

114TH CONGRESS
1ST SESSION

S. 1879

To improve processes in the Department of the Interior, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2015

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To improve processes in the Department 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 “Interior Improvement
5 Act”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—The first sentence of section 19
8 of the Act of June 18, 1934 (commonly known as the “In-
9 dian Reorganization Act”) (25 U.S.C. 479), is amended—

1 (1) by striking “The term” and inserting “Ef-
2 fective beginning on June 18, 1934, the term”; and

3 (2) by striking “any recognized Indian tribe
4 now under Federal jurisdiction” and inserting “any
5 federally recognized Indian tribe”.

6 (b) **RETROACTIVE PROTECTION.**—To the extent a
7 trust acquisition by the Secretary of the Interior pursuant
8 to the Act of June 18, 1934 (commonly known as the “In-
9 dian Reorganization Act”) (25 U.S.C. 461 et seq.), is sub-
10 jected to a challenge based on whether an Indian tribe was
11 federally recognized or under Federal jurisdiction on June
12 18, 1934, that acquisition is ratified and confirmed.

13 **SEC. 3. LAND ACQUISITION APPLICATIONS.**

14 The Act of June 18, 1934 (commonly known as the
15 “Indian Reorganization Act”), is amended by inserting
16 after section 5 (25 U.S.C. 465) the following:

17 **“SEC. 5A. LAND ACQUISITION APPLICATIONS.**

18 “(a) **DEFINITIONS.**—In this section:

19 “(1) **APPLICANT.**—The term ‘applicant’ means
20 an Indian tribe or individual Indian (as defined in
21 section 4 of the Indian Self-Determination and Edu-
22 cation Assistance Act (25 U.S.C. 450b)) who sub-
23 mits an application under subsection (b).

24 “(2) **APPLICATION.**—The term ‘application’
25 means an application submitted to the Department

1 by an Indian tribe or individual Indian under sub-
2 section (b).

3 “(3) CONTIGUOUS.—The term ‘contiguous’—

4 “(A) means 2 parcels of land having a
5 common boundary, notwithstanding the exist-
6 ence of non-navigable waters or a public road or
7 right-of-way; and

8 “(B) includes parcels that touch at a point.

9 “(4) CONTIGUOUS JURISDICTION.—The term
10 ‘contiguous jurisdiction’ means any county, county
11 equivalent, or Indian tribe with authority and con-
12 trol over the land contiguous to the land under con-
13 sideration in an application.

14 “(5) COUNTY AND COUNTY EQUIVALENT.—The
15 terms ‘county’ and ‘county equivalent’ mean the
16 largest territorial division for local government with-
17 in a State with the authority to enter into enforce-
18 able cooperative agreements with Indian tribes or in-
19 dividual Indians, as appropriate.

20 “(6) DEPARTMENT.—The term ‘Department’
21 means the Department of the Interior.

22 “(7) ECONOMIC IMPACT.—The term ‘economic
23 impact’ means any anticipated costs associated with
24 the development of or activity on the land under
25 consideration in an application, including associated

1 costs to a contiguous jurisdiction for utilities, public
2 works, public safety, roads, maintenance, and other
3 public service costs.

4 “(8) FINAL DECISION.—The term ‘final deci-
5 sion’ means a decision that is final for the Depart-
6 ment, as determined or defined by the Secretary.

7 “(9) INDIAN TRIBE.—The term ‘Indian tribe’
8 has the meaning given the term in section 4 of the
9 Indian Self-Determination and Education Assistance
10 Act (25 U.S.C. 450b).

11 “(10) SECRETARY.—The term ‘Secretary’
12 means the Secretary of the Interior.

13 “(b) APPLICATIONS.—

14 “(1) IN GENERAL.—An Indian tribe or indi-
15 vidual Indian seeking to have off-reservation fee or
16 restricted land taken into trust for the benefit of
17 that Indian tribe or individual Indian shall submit
18 an application to the Secretary at such time, in such
19 manner, and containing such information as this
20 section and the Secretary require.

