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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–501

INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 1999

FEBRUARY 29, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

[To accompany S. 613]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (S. 613) to encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 613 is to encourage Indian economic development, to provide for the disclosure of Indian tribal sovereignty immunity in contracts involving Indian tribes, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

S. 613, the proposed Indian Tribal Economic Development and Contract Encouragement Act of 1999, would amend existing law to provide that no agreement or contract with an Indian tribe that encumbers Indian lands for a period of seven or more years shall be valid unless that agreement or contract is approved by the Secretary of the Interior. The bill also provides that the Secretary shall issue regulations for identifying the types of agreements or contracts not covered by the aforementioned requirement.

Section 81 of Title 25 of the United States Code, enacted in 1872, is intended to protect Indians from improvident contracts and is concerned primarily with federal control over contracts between In-

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dians tribes or individual Indians and non-Indians. Over the decades many provisions of this law have come to be antiquated and unnecessary. In 1958 Congress amended Section 81 to remove the requirement that all such contracts be executed in the presence of a judge. In 1982 Congress amended Section 81 as it related to management agreements. In 1990 Congress amended Section 81 as it related to reservation-wide plebiscites and exempted Self-Governance tribes from Section 81.

S. 613 eliminates a major portion of federal control exercised pursuant to Section 81 by making federal approval only applicable to certain contracts having a life of seven or more years. In addition, S. 613 amends Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476) by removing the requirement that the choice of counsel and the fixing of fees by a Tribe shall be subject to the approval of the Secretary of the Interior.

COMMITTEE ACTION

S. 613 was introduced on March 15, 1999, by Senator Ben Nighthorse Campbell (R–CO). The bill, as amended, was passed by the Senate on September 15, 1999, by unanimous consent, and referred to the Committee on Resources. On February 16, 2000, the Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and rec-

ommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 29, 2000.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 613, the Indian Tribal Economic Development and Contract Encouragement Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette Keith (for federal costs), and Marjorie Miller (for the state, local, and tribal impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 613—Indian Tribal Economic Development and Contract Encouragement Act of 1999

Summary: Based on information from the Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA), CBO estimates that implementing S. 613 would reduce discretionary costs for BIA by a total of about $2 million over the 2001–2005 period. The act would not affect direct spending or receipts; therefore, pay-as-you-go procedures would apply. S. 613 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that this mandate would not impose minimal costs that would be far below the threshold established by that act ($55 million in 2000). Further, S. 613 would reduce the costs of an existing mandate, more than offsetting any new mandate costs. This legislation contains no new private-sector mandates as defined in UMRA.

S. 613 would amend current law (25 U.S.C. 81) to remove certain restrictions on contracts between Indian tribes and other parties. This provision, known as section 81, requires DOI's approval of all contracts involving payments between non-Indians and Indians for services relative to Indian lands. Under current law, any contract that is subject to this provision and which is not approved by DOI can be declared null and void. As amended by S. 613, section 81 would only require approval of contracts that encumber Indian lands for a period of at least seven years. S. 613 would prohibit DOI from approving contracts that neither provide for remedies in the case of a breach of contract nor explicitly disclose or waive an

Indian tribe's right to assert sovereign immunity as a defense in an action brought against it. In addition, the act would amend the Indian Reorganization Act to remove a requirement that a tribe's choice of legal counsel and the fees to be paid to such counsel be subject to DOI approval.

Estimated cost to the Federal Government: Based on information from DOI and BIA, CBO expects that S. 613 would reduce the number of contracts the department has to review each year. CBO estimates that implementing this legislation would reduce costs for BIA by between $300,000 and $400,000 in each of fiscal years 2001 through 2005. Any reduction in total BIA spending would be subject to appropriate action.

Pay-as-you-go considerations: None.

Estimated impact on state, local, and tribal governments: Section 81 currently imposes a mandate on tribes to submit certain contracts for approval by the Secretary of the Interior. S. 613 would greatly reduce the number of contracts requiring approval, thus reducing the cost to tribes of the existing mandate. But under this legislation, a tribe entering into a covered contract would have to include a specific statement regarding its sovereign immunity. This is an additional enforceable duty imposed on tribes, and so would constitute an intergovernmental mandate under UMRA. The cost of this mandate would be minimal, however. It would not affect the rights of either party under such contracts, but would only require that these rights be explicitly stated.

Estimated impact on the private sector: S. 613 contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 9, 1999, CBO prepared a cost estimate for S. 613 as ordered reported by the Senate Committee on Indian Affairs on June 16, 1999. Our cost estimates for these two versions of the legislation are the same.

Estimate prepared by: Federal Costs: Lanette Keith; Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 2103 OF THE REVISED STATUTES

[SEC. 2103. No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United

States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

[First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

[Second. It shall bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

[Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically.

[Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

[Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

[All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or any one else, for or on his or their behalf, on account of such services, in excess of the amount approved by the Commissioner and Secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid.]

SEC. 2103. (a) In this section:

(1) The term "Indian lands" means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

(2) The term "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) The term "Secretary" means the Secretary of the Interior.

(b) No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

(c) Subsection (b) shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

(d) The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) if the Secretary (or a designee of the Secretary) determines that the agreement or contract—

(1) violates Federal law; or

(2) does not include a provision that—

(A) provides for remedies in the case of a breach of the agreement or contract;

(B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or

(C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

(e) Not later than 180 days after the date of enactment of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b).

(f) Nothing in this section shall be construed to—

(1) require the Secretary to approve a contract for legal services by an attorney;

(2) amend or repeal the authority of the National Indian Gaming Commission under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or

(3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe.

SECTION 16 OF THE ACT OF JUNE 19, 1934

SEC. 16. (a) * * *

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(e) In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel**[**, the choice of counsel and fixing of fees to be subject to the approval of the Secretary**]**; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

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