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TO REPEAL CERTAIN OBSOLETE LAWS RELATING TO INDIANS

OCTOBER 22, 2019.—Ordered to be printed

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

R E P O R T

[To accompany S. 2071]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, S. 2071, to repeal certain obsolete laws relating to Indians, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

The purpose of S. 2071 is to repeal eleven outdated federal laws relating to Indians, with the goal of reversing certain historic wrongs committed by the United States against Indians and Indian Tribes.

SUMMARY OF THE BILL

The bill, S. 2071, would repeal eleven laws enacted between 1862 and 1913 relating to Native Americans in the United States. These laws have been unenforced for decades, and reflect the stigma of subjugation and paternalism of bygone eras.

Beginning in the mid-1800s, and continuing through the mid-1900s, the federal government treated Native Americans with hostile aggression and overt racism. This period is often referred to as the “removal and reservations” and “allotment and assimilation”

eras of federal Indian policy.¹ The federal government attempted to assimilate Native Americans by disrupting traditional community structures and ways of life. Sadly, tribal members were oftentimes punished for engaging in traditional cultural ceremonies and practices.

S. 2071 is in keeping with modern federal Indian policy, which recognizes the unique sovereign status of Tribal governments, and the existence of a government-to-government relationship between the United States and Native Americans. Lastly, according to the Congressional Research Service, repealing these obsolete laws would not affect other statutes, principles of Indian law established by the U.S. Supreme Court, treaty rights, tribal sovereignty, or other tribal rights.

LEGISLATIVE HISTORY

On July 10, 2019, Senators Rounds, Lankford, and Sinema introduced S. 2071.² The bill was referred to the Committee on Indian Affairs. On July 17, 2019, the Committee met at a duly called business meeting to consider the bill. The Committee ordered the bill to be reported favorably, without amendment.

Representatives O'Halleran, Cole, and Johnson introduced a companion bill, H.R. 3684, in the House of Representatives on July 10, 2019, and it was referred to the House Committee on Natural Resources. On July 25, 2019, H.R. 3684 was referred to the House Natural Resources Committee, Subcommittee on Indigenous Peoples of the United States. No further action has been taken at this time.

115th Congress. On February 8, 2017, Senators Rounds and Lankford introduced S. 343.³ On March 29, 2017, the Committee met at a duly called business meeting to consider the bill and ordered it reported favorably, without amendment. On November 29, 2017, the bill passed the Senate by Unanimous Consent. S. 343 was received in the House of Representatives and referred to the House Committee on Natural Resources. No further action was taken on the legislation. No companion bill was introduced in the House of Representatives.

114th Congress. On April 13, 2016, Senator Rounds introduced S. 2796. On June 29, 2016, the Committee held a legislative hearing on S. 2796, where the Department of the Interior testified in support of the bill. On September 14, 2016, the Committee passed S. 2796, with an amendment, and ordered the bill to be reported favorably. No further action was taken on S. 2796.

Senator Barrasso's amendment, offered on behalf of Senator Rounds, removed the provision striking 25 U.S.C. § 276 from the bill. After consulting with the tribes in the Great Plains, it was determined that this provision, which authorizes 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, still benefitted Indian tribes. One example of the

¹*Hearing on S. 2796, S. 2959, and S. 3013 Before the S. Comm. on Indian Affairs*, 114th Cong. 10 (2016) (Statement of Alletta Belin, Sr. Counselor to the Dep. Sec'y, U.S. Dept of the Interior).

²This bill is identical to S. 343, which was passed by the Committee in the 115th Congress.

³This bill is identical to S. 2796, as amended, which was passed by the Committee in the 114th Congress.

current use of 25 U.S.C. § 276 is the United Tribes Technical College, a tribal college located on a former military site near Bismarck, North Dakota.

On September 14, 2016, Representative Kristi Noem introduced a companion bill, H.R. 6028, in the House of Representatives. 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.
- 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 July 25, 2019, was prepared for S. 2071:

| Bill #, Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act | | | |
|---|-----------|-------------------------------------|-----------|
| As [Manager] on July 17, 2019 | | | |
| By Fiscal Year, Millions of Dollars | 2019 | 2019-2024 | 2019-2029 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 0 | 0 | 0 |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |

S. 2071 would repeal several laws relating to Native Americans that were enacted in the late 19th century and early 20th century and that, according to the Department of the Interior, are no longer enforced. Based on that information, CBO estimates that enacting S. 2071 would have no effect on the federal budget.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by Theresa A. Gullo, 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. 2071 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

Except as otherwise noted, the Committee has received no communications from the Executive Branch regarding S. 2071.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.