

[DISCUSSION DRAFT]

114TH CONGRESS
2D SESSION

H. R. _____

To establish requirements relating to rights-of-way on Indian lands, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BEN RAY LUJÁN of New Mexico introduced the following bill; which was
referred to the Committee on _____

A BILL

To establish requirements relating to rights-of-way on Indian
lands, 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. IMPROVING RIGHTS-OF-WAY RECORD KEEPING**
4 **ON INDIAN LANDS.**

5 (a) RIGHTS-OF-WAY.—

6 (1) PROVISION OF DOCUMENTATION.—Not later
7 than 120 days after the date of receipt of a request
8 from a tribal government of an Indian tribe, the
9 Secretary of the Interior (hereafter in the Act re-

1 ferred to as the “Secretary”) shall provide to the
2 tribal government documentation of valid right-of-
3 way for all existing facilities on Indian Lands, which
4 require right-of-way under specified Federal laws.

5 (2) FAILURE TO PROVIDE DOCUMENTATION.—

6 If, after receiving a request from a tribal govern-
7 ment under paragraph (1), the Secretary is unable
8 to provide documentation of valid right-of-way for all
9 existing facilities on Indian Lands, as such terms
10 are defined in specified Federal laws—

11 (A) not later than 30 days after the date
12 of receipt of the request, the Secretary shall no-
13 tify the tribal government of the Secretary’s in-
14 ability to provide the documentation;

15 (B) **[only]** at the request of the tribal gov-
16 ernment, the Secretary, not later than 120 days
17 after such a request and in consultation with
18 the tribal government and based on tribal con-
19 sent, shall develop a schedule and a plan for ac-
20 quiring, by purchase or otherwise, a valid right-
21 of-way for existing routes that are eligible for
22 inclusion in the national inventory of tribal
23 transportation facilities under section 202(b) of
24 title 23, United States Code, and owned by the

1 Bureau of Indian Affairs or the tribal govern-
2 ment; and

3 (C) not later than 1 year after such date
4 of receipt, the Secretary shall acquire, by pur-
5 chase or otherwise, a valid right-of-way in ac-
6 cordance with the schedule and plan developed
7 under subparagraph (B).

8 (3) TRIBAL AUTHORITY TO ACQUIRE RIGHT-OF-
9 WAY.—

10 (A) IN GENERAL.—If a tribal government
11 has requested documentation under paragraph
12 (1) of a valid right-of-way for a tribal transpor-
13 tation facility described under paragraph (2)(B)
14 and has received notice under paragraph (2)(A)
15 of the Secretary's inability to provide the docu-
16 mentation or the Secretary has failed to meet
17 any of the deadlines under paragraph (2)(B), or
18 (C) the tribal government may assume, at the
19 option of the tribal government and upon writ-
20 ten notice to the Secretary, the responsibility of
21 the Secretary under subparagraph (B) to ac-
22 quire a valid right-of-way for a tribal transpor-
23 tation facility under existing agreements under
24 the Indian Self Determination and Education
25 Assistance Act (including title VII of that Act)

1 and section 202(b)(7) of title 23, United States
2 Code.

3 (B) FUNDING; DEADLINES.—In any case
4 in which a tribal government assumes, under
5 subparagraph (A), the responsibility of the Sec-
6 retary to acquire a valid right-of-way for a trib-
7 al transportation facility under this sub-
8 section—

9 (i) the costs of acquiring the right-of-
10 way shall be payable from funds authorized
11 to carry out this Act; and

12 (ii) the tribal government shall not be
13 subject to any deadline specified in para-
14 graph (2).

15 (4) LIMITATION.—In acquiring a right-of-way
16 under this paragraph, the Secretary shall not require
17 a tribal government to use tribal funds or Federal
18 funds made available to the tribal government under
19 any other Federal program.

20 (5) RIGHTS-OF-WAY RECORDS.—

21 (A) IN GENERAL.—Not later than 3 years
22 after the date of enactment of this Act, the Sec-
23 retary shall complete a comprehensive national
24 update of rights-of-way records for all existing
25 facilities located on Indian Lands as of the date

1 of enactment of this Act to ensure compliance
2 with specified Federal laws.

