

INDIAN TRIBAL TRADE AND INVESTMENT
DEMONSTRATION PROJECT ACT OF 2011

APRIL 19, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2362]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2362) to facilitate economic development by Indian tribes and encourage investment by Turkish enterprises, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2362 is to facilitate economic development by Indian tribes and encourage investment by Turkish enterprises.

BACKGROUND AND NEED FOR LEGISLATION

Economic development on tribal lands is hampered by restrictive laws and regulations regarding the way tribes lease their lands. For example, simple leases can take a tribe several years to complete, in contrast to a simple lease on private land that can take as little as a week. A lengthier discussion on tribal leasing problems is contained in the Committee report accompanying H.R. 205, a similar bill concerning the lease of tribal lands for non-mineral purposes.

To aid economic growth in Indian Country, like H.R. 205, H.R. 2362 simplifies tribal leasing. Specifically, the bill allows up to six

Indian tribes or a consortia of tribes to participate in an Indian Tribal Trade and Investment Demonstration Project with Turkish private companies. Specifically, participating tribes would be allowed to lease land held in trust for them by the federal government without the Secretary of the Interior's approval if the lease: (1) furthers economic, community, or business development with a Turkish entity; (2) is entered into within 1 year of this Act's enactment; (3) is not for mineral exploration, development, or extraction; (4) does not include land held in trust for an individual Indian; (5) is executed under tribal regulations approved by the Secretary; and (6) has a term that does not exceed 25 years (but can be renewed for up to two terms). Furthermore, before the Secretary signs off on any tribal demonstration program, an adequate environmental review process will be required from the tribe.

During a hearing on the bill held in the Subcommittee on Indian and Alaska Native Affairs, a tribal witness explained that Turkey has a long track record of promoting good relations and trade between its private business community and Indian tribes in the United States. The intent of the bill is to further such relations to increase private business development in Indian Country where economic diversification is greatly needed.

During the full Committee markup of H.R. 2362, concerns and objections were raised by several Minority members because of the focus on Turkish companies. Much of the debate concerned the foreign policy of the United States and its relations with Turkey, a subject more appropriate for the Committee on Foreign Affairs to consider. The Natural Resources Committee is primarily concerned with proposals to increase business opportunities on impoverished Indian reservation communities in the United States. Because H.R. 2362 advances this goal, the bipartisan bill was ordered reported favorably to the full House.

COMMITTEE ACTION

H.R. 2362 was introduced on June 24, 2011, by Congressman Tom Cole (R-OK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On November 3, 2011, the Subcommittee held a hearing on the bill. On November 17, 2011, the Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. Congressman John Sarbanes (D-MD) offered amendment designated .020 to the bill; the amendment was ruled out of order. The bill, as amended, was then ordered favorably reported to the House of Representatives by a record vote of 27-15, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: November 17, 2011

Recorded Vote #: 11

Meeting on / Amendment: **HR 2362** – Favorably reported to the House of Representatives by a roll call vote of 27 yeas and 15 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>		X		Mr. Benishek, MI	X		
Mr. Young, AK	X			<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>		X		Mr. Rivera, FL		X	
Mr. Duncan of TN		X		<i>Mr. Sarbanes, MD</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC			
Mr. Gohmert, TX				<i>Ms. Sutton, OH</i>		X	
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO	X		
Mr. Bishop, UT	X			<i>Ms. Tsongas</i>		X	
<i>Mr. Pallone, NJ</i>		X		Mr. Gosar, AZ	X		
Mr. Lamborn, CO		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>				Mr. Labrador, ID		X	
Mr. Wittman, VA	X			<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>		X		Ms. Noem, SD	X		
Mr. Broun, GA	X			<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>		X		Mr. Southerland, FL	X		
Mr. Fleming, LA	X			Mr. Flores, TX	X		
<i>Ms. Bordallo, GU</i>				Mr. Harris, MD	X		
Mr. Coffman, CO	X			Mr. Landry, LA	X		
<i>Mr. Costa, CA</i>		X		Mr. Runyan, NJ	X		
Mr. McClintock, CA	X			Mr. Johnson, OH	X		
<i>Mr. Boren, OK</i>	X			Mr. Amodei, NV	X		
Mr. Thompson, PA	X						
<i>Mr. Sablan, CNMI</i>	X						
Mr. Denham, CA		X					
				TOTALS	27	15	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2362—Indian Tribal Trade and Investment Demonstration Project Act of 2011

H.R. 2362 would allow up to six tribes to enter into certain leases of trust lands without approval of the Bureau of Indian Affairs (BIA).¹ Based on information provided by the Department of the Interior, CBO estimates that implementing the bill would have no significant impact on the federal budget. Enacting H.R. 2362 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, most tribes can lease trust lands to certain entities for up to 25 years, subject to the approval of BIA. Under the bill, up to six tribes would be authorized to enter into leases with Turkish businesses without BIA approval if those leases were subject to certain tribal regulations approved by the agency. Any lease involving the exploration for or extraction of natural resources would still require approval from BIA. CBO estimates that the legislation would have a negligible impact on BIA's workload.

H.R. 2362 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Department of the Interior, CBO estimates that implementing the bill would have no significant impact on the federal budget.

