

HASKELL INDIAN NATIONS UNIVERSITY AND SOUTHWEST-
ERN INDIAN POLYTECHNIC INSTITUTE ADMINISTRATIVE
SYSTEMS ACT OF 1998

SEPTEMBER 9, 1998.—Ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government
Reform and Oversight, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 4259]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 4259) to allow Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute each to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SHORT SUMMARY OF LEGISLATION

Under this legislation, Haskell Indian Nations University (Haskell) and Southwestern Indian Polytechnic Institute (SIPI) may conduct five-year demonstration projects to establish alternative personnel systems that meet their needs as higher educational institutions without regard to most civil service laws.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Haskell and SIPI are the only federally owned and operated Indian Colleges. Over the past few years they have taken substantial strides to increase the educational opportunities for Native American students. For example, Haskell has changed from a junior college to a four-year institution, conferring its first baccalaureate degrees in the spring of 1997. Due to these developments, the two institutions have found that working within the confines of civil service law is extremely burdensome and impedes their efforts to improve their educational offerings. The Committee has been informed of a number of ways in which the rigidity of the civil service laws has interfered with the institutions' ability to offer a better education to their students. Both Haskell and SIPI have had difficulty recruiting professors due to the rigidity of the civil service classification systems, and Haskell's efforts to recruit faculty have also been frustrated by the lack of portability of federal retirement benefits.

Inappropriate job classification system

The Federal Government's position classification system does not address job classifications unique to colleges and universities. Under the current system, job classifications do not adequately reflect the true level of responsibility of such academic positions as dean, professor, assistant professor, and associate professor. Nor does it recognize the true pay scale necessary to attract qualified and experienced individuals for such positions. Nonacademic positions at the institutions—e.g., computer network administrator, college recruiter, college placement officer, and registrar—are also undervalued by the classification system.

This deficiency has been a serious obstacle to the continued development of both schools. Highly qualified faculty from other universities and colleges who have inquired about vacancies at Haskell have refused to apply after learning that Haskell has no teaching positions above the rank of instructor. Currently, there are no provisions for promotions among the faculty at Haskell.

In addition, the current system has prevented Haskell and SIPI from requiring applicants to meet minimum qualification standards that are appropriate to educational institutions. For example, when Haskell wanted to fill its Dean of Instruction position, the position description required a doctoral degree. But the job announcement prepared by the Bureau of Indian Affairs (BIA), which services both Haskell and SIPI, required only a bachelor's degree. Obviously, a person with only a bachelor's degree would be unacceptable as the academic dean of an university. SIPI, likewise, needs individuals with advanced degrees to become deans or professors. As a technical school, it needs to recruit and hire engineering profes-

sors, electronics professors, and environmental science professors with masters degrees or doctorates so its courses will receive college accreditation and its graduates can transfer their credits to four-year colleges and universities. Existing civil service regulations, however, do not allow the schools to require candidates to possess more than a bachelors degree.

SIPI also reports that hiring administrative support staff is complicated by the federal personnel system's failure to accommodate the needs of educational institutions. For example, in hiring a Network Administrator, it must recruit for a generic "computer specialist" rather than limit competition to candidates with the necessary technical qualifications to operate its computer network. Because civil service rules have prevented SIPI from properly staffing its college recruiting office, its efforts to attract qualified students to its campus has also suffered. In particular, this has hindered the school's effort to attract capable students to its new high-tech programs, such as the Environmental Science, Industrial Hygiene, and Agricultural Technologies programs. As a result of these limitations, most students learn of SIPI's offerings only by word of mouth. Many Native American students without ties to SIPI alumni, therefore, never learn of the opportunities available there.

Inordinate delays in employment recruiting

Existing civil service procedures produce lengthy delays as a result of cumbersome paperwork, posting, and certification processes. For example, Haskell's Dean of Instruction, a key senior management position, became vacant in December 1997. Haskell forwarded a request to recruit for the position to the servicing personnel office in January 1998. But the position was not announced and advertised until April. Furthermore, even though the vacancy announcement closed on May 26, 1998, Haskell did not receive the certificate of eligibles until July 15, 1998. Likewise, Haskell, initiated a request to fill an Indian Studies Instructor vacancy in the Fall of 1997. But it was not advertised until April 1998 and closed on April 27, 1998. More than three months after the closing date, Haskell had not received the certificate of eligibles. Haskell believes, and the Committee agrees, that such delays will very likely prevent Haskell from effectively competing for many qualified candidates.