21 “(2) REQUIREMENTS.—The Secretary may ap-
22 prove complete applications described in paragraph
23 (1) on a discretionary basis, subject to the condition
24 that the application includes—

1 “(A) a written request for approval of a
2 trust acquisition by the United States for the
3 benefit of the applicant;

4 “(B) the legal name of the applicant, in-
5 cluding, in the case of an applicant that is an
6 Indian tribe, the tribal name of the applicant as
7 the name appears in the list of recognized In-
8 dian tribes published by the Secretary in the
9 Federal Register pursuant to section 104 of the
10 Federally Recognized Indian Tribe List Act of
11 1994 (25 U.S.C. 479a-1);

12 “(C) a legal description of the land to be
13 acquired;

14 “(D) a description of the need for the pro-
15 posed acquisition of the property;

16 “(E) a description of the purpose for which
17 the property is to be used;

18 “(F) a legal instrument to verify current
19 ownership, such as a deed;

20 “(G) statutory authority for the proposed
21 acquisition of the property;

22 “(H) a business plan for management of
23 the land to be acquired, if the application is for
24 business purposes;

1 “(I) the location of the land to be acquired
2 relative to State and reservation boundaries;
3 and

4 “(J) a copy of any cooperative agreement
5 between the applicant and a contiguous juris-
6 diction.

7 “(3) FINAL DECISION.—After considering an
8 application described in this subsection and in ac-
9 cordance with subsection (c) and any other applica-
10 ble Federal law or regulation, a final decision to ap-
11 prove or deny the completed application shall be
12 issued.

13 “(c) STATUTORY NOTICE AND COMMENT REQUIRE-
14 MENTS.—

15 “(1) NOTICE AND COMMENT REQUIREMENTS
16 FOR INITIAL APPLICATIONS.—

17 “(A) NOTICE.—

18 “(i) IN GENERAL.—Not later than 30
19 days after the date on which the Secretary
20 receives an initial application, the Sec-
21 retary shall make that application, whether
22 complete or incomplete, available to the
23 public on the website of the Department,
24 subject to applicable Federal privacy laws.

1 “(ii) ADDITIONAL NOTICE REQUIRE-
2 MENT.—Not later than 30 days after the
3 date on which the Secretary receives an
4 initial application, the Secretary shall pro-
5 vide by certified mail notice of the applica-
6 tion to contiguous jurisdictions.

7 “(B) COMMENT.—Each contiguous juris-
8 diction notified under subparagraph (A)(ii)
9 shall have not fewer than 30 days, beginning on
10 the date that the contiguous jurisdiction re-
11 ceives the notice, to comment on that initial ap-
12 plication.

13 “(2) NOTICE REQUIREMENT FOR ANY APPLICA-
14 TION UPDATE, MODIFICATION, OR WITHDRAWAL.—

15 “(A) IN GENERAL.—If at any time an ap-
16 plication is updated, modified, or withdrawn,
17 not later than 5 days after the date on which
18 the Secretary receives notice of that update,
19 modification, or withdrawal, the Secretary shall
20 make that information available to the public
21 on the website of the Department, subject to
22 any applicable Federal privacy laws.

23 “(B) INCLUSION.—If an application has
24 been updated or modified in any way, the notice
25 described in subparagraph (A) shall include a

1 description of the changes made and the up-
2 dated or modified application, whether complete
3 or incomplete, available on the website of the
4 Department, subject to any applicable Federal
5 privacy laws.

6 “(3) NOTICE AND COMMENT REQUIREMENTS
7 FOR COMPLETED APPLICATIONS.—

8 “(A) NOTICE.—

9 “(i) IN GENERAL.—Not later than 30
10 days after the date on which the Secretary
11 receives a completed application, the Sec-
12 retary shall make that application available
13 to the public on the website of the Depart-
14 ment, subject to any applicable Federal
15 privacy laws.

