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SENATE

{ REPORT
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SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL AGREEMENT IMPLEMENTATION ACT OF 2003

NOVEMBER 19, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany S. 551]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 551) to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

For over 10 years, the State, Tribe and United States Environmental Protection Agency (EPA) have disagreed over tribal and State eligibility to receive delegations of authority to administer programs under the Clean Air Act on the Southern Ute Indian Reservation. Pursuant to the 1984 law which confirmed the boundaries of the Reservation, the Tribe relinquished territorial jurisdiction over non-Indians conducting activities on non-Indian land. Amendments to the Clean Air Act in 1990, however, authorized EPA to delegate primacy to tribes with respect to administration of various programs under that statute and arguably restored tribal jurisdictional authority Reservation-wide for air programs. Notwithstanding the Tribe's and the State's conflicting jurisdictional assertions, the Tribe and the State have decided to work cooperatively

to develop a comprehensive air quality program applicable to all lands within the boundaries of the Reservation.

OBJECTIVES OF THE LEGISLATION

This legislation authorizes the Administrator to treat the Southern Ute tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d) to carry out an Intergovernmental Agreement entered into by the Tribe and the State on December 13, 1999. The agreement provides for the regulation of air quality within the exterior boundaries of the Southern Ute Indian Reservation, as well as the establishment of a Southern Ute Indian Tribe/State of Colorado Environmental Commission.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

“Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003.”

Sec. 2. Findings and Purpose

Congress finds that the Agreement between the Southern Ute Indian Tribe and the State of Utah is consistent with existing law. The purpose of the legislation is to provide for improved air quality within the boundaries of the Reservation and to authorize the creation of the Southern Ute Indian Tribe/State of Colorado Environmental Commission.

Sec. 3. Definitions

The terms specific to the legislation are defined.

Sec. 4. Tribal Authority

This section authorizes the Administrator to treat the Southern Ute tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d) to carry out an Intergovernmental Agreement entered into by the Tribe and the State on December 13, 1999. If the Administrator approves an air program application of the Tribe, the approved program shall be applicable to all air resources within the exterior boundaries of the Reservation. The Tribe and State each retain authority to terminate the Agreement. If the Agreement is terminated, the Administrator will withdraw treatment of the Tribe as a State.

Sec. 5. Civil Enforcement

The legislation authorizes the Tribe or Commission to bring civil action in Federal court to assure compliance with provisions of the Clean Air Act. The legislation creating the Commission also protects the rights of citizens to bring suit separately under the provisions of the Clean Air Act.

Sec. 6. Judicial Review

Decisions by the Southern Ute Indian Tribe/State of Colorado Environmental Commission, as established by the Agreement, that would have been subject to appellate review if made by the U.S.

Environmental Protection Agency will be subject to review by the U.S. Court of Appeals for the Tenth Circuit. This provision is intended to expedite the resolution of any conflicts that might develop in implementation by clarifying the judicial venue for dispute resolution.

Sec. 7. Disclaimer

This section provides a savings clause to ensure that the Clean Air Act, the Act to Confirm the Boundaries of the Southern Ute Indian Reservation in Colorado, and any administrative or case law relating to these Acts, are not affected by the legislation.

LEGISLATIVE HISTORY

S. 551, the “Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003,” was introduced on March 6, 2003 by Senator Campbell and referred to the Senate Committee on Environment and Public Works. No hearings were held on the bill. A similar bill, S. 2065, was considered and reported to the Senate by the committee in the 107th Congress.

ROLLCALL VOTES

On July 30, 2003, the Committee on Environment and Public Works met to consider S. 551. The committee agreed to a technical amendment offered by Senator Inhofe and voted to favorably report the bill, as amended, by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 551 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 551 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 15, 2003.

Hon. JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 551, the “Southern Ute and

Colorado Intergovernmental Agreement Implementation Act of 2003.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff is Susanne S. Mehlman, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

S. 551, Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003, as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003

S. 551 would authorize the Environmental Protection Agency (EPA) to treat the Southern Ute Indian Tribe as a State under section 301(d) of the Clean Air Act. The bill would allow the tribe to accept delegation of EPA’s authority under the Clean Air Act in the same manner as States. Enacting S. 551 would provide that, if the tribe submits an application under section 301(d) and if the application is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The bill also would give jurisdiction for enforcement of those delegated powers to the U.S. District Court for the District of Colorado. According to EPA, enacting this legislation would not change the Southern Ute Indian Tribe’s eligibility for Federal grants in any manner. Thus, CBO estimates that enacting this legislation would not have a significant effect on the Federal budget.

S. 551 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. This legislation would implement an agreement entered into voluntarily by the State of Colorado and the Southern Ute Indian Tribe, and any costs incurred by either the State or the tribe would stem from their acceptance of that agreement.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for Federal costs), and Marjorie Miller (for the State, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

