

Calendar No. 767

107TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 107-346

SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL
AGREEMENT IMPLEMENTATION ACT OF 2002

NOVEMBER 19, 2002.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany S. 2065]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2065) to provide for the implementation of air quality programs developed pursuant to an Intergovernmental Agreement between the Southern Ute Indian Tribes and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

Pursuant to a 1984 law that confirmed the boundaries of the Southern Ute Indian Reservation, the Tribe relinquished territorial jurisdiction over non-Indians conducting activities on non-Indian land. Then, amendments to the Clean Air Act in 1990 authorized the Environmental Protection Agency (EPA) to delegate primacy to tribes with respect to administration of various programs under that statute. The Tribe and the State of Colorado have since decided to work cooperatively to develop a comprehensive air quality program applicable to all lands (Indian and non-Indian) within the boundaries of the Reservation. In 1999, the State of Colorado formally entered into an Intergovernmental Agreement with the Southern Ute Indian Tribe concerning air quality control on the Southern Ute Indian Reservation.

The Agreement facilitates joint participation by the Tribe and the State in the regulation of air quality on the Reservation. Under the Agreement, the Southern Ute Indian Tribe/State of Colorado Environmental Control Commission was created with two main responsibilities. First, the Commission determines the specific Clean Air Act or other air programs that apply to the Reservation and establishes program standards for restricting emissions. Second, the Commission reviews administrative proceedings that can be appealed. The Tribe incorporates Commission standards when applying to EPA for delegation of authority to administer Clean Air Act programs on the Reservation. Once the delegation is received, the Tribe will have responsibility for the day-to-day enforcement of the Commission's standards, rules, and regulations.

The Agreement provides that it is not fully implemented until Congress enacts Federal legislation that (1) provides for Federal jurisdiction for the civil enforcement of regulatory orders and judicial review of final agency actions by the Commission and (2) authorizes EPA to delegate "treatment as a State" status to the Tribe in the time that the Agreement remains in effect. The terms of the Agreement expire without congressional authorization prior to December 13, 2002.

S. 2065 specifically authorizes the EPA to treat the Southern Ute Indian Tribe as a State under section 301(d) of the Clean Air Act. Enacting this legislation would provide that, if a Tribal application under section 301(d) is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The bill also provides for compliance enforcement by the Commission established by the Agreement and judicial review of the Commission's decisions.

OBJECTIVES OF THE LEGISLATION

The purpose of the legislation is to provide congressional recognition of an arrangement authorized under the Clean Air Act between the State of Colorado and the Southern Ute Indian Tribe to promote efficient achievement of the Act's air quality standards and program compliance.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

"Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2002."

Sec. 2. Statement of Findings

Congress finds that the Agreement between the Southern Ute Indian Tribe and the State of Utah is consistent with existing law.

Sec. 3. Tribal Authority

The EPA specifically is authorized to treat the Southern Ute Indian Tribe in the same manner as a State as provided for by section 301(d) of the Clean Air Act, for air quality programs to implement an Intergovernmental Agreement between the Tribe and the State of Colorado within the boundary of the Tribe's Reservation. EPA is directed to withdraw authorization of the Agreement if ei-

ther the Tribe or the State terminates participation in the Agreement. EPA is already authorized by the Clean Air Act to recognize such Agreements, but the State and the Tribe believe that the certainty provided by explicit congressional recognition will encourage efficient implementation.

Sec. 4. Civil Enforcement

This provision emphasizes that civil orders issued by the Tribe or the State, pursuant to implementation of the Agreement, may be enforced in the U.S. District Court for the District of Colorado. The section further restates that the legislation does not affect in any way the ability of citizens to bring an action under section 304 of the Clean Air Act. This language makes it clear that the Commission and its parties as established by the Agreement and officially recognized by this legislation are subject to the same terms and conditions of any other entity delegated with authority to implement the Clean Air Act.

Sec. 5. Judicial Review

Decisions by the Southern Ute Indian Tribe/State of Colorado Environmental Commission, as established by the Agreement, that would have been subject to appellate review if made by the U.S. Environmental Protection Agency will be subject to review by the U.S. Court of Appeals for the Tenth Circuit. This provision is intended to expedite the resolution of any conflicts that might develop in implementation by clarifying the judicial venue for dispute resolution.

Sec. 6. Disclaimer

This section provides a savings clause to ensure that the Clean Air Act, the Act to Confirm the Boundaries of the Southern Ute Indian Reservation in Colorado, and any administrative or case law relating to these Acts, are not affected by the legislation.

LEGISLATIVE HISTORY

On March 21, 2002, Sen. Ben Nighthorse Campbell introduced S. 2065. No hearing was held on the bill. On September 26, 2002, the full Committee on Environment and Public Works by voice vote ordered S. 2065 to be reported to the Senate.

ROLLCALL VOTES

On September 26, 2002, the committee met to consider S. 2065. The bill was agreed to by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of the rule XXVI of the Standing Rules of the Senate, the committee has determined that the legislation is not expected to create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 2065 would not impose Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 2002.

Hon. JAMES M. JEFFORDS, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2065, the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne Mehlman (for Federal costs), who can be reached at 226-2860, and Marjorie Miller (for State, local, and tribal impact), who can be reached at 225-3220.

Sincerely,

DAN L. CRIPPEN.

*S. 2065, Southern Ute and Colorado Intergovernmental Agreement
Implementation Act of 2002 as ordered reported by the Senate
Committee on Environment and Public Works on September 26,
2002*

S. 2065 would authorize the Environmental Protection Agency (EPA) to treat the Southern Ute Indian Tribe as a State under section 301(d) of the Clean Air Act. The bill would allow the tribe to accept delegation of EPA's authority under the Clean Air Act in the same manner as States. Enacting S. 2065 would provide that, if the tribe submits an application under section 301(d), and if the application is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The bill also would give jurisdiction for enforcement of these delegated powers to the U.S. District Court for the District of Colorado. According to EPA, enacting this legislation would not change the Southern Ute Indian Tribe's eligibility for Federal grants in any manner. Thus, CBO estimates that enacting this legislation would not have a significant effect on the Federal budget.

S. 2065 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments. This legislation would implement an agreement entered into voluntarily by the

State of Colorado and the Southern Ute Indian Tribe, and any costs incurred by either the State or the tribe would stem from their acceptance of that agreement.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for Federal costs), and Marjorie Miller (for the State, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

