

Calendar No. 38

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-7

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO ASSESS SANITATION AND SAFETY CONDITIONS AT BUREAU OF INDIAN AFFAIRS FACILITIES THAT WERE CONSTRUCTED TO PROVIDE AFFECTED COLUMBIA RIVER TREATY TRIBES ACCESS TO TRADITIONAL FISHING GROUNDS AND EXPEND FUNDS ON CONSTRUCTION OF FACILITIES AND STRUCTURES TO IMPROVE THOSE CONDITIONS, AND FOR OTHER PURPOSES

MARCH 13, 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. 50]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 50) to authorize the Secretary of the Interior to assess sanitation and safety conditions at Bureau of Indian Affairs (“BIA”) facilities that were constructed to provide affected Columbia River Treaty Tribes access to traditional fishing grounds and expend funds on construction of facilities and structures to improve those conditions, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this bill, S. 50, is to improve safety and sanitary conditions at twenty-seven tribal fishing sites located along the Columbia River by authorizing the BIA to assess conditions and execute improvements at the twenty-seven In-Lieu and Treaty Fishing Access Sites that the BIA manages on both sides of the Columbia River.

This effort would be done in coordination with the four tribes outlined by statute¹ and with whom the sites serve—the Confederated Tribes and Bands of the Yakima Nation (WA), the Nez Perce Tribe (ID), the Confederated Tribes of the Warm Springs In-

¹ See Pub. L. No. 100-581 (102 Stat. 2944).

dian Reservation of Oregon (OR) and the Confederated Tribes of the Umatilla Indian Reservation (OR) (collectively, the “Columbia River Treaty Tribes”).

NEED FOR LEGISLATION

The bill, S. 50, will improve safety and sanitary conditions at twenty-seven tribal fishing sites located along the Columbia River by authorizing the BIA to assess conditions and execute improvements at the twenty-seven In-Lieu and Treaty Fishing Access Sites that the BIA manages on both sides of the Columbia River.

BACKGROUND

The Columbia River Treaty Tribes, through a series of treaties in 1855, reserved access to “usual and accustomed fishing areas” and ancillary fishing facilities located along the Columbia River.² These rights were secured by various treaties signed between the United States and the Columbia River Treaty Tribes, in 1855.

However, during the 1930s and 1950s the United States began the process of building dams along the Columbia River to provide much needed electricity to various communities throughout the states of Washington and Oregon. As a consequence of these dams being constructed, tribal and non-tribal communities were flooded and needed to be relocated. Celilo Falls, one of the oldest and continuously inhabited tribal fishing communities in the United States, was lost to flooding by the construction of the Dalles Dam on the Columbia River.

Congress passed the River and Harbor Act of 1945 to authorize the U.S. Army Corps of Engineers (the “Corps”) to acquire and replace tribal fishing areas along the Columbia River.³ Over the next twenty years, the Corps acquired five tribal access sites, which had been identified through a 1939 settlement agreement between the United States and Tribes.

In Title IV of Public Law 100–581 (102 Stat. 2944), Congress took additional action to affirm tribal access to these usual and accustomed fishing areas and authorized further construction of improvements for ancillary fishing facilities along the Columbia River. Title IV of Public Law 100–581 also directed the Corps to acquire lands from willing sellers to provide unfettered river access for members of the Columbia River Treaty Tribes. Following the acquisition of these lands, Congress directed the lands be transferred to the Department of the Interior for the purpose of maintaining the sites and providing law enforcement services.⁴

The flooded tribal lands were later replaced with 31 designated encampments.⁵ Since the Corps began acquiring these sites, all but two of these encampments have been transferred to the BIA for management.

In 2013 the Portland Office of the Army Corps of Engineers commissioned a report to study the living conditions of the in-lieu treaty fishing sites. In response to the 2013 report, the Corps’ Portland

²See Yakima Treaty, 1855; Tribes of Middle Oregon Treaty, 1855; Cayuse, Umatilla, and Walla Walla Treaty, 1855; and Nez Perce Treaty, 1855.

³Pub. L. No. 79–14 (59 Stat. 22).

⁴*Id.*

⁵*Legislative Hearing to receive testimony on the following bills: S. 2636, S. 3216, S. 3222, S. 3300 Before the S. Comm. on Indian Affairs, 114th Cong. (2016)* (testimony of Paul Lumley, Executive Director Columbia River Inter-Tribal Fish Commission)

District spokeswoman acknowledged the terrible living conditions near these sites.⁶

LEGISLATIVE HISTORY

Senator Merkley introduced the bill, S. 50, on January 8, 2019. Senators Wyden, Murray, and Cantwell joined as co-sponsors.

Predecessor Senate bills have been introduced in the 114th and 115th Congresses.

