

Calendar No. 342118TH CONGRESS
2^D SESSION**S. 1322****[Report No. 118–159]**

To amend the Act of August 9, 1955, to modify the authorized purposes and term period of tribal leases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2023

Mr. SCHATZ (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

MARCH 12, 2024

Reported by Mr. SCHATZ, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Act of August 9, 1955, to modify the authorized purposes and term period of tribal leases, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Unlocking Native
3 Lands and Opportunities for Commerce and Key Eco-
4 nomic Developments Act of 2023”.

5 **SEC. 2. MODIFICATION OF TRIBAL LEASES AND RIGHTS-OF-**
6 **WAY ACROSS INDIAN LAND.**

7 (a) **EXTENSION OF TRIBAL LEASE PERIOD.**—The
8 first section of the Act of August 9, 1955 (69 Stat. 539,
9 chapter 615; 25 U.S.C. 415) (commonly known as the
10 “Long-Term Leasing Act”), is amended—

11 (1) by striking “That (a)” and all that follows
12 through the end of subsection (a) and inserting the
13 following:

14 **“SECTION 1. LEASES OF RESTRICTED LAND.**

15 **“(a) AUTHORIZED PURPOSES; TERM; APPROVAL BY**
16 **SECRETARY.**—

17 **“(1) IN GENERAL.**—Any restricted Indian
18 lands, regardless of whether that land is tribally or
19 individually owned, may be leased by the Indian
20 owner of the land, with the approval of the Sec-
21 retary, for—

22 **“(A)** a public, religious, educational, rec-
23 reational, residential, business, or grazing pur-
24 poses; or

25 **“(B)** a farming purpose that requires the
26 making of a substantial investment in the im-

1 provement of the land for the production of 1
2 or more specialized crops as determined by the
3 Secretary.

4 “(2) INCLUSIONS.—A lease under paragraph
5 (1) may include the development or use of natural
6 resources in connection with operations under that
7 lease.

8 “(3) TERM.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), a lease under paragraph (1)
11 shall be for a term of not more than 99 years,
12 including any renewals.

13 “(B) EXCEPTION FOR GRAZING PUR-
14 POSES.—A lease under paragraph (1) for graz-
15 ing purposes may be for a term of not more
16 than 10 years, including any renewals.

17 “(4) REQUIREMENT.—Each lease and renewal
18 under this subsection shall be made in accordance
19 with such terms and regulations as may be pre-
20 scribed by the Secretary.

21 “(5) CONDITIONS FOR APPROVAL.—Before the
22 approval of any lease or renewal of an existing lease
23 pursuant to this subsection, the Secretary shall de-
24 termine that adequate consideration has been given
25 to—

1 “(A) relationship between the use of the
2 leased lands and the use of neighboring land;

3 “(B) the height, quality, and safety of any
4 structures or other facilities to be constructed
5 on the leased land;

6 “(C) the availability of police and fire pro-
7 tection and other services on the leased land;

8 “(D) the availability of judicial forums for
9 all criminal and civil causes of action arising on
10 the leased land; and

11 “(E) the effects on the environment of the
12 uses to which the leased lands will be subject.”;

13 (2) in subsection (b)—

14 (A) by striking “(b) Any lease” and insert-
15 ing the following:

16 “(b) EXCEPTION FOR SECRETARY APPROVAL.—Any
17 lease”;

18 (B) by striking “of the Interior” each
19 place it appears; and

20 (C) by striking “clause (3)” and inserting
21 “paragraph”;

22 (3) by redesignating subsections (a), (b), (c),
23 and (d) as subsections (b), (c), (d), and (a), respec-
24 tively, and moving the subsections so as to appear
25 in alphabetical order; and

1 (4) by striking “subsection (a)” each place it
2 appears and inserting “subsection (b)”.

3 (b) **TECHNICAL CORRECTION.**—Section 2 of the Act
4 of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C.
5 415a) (commonly known as the “Long-Term Leasing
6 Act”), is amended by inserting “of the Interior” after
7 “Secretary” each place it appears.