SIPI has also experienced harmful delays in recruiting. These delays stem both from the requirement that it first advertise positions within the BIA, even when the likelihood of finding qualified candidates within the workforce is extremely small, and the inappropriate procedures required when it subsequently recruits from the general public. As a result, SIPI has found that individuals with the qualifications it needs are often not available. They can be, and are, hired much more quickly by the other institutions of higher education competing for their services. This is a problem that SIPI has encountered when recruiting for faculty positions in both technical subjects and the liberal arts. Existing personnel procedures, for example, have prevented SIPI from recruiting a qualified English professor.

Lack of portable retirement

The retirement systems in which federal employees participate are not fully portable. The Civil Service Retirement System (CSRS), which covers many current employees and certain returning employees, is not portable at all. Other Federal employees, including those hired after 1983, are covered by the Federal Employees Retirement System (FERS). FERS is a three-tiered retirement plan, consisting of a basic annuity, individual Thrift Savings Plan (TSP) accounts, and Social Security. Although both the TSP accounts and Social Security are portable, the basic annuity is not.

Haskell has advised the Committee that this lack of portability has hindered its ability to recruit some highly qualified candidates for its faculty. Candidates who were initially attracted to Haskell lost interest when they learned they would not be able to bring their retirement programs with them to Haskell or would be unable to take retirement benefits earned at Haskell to another university.

The Committee recognizes that the inability to offer portable retirement benefits unquestionably hinders Haskell's efforts to recruit top flight educators for its faculty. Retirement portability is common among colleges and universities. For example, the Teachers Insurance Annuity Association-College Retirement Equities Fund (TIAA-CREF) offers a "fully funded, fully vested, portable pension system for staff members of private and public U.S. colleges, universities, independent schools, and related nonprofit research organizations and educational associations."¹ Approximately 6100 institutions and 1.8 million individuals were covered by TIAA-CREF at the end of 1996.² Competitors that participate in such a system can offer prospective faculty the assurance of mobility and the opportunity to preserve retirement benefits earned at other institutions that many educators expect. Haskell cannot.

Providing needed flexibility

In order to address these problems, H.R. 4259 permits Haskell and SIPI to establish procedures for hiring, compensating, and terminating employees that are appropriate for institutions of higher learning. This includes the authority to establish, among other alternative benefits, portable retirement programs. Current employees with at least one year of government service may retain their Federal retirement, health benefits and life insurance. Although the institutions may be exempted from provisions generally applicable to the civil service, they will remain subject to certain laws, including those on equal employment opportunity, Indian preference, and veterans' preference.

The Secretary of the Interior or the president of the institution may terminate a demonstration project at any time. However, retirement plans established under a demonstration project will not terminate automatically when a demonstration project ends.

The Secretary is required to evaluate the results of the demonstration project. At least 6 months before a demonstration is to

¹"TIAA-CREF Assets Reach \$185 Billion; Investment Experiences Summarized," Spencer's Research Reports, at 1 (Nov. 14, 1997).

²Id.

expire, the institution covered by a project must recommend to Congress whether or not the processes established under it should be made permanent.

III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

The Committee held no legislative hearings on H.R. 4259. Rep. Vince Snowbarger introduced H.R. 4259 on July 16, 1998. The bill was referred on that date to the Committee on Education and the Workforce, and, in addition, to the Committee on Government Reform and Oversight. On July 23, 1998, the Committee on Government Reform and Oversight considered the bill. Rep. Elijah E. Cummings offered an amendment in the nature of a substitute, which was not adopted by the Committee. The Committee ordered H.R. 4259 reported to the House without amendment.

IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

The Committee did not hold any hearings on this legislation. However, on June 24, 1998, the Subcommittee did hold hearings at which the need for more flexible personnel systems and portable retirements were examined. Witnesses who addressed these points included Dr. Robert Emmet Moffit, Director of Domestic Policy Studies, The Heritage Foundation; Grover G. Norquist, President, Americans for Tax Reform; Patrick S. Korten, Vice President, The Cato Institute; the Honorable Janice R. Lachance, Director, Office of Personnel Management; and Michael Brostek, Associate Director, Federal Management and Workforce Issues, General Government Division, General Accounting Office.

