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1st Session }

SENATE

{ REPORT
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TO REPEAL CERTAIN OBSOLETE LAWS RELATING TO INDIANS

MAY 24, 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. 343]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 343) to repeal certain obsolete laws relating to Indians, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 343 is to repeal certain obsolete laws relating to Indians.

BACKGROUND AND NEED FOR LEGISLATION

The bill, S. 343, would repeal eleven laws relating to Indians that are obsolete, have not been enforced by the federal government for several decades and are inconsistent with current federal policy. Eleven laws are proposed to be repealed by S. 343, also known as the *Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act* (RESPECT Act). This bill is intended to help mend relations and further respect between the federal and tribal governments.

These laws are a sad reminder of the hostile aggression and overt racism displayed by the federal government to Native Americans during a period of time in federal Indian policy often referred to as the “assimilation era”. In the late 1800s to mid 1900s, during this era, the federal government attempted to assimilate the Native Americans by forcing them to live among the non-Indian society

and by punishing them for practicing their culture and traditional practices. The laws to be repealed by the RESPECT Act are more than a century old and continue the stigma of subjugation and paternalism found during the assimilation era.

LEGISLATIVE HISTORY

115th Congress. On February 8, 2017, the bill, S. 343, was introduced by Senators Rounds and Lankford. This bill is identical to S. 2796, as amended, which was passed by the Committee in the 114th Congress. On March 29, 2017, the Committee passed S. 343 without amendment favorably and ordered the bill to be reported. At this time, there is no House companion bill.

114th Congress. On April 13, 2016, Senator Rounds introduced S. 2796, the *Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act* (RESPECT Act). Senator Lankford was added as a co-sponsor to the bill on April 27, 2016. A legislative hearing on S. 2796 was held by the Committee on June 29, 2016. The Committee passed S. 2796, with an amendment, and ordered the bill to be reported, on September 14, 2016. No further action was taken on S. 2796.

The bill, S. 2796, as introduced, included twelve laws. After consulting with the tribes in South Dakota, it was determined that one of the twelve laws still benefitted Indian tribes, 25 U.S.C. 276, which authorized the Secretary of the Army to set aside vacant military posts or barracks to be transferred to an Indian tribe for the use of providing education to Indian students. One example of the current use of 25 U.S.C. 276 is the United Tribes Technical College, a tribal college, is located on a former military site, Fort Abraham Lincoln, near Bismarck, North Dakota.

The Great Plains Tribal Chairmen’s Association issued a letter in support of S. 2796.

The House companion bill, H.R. 6028, was introduced by Representative Noem on September 14, 2016. This bill was referred to the House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs. No further action was taken on H.R. 6028.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth the short title of this bill as the *“Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act”*.

Section 2. Repeal of certain obsolete laws relating to Indians

Section 2 repeals:

- 25 U.S.C. § 72, which authorizes the President to abrogate treaties with tribes who are hostile towards the United States;
- 25 U.S.C. § 127, which authorizes the withholding of treaty-stipulated payments if the tribe acts in hostility to the United States;
- 25 U.S.C. § 128, which mandates the withholding of goods or payments while an Indian tribe is at war with the United States;

- 25 U.S.C. § 129, which authorizes the Secretary of the Interior to withhold payments to tribes who hold non-Indians as captives;
- 25 U.S.C. § 130, which authorizes the withholding of payments or goods while Indians are under the influence of or have access to alcohol;
- 25 U.S.C. § 137, which authorizes the requirement that Indian males work before receiving their treaty payments;
- 25 U.S.C. § 138, which mandates that no treaty payments be made if the chief has violated any terms of the treaty;
- 25 U.S.C. § 273, which authorizes the Secretary of the Army to assign an army officer with special duties related to Indian education;
- 25 U.S.C. § 283, which authorizes the Secretary of the Interior to withhold rations or payments to any Indian family whose child failed to attend school in the preceding year;
- 25 U.S.C. § 285, which authorizes the Secretary of the Interior to withhold payments owed to Osage children who failed to attend school in the preceding year; and
- 25 U.S.C. § 302, which authorizes the Secretary to the Interior to place Indian children in school without parental consent.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated April 13, 2017, was prepared for S. 343:

APRIL 13, 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. 343, the RESPECT Act.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 343—Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act

S. 343 would repeal several laws enacted between 1862 and 1913 that stipulated situations in which the federal government could withhold funding from Indian tribes or tribal members. Such situations include, among others, a tribe being in open conflict with the United States, a Native American being under the influence of intoxicating liquors, and a tribe not having school-aged members attend school.

The laws that would be repealed by S. 343 do not affect the current processes for providing funds to Indian tribes; therefore CBO estimates that implementing S. 343 would have no effect on the federal budget.

Enacting S. 343 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. 343 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

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

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. 343 will have minimal impact of regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 343.

CHANGES IN EXISTING LAW

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