8 (c) **MODIFICATION OF RIGHTS-OF-WAY ACROSS IN-**
9 **DIAN LAND.**—The first section of the Act of February 5,
10 1948 (62 Stat. 17, chapter 45; 25 U.S.C. 323), is amend-
11 ed—

12 (1) by striking “That the Secretary of the Inte-
13 rior be, and he is empowered to” and inserting the
14 following:

15 **“SECTION 1. RIGHTS-OF-WAY FOR ALL PURPOSES ACROSS**
16 **INDIAN LAND.**

17 “(a) **RIGHTS-OF-WAY.**—Except as provided in sub-
18 section (b), the Secretary of the Interior may”;

19 (2) by adding at the end the following:

20 “(b) **EXCEPTION.**—A right-of-way granted by an In-
21 dian tribe for the purposes authorized under this section
22 shall not require the approval of the Secretary of the Inte-
23 rior, subject to the condition that—

24 “(1) the right-of-way approval process by the
25 Indian tribe substantially complies with subsection

1 (h) of the first section of the Act of August 9, 1955
 2 (69 Stat. 539, chapter 615; 25 U.S.C. 415(h)); or
 3 “(2) the Indian tribe has tribal regulations ap-
 4 proved by the Secretary of the Interior under that
 5 subsection.”.

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Unlocking Native Lands*
 8 *and Opportunities for Commerce and Key Economic Devel-*
 9 *opments Act of 2023”.*

10 **SEC. 2. MODIFICATION OF TRIBAL LEASES AND RIGHTS-OF-**
 11 **WAY ACROSS INDIAN LAND.**

12 (a) *EXTENSION OF TRIBAL LEASE PERIOD.*—*The first*
 13 *section of the Act of August 9, 1955 (69 Stat. 539, chapter*
 14 *615; 25 U.S.C. 415) (commonly known as the “Long-Term*
 15 *Leasing Act”), is amended—*

16 (1) *by striking “That (a)” and all that follows*
 17 *through the end of subsection (a) and inserting the*
 18 *following:*

19 **“SECTION 1. LEASES OF RESTRICTED LAND.**

20 **“(a) AUTHORIZED PURPOSES; TERM; APPROVAL BY**
 21 **SECRETARY.—**

22 **“(1) IN GENERAL.—***Any restricted Indian lands,*
 23 *regardless of whether that land is tribally or individ-*
 24 *ually owned, may be leased by the Indian owner of*
 25 *the land, with the approval of the Secretary, for—*

1 “(A) a public, religious, educational, rec-
2 reational, residential, business, or grazing pur-
3 poses; or

4 “(B) a farming purpose that requires the
5 making of a substantial investment in the im-
6 provement of the land for the production of 1 or
7 more specialized crops as determined by the Sec-
8 retary.

9 “(2) *INCLUSIONS.*—A lease under paragraph (1)
10 may include the development or use of natural re-
11 sources in connection with operations under that
12 lease.

13 “(3) *TERM.*—

14 “(A) *IN GENERAL.*—Except as provided in
15 subparagraph (B), a lease under paragraph (1)
16 shall be for a term of not more than 99 years,
17 including any renewals.

18 “(B) *EXCEPTION FOR GRAZING PUR-*
19 *POSES.*—A lease under paragraph (1) for graz-
20 ing purposes may be for a term of not more than
21 10 years, including any renewals.

22 “(4) *REQUIREMENT.*—Each lease and renewal
23 under this subsection shall be made in accordance
24 with such terms and regulations as may be prescribed
25 by the Secretary.

