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TO ESTABLISH A BUSINESS INCUBATORS PROGRAM WITHIN THE DEPARTMENT OF THE INTERIOR TO PROMOTE ECONOMIC DEVELOPMENT IN INDIAN RESERVATION COMMUNITIES

SEPTEMBER 26, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 607]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 607) to establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill, S. 607, would establish a business incubators program within the Department of the Interior, Office of Indian Energy and Economic Development to promote entrepreneurship and economic development on Indian reservation. The bill would require the Department of the Interior to coordinate with other federal agencies to promote Native American business development.

BACKGROUND

Starting a new business is challenging anywhere, but Native American entrepreneurs must navigate a set of unique obstacles particular to Indian country.¹

¹*Economic Development: Encouraging Investment in Indian Country: Hearing Before the S. Comm. on Indian Affairs, 113th Cong. 2, 3* (written testimony of Gerald Sherman, Vice Chairman, Native CDFI Network).

The land tenure system is one such obstacle. Much of the land in Indian country is held in trust.² Consequently, the Secretary of the Interior must approve activities on these lands as part of the trust responsibility.³ Secretarial approval creates additional expense and uncertainty for Native entrepreneurs and their potential business partners because they must comply with leasing and related federal legal requirements that generally do not apply outside Indian country.⁴

As a remedy, Congress took action to provide tribes with greater control to regulate the agricultural, residential, and business leasing of tribal lands.⁵ Since enactment, 26 of the 567 federally recognized tribes have utilized this new statutory authority by establishing their own leasing rules, which the Bureau of Indian Affairs must vet before going into effect.⁶

The status of reservation lands also complicates access to capital, primarily because trust land cannot be alienated and cannot be used as collateral to obtain financing.⁷ As a result, Native entrepreneurs that intend to open businesses on a reservation must look to other methods of raising capital to start and grow their businesses.

Unfamiliarity with Indian country is also a challenge.⁸ Even when an entrepreneur has a promising concept, getting it off the ground can be difficult when investors or business partners do not have significant experience working in reservation communities and are unfamiliar with the challenges associated with operating in Indian country. The resulting uncertainty can produce less favorable terms for Native entrepreneurs or prevent a venture from happening altogether.⁹

Finally, location is often a challenge. Many reservations are located in rural—if not remote—areas.¹⁰ This fact limits the available workforce, making it difficult for Native entrepreneurs to attract necessary staff to operate their businesses.¹¹ And infrastructure challenges common in rural areas make it difficult for Native entrepreneurs to get their products to market.¹² A lack of access to high-speed internet, for example, is often a roadblock to success for businesses that must compete in 21st century markets.¹³

²See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 15.03, at 997–999 (Nell Jessup Newton ed., 2012) (hereinafter, COHEN'S HANDBOOK) (providing a broader discussion of the underlying principles and development of the trust responsibility).

³See COHEN'S HANDBOOK, § 21.02[3], at 1329–30.

⁴See *id.*; See also *Economic Development: Encouraging Investment in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 113th Cong. 2, 3 (written testimony of William M. Lettig, Executive Vice President, Key Bank).

⁵See Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. No. 112–151.

⁶See HEARTH Act of 2012, available at <https://www.bia.gov/bia/ots/hearth> (listing tribes).

⁷See COHEN'S HANDBOOK at § 21.02[3], at 1329; See also *Access to Capital and Credit in Native Communities*, Native Nations Institute, University of Arizona, Digital Version at 39 (2016), available at: <http://nni.arizona.edu/news/articles/access-capital-and-credit-native-communities>.

⁸See *Economic Development: Encouraging Investment in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 113th Cong. 2, 2 (written testimony of William M. Lettig, Executive Vice President, Key Bank).

⁹*Access to Capital and Credit in Native Communities*, *supra* note 5, at 39.

¹⁰See *Accessing Capital in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 114th Cong. 1, 2 (written testimony of Alejandra Y. Castillo, National Director, Minority Business Development Agency, U.S. Dept. of Commerce).

¹¹See *id.*

¹²See *id.*

¹³See U.S. Gov't Accountability Office, GAO–16–222, *Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands*, at 8–12 (2016).

These unique challenges vary from reservation to reservation and from business to business. Accordingly, it is vital that entrepreneurial development tools provide assistance focused specifically on Indian country and tailored to each entrepreneur.¹⁴

Business incubators are uniquely equipped to do this because they offer a flexible suite of services intended to help businesses grow and thrive. They offer workspace, a collaborative environment, individualized yet comprehensive business skills training, and opportunities to build professional networks. By providing these focused services, business incubators help Native entrepreneurs develop businesses and create jobs in reservation communities, contributing greatly to overall tribal economic development.

LEGISLATIVE HISTORY

114th Congress. Senators Tester, Cantwell, and Udall introduced the Native American Business Incubators Program Act (S. 3261) on July 14, 2016. Senator Murkowski was added as a cosponsor on September 7, 2016. The bill was referred to the Committee on Indian Affairs, which held a hearing on the bill on September 7, 2016. On September 21, 2016, the Committee held a duly called business meeting to consider S. 3261, among other bills. The Committee ordered the bill to be favorably reported without amendment to the Senate. No further action was taken on the bill. No companion bill was introduced in the House of Representatives.

