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SENATE

{ REPORT
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REFORMING AMERICAN INDIAN STANDARDS OF EDUCATION ACT OF 2016

NOVEMBER 17, 2016.—Ordered to be printed

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

R E P O R T

[To accompany S. 2580]

The Committee on Indian Affairs, to which was referred the bill (S. 2580) to establish the Indian Education Agency to streamline the administration of Indian education, and for other purposes, 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 purpose of S. 2580 is to establish the Indian Education Agency that would streamline the administration of Native American education.

BACKGROUND

The Bureau of Indian Education (BIE), a division of the U.S. Department of the Interior under the Assistant Secretary for Indian Affairs, administers a school system that educates approximately 48,000 students in 183 elementary, secondary, and two post-secondary schools.¹ The BIE funded schools are located on 64 reservations in 23 states. In Fiscal Year 2016, the BIE was appropriated

¹*Bureau of Indian Education: Examining Organizational Challenges in Transforming Educational opportunities for Indian Children*, Hearing Before the Senate Committee on Indian Affairs, 114th Cong. (2015) (statement of Charles Roessel, Director, Bureau of Indian Education).

\$852,367,000 for school operations² and \$138,245,000 for school construction.³

The initial underlying policies for federal Native American education were driven in large measure to attempt to assimilate Indian people and tribes into the non-Indian culture and society.⁴ Additionally, treaties signed between Indian tribes and the United States often had specific agreements to provide for the education of Indians, in exchange for Indian lands. Thus, responsibility for Indian education emanates from these treaties and embodied as part of the trust relationship between the federal government and Indian tribes.

In 1819, Congress passed the *Indian Civilization Act*, which authorized an annual “civilization fund” of \$10,000 per year, to convert Indians from hunters to agriculturalists.⁵ Eventually, monies from this fund mostly went to mission schools.

In 1832, Congress mandated the responsibility for the education of Native Americans be placed under the Commissioner of Indian Affairs.⁶ It was at this time, the federal government created schools that trained Native Americans in agriculture in 16 schools and 87 boarding schools across the country.⁷

In the 1870s, the Federal government began converting abandoned U.S. Army posts and barracks to serve as its Indian boarding school system. These boarding schools were often run in a military fashion and forced many Native American children to abstain from speaking in their traditional languages.⁸ In 1879, the first off-reservation boarding school, the Carlisle Indian Industrial School, opened in Carlisle, Pennsylvania.

In 1921, Congress passed the *Snyder Act of 1921* which provided broad authorization for Indian programs, including education. Despite this authority and attention, Indian education programs struggled. The conditions which the Indian children had to endure were deeply troubling. For example, health conditions at most of these Indian schools were “deplorable”, according to the 1928 Meriam Report.⁹ This Report also found in particular:

“Old buildings, often kept in use long after they should have been pulled down, and admittedly bad fire-risks in many instances; crowded dormitories; conditions of sanitation that are usually perhaps as good as they can be under the circumstances, but certainly below accepted standards; boilers and machinery out-of-date and in some instances unsafe, to the point of having long since been condemned [. . .]”¹⁰

²U.S. Dept. of the Interior, Indian Affairs, Budget Justifications. Fiscal Year 2017, pg. IA-BIA-1.

³*Id.*

⁴U.S. Senate. Committee on Labor and Public Welfare. *Indian Education: A National Tragedy—A National Challenge*. (Rpt. 91-501, pg. 8-10) 1969.

⁵*Id.* (pg. 11).

⁶Act of July 9, 1832, c.174, §1, 4 Stat. 564 (codified at 25 U.S.C. §2). The Bureau of Indian Affairs (BIA) was administratively established by Secretary of War John Calhoun on March 11, 1824. On July 9, 1832, Congress gave the BIA statutory authority (4 Stat. 564, chap. 174). The BIA was then transferred, by Congress, to the Department of the Interior, in 1849 (9 Stat. 395).

⁷U.S. Senate. Committee on Labor and Public Welfare. *Indian Education: A National Tragedy—A National Challenge*, Rpt. No. 91-501, at 11 (1969).

⁸*Id.*, at 12.

⁹Inst. For Gov’t Research, *The Problem of Indian Administration* (1928), at 329 (commonly referred to as the Meriam Report).