1 “(5) *CONDITIONS FOR APPROVAL.*—*Before the*
 2 *approval of any lease or renewal of an existing lease*
 3 *pursuant to this subsection, the Secretary shall deter-*
 4 *mine that adequate consideration has been given to—*

5 “(A) *relationship between the use of the*
 6 *leased lands and the use of neighboring land;*

7 “(B) *the height, quality, and safety of any*
 8 *structures or other facilities to be constructed on*
 9 *the leased land;*

10 “(C) *the availability of police and fire pro-*
 11 *tection and other services on the leased land;*

12 “(D) *the availability of judicial forums for*
 13 *all criminal and civil causes of action arising on*
 14 *the leased land; and*

15 “(E) *the effects on the environment of the*
 16 *uses to which the leased lands will be subject.”;*

17 (2) *in subsection (b)—*

18 (A) *by striking “(b) Any lease” and insert-*
 19 *ing the following:*

20 “(b) *EXCEPTION FOR SECRETARY APPROVAL.*—*Any*
 21 *lease”;*

22 (B) *by striking “of the Interior” each place*
 23 *it appears; and*

24 (C) *by striking “clause (3)” and inserting*
 25 *“paragraph”;*

1 (3) by redesignating subsections (a), (b), (c), and
 2 (d) as subsections (b), (c), (d), and (a), respectively,
 3 and moving the subsections so as to appear in alpha-
 4 betical order;

5 (4) by striking “subsection (a)” each place it ap-
 6 pears and inserting “subsection (b)”; and

7 (5) in subsection (h)(1)—

8 (A) in the matter preceding subparagraph
 9 (A), by striking “and the term of the lease does
 10 not exceed—” and inserting a period; and

11 (B) by striking subparagraphs (A) and (B).

12 (b) *TECHNICAL CORRECTION.*—Section 2 of the Act of
 13 August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415a)
 14 (commonly known as the “Long-Term Leasing Act”), is
 15 amended by inserting “of the Interior” after “Secretary”
 16 each place it appears.

17 (c) *MODIFICATIONS OF RIGHTS-OF-WAY ACROSS IN-*
 18 *DIAN LAND.*—The Act of February 5, 1948 (62 Stat. 17,
 19 chapter 45), is amended—

20 (1) in the first section (62 Stat. 17, chapter 45;
 21 25 U.S.C. 323), by striking “That the Secretary of the
 22 Interior be, and he is hereby, empowered to” and in-
 23 serting the following:

1 **“SECTION 1. RIGHTS-OF-WAY FOR ALL PURPOSES ACROSS**
 2 **INDIAN LAND.**

3 “(a) *RIGHTS-OF-WAY.*—*The Secretary of the Interior*
 4 *may*”;

5 (2) *in section 2 (62 Stat. 18, chapter 45; 25*
 6 *U.S.C. 324), by striking “organized under the Act of*
 7 *June 18, 1934 (48 Stat. 984), as amended; the Act of*
 8 *May 1, 1936 (49 Stat. 1250); or the Act of June 26,*
 9 *1936 (49 Stat. 1967),”;* and

10 (3) *by adding at the end the following:*

11 **“SEC. 8. TRIBAL GRANTS OF RIGHTS-OF-WAY.**

12 “(a) *RIGHTS-OF-WAY.*—

13 “(1) *IN GENERAL.*—*Subject to paragraph (2), an*
 14 *Indian tribe may grant a right-of-way over and*
 15 *across the Tribal land of the Indian tribe for any*
 16 *purpose.*

17 “(2) *AUTHORITY.*—*A right-of-way granted under*
 18 *paragraph (1) shall not require the approval of the*
 19 *Secretary of the Interior or a grant by the Secretary*
 20 *of the Interior under the section 1 if the right-of-way*
 21 *granted under paragraph (1) is executed in accord-*
 22 *ance with a Tribal regulation approved by the Sec-*
 23 *retary of the Interior under subsection (b).*

24 “(b) *REVIEW OF TRIBAL REGULATIONS.*—

25 “(1) *TRIBAL REGULATION SUBMISSION AND AP-*
 26 *PROVAL.*—

1 “(A) *SUBMISSION.*—*An Indian tribe seeking*
2 *to grant a right-of-way under subsection (a)*
3 *shall submit for approval a Tribal regulation*
4 *governing the granting of rights-of-way over and*
5 *across the Tribal land of the Indian tribe.*

6 “(B) *APPROVAL.*—*Subject to paragraph (2),*
7 *the Secretary of the Interior shall have the au-*
8 *thority to approve or disapprove any Tribal reg-*
9 *ulation submitted under subparagraph (A).*

