

## Calendar No. 188

109TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 109-118

---

---

AMENDING THE INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT TO MODIFY PROVISIONS RELATING TO THE NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION

JULY 29, 2005.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 1231]

The Committee on Indian Affairs, to which was referred the bill (S. 1231), to amend the Indian Self-Determination and Education Assistance Act to modify provisions relating to the National Fund for Excellence in American Indian Education, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

#### PURPOSE

The National Fund for Excellence in American Indian Education Amendments Act of 2005 (S. 1231) amends the Act to provide four key improvements which will assist the Fund in achieving self-sufficiency. First, this legislation provides initial seed money to the Fund for three fiscal years to facilitate operations.

In addition, S. 1231 authorizes the Secretary to provide funding for operational costs of the Fund on a reimbursement basis. S. 1231 also authorizes the Board to appoint the Chief Operating Officer rather than mandating the Secretary of the Board serve as the Chief Operating Officer.

Finally, S. 1231 will increase the administrative cost cap of ten percent currently in place to 20% for one year, 15% the following year and then decreasing back to 10% thereafter.

#### BACKGROUND

*History of the Fund.* In 2000, Congress amended the Act in Public Law 106-568 and authorized the Secretary of the Interior to establish the Fund as a federally-chartered nonprofit corporation to

accept and administer charitable donations furthering educational opportunities of Indian children attending Bureau-funded schools. However, the formal establishment and commencement of operations for the Fund have not been without considerable difficulty.

The Committee received testimony from the Acting Chair of the Fund that after two years, the Secretary hired an Executive Director to initiate establishment of the Fund and appointed a Board of Directors (Board). Another six months passed before the Board was fully installed and held its first meeting in March, 2003.

However, in November, 2002, it was discovered that another private foundation held the legal rights to the official name of the Fund designated in Public Law 106-568. After negotiations for a name-sharing agreement failed between the Board and the private foundation, the Board sought Congressional action to remedy any potential conflicts over the name.

In 2004, Congress enacted Public Law 108-267, the Omnibus Indian Advancement Act of 2000, which changed the original name of the Fund from the "American Indian Education Foundation" to the "National Fund for Excellence in American Indian Education", thereby eliminating the confusion and potential conflict.

The Fund was established in July, 2004, when it officially incorporated, and received its tax-exempt status determination from the Internal Revenue Service in November, 2004, but has yet to become operational.

*Operational Limitations.* The Committee received testimony that the Board faces significant hurdles in beginning operations. First, under Public Law 106-568, during the first five years after establishment, the Secretary is authorized to provide "*in-kind*" administrative support to the Fund and provide *funds* for travel expenses of the Board—all to be reimbursed to the Secretary by the Fund. After five years, the Secretary may provide only administrative support if space is available and on a reimbursement basis.

In 2004, the Board presented a cooperative agreement to the Assistant Secretary for Indian Affairs for a transfer of \$450,000 to the Fund for administrative purposes. The Office of the Solicitor determined that any funding could be used only to reimburse travel expenses of the Board, not for operations. Since no funding was authorized for operational expenses, the Fund currently cannot become operational or begin such activities, such as marketing or soliciting donations, needed to become operational.

In addition, the Secretary is authorized to transfer property donated for the "advancement of the Indian race" under 25 U.S.C. 451 to the Fund, subject to any restrictions on that donation imposed by the donor.

In September, 2004, the Assistant Secretary for Indian Affairs identified approximately \$1.6 million in donated funds that could be transferred to the Fund, of which \$200,000 were restricted. Despite meeting with Department officials regarding the transfer, the Board has indicated that no funds have been transferred.

#### SUMMARY OF MAJOR PROVISIONS

S. 1231 provides key amendments which will assist the Fund in achieving self-sufficiency.

*Initial Seed Money.* This legislation provides initial seed money to the Fund for three fiscal years to facilitate operations. The Com-

mittee received testimony from the Acting Chair regarding the need for “start-up” funding. A review of other federal statutes establishing federally chartered foundations indicated that appropriations had been authorized in amounts ranging from \$5 million to \$25 million per year for a limited number of years. Thus, appropriations in the amount of \$5 million per year for the first three fiscal years appeared to be a reasonable amount to assist the Fund in achieving self-sufficiency, particularly in the event the Secretary is unable to provide operational costs.