During the 115th Congress, the predecessor bill, S. 669, was reported out of the Committee favorably on March 29, 2017. This bill, S. 669, was amended post mark-up to include a study by the Government Accountability Office (GAO) on the safety conditions of the sanitation facilities listed in the bill, and determine what improvements, if any, resulted due to the passage of the bill. The GAO would provide a report of their findings to the Committee. The bill, as amended, passed the full Senate by Unanimous Consent on November 29, 2017.

The bill, S. 669, was received by the House of Representatives and referred to the Committee on Natural Resources of the House of Representatives on November 30, 2017. The Committee on Natural Resources of the House of Representatives reported the bill favorably during its business meeting on November 15, 2018 and it was placed on the House Union Calendar on December 3, 2018. No further action was taken.

During the 114th Congress, the Committee held a legislative hearing on a predecessor bill, S. 3222, on September 14, 2016, at which Mr. Larry Roberts the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (DOI) testified and provided technical corrections to improve the bill. Mr. Paul Lumley, Executive Director of the Columbia River Inter-Tribal Fish Commission also testified and supported the predecessor bill, S. 3222. No further action was taken on this bill.

The DOI recommendations were incorporated into the subsequent bill, S. 669, and are also reflected in the current bill, S. 50. Those recommendations include clarifying that the BIA was the only agency authorized to carry out the bill activities and which tribes were defined as the “affected Columbia River Treaty Tribes.”

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1. Short title

Section 1 titles the bill as the “Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act.”

Section 2. Sanitation and safety conditions at certain Bureau of Indian Affairs facilities

Section 2 provides for the assessment of fishing access facilities and structures maintained by the BIA, establishes the BIA as the sole Federal agency tasked with executing the requirements of the bill, applies the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the contracting process for facility assessments, defines the affected Columbia River Treaty Tribes,

⁶*Id.*

and authorizes appropriations for assessments of the fishing access sites and facilities.

Section 2(a) provides for the BIA to, in consultation with the Columbia River Treaty Tribes, assess any permanent federal structures and improvements on BIA lands that were set aside to provide the treaty access to traditional grounds.

Section 2(b) provides that the BIA shall be the only federal agency authorized to carry out the activities in the bill.

Section 2(b) also allows for tribes and tribal organizations to contract the assessment activities of the fishing access sites and facilities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

Section 2(c) defines the affected Columbia River Treaty Tribes as the Nez Perce tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation.

Section 2(d) authorizes appropriations for the bill, S. 50.

Section 3. Study of assessment and improvement activities

Section 3 directs the Comptroller General of the United States, in consultation with the Committee, to conduct a study to evaluate whether the sanitation and safety conditions on lands held by the United States for the benefit of the affected Columbia River Treaty Tribes' sanitation facilities (as defined in section 2(c)) have improved as a result of the activities authorized in this bill and to submit this report to the Senate Committee on Indian Affairs and the House Natural Resources Committee.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated February 19, 2019.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 19, 2019.

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. 50, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 50, Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act						
As ordered reported by the Senate Committee on Indian Affairs on January 29, 2019						
Millions of Dollars	Direct Spending	Revenues	Net Effect	Deficit	Spending Subject to Appropriation	
2019	0	0	0		0	
2019-2024	0	0	0		11	
2019-2029	0	0	0		n.a.	
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	
n.a. = not applicable.						

S. 50 would authorize the appropriation of whatever amounts are necessary to the Bureau of Indian Affairs (BIA) to assess and improve the sanitation and safety conditions on land held in trust by the United States for the four Columbia River Treaty tribes (the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation).

For this estimate, CBO assumes that S. 50 will be enacted in fiscal year 2019 and that the necessary amounts will be appropriated for each fiscal year starting in 2020.

Currently, BIA funds operations and maintenance of 28 fishing sites on the Columbia River. Using information provided by BIA, CBO estimates that implementing S. 50 would require one new full-time equivalent (FTE) position to oversee an improvement plan and maintenance, and seven new law enforcement FTEs to ensure the safety and security of the facilities with average annual salaries of around \$70,000. All equipment necessary to make upgrades to the facilities' electric, sewer, and water infrastructure would cost around \$1 million a year over this period and preparing an improvement plan in 2020 also would cost about \$1 million, CBO estimates.

As shown in Table 1, CBO estimates that implementing the bill would cost \$11 million over the 2019–2024 period. The costs of the legislation fall within budget function 450 (community and regional development).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Estimated Authorization	0	3	2	2	2	2	11
Estimated Outlays	0	3	2	2	2	2	11

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 50.

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

CHANGES IN EXISTING LAW (CORDON RULE)

On February 6, 2019, the Committee on Indian Affairs of the Senate unanimously approved a motion to waive the Cordon rule. Thus, 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.