115th Congress. Senators Udall, Cantwell, and Tester introduced S. 607, the Native American Business Incubators Act, on March 13, 2017. On March 29, 2017, the Committee held a duly called business meeting to consider, among other bills, S. 607. The Committee ordered the bill to be favorably reported without amendment to the Senate. To date, no companion bill has been introduced in the House of Representatives.

SUMMARY OF THE BILL

The Native American Business Incubators Program Act would create a competitive grant program in the Office of Indian Energy and Economic Development at the Department of the Interior to establish and maintain business incubators that serve Native entrepreneurs in reservation communities. The program is intended to make substantial and sustained investments in these business incubators to ensure Native entrepreneurs in reservation communities have uninterrupted access to locally tailored business development services from entities specializing in providing services in Native communities. Understanding that needs will be different in each Native community, the program is also intended to be flexible so that it can be deployed to benefit Native communities throughout the United States.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section states that the bill may be cited as the “Native American Business Incubators Program Act”.

¹⁴*Native American Business Incubators Program Act: Hearing on S. 3261 Before the S. Comm. on Indian Affairs, 114th Cong. 2, 8 (2016)* (written testimony of Derrick Watchman, Chairman Board of Directors, National Center for American Indian Enterprise Development).

Section 2—Findings

This section states Congress finds that there are unique challenges associated with establishing a business in Indian country and business incubators are business development tools that are well-suited to helping Native American entrepreneurs establish and operate businesses in or near reservation communities. This section further states that Congress finds that business incubators that assist Native entrepreneurs will promote tribal economic development.

Section 3—Definitions

This section sets forth the definitions of “Business Incubator”, “Eligible Applicant”, “Indian Tribe”, “Institution of Higher Education”, “Native American; Native”, “Native Business”, “Native Entrepreneur”, “Program”, “Reservation”, “Secretary”, and “Tribal College or University”.

Section 4—Establishment of Program

This section establishes a competitive grant program in the Office of Indian Energy and Economic Development at the Department of the Interior to establish and maintain business incubators that serve Native entrepreneurs and reservation communities.

This section also defines who is eligible to apply for a grant. Eligible applicants include tribes, institutions of higher education (including TCUs), and non-profit organizations.

This section describes application and program requirements. An eligible applicant must submit an application that includes a 3-year plan, information demonstrating the applicant’s effectiveness and experience, and a site description. Eligible applicants must also meet minimum requirements that include providing: culturally tailored services; a competitive process for selecting participants; a physical workspace; business skills training and education; mentorship opportunities; and access to professional networks.

This section provides application evaluation considerations and establishes that priority will be given to business incubators sited in or near the reservation community the applicant intends to serve.

This section contains oversight provisions that apply to the agency and grant recipients.

Section 5—Regulations

This section requires the Secretary to promulgate regulations implementing the program within one hundred eighty days of enactment.

Section 6—Schools to business incubator pipeline

This section requires the Secretary to facilitate relationships between grant recipients and educational institutions serving Native American communities.

Section 7—Agency partnerships

This Section requires the Secretary to coordinate with other agencies that have business development programs to ensure grant recipients have information and materials necessary to inform in-

cubator participants about available federal programs and assist them when applying.

Section 8—Authorizations of appropriations

This section authorizes \$5,000,000 to be appropriated for each of fiscal years 2018 through 2023, and such sums as may be necessary thereafter.

COST AND BUDGETARY CONSIDERATIONS

S. 607—Native American Business Incubators Program Act

Summary: S. 607 would authorize the Bureau of Indian Affairs (BIA) to award grants to eligible public and private organizations for the purpose of providing physical workspaces and other resources to Native American entrepreneurs and businesses. The bill would authorize the appropriation of \$5 million annually over the 2018–2023 period.

CBO estimates that implementing S. 607 would cost \$18 million over the 2018–2022 period, assuming appropriation of the authorized amounts. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028. S. 607 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit tribal governments.

Estimated cost to the Federal Government:

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level	0	5	5	5	5	5	25
Estimated Outlays	0	1	3	4	5	5	18

S. 607 would authorize the appropriation of \$5 million annually over the 2018–2022 period and whatever sums are necessary in years after 2023, to fund a grant program to aid development of Native American businesses. The program would be managed by BIA and would include providing physical workplaces, business skills training, and access to networks of potential investors, among other services. All grants would be awarded for three-year periods and could be renewed for additional three-year terms. CBO estimates that implementing the program would cost \$18 million over the 2018–2022 period.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 607 contains no intergovernmental or private-sector mandates as defined in UMRA. Tribal governments would benefit from grants established in the bill to support the growth of Native American businesses and Native American entrepreneurs. Any costs to tribal governments would result from complying with conditions of assistance.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 607.

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. 607 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW (CORDON RULE)

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 607 will not make any changes to existing law.