*Operational Costs.* This legislation clarifies the activities for which funds may be provided to the Board. S. 1231 authorizes the Secretary to provide funding for operational costs of the Fund on a reimbursement basis. The Committee received testimony recommending elimination of the reimbursement requirement. The Committee believes this requirement is appropriate, however, it encourages the Secretary to provide sufficient accommodations in seeking reimbursement which would not unduly burden the Fund nor harm direct educational services to Indian children.

*Chief Operating Officer.* S. 1231 also authorizes the Board to appoint the Chief Operating Officer rather than mandating the Secretary of the Board serve as the Chief Operating Officer. The Committee received testimony that this designation has not proven to be the most efficient means of organizing the Fund. The Committee has determined that the Board should appoint this position so that the Board can focus on more important functions rather than being mired in the daily tasks of the Fund’s operations.

*Administrative Costs.* This legislation will add a provision increasing the administrative cost cap currently in place and set at 10% to 20% for one year, 15% the following year and then decreasing back to 10% thereafter. The Committee received testimony that more flexibility in the administrative cost cap was needed to fulfill the purposes of the Fund—especially with the obstacles the Fund faced in trying to begin operations.

While the Acting Chair testified that such administrative caps were not imposed on other similar foundations such as the National Parks Foundation and the Fish & Wildlife Foundation, the Committee believed limitations were still appropriate. The primary purpose of the Fund is to support Indian children, through programs, services or other activities which are not considered administrative costs. By maintaining such limits, the Committee is assured that the emphasis of the Fund will remain focused on serving Indian children.

#### LEGISLATIVE HISTORY

The bill, S. 1231, was introduced on June 14, 2005, by Senator McCain for himself and Senator Dorgan and was referred to the Senate Committee on Indian Affairs.

An oversight hearing on Indian education was held on June 14, 2005, at which testimony was received by the Fund on the provisions of S. 1231. The Fund expressed support for the bill and most of the Fund’s recommendations are addressed in the substitute amendment to S. 1231.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on June 29, 2005, the Committee considered a substitute amendment proposed by Senator McCain. By a unanimous vote, the Committee ordered the substitute amendment favorably reported to the full Senate with the recommendation that the bill do pass.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

The Act may be cited as the “National Fund for Excellence in American Indian Education Amendments Act of 2005”.

*Section 2. National fund for excellence in American Indian education*

This section authorizes the Board to appoint the Chief Operating Officer and authorizes seed money for the Fund for fiscal years 2007 through 2009. This section also increases the administrative cost caps from 10% to 20% for the first fiscal year after the Fund has been in operations for one year, then 15% for the second fiscal year and then 10% thereafter.

*Section 3. Administrative services and support*

This section authorizes the Secretary of the Interior to provide funding for the operating costs of the Fund on a reimbursement basis.

## COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1231, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 11, 2005.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1231, the National Fund for Excellence in American Indian Education Amendments Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Humphrey.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 1231—National Fund for Excellence in American Indian Education Amendments Act of 2005*

Summary: S. 1231 would amend the Indian Self-Determination and Education Assistance Act to authorize funding and modify provisions for the National Fund for Excellence in American Indian Education (National Fund). The bill would authorize the appropriation of \$5 million for each of fiscal years 2007 through 2009 for Na-

tional Fund operations. Enacting the bill would not affect direct spending or revenues.

The Congress originally authorized the National Fund in 2001 to advance and promote educational opportunities for American Indian students enrolled in Bureau of Indian Affairs (BIA) schools. Current funding comes from personal property gifts and private donations.