16 “(ii) ADDITIONAL NOTICE REQUIRE-
17 MENTS.—Not later than 30 days after the
18 date on which the Secretary receives a
19 completed application, the Secretary shall
20 provide by certified mail notice of the ap-
21 plication to contiguous jurisdictions.

22 “(iii) PUBLICATION IN FEDERAL REG-
23 ISTER.—Not later than 5 days after the
24 date on which the Secretary receives a
25 completed application, the Secretary shall

1 publish in the Federal Register notice of
2 the completed application.

3 “(B) COMMENT.—Contiguous jurisdictions
4 shall have not fewer than 30 days, beginning on
5 the date on which the contiguous jurisdiction
6 receives notice under subparagraph (A)(ii), to
7 comment on that completed application.

8 “(4) NOTICE OF DECISION.—

9 “(A) IN GENERAL.—Not later than 5 days
10 after a final decision to approve or deny an ap-
11 plication is issued, the Secretary shall issue a
12 notice of decision and make the notice of deci-
13 sion available to the public on the website of the
14 Department.

15 “(B) PUBLICATION IN FEDERAL REG-
16 ISTER.—Not later than 5 days after a final de-
17 cision to approve or deny an application is
18 issued, the Secretary shall publish in the Fed-
19 eral Register the notice of decision described in
20 subparagraph (A).

21 “(d) ENCOURAGING LOCAL COOPERATION.—

22 “(1) IN GENERAL.—The Secretary shall encour-
23 age, but may not require, applicants to enter into co-
24 operative agreements with contiguous jurisdictions.

25 “(2) COOPERATIVE AGREEMENTS.—

1 “(A) IN GENERAL.—The Secretary shall
2 give weight and preference to an application
3 with a cooperative agreement described in para-
4 graph (1).

5 “(B) TERMS OF AGREEMENT.—A coopera-
6 tive agreement described in paragraph (1) may
7 include terms relating to mitigation, changes in
8 land use, dispute resolution, fees, and other
9 terms determined by the parties to be appro-
10 priate.

11 “(C) SUBMISSION OF COOPERATIVE
12 AGREEMENT.—

13 “(i) IN GENERAL.—If an applicant
14 submits to the Secretary a cooperative
15 agreement or multiple cooperative agree-
16 ments executed between the applicant and
17 contiguous jurisdictions, the Secretary
18 shall issue a final decision to approve or
19 deny a complete application not later
20 than—

21 “(I) 60 days after the date of
22 completion of the review process
23 under the National Environmental
24 Policy Act of 1969 (42 U.S.C. 4321
25 et seq.) described in clause (ii); or

1 “(II) if that review process is not
2 applicable, 30 days after the date on
3 which a complete application is re-
4 ceived by the Secretary.

5 “(ii) TIMELINE.—Completion of the
6 review process under the National Environ-
7 mental Policy Act of 1969 (42 U.S.C.
8 4321 et seq.) described in clause (i) may
9 refer to—

10 “(I) the issuance of a categorical
11 exclusion determination in accordance
12 with section 6.204 of title 40, Code of
13 Federal Regulations (or successor reg-
14 ulations);

15 “(II) an environmental assess-
16 ment finding of no significant impact
17 in accordance with section 6.206 of
18 title 40, Code of Federal Regulations
19 (or successor regulations); or

20 “(III) the issuance of a record of
21 decision in accordance with section
22 6.208 of title 40, Code of Federal
23 Regulations (or successor regulations).

24 “(iii) EFFECT OF FAILURE TO ISSUE
25 TIMELY FINAL DECISION.—If the Secretary

1 fails to issue a final decision by the date
2 described in clause (i), the application shall
3 be—

4 “(I) deemed approved on an
5 automatic basis; and

6 “(II) treated as a final decision.

