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SENATE

{ REPORT
115-27

TO ENHANCE TRIBAL ROAD SAFETY, AND FOR OTHER PURPOSES

APRIL 6 (legislative day, APRIL 4), 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. 302]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 302) to enhance tribal road safety, and for other purposes, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The bill, S. 302, would define certain parameters for a “tribal transportation safety project” to be categorically excluded from certain requirements and allow permits and approvals to be processed more expeditiously by certain federal agencies. The bill also requires the Secretary of the Interior to enter into programmatic agreements with Indian tribes that establish procedures for carrying out environmental reviews for certain projects.

BACKGROUND

Road and transportation safety is a critical issue in Indian communities. Motor vehicle crashes are the leading cause of death of Indian children according to the Centers for Disease Control and Prevention (CDC). Native American infants, under the age of one, are eight times more likely to die in a vehicle-related crash than non-Native infants. Motor vehicle crashes are also the leading cause of unintentional injury for Native adults.

From 2004–2010, the CDC reported the following five states with the highest motor vehicle-related death rates for Native Americans:

- Wyoming (72 deaths per 100,000 population)
- South Dakota (59 deaths per 100,000 population)
- Montana and North Dakota (56 deaths per 100,000 population)
- Arizona (45 deaths per 100,000 population)

The CDC estimated that the national rate was 10.7 deaths per 100,000 population, during the same time frame.

Between 1975 and 2002, the number of fatal motor vehicle crashes on Indian reservations and in Alaska Native villages increased more than 50 percent. Meanwhile, fatal motor vehicle crashes for the rest of the United States declined 2 percent according to the Department of Transportation (DOT).

In a 2004 National Highway Traffic Safety Administration (NHTSA) study, it was reported that of those individuals who died in motor vehicle crashes on reservations, 76 percent of them were not wearing a seat belt. In 2011, the NHTSA reported 569 motor vehicle crash fatalities and 181 non-Native motor vehicle crash fatalities on reservation lands.

JOHN P. SMITH

This bill, S. 302, is named in honor of a remarkable Native American who led efforts to change federal laws to save lives and provide better road and transportation safety in Indian communities. This bill is intended to memorialize those efforts. In prepared remarks, during the February 8, 2017 Committee business meeting,¹ Senator Barrasso, the sponsor of this legislation, stated the following:

“Big” John Smith led the Department of Transportation for the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation for over 27 years. Under his leadership, Big John was able to bring people from the tribal and state transportation departments together to make roads and bridges safer.

John testified before the Committee in 2015 to share the dire need for transportation improvements in Indian country. At the time, the Wind River Reservation in Wyoming topped the charts for pedestrian deaths in Indian country.

John helped to inspire the TIRES Act [S. 1776] last Congress, parts of which are now law.

[. . .]

Big John knew that working together, we could make real improvements to road safety and save lives.

LEGISLATIVE HISTORY

On February 3, 2017, Senator Barrasso, along with Senator Crapo, introduced S. 302. Senator Enzi was added as a co-sponsor. On February 8, 2017, the Committee met at a business meeting to consider the bill. By voice vote, the Committee ordered the bill to be reported favorably to the Senate.

In the 114th Congress, Senator Barrasso introduced similar language in S. 1776, the *Tribal Infrastructure and Roads Enhancement and Safety Act* (TIRES) along with Senator Crapo. On July

¹Business Meeting before the Senate Committee on Indian Affairs, 115th Cong. (2017) (statement of Senator John Barrasso).

22, 2015, the Committee met at a duly called business meeting to consider the bill. By voice vote, the Committee ordered the bill, as amended, to be reported favorably, to the Senate. Various provisions of S. 1776 were included in the Senate-passed bill, S. 1647, *Developing a Reliable and Innovative Vision for the Economy Act* (DRIVE Act).

SECTION-BY-SECTION ANALYSIS FOR S. 302

Section 1. Short title

The short title of this bill is the “John P. Smith Act.”

Section 2. Definitions

This section defines the term Secretary to mean the Secretary of the Interior.

Section 3. Application of categorical exclusions to certain tribal transportation facilities

This section defines the parameters for a “tribal transportation safety project” as including a project that addresses a road hazard or other safety problem and defines a number of projects eligible to be considered by the Secretary for categorical exclusion from the requirements of Environmental Assessments and Environmental Impact Statements under the National Environmental Policy Act (NEPA).

This section also sets forth requirements for reviewing tribal transportation safety project applications. A federal agency must, within 45 days of receiving a complete tribal transportation safety project application, make a final determination on the application or provide the tribe a schedule for completion of the application review, including an identification of the federal agency that has jurisdiction over the project.

This section also allows for expedited treatment for permits and approvals that may be required by federal agencies such as the U.S. Army Corps of Engineers, Fish and Wildlife Service, etc. A federal agency would be required to make a determination on a tribal application for a permit, approval, or jurisdictional determination no later than 45 days after the federal agency has made its determination under NEPA or provide the tribe a schedule for completion of review for the applicable permit, approval, or jurisdictional determination.

A federal agency may extend these review periods by an additional 30 days by providing the tribe a notice that includes a statement describing the need for an extension. If a federal agency fails to act or provide notice as required under this section, the federal agency shall notify the Committee on Indian Affairs in the Senate and the Committee on Natural Resources in the House of Representatives and provide an explanation of why it failed to meet the deadline.

Section 4. Programmatic agreements for categorical exclusions

This section requires the Secretary of the Interior to enter into programmatic agreements, for a period of up to 5 years, with tribes that establish procedures for carrying out environmental reviews for eligible projects. Tribes are required to maintain adequate per-

sonnel and other resources to carry out applicable processes and the agreements will allow the Secretary to monitor tribal compliance with that agreement. These agreements must also set forth tribal responsibilities for making and documenting determinations, as well as achieving acceptable quality control and quality assurance.

COST AND BUDGETARY CONSIDERATIONS

FEBRUARY 24, 2017.

Hon. JOHN HOEVEN,
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. 302, the John P. Smith Act. If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL.

Enclosure.

S. 302 would revise environmental regulations that are applied to certain highway infrastructure projects on Indian reservations. Those projects are administered by the Department of the Interior and the Federal Highway Administration and are funded from the Highway Trust Fund. Specifically, the bill would permit certain projects that address the safety of roads and bridges to be eligible for a different standard of environmental review, known as a categorical exclusion. The bill also would permit the Department of Transportation to delegate the responsibility for determining whether projects are eligible for expedited review to the tribes.

Because S. 302 would not change the amount of funds authorized for such projects nor impose any significant additional requirements on any agency, CBO estimates that implementing the legislation would have no significant cost.

CBO estimates that enacting S. 302 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO also estimates that enacting S. 302 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 302 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.

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

EXECUTIVE COMMUNICATIONS

The Committee has received no communication from the Executive Branch regarding S. 302.

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

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived.