¹⁰ *Id.*

In the 1920s and 1930s, the Indian programs and services began expanding as a whole, including expanding Indian education to Alaska Natives.¹¹ In 1979, Congress amended the *Elementary and Secondary Education Act of 1965* (ESEA) to include bilingual education program set-asides for Native American students and the Bureau of Indian Affairs schools.¹² In 1972, Congress authorized the *Indian Education Act of 1972*, P.L. 92 318, also known as Title VII of ESEA. This law established the Office of Indian Education, within the Department of Health, Education and Welfare, to make grants to local educational agencies that serve Indian children.

In 1975, Congress passed the *Indian Self-Determination and Education Assistance Act (ISDEAA)*. This Act allows Indian tribes and tribal organization to negotiate self-determination contracts with the BIA for tribal management of specific schools or dormitories.¹³

In 1978, Congress passed the *Education Amendments Act of 1978*.¹⁴ This Act amended ESEA to include Title XI, Indian Education, and created the Office of Indian Education Programs (OIEP), which was in charge of operations of all education personnel by the BIA. The law further provided that a director would be in charge of the OIEP and established requirements and guidelines for the BIA-funded school system.

In 1988, Congress further amended Title XI of the ESEA with passage of the Indian Education Amendments of 1988.¹⁵ The Indian Education Amendments Act addressed safety concerns for the BIA schools and dormitories, including procedures for closure or consolidation. It also authorized the BIA administrative cost grants, among other grants. Included in P.L. 100–297 was the Tribally Controlled Schools Act of 1988, which authorized tribes to receive grants to operate the BIA-funded schools, in addition to ISDEAA contracts.

In 2006, the Office of Indian Education Programs was renamed to the Bureau of Indian Education (BIE), by the Secretary of the Interior, and created a new director to oversee the BIE.¹⁶

Bureau of Indian Education

The Bureau of Indian Education (BIE) is headed by a Director, who is responsible for the line direction and management of all education functions, including the formation of policies and procedures, the supervision of all program activities and the approval of the expenditure of funds appropriated for education functions. The BIE schools are subject to the standards and accountability provisions in the *Elementary and Secondary Education Act (ESEA)*, as amended by the *Every Student Succeeds Act (ESSA)*.

Elementary and secondary schools funded by the BIE may be operated either directly by the BIE or by tribes and tribal organizations through contracts or grants authorized under the *Tribally*

¹¹ Roger Walke, Cong. Research Serv., RL34205, *Federal Indian Elementary—Secondary Education Programs: Background and Issues*.

¹² *Elementary and Secondary Education Amendments of 1966*, Pub. L. No. 89–750, 80 Stat. 1191 (1966).

¹³ *Indian Self-Determination and Education Assistance Act of 1975*, Pub. L. No. 93–638, 88 Stat. 2203 (1975).

¹⁴ *Education Amendments Act of 1978*, Pub. L. No. 95–561, 92 Stat. 2143 (1978).

¹⁵ Pub. L. No. 100–297, 102 Stat. 130 (1988).

¹⁶ U.S. Dept. of the Interior, Indian Affairs, Budget Justifications, Fiscal Year 2008, at IA-EDUC–5–6. See also 25 CFR Part 32.

Controlled Schools Act of 1988 or the *Indian Self-Determination and Education Assistance Act of 1975*. Currently, tribes or tribal organizations manage 129 of the 183 elementary and secondary schools. As of September 1, 1996, Congress has prohibited the BIE from funding additional schools.

NEED FOR LEGISLATION

The Bureau of Indian Education (BIE) has, for many years, experienced instability as well as poor management and performance in educating Indian children. For example, since 1979, the leadership position overseeing Indian education through both agencies, the BIA and BIE, has been filled by 33 different directors.¹⁷

The academic achievement of the students has fallen behind that of students from other schools for years. Management instability impedes other aspects of educational services. Too many BIE facilities are in poor and even dangerous conditions. The BIE schools face other challenges such as teacher recruitment and retention.