3 (B) REQUIREMENTS.—In completing the
4 update of records under subparagraph (A), the
5 Secretary shall—

6 (i) computerize and organize all
7 rights-of-way records described in subpara-
8 graph (A); and

9 (ii) establish a system for ensuring
10 that documentation of any new right-of-
11 way under specified Federal laws is
12 promptly added to the rights-of-way
13 records database.

14 (C) AVAILABILITY.—The Secretary shall
15 make each updated record under this paragraph
16 available to the public in a commonly used map-
17 ping format.

18 (6) SPECIFIED FEDERAL LAWS.—For the pur-
19 poses of this subsection, the term “specified Federal
20 laws” means the following:

21 (A) The Act of March 3, 1901 (25 U.S.C.
22 311).

23 (B) Sections 1–4 and 6–8 of the Act of
24 March 2, 1899 (25 U.S.C. 312 - 318).

1 (C) The Act of May 26, 1928 (25 U.S.C.
2 318a).

3 (D) The Act of March 3, 1901 (25 U.S.C.
4 319).

5 (E) The Act of March 3, 1909 (25 U.S.C.
6 320).

7 (F) Section 1 of the Act of March 11,
8 1904 (25 U.S.C. 321).

9 (G) The Act of April 21, 1928 (25 U.S.C.
10 322 - 322a).

11 (H) The Act of February 5, 1948 (5
12 U.S.C. 323 - 328).

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to carry out this section
15 \$10,000,000 for each of fiscal years 2017 through 2022.

16 (c) CLARIFICATION FOR TRIBALLY ADMINISTERED
17 PROJECTS CARRIED OUT ON LANDS OWNED BY TRIBAL
18 GOVERNMENT.—A tribal government shall not be required
19 to obtain a right-of-way for any portion of a tribally-ad-
20 ministered project that crosses Indian Lands if the tribal
21 government owns 100 percent of the beneficial interest of
22 the Indian Lands. Upon request of the tribal government,
23 the Secretary shall record a tribal government's dedication
24 of such land for a public purpose and facilitate the inclu-

- 1 sion of the dedication on the Secretary's right-of-way
- 2 record database.

Luján Draft BIA Database Modernization Act

In 2014, the Tribal Transportation Unity Caucus, the National Congress of American Indians (NCAI), and the Intertribal Transportation Association developed tribal transportation recommendations for the upcoming Congressional highway reauthorization. These recommendations included one to “Improve BIA (Bureau of Indian Affairs) Right-of-Way Management” because “the BIA has, in many cases, failed to maintain adequate records of rights-of-way the BIA acquired, disposed of, or otherwise transferred long ago for tribal transportation facility routes. As a result, when Tribes seek to improve existing routes, they are often forced to undertake time-consuming and costly efforts to acquire or establish rights-of-way for those routes.” The recommendations included several provisions to address the BIA’s failure to adequately maintain rights-of-way records. Unfortunately, these provisions were not included in the most recent highway reauthorization, the “Fixing America’s Surface Transportation Act” (FAST Act).

That is why Congressman Ben Ray Luján developed draft legislation that reflects the goals of the Tribal Transportation Unity Caucus, NCAI, and the Intertribal Transportation Association. While the BIA technically grants rights-of-way on Indian Lands, the BIA, in its role as a deliverer of federal programs to direct service tribes, also has a legal obligation to develop and properly record right-of-way whenever it builds roads or develops infrastructure projects on Indian Lands. In too many cases over the last several decades, the BIA has not fulfilled its legal obligation to properly maintain right-of way records in these circumstances. This BIA recordkeeping failure significantly increases costs and causes major delays for tribes who wish to develop infrastructure projects on Indian Lands. To eliminate unnecessary project cost increases and delays, this draft legislation seeks to:

- At the request of a tribe, requires the BIA to provide documentation of a valid right-of-way for all existing facilities on Indian Lands.
- If the BIA is unable to provide such documentation, directs the BIA, at a tribes’ request, to compensate tribes for improperly documented or recorded rights-of-way.
- Clarifies that tribal governments are authorized to assume responsibility for the maximum permissible functions associated with the correction of right-of-way records for existing facilities.
- Requires the BIA to develop a comprehensive national update of all right-of-way records in a computerized and publically available database.
- Ensures that tribal governments are not required to obtain a right-of-way for tribally administered construction projects if the tribal government owns 100 percent of the beneficial interest of the Indian Lands.
- Authorizes \$10 million annually for the BIA to carry out the requirements of the legislation for fiscal years 2017 through 2022.