribal lands to members of the tribe and residents of the area;
- Make plaintiffs who obtain injunctions against energy projects on tribal lands but do not prevail on the merits of the case liable to the defendant for damages. Under the bill, plaintiffs would be required to post a bond with the court for 30 percent of the amount required to compensate defendants before the court could issue an injunction;
- Require DOI to contract for four biomass-demonstration projects annually through 2017 using timber from federal forests that is not marketable;
- Designate any practice done in accordance to a tribe's resource management plan as a sustainable practice with respect to federal benefits and standards; and
- Authorize the Navajo Nation to enter into commercial and agricultural leases for up to 99 years. Under the bill, the Navajo Nation also would be authorized to enter into mineral resource leases without DOI approval for 25 years. Any income resulting from those leases would be paid directly to the tribal owners or to the appropriate tribal government and would have no significant impact on the federal budget.

PAY-AS-YOU-GO CONSIDERATIONS

Enacting H.R. 3973 would affect direct spending; therefore, pay-as-you-go procedures apply. The legislation would prohibit payments of attorneys' fees under the Equal Access to Justice Act for lawsuits regarding energy projects on tribal lands. A portion of those payments comes from the Treasury Department's Judgment Fund and is recorded in the budget as direct spending. Based on information provided by the Government Accountability Office, CBO estimates that any reduction in direct spending as a result of the bill would be insignificant. Enacting H.R. 3973 would not affect revenues.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3973 would impose an intergovernmental and private-sector mandate by requiring plaintiffs, including public and private entities, to post a bond when seeking a preliminary injunction to stop energy-related activities on Native American energy projects.

Preliminary injunctions are issued rarely and only in cases where compensation awarded by the court could not equal the potential personal damage or damage to property. The amount of the bond would be determined by the court and would be equal to 30 percent of the potential losses incurred by the defendant as a result of the injunction. The cost of the mandate would be the purchase price of required bonds, typically 10 percent of the bond amount. Based on the number of injunctions that would require such bonds and the aggregate value of the bonds that would have to be purchased to reach the annual thresholds, CBO estimates that the costs for public and private entities would probably fall below the annual thresholds established in UMRA (\$73 million and \$146 million, respectively, in 2012, adjusted annually for inflation).

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