The Government Accountability Office (GAO) has chronicled many of these challenges in reports and testimonies before Senate and House Committees.¹⁸ For example, on February 27, 2015, the House of Representatives Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies held an oversight hearing over the management challenges of the BIE, at which the GAO testified that:

“Management challenges within the Department of Interior’s Office of Assistant Secretary—Indian Affairs (Indian Affairs), such as fragmented administrative structures and frequent turnover in leadership, continue to hamper efforts to improve Indian education. For example, incompatible procedures and lack of clear roles for the Bureau of Indian Education and the Indian Affairs’ Deputy Assistant Secretary for Management (DAS–M), which provides administrative functions to BIE, such as human resources and acquisitions, contribute to delays in schools acquiring needed materials and resources. According to BIE officials, some DAS–M staff are not aware of the necessary procedures and timelines to meet schools’ needs.”¹⁹

Additionally, the GAO testified on the Bronner Report, stating:

“[I]n 2011, Indian Affairs commissioned another study—the Bronner report—to evaluate the administrative support structure for the BIE and BIA. That report, issued in March 2012, found that organizations within the Interior, including the DAS–M, BIA and BIE, do not coordinate effectively and communication among them is poor.”²⁰

Despite these challenges, the BIE schools are still needed because, without them, many Native students would not be able to

¹⁷*Bureau of Indian Education: Examining Organization Challenges in Transforming Educational Opportunities for Indian Children*, Hearing Before the Senate Committee on Indian Affairs, 114th Cong. (2015) (statement of Charles Roessel, Director, Bureau of Indian Education).

¹⁸*Bureau of Indian Affairs and Bureau of Indian Education*, Hearing Before the House Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, 114th Cong. (2015) (statement of Melissa Emrey-Arras, Director, Gov’t Accountability Office).

¹⁹*Id.*

²⁰*Id.*

attend any school at all. The federal government in implementing its trust responsibility for the education of Indian students is in need of immediate and effective improvements.

Reforms. Efforts to reform the BIE have been unsuccessful. Most recently, in 2014, the Administration released the “Bureau of Indian Education Blueprint for Reform” (Blueprint) to improve Indian education.

The Blueprint was based largely on written comments and feedback during tribal consultations conducted in 2013. The goal of the Blueprint is to increase student achievement and recruit high performing teachers, by giving greater control and access to Indian tribes. The reorganization efforts includes re-prioritizing existing staff positions, creating new area offices, and developing a six-year plan aimed at improving dilapidated school facilities.

To date, the Blueprint reform efforts have been slow and often confusing to understand. For example, the chairman of the House Education and Workforce Committee, John Kline, stated he had concerns with the BIE Blueprint restructuring, during a May 14, 2015 oversight hearing.²¹

Furthermore, in its report on “Better Management and Accountability Needed to Improve Indian Education” the GAO noted that,

“The realignment [Blueprint] is intended to improve efficiency in delivering services to Indian Affairs stakeholders, including BIE schools. **However, it is unclear to what extent, if at all, the changes will result in improved services for BIE schools** [emphasis added].”²²

While not every proposal in the Blueprint is questionable or without merit, one conclusion is clear—the management issues at the BIE need to be addressed before any of improvements or the recommendations in the Administration’s Blueprint or even the GAO recommendations can be achieved. Accordingly, legislation is needed to address the management issues and to establish clear authorities, roles, and responsibilities for education services.

The Department of the Interior and the Office of the Assistant Secretary, which oversee both the BIA and the BIE, appear to be reluctant to make the required administrative changes to begin properly addressing the issues.²³ In 2013, the Department submitted a proposed realignment plan to the House and Senate Appropriations Committees to implement its Blueprint. The GAO noted in its report that,

“[t]he process Indian Affairs followed to develop the realignment plan is unclear and Indian Affairs did not consult BIE officials on the specific changes outlined in the realignment request it submitted to Congress. **For example,**

²¹ *Examining the Federal Government’s Mismanagement of Native American Schools*, Hearing Before the House Committee on Education and the Workforce, 114th Cong. (2015) (statement of John Kline, Rep., U.S.).

²² U.S. Gov’t Accountability Office, GAO–13–774, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education* (2013).