10 “(2) *CONSIDERATIONS FOR APPROVAL.*—

11 “(A) *IN GENERAL.*—*The Secretary of the*
12 *Interior shall approve a Tribal regulation sub-*
13 *mitted under paragraph (1)(A), if the Tribal*
14 *regulation—*

15 “(i) *is consistent with any regulations*
16 *(or successor regulations) issued by the Sec-*
17 *retary of the Interior under section 4;*

18 “(ii) *provides for an environmental re-*
19 *view process that includes—*

20 “(I) *the identification and evalua-*
21 *tion of any significant impacts the*
22 *proposed action may have on the envi-*
23 *ronment; and*

24 “(II) *a process for ensuring—*

1 “(aa) that the public is in-
2 formed of, and has a reasonable
3 opportunity to comment on, any
4 significant environmental impacts
5 of the proposed action identified
6 by the Indian tribe under sub-
7 clause (I); and

8 “(bb) the Indian tribe pro-
9 vides a response to each relevant
10 and substantive public comment
11 on the significant environmental
12 impacts identified by the Indian
13 tribe under subclause (I) before
14 the Indian tribe approves the
15 right-of-way.

16 “(B) *STATUTORY EXEMPTIONS.*—The Sec-
17 retary of the Interior, in making an approval
18 decision under this subsection, shall not be sub-
19 ject to—

20 “(i) the *National Environmental Pol-*
21 *icy Act of 1969 (42 U.S.C. 4321 et seq.);*

22 “(ii) *section 306108 of title 54, United*
23 *States Code; or*

24 “(iii) *the Endangered Species Act of*
25 *1973 (16 U.S.C. 1531 et seq.).*

1 “(3) *REVIEW PROCESS.*—

2 “(A) *IN GENERAL.*—Not later than 180
3 days after the date on which the Indian tribe
4 submits a Tribal regulation to the Secretary of
5 the Interior under paragraph (1)(A), the Sec-
6 retary of the Interior shall—

7 “(i) review the Tribal regulation;

8 “(ii) approve or disapprove the Tribal
9 regulation; and

10 “(iii) notify the Indian tribe that sub-
11 mitted the Tribal regulation of the approval
12 or disapproval.

13 “(B) *WRITTEN DOCUMENTATION.*—If the
14 Secretary of the Interior disapproves a Tribal
15 regulation submitted under paragraph (1)(A),
16 the Secretary of the Interior shall include with
17 the disapproval notification under subparagraph
18 (A)(iii) written documentation describing the
19 basis for the disapproval.

20 “(C) *EXTENSION.*—The Secretary of the In-
21 terior may, after consultation with the Indian
22 tribe that submitted a Tribal regulation under
23 paragraph (1)(A), extend the 180-day period de-
24 scribed in subparagraph (A).

1 “(4) *FEDERAL ENVIRONMENTAL REVIEW.*—Not-
2 withstanding paragraphs (2) and (3), if an Indian
3 tribe carries out a project or activity funded by a
4 Federal agency, the Indian tribe may rely on the en-
5 vironmental review process of the applicable Federal
6 agency rather than any Tribal environmental review
7 process required under this subsection.

8 “(c) *DOCUMENTATION.*—An Indian tribe granting a
9 right-of-way under subsection (a) shall provide to the Sec-
10 retary of the Interior—

11 “(1) a copy of the right-of-way, including any
12 amendments or renewals; and

13 “(2) if the right-of-way allows for compensation
14 to be made directly to the Indian tribe, documenta-
15 tion of payments that are sufficient, as determined by
16 the Secretary of the Interior, as to enable the Sec-
17 retary of the Interior to discharge the trust responsi-
18 bility of the United States under subsection (d).

19 “(d) *TRUST RESPONSIBILITY.*—

20 “(1) *IN GENERAL.*—The United States shall not
21 be liable for losses sustained by any party to a right-
22 of-way granted under subsection (a).