¹ Trust lands are tribally owned lands that are legally held by the federal government for the benefit of tribal governments or individual tribal members.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to facilitate economic development by Indian tribes and encourage investment by Turkish enterprises.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates as defined under Public Law 104-4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

H.R. 2362: INDIAN TRIBAL TRADE AND INVESTMENT DEMONSTRATION PROJECT ACT

H.R. 2362 specifically designates the Republic of Turkey as the sole foreign entity to engage in demonstration projects with tribes. Considering historic and recent action on the part of the Republic of Turkey there is great reason not to give the country any type of preferential treatment. There are many examples of how Turkey's policies are in conflict with American interests and values.

Turkey continues to deny the first genocide of the twentieth century, the Armenian Genocide. Between 1915 and 1923, 1.5 million Armenians were systematically and deliberately killed by the Ottoman Turks. The Armenian Genocide is a dark day in history, and we must not allow the Republic of Turkey to continue their policy of denial and pretend that this century's first genocide never happened.

On July 20th 1974, Turkey invaded Cyprus in violation of international law and at great cost to the citizens of Cyprus. The invasion forced nearly 200,000 Greek Cypriots to flee their homes—making one-third of the Cypriot population refugees in their own country. Today, Turkey continues to illegally occupy northern Cyprus with a force of approximately 43,000 troops.

Recently, Turkey threatened important U.S. allies. After signing an agreement to cooperate on natural resource development in their Exclusive Economic Zones (EEZ), Cyprus and Israel became targets of Turkish aggression. Further, a U.S. based company which has entered into an agreement to carry out development of these natural resources has also been subject to threats from the Turkish government. The Natural Resources Committee should be particularly troubled by a foreign nation using aggressive action and threats in an attempt to dictate how a nation pursues the development of their natural resources.

Finally, while enhancing tribal sovereignty and promoting economic development and vitality on tribal lands should be a priority of the committee, these objectives would be more effectively accomplished through passage of H.R. 205: the HEARTH Act (Heinrich, D-NM). H.R. 205 would permit all tribes, not just a select few, to engage in leasing activities without federal oversight under certain circumstances. H.R. 205 does not discriminate which countries would be able to participate in the demonstration projects and would allow tribes to pursue agreements on a more open basis that is to their benefit.

FRANK PALLONE, Jr.
NIKI TSONGAS.

DISSENTING VIEWS

H.R. 2362: INDIAN TRIBAL TRADE AND INVESTMENT DEMONSTRATION PROJECT ACT

Nothing in H.R. 2362 could not be accomplished by passage of H.R. 205: the HEARTH Act (Heinrich, D-NM), which permits all tribes, not a select few on a demonstration project basis, to engage in leasing activities without federal oversight under certain circumstances. The HEARTH Act, unlike H.R. 2362, has the overwhelming support of Indian Country and has been the subject of two legislative hearings since first being introduced in the 110th Congress. There is simply no reason to enact H.R. 2362 for the benefit of a select few when all tribes would benefit equally under H.R. 205.

In addition to its duplicative nature, H.R. 2362 specifically authorizes the Republic of Turkey, above any other country in the world, to engage in economic development activities on tribal lands. The need for such special treatment was not clearly addressed in a hearing on the bill and the precise industries that may be targeted for development through Turkish-tribal ventures went similarly undetermined. Equally unclear are the purposes for which tribes may engage in leasing activities with the Republic. As written, the bill states that any lease should simply be connected with a project or activity “related” to a purpose for which a participating tribe receives funding from two or more federal programs. Such “related” purposes remain unspecified except in the most general terms; at a hearing on the bill, Turkish and Tribal witnesses stated that “construction” and the “leather industry” would be targeted. Legislation purporting to free tribes from federal oversight of leasing activity on a demonstration project basis must be more specific. This is especially important when the United States disclaims all liability for losses the participating tribes might suffer under such leases as it does in this legislation.

In addition, the bill strictly, and unnecessarily, limits the applicant pool for the demonstration project. The applicant pool of tribes that may be selected to participate in the demonstration project is limited to only those tribes or tribal consortia that currently participate in self-determination contracting under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 et seq. Tribes without self-determination contracts in place are automatically prevented from participating in the demonstration project. The bill thus eliminates a large category of tribes and as a result creates classes of tribes based on their eligibility to conduct business—not their need. A broader, more inclusive authority for tribes to engage in business development leasing on their tribal lands without Secretarial oversight, like that which is reflected in H.R. 205 is better policy.

Finally, there is the matter of the bill's workability: unless H.R. 2362 addresses some unstated prearranged program, it is unlikely that a tribe would be able to draft leasing regulations, get them approved by the Secretary, and enter into a lease with a Turkish entity in connection with a program or activity related to a purpose for which the tribe is already receiving federal funds within one year.

We fully support enhancing tribal authorities to engage in business development on tribal lands with any entity, foreign or domestic. However, H.R. 2362 presents too many unanswered questions relating to scope, purpose, need and workability. H.R. 205 is the better legislative vehicle under which tribes may fully engage in economic development activities through leasing of tribal lands. H.R. 2362 should be rejected by the House.

EDWARD J. MARKEY.
RUSH HOLT.
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