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1st Session }

SENATE

{ REPORT
{ 118-38

A BILL TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO EXTEND THE DEADLINE FOR THE SECRETARY OF THE INTERIOR TO PROMULGATE REGULATIONS IMPLEMENTING TITLE IV OF THAT ACT, AND FOR OTHER PURPOSES

—————
JUNE 8, 2023.—Ordered to be printed
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Mr. SCHATZ, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1308]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, (S. 1308), A bill to amend the Indian Self-Determination and Education Assistance Act to extend the deadline for the Secretary of the Interior to promulgate regulations implementing title IV of that Act, and for other purposes, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

PURPOSE

S. 1308 would make a technical amendment to the *PROGRESS for Indian Tribes Act* by extending the deadlines for issuing proposed and final rules pursuant to negotiated rulemaking.

BACKGROUND

The *PROGRESS for Indian Tribes Act* was signed into law on October 21, 2020 with the goal of streamlining and improving the consistency of the U.S. Department of the Interior's process for approving self-governance contracts and compacts and annual funding agreements for Indian programs. The Act authorized a negotiated rulemaking committee to issue a final rule implementing the law. The legislation also set July 21, 2022 as the deadline to issue a proposed rule, and April 21, 2023 as the deadline to issue a final rule and sunset the committee.

NEED FOR LEGISLATION

Following the passage of the Act, the Department appointed a Designated Federal Officer to stand up and support the rulemaking committee within days. However, the logistical aspects of forming the committee took longer than is customary for a negotiated rulemaking due to the COVID-19 pandemic and transition between administrations. Additionally, the committee uses a consensus-based model of negotiation (“negotiated rulemaking”), which takes additional time beyond a traditional rulemaking.

The committee was in the process of completing its negotiated rulemaking, but had to pause progress when the statutory deadline of April 21 to issue a final rule arrived. As such, an extension is needed for their work to continue.

SUMMARY OF THE BILL, AS AMENDED

As amended, S. 1308 would make a technical amendment to the *PROGRESS for Indian Tribes Act*, extending the deadlines for issuing a proposed rule and a final rule to December 21, 2023 and December 21, 2024, respectively.

LEGISLATIVE HISTORY

Senator Hoeven (R-ND) and Senator Smith (D-MN) introduced S. 1308 on April 26, 2023. On the same day, the Senate referred the bill to the Committee on Indian Affairs. On May 3, 2023, the Committee met at a duly convened business meeting to consider S. 1308. Senators Hoeven and Smith filed one untimely amendment striking language in the bill extending the deadlines for issuing a proposed rule and a final rule to September 21, 2023 and September 21, 2024, respectively, and replacing it with language to extend those deadlines to December 21, 2023 and December 21, 2024. With the concurrence of the Chairman and Vice Chairman, the Committee considered the amendment, which it adopted, and ordered S. 1308, as amended, reported favorably by voice vote. There is currently no companion bill in the House of Representatives.

116th Congress. S. 209, the *PROGRESS for Indian Tribes Act*, was introduced in the Senate on January 24, 2019, by Senators Hoeven (R-ND), Udall (D-NM), Barrasso (R-WY), and Smith (D-MN). Senator Cantwell (D-WA) was added as a co-sponsor on January 29, 2019. On January 29, 2019, the Committee held a duly called business meeting at which S. 209 was considered, and the Committee ordered the bill reported favorably to the Senate on April 29, 2019. On June 27, 2019, S. 209 passed the Senate, without amendment, by voice vote. The next day, S. 209 was referred to the House Committee on Natural Resources. On July 3, 2019, the bill was further referred to the Subcommittee on Indigenous Peoples of the United States. On July 16, 2019, the Subcommittee held a hearing on the House version of the bill, H.R. 2031, introduced by Representative Deb Haaland (D-NM).

On December 5, 2019 the Subcommittee discharged the bill by unanimous consent and the full Committee held a mark-up and adopted the bill without amendment. S. 209 was ordered favorably reported by a roll call vote of 22-10. S. 209 was considered under suspension of the rules and passed the House by voice vote on September 21, 2020. The bill was presented to the President on Octo-

ber 9, 2020 and signed into law on October 21, 2020 as the *PROGRESS for Indian Tribes Act* (Pub. L. No. 116–180).

SECTION-BY-SECTION ANALYSIS OF S. 1308 AS ORDERED REPORTED

Section 1—Extension of Deadline to Promulgate Certain Regulations

This section amends the Indian Self-Determination and Education Assistance Act to extend the period for publishing proposed regulations from 21 months after enactment of the *PROGRESS for Indian Tribes Act* to 38 months after enactment, and to extend the authority to promulgate regulations from 30 months after enactment to 50 months after enactment.

COST AND BUDGETARY CONSIDERATIONS

S. 1308, a bill to amend the Indian Self-Determination and Education Assistance Act to extend the deadline for the Secretary of the Interior to promulgate regulations implementing title IV of that Act, and for other purposes			
As ordered reported by the Senate Committee on Indian Affairs on May 3, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Mandate Effects	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 1308 would extend deadlines for the Department of the Interior to issue rules for the Tribal Self-Governance program. Under current law, the department was required to submit a proposed rule within 21 months and the final rule within 30 months of October 21, 2020. The bill would extend those periods to 38 months and 50 months, respectively. CBO estimates that implementing S. 1308 would cost \$1 million over two years, primarily to cover the additional costs of staff time, facilitators, and travel for tribes involved in the rulemaking; spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Julia Aman. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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. 1308 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1308.

CHANGES IN EXISTING LAW

On February 11, 2021, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. 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.