

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To clarify the responsibilities of the Secretary of the Interior in making a determination whether to take off-reservation land into trust for gaming purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. MCCAIN (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To clarify the responsibilities of the Secretary of the Interior in making a determination whether to take off-reservation land into trust for gaming 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 “Off-Reservation Land  
5 Acquisition Guidance Act”.

6 **SEC. 2. OFF-RESERVATION LAND ACQUISITION GUIDANCE.**

7 (a) DEFINITION OF OFF-RESERVATION LAND.—In  
8 this Act, the term “off-reservation land” means land that  
9 is—

1           (1) located outside of, and noncontiguous to,  
2           the reservation of an Indian tribe;

3           (2) likely to qualify for, result in, or be associ-  
4           ated with the development of an Indian gaming fa-  
5           cility; and

6           (3) located beyond a reasonable commuting dis-  
7           tance from the reservation of that Indian tribe.

8           (b) PROCEDURE.—Before determining whether to  
9           take off-reservation land into trust for the benefit of an  
10          Indian tribe under section 5 of the Act of June 18, 1934  
11          (25 U.S.C. 465) (commonly known as the “Indian Reorga-  
12          nization Act”), the Secretary shall evaluate—

13           (1) the anticipated benefits to the Indian tribe  
14           associated with taking the off-reservation land into  
15           trust; and

16           (2) any concerns raised by applicable State and  
17           local governments relating to the acquisition of the  
18           off-reservation land.

19          (c) EVALUATION.—

20           (1) BENEFIT TO TRIBE.—In evaluating the an-  
21           ticipated benefits to the Indian tribe of taking a par-  
22           cel of off-reservation land into trust, the Secretary  
23           shall prepare a report that includes an assessment  
24           of—

1 (A) the impacts of taking the applicable  
2 off-reservation land into trust on the on-res-  
3 ervation unemployment rate;

4 (B) the impacts of taking the applicable  
5 off-reservation land into trust on reservation  
6 life and tribal membership if the members, de-  
7 pendents, and descendants of the Indian tribe  
8 relocate to the off-reservation land or adjacent  
9 communities;

10 (C) the specific on-reservation benefits of  
11 taking the off-reservation land into trust, in-  
12 cluding an assessment of whether on-reserva-  
13 tion jobs will be created and, if so, the quantity  
14 of jobs expected to be created; and

15 (D) whether the tribal government can ef-  
16 ficiently exercise the governmental and regu-  
17 latory responsibilities of the tribal government  
18 if a gaming facility is constructed on the off-  
19 reservation land.

20 (2) STATE AND LOCAL CONCERNS.—In evalu-  
21 ating any concerns raised by applicable State and  
22 local governments relating to taking a parcel of off-  
23 reservation land into trust, the Secretary shall pre-  
24 pare a report that includes an assessment of—

1 (A) whether the transfer of jurisdiction to  
2 the Indian tribe over the parcel is likely to dis-  
3 rupt established local governmental operations;

4 (B) potential impacts on real property  
5 taxes and special assessments on adjacent land  
6 and property, including any impact on State  
7 and local governments resulting from the ex-  
8 emption of the parcel from the taxation;

9 (C) whether the Indian tribe has submitted  
10 intergovernmental agreements necessary to ad-  
11 dress State and local government concerns, in-  
12 cluding agreements regarding law enforcement  
13 jurisdiction on the parcel;

14 (D) the compatibility of the anticipated use  
15 of the land with the zoning and land use re-  
16 quirements of the applicable State and local  
17 governments;

18 (E) traffic, noise, and other negative ef-  
19 fects on development associated with, or gen-  
20 erated by, the anticipated use of the land, in-  
21 cluding any impact on local water resources and  
22 water and wastewater infrastructure; and

23 (F) any potential incompatible use between  
24 the anticipated use of the land and adjacent or  
25 contiguous land zoned or used for—

- 1 (i) national parks;
- 2 (ii) national monuments;
- 3 (iii) conservation areas;
- 4 (iv) national fish and wildlife refuges;
- 5 (v) daycare centers;
- 6 (vi) schools;
- 7 (vii) churches; or
- 8 (viii) residential developments.

9 (d) SUBMISSION FROM INDIAN TRIBE.—The Indian  
10 tribe requesting off-reservation land to be taken into trust  
11 under section 5 of the Act of June 18, 1934 (25 U.S.C.  
12 465) (commonly known as the “Indian Reorganization  
13 Act”) shall disclose and submit to the Secretary—

14 (1) any plan, contract, agreement, or other in-  
15 formation relating to the use, or intended use, of the  
16 off-reservation land by the Indian tribe, along with  
17 written documentation of the plan, contract, or  
18 agreement;

19 (2) a request for a written opinion from the Of-  
20 fice of Indian Gaming that the off-reservation land  
21 is eligible for gaming; and

22 (3) any other information the Secretary re-  
23 quires in determining whether to take the off-res-  
24 ervation land into trust for the benefit of the Indian  
25 tribe.

1 (e) APPLICABILITY.—The Secretary shall not take  
2 the applicable off-reservation land into trust under section  
3 5 of the Act of June 18, 1934 (25 U.S.C. 45) (commonly  
4 known as the “Indian Reorganization Act”), unless the  
5 Secretary determines that—

6 (1) the Indian tribe has adequately addressed  
7 the concerns identified in the written assessments  
8 under subsection (c)(2);

9 (2) the Indian tribe has provided the informa-  
10 tion required under subsection (d); and

11 (3) the proposed use of the land by the Indian  
12 tribe is compatible with State and local requirements  
13 for planning and zoning and public health and safe-  
14 ty.

15 **SEC. 3. STAY OF DECISIONMAKING.**

16 (a) IN GENERAL.—Unless explicitly required by an  
17 Act of Congress, the Secretary shall not approve any ap-  
18 plication for taking off-reservation land into trust that is  
19 pending on the date of enactment of this Act until the  
20 date on which the Secretary promulgates regulations to  
21 carry out this Act.

22 (b) FUTURE EFFECT.—All applications for taking  
23 off-reservation land into trust that are pending on the date  
24 of enactment of this Act shall be subject to the provisions  
25 of the regulations described in subsection (a).