

Calendar No. 64

116TH CONGRESS
1st Session

SENATE

{ REPORT
116-29

TO ESTABLISH A BUSINESS INCUBATORS PROGRAM WITHIN THE DEPARTMENT OF THE INTERIOR TO PROMOTE ECONOMIC DEVELOPMENT IN INDIAN RESERVATION COMMUNITIES, AND FOR OTHER PURPOSES

APRIL 8, 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. 294]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 294) 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. 294, 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 reservations. 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 federal 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 by enacting the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act).⁵ Since then, 39 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 barrier.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 businesses 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—often 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

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).

⁹Access 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.*

high-speed Internet, for example, is often a roadblock to success for businesses that must compete in 21st century markets.¹³

These unique obstacles 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

116th Congress. Senators Udall, Cortez Masto, Heinrich, Smith, and Heinrich introduced S. 294 on January 31, 2019, which the Senate referred to the Committee. Senator Cantwell joined as a co-sponsor of the bill on February 4, 2019. On February 6, 2019, the Committee held a duly called business meeting to consider, among other bills, S. 294. The Committee ordered the bill reported favorably, without amendment.

On March 27, 2019, Representatives Haaland, Cole, Torres of California, and Young introduced a companion bill, H.R. 1900, in the House of Representatives, which referred it to the Committee on Natural Resources. No further action has been taken on the bill at this time.

115th Congress. Senators Udall, Cantwell, and Tester introduced S. 607, a similar predecessor bill to S. 294, 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. On September 26, 2017, the Committee reported S. 607 to the full Senate. Senator Warren joined the bill as a co-sponsor on March 6, 2018.

On March 22, 2018, Senator McConnell proposed an amendment in the nature of a substitute, S. Amdt. 2223, to S. 607 for Senator Hoeven. S. Amdt. 2223, which added a new “No Duplicative Grants” paragraph to subsection (d) of section 4 of the bill, prohibits the Department of the Interior from awarding grants to otherwise eligible applicants that already receive Federal funding for the same purposes from another source. The Senate agreed to the amendment by unanimous consent and the bill, as amended, by voice vote.

On March 26, 2018, the House of Representatives referred S. 607 to the Committee on Natural Resources, which in turn referred it to the Subcommittee on Indian, Insular, and Alaska Native Affairs. The Subcommittee held a hearing on the bill on July 24, 2018 and

¹³ See 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).

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).

discharged the bill on September 27, 2018. The House Committee considered the bill the same day and ordered the bill reported favorably, without amendment. After the Committee reported the bill on November 11, 2018, the full House of Representatives took no further action on the bill.

No member of the House of Representatives introduced a companion bill to S. 607.

114th Congress. Senators Tester, Cantwell, and Udall introduced S. 3261, a similar predecessor bill to S. 294, 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 but took no further action on the bill. No member of the House of Representatives introduced a companion bill to S. 294.

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”.

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 prohibits the Department from awarding grants to otherwise eligible applicants that already receive Federal funding for the same purposes from another source.

This section contains oversight provisions that apply to the agency and grant recipients. It requires the Department to submit a report to Congress within two years of awarding the first round of grants under the program. The report must include information on the performance and effectiveness of the program grantees, and the Committee expects the Department to include a discussion of compliance with the “No Duplicative Grants” provision contained in Section (4)(d)(5).

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 incubator 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. 294 would authorize the appropriation of \$5 million a year over the 2020–2024 period for the Bureau of Indian Affairs to make grants to other organizations that would provide business incubation services to Native American entrepreneurs and businesses including physical workplaces, business skills training, and access to networks of potential investors. Grants would be awarded for three-year periods and could be renewed for an additional three years.

CBO assumes S. 294 will be enacted in fiscal year 2019 and that the authorized amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar programs.

CBO estimates that implementing the bill would cost \$18 million over the 2020–2024 period. The costs of the legislation fall within budget function 450 (community and regional development).

As shown in Table 1, CBO estimates that implementing the bill would cost \$18 million over the 2020–2024 period. The costs of the legislation fall within budget function 450 (community and regional development).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 294

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Authorization	0	5	5	5	5	5	25
Estimated Outlays	0	1	3	4	5	5	18

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 294.

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

CHANGES IN EXISTING LAW

In compliance with the Standing Rules of the Senate and the 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 in order to expedite the business of the Senate.