S. 1231 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1231 is shown in the following table. CBO estimates that implementing this bill would cost \$15 million over the 2007–2010 period. This estimate assumes that S. 1231 will be enacted near the start of fiscal year 2006 and that the authorized amounts will be appropriated for fiscal year 2007 and each subsequent fiscal year. The estimated outlays reflect historical spending patterns for the other programs in BIA. These costs would fall within budget function 500 (education, employment, training, and social services).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level .....	0	5	5	5	0
Estimated Outlays .....	0	4	5	5	2

Intergovernmental and private-sector impact: S. 1231 contains no intergovernmental or private-sector mandates as defined by UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Justin Humphrey. Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum. Impact on the Private Sector: Jennifer Doleac.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact to be incurred in carrying out the bill. The Committee believes that S. 1231 will have minimal regulatory or paperwork impact.

#### EXECUTIVE COMMUNICATIONS

The Committee has not received official statements on S. 1231 from the Department of the Interior.

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill, S. 1231, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## AN ACT

【To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; and to establish an Indian youth intern program】

## PUBLIC LAW 93-638

An Act to promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; and to establish an Indian youth intern program.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

## TITLE V—NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION

### SECTION 501. NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION

\* \* \* \* \*

#### 【(g) OFFICERS.—

(1) IN GENERAL.—The officers of the Foundation shall be a secretary, elected from among the members of the Board, and any other officers provided for in the constitution and bylaws of the Foundation.

(2) SECRETARY OF FOUNDATION.—The secretary shall serve, at the direction of the Board, as its chief operating officer and shall be knowledgeable and experienced in matters relating to education in general and education of American Indians in particular.】

#### (g) OFFICERS.—

(1) IN GENERAL.—*The officers of the Foundation shall be—*

*(A) a chief operating officer, to be appointed in accordance with paragraph (2); and*

*(B) any other officers, to be appointed or elected in accordance with the constitution and bylaws of the Foundation.*

(2) CHIEF OPERATING OFFICER.—

*(A) APPOINTMENT.—The Board shall appoint a chief operating officer to the Foundation.*

*(B) REQUIREMENTS.—The chief operating officer of the Foundation shall—*

- (i) demonstrate experience and knowledge in matters relating to—
  - (I) education, in general; and
  - (II) education of Indians, in particular; and
- (ii) serve at the direction of the Board;

\* \* \* \* \*

(l) RESTRICTIONS.—

[(1) LIMITATION ON SPENDING.—Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation may not exceed 10 percent of the sum of—

[(A) the amounts transferred to the Foundation Under subsection (m) during the preceding fiscal year; and

[(B) donations received from private sources during the preceding fiscal year.]

(1) LIMITATION ON SPENDING.—For each fiscal year following the first fiscal year during which the Foundation is in operation, the administrative costs of the Foundation shall not exceed—

(A) for the first fiscal year, an amount equal to 20 percent of the sum of—

(i) the amounts transferred to the Foundation under subsection (m) during the preceding fiscal year; and

(ii) donations received from private sources during the preceding fiscal year;

(B) for the second fiscal year, an amount equal to 15 percent of the sum of—

(i) the amounts transferred to the Foundation under subsection (m) during the preceding fiscal year; and

(ii) donations received from private sources during the preceding fiscal year; and

(C) for the third fiscal year, and each fiscal year thereafter, an amount equal to 10 percent of the sum of—

(i) the amounts transferred to the Foundation under subsection (m) during the preceding fiscal year; and

(ii) donations received from private sources during the preceding fiscal year.”;

\* \* \* \* \*

(o) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2007 through 2009.

(2) EFFECT ON OTHER FUNDS.—Funds appropriated under paragraph (1) shall not reduce the amount of funds available for any other program relating to Indian education.

**SECTION 502. ADMINISTRATIVE SERVICES AND SUPPORT**

(a) PROVISION OF SUPPORT BY SECRETARY.—

\* \* \* \* \*

[(2) may provide funds to reimburse the travel expenses of the members of the Board under section 458bbb of this title; and]

(2) may provide funds—

(A) to pay the operating costs of the Foundation; and

*(B) to reimburse travel expenses of a member of the Board under section 501; and*

\* \* \* \* \*

**[(b) REIMBURSEMENTS.—]**

*(b) REIMBURSEMENTS.—*

*\* \* \* and the operating and travel expenses described in subsection (a)(2).*

\* \* \* \* \*