All of these witnesses agreed that Federal managers should have greater authority to develop innovative personnel systems to meet the needs of their particular agencies. Mr. Brostek testified that the authority to conduct personnel demonstration projects under the Civil Service Reform Act of 1978 has received only "limited use" and questioned whether this authority has adequately accomplished its primary objective of determining whether specific changes in personnel policies would actually improve Federal personnel management. He also stated that under the human resource management model being adopted by many private and public sector organizations, personnel management practices are adopted because they support the organization's needs and mission, not because they have been used elsewhere. OPM Director Lachance concurred in general with the desirability of increased flexibility in personnel management and holding managers accountable for using such authority effectively.

Mr. Norquist, Mr. Moffit, and Mr. Korten all urged Congress to offer Federal employees fully portable retirement plans. They pointed out that such plans would empower individuals by releasing them from the "golden handcuffs" that often prevent them from accepting non-federal jobs and permitting them to tailor their retirement programs to their own individual needs and preferences. Mr. Norquist pointed out that the existing defined benefit plans for Federal employees are skewed to favor longer term workers. He argued that at standard market investment returns, employees who serve less than approximately 15 years for the Federal Government would receive substantially higher retirement benefits from defined

contribution plans. In contrast, Director Lachance opposed any departure from the one-size-fits-all, uniform governmentwide benefits, including retirement. She argued that exempting employees from the governmentwide retirement system could adversely affect the retirement trust fund and individual employees.

V. EXPLANATION OF THE BILL AS REPORTED: SECTION-BY-SECTION

Section 1. Short title

The short title is “The Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998.”

Section 2. Findings

This section sets out congressional findings supporting this legislation. Congress finds:

(a) that providing culturally sensitive curricula for higher education programs at Haskell Indian Nations University (Haskell) and Southwestern Indian Polytechnic Institute (SIPI) is consistent with fulfilling the federal government’s treaty obligations to Indian tribes through self-determination and with the use of federal resources; and

(b) that giving these institutions a greater degree of autonomy while they remain integral parts of the Bureau of Indian Affairs will facilitate Haskell’s transition to a 4-year university and the administration and improvement of SIPI’s academic program.

Section 3. Definitions; applicability

This section defines key terms used in the legislation and provides that the legislation applies to Haskell and SIPI.

Section 4. Authority

This section authorizes Haskell and SIPI to implement temporary alternative personnel systems and establishes the rules governing such demonstration projects.

Subsection (a) provides that demonstration projects are not limited by the lack of specific authority in title 5 of the United States Code for a particular action and exempts the projects from title 5 provisions that are inconsistent with it. Matters that may be covered by demonstration projects include employee compensation, discipline, and reduction-in-force procedures.

Subsection (b) requires the presidents of the institutions to consult with their respective boards of regents and such other persons they consider appropriate to develop a plan for any demonstration projects. The plan must address the subjects specified in this subsection, including the project’s purposes, the number of employees covered, duration of the project, its anticipated costs, and the methodology and criteria for evaluating the project. The plan must also describe aspects of the plan for which there is no specific authority and cite existing laws, rules, or regulations that must be waived. In addition, the plan must be published in the Federal Register and submitted to a public hearing. The institution must also inform

Congress and affected employees of both the proposed and final plans.

Subsection (c) poses limitations on demonstration projects. The project may not waive laws, rules, or regulations on equal employment opportunity; Indian preference; veterans' preference; any provision of chapter 23 of title 5 or other provisions relating to merit system principles, or prohibited personnel practices; or any provision of subchapters II or III of chapter 73 of title 5. The demonstration project may not require the institutions to bargain over the classification of positions or employee compensation, and the payment of dues or fees of any kind to a labor organization cannot be made a condition of employment.

Subsection (d) provides that any demonstration projects under this Act must begin within 2 years of the date of enactment, and may last for only 5 years. The 5-year period may be extended to the extent necessary to validate the results of the project.

Subsection (e), permits the Secretary of the Interior or the president of the institution to terminate a demonstration project at any time if it imposes a substantial hardship, or is not in the best interests of, the institution and its educational goals.