²³ Out of the five GAO recommendations from their report (GAO–13–774), the Department of the Interior has implemented only one recommendation. The remaining recommendations relate to developing and implementing decision-making process for BIE, developing a communication strategy for BIE, developing and implementing BIA goals to help support BIE mission, and revising the BIA strategic workforce plan to ensure that employees are providing administrative support to BIE. U.S. Gov’t Accountability Office, GAO–13–774, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education* (2013).

it did not consult with BIE on transferring the responsibilities for most of BIE’s administrative functions to BIA regional offices [emphasis added]. Additionally, although Indian Affairs informed Congress that the realignment would be overseen by an Executive Implementation Oversight Board, several senior BIE officials, including an acting BIE Director, reported that they were not asked for input into the new plan. Indian Affairs officials acknowledged that their office had not consulted with BIE officials on potential organizational changes since before the Bronner report was issued in March 2012.”²⁴

The need for structural improvement has been highlighted by former BIE employees as well. In testimony before the Committee, the GAO noted,

“In a December 2011 memo to Secretary Salazar, BIE’s former Director expressed frustration with the current organizational structure of Indian Affairs and asserted that the **‘major challenges facing BIE cannot be overcome . . . until basic structure and governance issues are addressed and resolved.’** In addition, according to his memo, **‘because of this disjointed system, points-of-view concerning the effectiveness of support functions do not necessarily originate from a similar organizational culture, mindset, or most importantly, mission outcomes** [emphasis added].’ Additionally, he noted that ‘the outcome of student achievement is often overshadowed and leaves our Bureau fighting to focus attention on education priorities and competing for leftover resources scattered throughout the larger organization.’”²⁵

BILL SUMMARY

The Reforming American Indian Standards of Education (RAISE) Act of 2016 would modernize and streamline the Bureau of Indian Education (BIE) into an independent agency, under the Department of the Interior (DOI). The purpose of this legislation is to address management issues highlighted by past Congressional reports, the Government Accountability Office (GAO), and former BIE employees. The bill provides an organizational structure more suitable to providing educational services to Native American students. It represents a first step toward improving educational services and academic achievement for Native American children.

A director would be appointed by the President for a six-year term to run the agency. The agency would have two permanent career assistant directors overseeing school operations and school academic programs.

This structure would provide enough autonomy to the director and assistant directors to better manage the agency (with minimal interference from the BIA or DOI). Similar legislation has been en-

²⁴U.S. Gov’t Accountability Office, GAO-13-774, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education* (2013).

²⁵*Management Challenges Continue to Hinder Efforts to Improve Indian Education*, Hearing Before the House Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, 113th Cong. (2013) (statement of George A. Scott, Director, Gov’t Accountability Office).

acted to provide autonomy for teaching children in the Department of Defense Education Activity schools.

The bill would firmly resolve who is in charge of the education of Native American students. The director would no longer have to get approval from the Assistant Secretary of Indian Affairs to construct and repair schools or plan and develop annual budgets. Under current law, the director of the BIE still has to work with the Deputy Assistant Secretary of Indian Affairs for budget allocations.

LEGISLATIVE HISTORY

On February 25, 2016, Senator Barrasso introduced S. 2580, the *Reforming American Indian Standards of Education (RAISE) Act of 2016*. A House companion bill has not been introduced, at this time.

A legislative hearing was held on April 6, 2016. At the legislative hearing, Acting Assistant Secretary of Indian Affairs, Lawrence Roberts, testified that the Administration has concerns that an independent agency may require “too much growing of the administrative functions” and that it might take too much time to create a new agency.²⁶ Mr. Roberts, though, indicated the Administration would be willing to work with the Committee to address those concerns. Patricia Whitefoot, President of the National Indian Education Association, testified that her organization supports “a progressive first step [. . .] the elevation of the BIE Director from a career to a political appointee.”²⁷

On May 11, 2016, the Committee held a business meeting to consider S. 2580, among other education-related bills. An amendment, in the nature of a substitute, was offered by Senator Barrasso. The substitute amendment would provide certain authorization amounts for the Indian Education Agency. The substitute amendment would amend the titles of the assistant directors and provide clarification of the functions of the director and assistant directors. Finally, the substitute amendment would mandate the President include each Fiscal Year a separate request for funds for construction of school facilities.

By voice vote, the Committee ordered the bill to be reported favorably to the Senate, as amended by Senator Barrasso’s substitute amendment.

