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SENATE

{ REPORT
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TO REPEAL CERTAIN OBSOLETE LAWS RELATING TO INDIANS

APRIL 28, 2021.—Ordered to be printed

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

R E P O R T

[To accompany S. 789]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 789) 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The purpose of S. 789 is to repeal eleven outdated federal laws relating to Indians with the goal of reversing certain historic wrongs committed by the United States against Indians and Indian Tribes.

BACKGROUND

S. 789 would repeal eleven laws enacted between 1862 and 1913 relating to Indians. From the mid-1800s to the mid-1900s—often referred to as the “removal and reservations” and “allotment and assimilation” eras of federal Indian policy—the United States treated Tribes with hostile aggression and overt racism. During both eras, the federal government attempted to assimilate the Native Americans by disrupting traditional community structures and ways of life. The federal government also punished tribal members for engaging in traditional cultural ceremonies and practices.

In light of modern federal Indian policy that recognizes the unique sovereign status of Tribal governments and supports a government-to-government relationship with the United States, the

RESPECT Act formally repeals laws that have been unenforced for decades.

According to research conducted by the Congressional Research Service, repealing the eleven 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.

NEED FOR LEGISLATION

S. 789 repeals eleven obsolete provisions of Title XXV of the U.S. Code that are either obsolete, unenforced, or entirely inconsistent with the fundamental principles of self-determination, including the recognition of government-to-government relationships between the federal government and Indian tribes and the unique sovereign status of Tribal governments. Repealing these provisions will remove offensive and immoral provisions from the U.S. Code, signal the importance of Congress upholding the principals of self-determination, and ensure these provisions are not misapplied in the future.

LEGISLATIVE HISTORY

Senators Rounds, Smith, Lankford, and Sinema introduced S. 789, the RESPECT Act, on March 17, 2021. The Senate referred the bill to the Committee on the same day. The bill, S. 789, is identical to the version favorably reported by the Committee, as amended, in the 116th Congress. On March 24, 2021, at a duly called business meeting, the Committee considered and ordered reported S. 789 favorably without amendment.

116th Congress. On July 10, 2019, Senators Rounds, Lankford, and Sinema introduced S. 2071.¹ 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. On November 21st, 2019, S. 2071 passed the Senate and was referred to the House Natural Resources Committee, Subcommittee for the Indigenous Peoples of the United States. No further action was taken.

A companion bill, H.R. 3684, was introduced in the House of Representatives on July 10, 2019 by Representatives O'Halleran, Tom Cole, and Dusty Johnson. H.R. 3684 was referred to the House Committee on Natural Resources on the same day. On July 12, 2019, Representative Gallego joined the bill as a co-sponsor. On July 25, 2019, the bill was referred to the Subcommittee for Indigenous Peoples of the United States. No further action was taken.

115th Congress. On February 8, 2017, Senators Rounds and Lankford introduced S. 343.² On March 29, 2017, the Committee met at a duly called business meeting to consider the bill and ordered it reported favorable, 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

¹This bill is identical to S. 343, which was passed by the Committee in the 115th Congress.

²This bill is identical to S. 2796, as amended, which was passed by the Committee in the 114th Congress.

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. Senator Lankford joined the bill as a co-sponsor on April 27, 2016. 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 favorably reported. No further action was taken on S. 2796.

Amendment. Senator Barrasso offered an amendment, on behalf of Senator Rounds, that would remove 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 current use of 25 U.S.C. § 276 is the United Tribes Technical College, a tribal college located on a former military fort near Bismarck, North Dakota.

On September 14, 2016, Representative 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

This section 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 April 7, 2021, was prepared for S. 789:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 7, 2021.

Hon. BRIAN SCHATZ,
*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. 789, the RESPECT Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 789, RESPECT Act			
As ordered reported by the Senate Committee on Indian Affairs on March 24, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
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 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 789 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. On that basis, CBO estimates that enacting S. 789 would have no effect on the federal budget.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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. 789 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. 789.

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.