Subsection (f) requires the Secretary of the Interior to evaluate the results of each demonstration project. The institutions must cooperate with the Secretary in conducting the evaluation and provide such information and reports as the Secretary requests.

Subsection (g) requires the Office of Personnel Management to provide information or technical assistance as the Secretary or the president of an institution may request in connection with a demonstration project.

Subsection (h) provides that demonstration projects may apply to all employees, applicants for employment, and positions, except as exempted in this subsection. Employees with 1 year of government service creditable under the Civil Service Retirement System or the Federal Employees Retirement System may elect to remain covered by such systems or any benefits established under subpart G of part III of title 5 (insurance and annuities) in lieu of any alternatives available under the demonstration project. Alternative benefits offered under a demonstration project in lieu of benefits established under subpart G do not automatically terminate with the termination of the project.

Under subsection (h), employees covered by a demonstration project will also retain any annual or sick leave accumulated before the project began. In addition, they will retain their rights to lump-sum payments of annual leave accumulated before the demonstration project and to receive retirement credit for accumulated sick leave upon separation. Employees under a demonstration project who transfer to another position with the Federal Government or the District of Columbia are entitled to have sick or annual leave earned under the project transferred to the new agency on an adjusted basis under 5 U.S.C. §6308.

Subsection (h) also provides that collective bargaining agreements in effect when the demonstration project begins will continue in effect until the earlier of: (1) 3 years after the date the project began, (2) the agreement's expiration date, or (3) a date established by the mutual consent of the parties.

Section 5. Delegation of procurement authority

This section directs the Secretary of the Interior to delegate procurement authority related to the administrative functions of Haskell and SIPI to the presidents of those institutions to the extent consistent with law and the availability of appropriations.

Section 6. Authorization of appropriations

This section authorizes appropriations for Haskell and SIPI in fiscal year 1999, and succeeding fiscal years. For those years, the legislation authorizes the amount appropriated in fiscal year 1998, as operations funding for the administration of those institutions plus such sums as are necessary for their operations under this Act.

Section 7. Regulations

The presidents of Haskell and SIPI, in consultation with their respective boards of regents, may prescribe regulations to implement this Act.

Section 8. Legislation to Make Changes Permanent

At least 6 months before a demonstration project is to expire, the institution conducting it is required to submit to Congress recommendations as to whether or not the project should be made permanent and appropriate legislation to implement such recommendations.

VI. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from Committee oversight activities are incorporated in the bill and this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

The budget analysis and projections required by section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 4, 1998.

Hon. DAN BURTON,
*Chairman Committee on Government Reform and Oversight,
House of Representatives, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4259, the Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998.

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

Sincerely,

June E. O'Neill, *Director.*

Enclosure.

H.R. 4259—Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998

Summary: H.R. 4259 would authorize appropriations to the Haskell Indian Nations University (HINU) and the Southwestern Indian Polytechnic Institute (SIPI), both owned and operated by the federal government, for 1999 and each fiscal year thereafter. In addition, the bill would authorize each institution to conduct a five-year demonstration project to test the feasibility and desirability of new personnel management practices. The projects would have to commence within two years of the enactment of H.R. 4259 and would terminate five years later. Appropriations would be authorized in an amount equal to the amount of funds provided in fiscal year 1998 plus such additional sums as may be necessary to conduct the demonstration projects. According to the Department of the Interior, the two universities received a total of \$12.7 million in 1998.

CBO estimates that implementing H.R. 4259 would result in discretionary spending of \$67 million over the 1999–2003 period, assuming appropriation of the necessary sums. Almost all of the estimated cost is attributable to reauthorizing appropriations to the universities. In addition, CBO estimates that the demonstration projects that would be authorized by H.R. 4259 would increase costs above the amounts provided to HINU and SIPI in fiscal year 1998. The extent of the increase would depend on how the universities use the bill's broad authority to alter their personnel practices. On the one hand, the universities could offer higher salaries to instructors, which would increase costs. On the other hand, the universities could use the authority to streamline certain record-keeping requirements or to assist them in reducing overall staffing levels, both of which would decrease costs. Subject to the availability of funds, CBO estimates that the demonstration projects would increase personnel costs at the two universities by less than \$500,000 a year over fiscal year 1999 through 2001 and by less than \$1 million in each of fiscal years 2002 and 2003.

Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 4259 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4259 is shown in the following table. For the purposes of this estimate, CBO assumes that the amount provided to the two universities in fiscal year 1998, increased slightly for the costs to carry out the demonstration projects, will be appropriated by the start of each fiscal year and that outlays will follow the historical spending pattern of the two universities. The costs of this legislation fall within budget function 450 (community and regional development).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
HINU/SIPI Spending Under Current Law:						
Budget authority ¹	13	0	0	0	0	0
Estimated outlays	13	1	0	0	0	0
Proposed Changes:						
Budget authority	0	13	13	13	14	14
Estimated outlays	0	12	13	13	14	14
HINU/SIPI Spending Under H.R. 4259:						
Estimated authorization level ¹	13	13	13	13	14	14
Estimated outlays	13	13	13	13	14	14

¹The 1998 level is the amount appropriated for that year.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 4259 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of states, local, or tribal governments.

Estimated prepared by: John R. Righter.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

IX. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1 and 18 of Article 1, Sec. 8 of the Constitution grant Congress the power to enact this law.

X. COMMITTEE RECOMMENDATION

On July 23, 1998, a quorum being present, the Committee ordered the bill favorably reported without amendments.

Committee on Government Reform and Oversight—105th Congress Rollcall

Date: July 23, 1998.

Amendment No. 1.

Description: Amendment in the nature of a substitute.

Offered by: Hon. Elijah E. Cummings (MD).

The Yeas and Nays were tied, so the amendment failed.

Final Passage of H.R. 4259.

Offered by: Hon. Vince Snowbarger (KS).

Adopted by the Yeas and Nays: 20–16.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104–1; SECTION 102(B)(3)

H.R. 4259 will not apply to employees of the legislative branch. The personnel flexibilities it authorizes address the peculiar needs of Haskell and SIPI as academic institutions.

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104–4; SECTION 423

H.R. 4259 does not impose any Federal mandates on state, local, and tribal governments, or the private sector, or preempt any state or local law.

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that H.R. 4259 does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App, Section 5(b).

MINORITY VIEWS

The minority members of the Committee opposed H.R. 4259 at the full committee markup because the bill would exempt Haskell and Southwestern Indian Universities from civil service laws covering leave and benefits; the Office of Personnel Management's (OPM) authority to develop, manage and oversee demonstration projects would be reduced to that of consultant; employee organizations would not have any input in the development of the demonstration projects; and the demonstration projects would be made permanent without the accountability provided by independent oversight and scrutiny called for under current law.

Congressman Elijah Cummings, Ranking Member, Subcommittee on Civil Service, offered an amendment to H.R. 4259 that would have allowed the institutions to participate in a demonstration project under current law which vests OPM with control and oversight over the process. Under the amendment, OPM would be required to enter into demonstration projects with the universities. The demonstration projects, however, would be subject to all of the provisions of current law found in chapter 47, title 5 of the United States Code, except the one that caps the number of demonstration projects at ten (10). The amendment was defeated by a tie (15 to 15).

No hearings on this issue were held by the Subcommittee on Civil Service and there is nothing in the record that supports the proponents' view that these universities need special authority to accomplish their objectives. Information provided by the National Federation of Federal Employees (NFFE), which represents federal workers at both universities, reveals that in May 1998 the National Haskell Board of Regents resolved that alternative administrative systems be developed, but that the "implementation of these alternative systems will not eliminate the right of federal employees to engage in collective bargaining." Haskell Indian University's Faculty Senate adopted the same resolution in June 1998. Despite this and numerous attempts by NFFE Local #45 to bring this to the attention of the bill's sponsor, section 4(a)(7) of the bill would grant sole authority to the University president to determine the "methods of involving employees, labor organizations, and employee organizations in personnel decisions." This would severely weaken the rights and protections currently available to the universities' employees and their representative organizations.

Haskell and Southwestern Indian Universities are the only two federally owned and operated institutions of higher education in the country. They are funded entirely with federal dollars and there is no compelling evidence why they should not be subject to the same uniform requirements for demonstration projects as other federal agencies.

HENRY A. WAXMAN.
ELIJAH E. CUMMINGS.
EDOLPHUS TOWNS.
ELEANOR H. NORTON.
DENNIS J. KUCINICH.
HAROLD E. FORD, Jr.