23 “(2) *AUTHORITY OF THE SECRETARY.*—

24 “(A) *IN GENERAL.*—Pursuant to the author-
25 ity of the Secretary of the Interior to fulfill the

1 *trust obligation of the United States to the appli-*
2 *cable Indian tribe under Federal law (including*
3 *regulations), the Secretary of the Interior may,*
4 *on reasonable notice from the applicable Indian*
5 *tribe and at the discretion of the Secretary of the*
6 *Interior, enforce the provisions of, or cancel, any*
7 *right-of-way granted by the Indian tribe under*
8 *subsection (a).*

9 “(B) *AUTHORITY.*—*The enforcement or can-*
10 *cellation of a right-of-way under subparagraph*
11 *(A) shall be conducted using regulatory proce-*
12 *dures issued under section 6.*

13 “(e) *COMPLIANCE.*—

14 “(1) *IN GENERAL.*—*An interested party, after ex-*
15 *haustion of any applicable Tribal remedies, may sub-*
16 *mit a petition to the Secretary of the Interior, at such*
17 *time and in such form as determined by the Secretary*
18 *of the Interior, to review the compliance of an appli-*
19 *cable Indian tribe with a Tribal regulation approved*
20 *by the Secretary of the Interior under subsection (b).*

21 “(2) *VIOLATIONS.*—*If the Secretary of the Inte-*
22 *rior determines that a Tribal regulation was violated*
23 *after conducting a review under paragraph (1), the*
24 *Secretary of the Interior may take any action the*
25 *Secretary of the Interior determines to be necessary to*

1 *remedy the violation, including rescinding the ap-*
2 *proval of the Tribal regulation and reassuming re-*
3 *responsibility for approving rights-of-way through the*
4 *trust land of the applicable Indian tribe.*

5 “(3) *DOCUMENTATION.*—*If the Secretary of the*
6 *Interior determines that a Tribal regulation was vio-*
7 *lated after conducting a review under paragraph (1),*
8 *the Secretary of the Interior shall—*

9 “(A) *provide written documentation, with*
10 *respect to the Tribal regulation that has been*
11 *violated, to the appropriate interested party and*
12 *Indian tribe;*

13 “(B) *provide the applicable Indian tribe*
14 *with a written notice of the alleged violation;*
15 *and*

16 “(C) *prior to the exercise of any remedy, in-*
17 *cluding rescinding the approval for the applica-*
18 *ble Tribal regulation or reassuming responsi-*
19 *bility for approving rights-of-way through the*
20 *trust land of the applicable Indian tribe, provide*
21 *the applicable Indian tribe with—*

22 “(i) *a hearing that is on the record;*

23 *and*

24 “(ii) *a reasonable opportunity to cure*
25 *the alleged violation.*

1 “(f) *SAVINGS CLAUSE.*—*Nothing in this section affects*
2 *the application of any Tribal regulations issued under Fed-*
3 *eral environmental law.*

4 “(g) *EFFECT OF TRIBAL REGULATIONS.*—*An ap-*
5 *proved Tribal regulation under subsection (b) shall not pre-*
6 *clude an Indian tribe from, in the discretion of the Indian*
7 *tribe, consenting to the grant of a right-of-way by the Sec-*
8 *retary of the Interior under the section 1.*

9 “(h) *TERMS OF RIGHT-OF-WAY.*—*The compensation*
10 *for, and terms of, a right-of-way granted under subsection*
11 *(a) will be determined by—*

12 “(1) *negotiations by the Indian tribe; or*

13 “(2) *the regulations of the Indian tribe.*

14 “(i) *JURISDICTION.*—*The grant of a right-of-way*
15 *under subsection (a) does not waive the sovereign immunity*
16 *of the Indian tribe or diminish the jurisdiction of that In-*
17 *dian tribe over the Tribal land subject to the right-of-way,*
18 *unless otherwise provided in—*

19 “(1) *the grant of the right-of-way; or*

20 “(2) *the regulations of the Indian tribe.”.*

Calendar No. 342

118TH CONGRESS
2^D SESSION

S. 1322

[Report No. 118-159]

A BILL

To amend the Act of August 9, 1955, to modify the authorized purposes and term period of tribal leases, and for other purposes.

MARCH 12, 2024

Reported with an amendment