7 “(D) COOPERATIVE AGREEMENT NOT SUB-
8 MITTED.—

9 “(i) IN GENERAL.—If an applicant
10 does not submit to the Secretary a cooper-
11 ative agreement executed between the ap-
12 plicant and contiguous jurisdictions, the
13 Secretary shall issue a written determina-
14 tion of mitigation by the date that is not
15 later than 30 days after a complete appli-
16 cation is received by the Secretary, which
17 shall—

18 “(I) describe whether any eco-
19 nomic impacts on contiguous jurisdic-
20 tions have been mitigated to the ex-
21 tent practicable; and

22 “(II) explain the basis of that de-
23 termination.

24 “(ii) DETERMINATION OF MITIGA-
25 TION.—The Secretary shall consider a de-

1 termination of mitigation in making a final
2 decision to approve or deny an application,
3 but that determination shall not halt or
4 unduly delay the regular processing of an
5 application.

6 “(iii) CONSIDERATIONS.—In making a
7 determination of mitigation described in
8 clause (i), the Secretary shall take into
9 consideration—

10 “(I) the anticipated economic im-
11 pact of approving an application on
12 contiguous jurisdictions; and

13 “(II) whether the absence of a
14 cooperative agreement is attributable
15 to the failure of any contiguous juris-
16 diction to work in good faith to reach
17 an agreement with the applicant.

18 “(iv) NOTICE.—The Secretary shall
19 provide by certified mail a copy of the de-
20 termination of mitigation described in
21 clause (i) to the applicant and contiguous
22 jurisdictions not less than 5 days after a
23 determination of mitigation is issued.

24 “(v) GOOD FAITH PROTECTION.—
25 Failure to submit a cooperative agreement

1 shall not prejudice an application if the
2 Secretary determines that the failure to
3 submit is attributable to the failure of any
4 contiguous jurisdiction to work in good
5 faith to reach an agreement.

6 “(3) RECIPROCAL NOTICE AND COMMENT.—
7 The Secretary shall also encourage contiguous juris-
8 dictions to engage in local cooperation through recip-
9 rocal notice and comment procedures, particularly
10 with regard to changes in land use.

11 “(e) IMPLEMENTATION.—

12 “(1) CONSULTATION.—Not later than 60 days
13 after the date of enactment of this section, the Sec-
14 retary shall initiate consultation with Indian tribes
15 regarding the implementation of this section.

16 “(2) SUMMARY.—Not later than 180 days after
17 the date on which the consultation described in
18 paragraph (1) is initiated, the Secretary shall issue
19 a summary of the consultation and the summary
20 shall be published in the Federal Register.

21 “(3) RULEMAKING.—Not later than 60 days
22 after the date on which the summary described in
23 paragraph (2) is published in the Federal Register,
24 the Secretary shall, through a rulemaking under sec-
25 tion 553 of title 5, United States Code, modify exist-

1 ing regulations, guidance, rules, and policy state-
2 ments, as necessary to carry out this section.

3 “(f) JUDICIAL REVIEW.—

4 “(1) IN GENERAL.—An applicant or contiguous
5 jurisdiction may seek review of a final decision.

6 “(2) ADMINISTRATIVE REVIEW.—An applicant
7 or contiguous jurisdiction may seek review in a
8 United States district court only after exhausting all
9 available administrative remedies.”.

10 **SEC. 4. EFFECT.**

11 (a) OTHER LAND DETERMINATIONS.—Nothing in
12 this Act (or an amendment made by this Act) impacts any
13 other Federal Indian land determination.

14 (b) EFFECT ON OTHER LAWS.—Nothing in this Act
15 (or the amendments made by this Act) affects—

16 (1) the application or effect of any Federal law
17 other than the Act of June 18, 1934 (25 U.S.C. 461
18 et seq.); or

19 (2) any limitation on the authority of the Sec-
20 retary of the Interior under any Federal law or reg-
21 ulation other than the Act of June 18, 1934 (25
22 U.S.C. 461 et seq.).

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