SECTION-BY-SECTION ANALYSIS, AS AMENDED

Section 1. Short title

Section 1 sets forth the short title of the bill as the RAISE Act, Reforming American Indian Standards of Education.

Section 2. Definitions

Section 2 defines the new Agency name, Assistant Directors, and Director.

²⁶ *Legislative Hearing on S. 2304, S. 2468, S. 2580, S. 2711, Before the Senate Committee on Indian Affairs*, 114th Cong. (2016) (statement of Lawrence Roberts, Assistant Secretary for Indian Affairs, Dept. of the Interior).

²⁷ *Legislative Hearing on S. 2304, S. 2468, S. 2580, S. 2711, Before the Senate Committee on Indian Affairs*, 114th Cong. (2016) (statement of Patricia Whitefoot, President, National Indian Education Association).

Section 3. Establishment

Section 3 establishes the purpose and activities in carrying out the Indian Education Agency and sets the functions of the director and two assistant directors. The director would be appointed by the president and confirmed by the Senate to serve a six year term. The director can be reappointed for unlimited terms. One assistant director would oversee school operations and the other would oversee school academic programs. Each assistant director would be career employees of the agency.

Section 4. Termination of Bureau of Indian Education; transfer of functions

The Bureau of Indian Education's organization, as it currently exists, would cease and be transferred to the new independent agency, under the Department of the Interior.

Section 5. Budget requests for school construction funds

This section provides that the President is responsible and shall submit a separate budget for the construction of Indian Education Agency schools each Fiscal Year.

Section 6. Use of school construction funds

This section provides that the director shall give priority to Indian Education Agency schools having the most serious capacity or facility-condition deficiencies.

Section 7. Personnel

This section sets certain salary rates for the director and assistant directors. Indian preference hiring would apply to all individuals, except the director.

Section 8. Reports

Eighteen months after enactment (and annually thereafter), the director of the new agency will submit reports to Congress, in consultation with Indian tribes that have agency schools, regarding the activities of the agency, an assessment of the effectiveness of the new structure, and recommendations for legislation to improve the agency.

Section 9. Regulations

Section 9 provides that the director shall issue appropriate regulations, as the director determines. The Secretary of the Interior does not have to approve those appropriate regulations.

Section 10. Authorization of appropriations

This section authorizes \$983,000,000 for Fiscal Year 2017 and each Fiscal Year thereafter, of which \$130,000,000 shall be used for school construction.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, June 6, 2016.

Hon. JOHN BARRASSO,
 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. 2580, the Reforming American Indian Standards of Education Act of 2016.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 2580—Reforming American Indian Standards of Education Act of 2016

Summary: S. 2580 would create the Indian Education Agency, terminate the Bureau of Indian Education, and transfer responsibility for administering Indian education programs to the new agency. The bill would authorize the appropriation of \$983 million for 2017 and each fiscal year thereafter.

CBO estimates that enacting S. 2580 would cost \$4.5 billion over the 2017–2021 period, assuming appropriation of the authorized amounts.

Enacting S. 2580 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2580 contains no intergovernmental or private-sector mandates as defined in 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 effect of S. 2580 is shown in the following table. The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

	By fiscal year, in millions of dollars—					
	2017	2018	2019	2020	2021	2017–2021
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	983	983	983	983	983	4,915
Estimated Outlays	653	884	965	983	983	4,468

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2016, that the authorized amounts will be appropriated each year, and that spending will follow the historical patterns for similar programs.

S. 2580 would authorize the appropriation of \$983 million for fiscal year 2017 and each fiscal year thereafter, of which \$130 million would be available for school construction. In fiscal year 2016, the Congress provided \$852 million to the Bureau of Indian Education,

as well as \$138 million to the Bureau of Indian Affairs for construction of schools. CBO estimates that implementing the bill would cost \$4.5 billion over the 2017-2021 period.

Pay-As-You-Go considerations: None.

Increase in long term net direct spending and deficits: CBO estimates that enacting S. 2580 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

Intergovernmental and private sector impact: S. 2580 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Leah Koestner, Impact on State, Local, and Tribal Governments: Rachel Austin, Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis June 6, 2016.

REGULATORY AND PAPERWORK 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 that would be incurred in carrying out the bill. The Committee believes that S. 2580 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2580.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S.2580 will not make any changes in existing law.