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ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION  
ADVANCEMENT ACT OF 2003

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JUNE 18, 2003.—Ordered to be printed

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

**REPORT**

[to accompany S. 163]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 163) to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes, having considered the same reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

The U.S. Institute of Environmental Conflict Resolution is a Federal program established by Congress in 1998 to serve as an alternative to litigation for environmental disputes. The Institute is part of the Morris K. Udall Foundation, established in 1992 as an independent agency of the executive branch overseen by a board of trustees appointed by the President. Although the Foundation was originally charged with the task of establishing a program for environmental dispute resolution, it lacked the funding and explicit direction that would enable it to run a program that could provide conflict resolution services. Thus, the Foundation has sponsored seminars and workshops on conflict resolution, but it had not been unable to provide a program for environmental conflict resolution.

The role of the Institute is to provide direct mediation and facilitation assistance on selected cases nationwide. It serves a critical role in assessing the nature of a dispute, convenes affected parties

and assures constructive deliberations. The Institute also assists Federal and State agencies in intra-agency and interagency disputes as well as offering strategic planning, program development, partnering, and program evaluation. In the past 5 years, its caseload has grown exponentially to cover requested assistance in more than 100 environmental conflicts across 30 States.

The Institute assisted the Everglades Task Force in defining its role in resolving disputes over the South Everglades Restoration Project, worked with the U.S. Forest Service, ranchers and environmental advocates in the southwest on grazing and environmental compliance issues, and is developing a system to resolve disputes among Federal and State agencies over transportation projects within the context of the Federal Highway Administration's environmental streamlining mandate.

#### OBJECTIVES OF THE LEGISLATION

The funding authorization for the Institute expired in fiscal year 2002. S. 163 reauthorizes the Institute and increases its operating funding authority from \$1.25 million to \$4.0 million per year from fiscal years 2004–2008. These costs are intended to continue general services, including assistance to Federal and State agencies and tribal governments, which may not have adequate funds to pay for mediation services. \$1.0 million of the proposed \$4.0 million is dedicated to a participation fund to support participation of non-Federal entities to Federal environmental disputes.

The Environmental Policy and Conflict Resolution Advancement Act of 2003 amends the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to authorize appropriations for fiscal years 2004–2008 for the Environmental Dispute Resolution Fund. It requires a specified amount to be used for grants or other arrangements to pay for services provided in a neutral manner relating to, and to support the participation of non-Federal entities in, environmental conflict resolution proceedings involving Federal agencies.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title*

This Act may be cited as the “Environmental Policy and Conflict Resolution Advancement Act of 2003”.

##### *Sec. 2. Environmental Dispute Resolution Fund*

#### SUMMARY

This section specifies the amount of and the neutral manner in which the assistance from this fund is to be dispersed.

#### DESCRIPTION

Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 is amended by authorizing \$4.0 million for the Environmental Dispute Resolution Fund for each of fiscal years 2004–2008. Authorization for \$3.0 million will be used for operations costs and

\$1.0 million will be used for grant or other arrangements to pay the cost of services.

#### LEGISLATIVE HISTORY

##### *102d Congress Legislative Activities*

In the 102d Congress, both Houses of Congress agreed to S. 1176, a bill to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, but the bill was neither signed nor returned to the Congress by President George H.W. Bush. He invoked the pocket veto privilege on the measure, notwithstanding the intrasession adjournment of the two Houses from Nov. 27, 1991, until 11:55 a.m., January 3, 1992. As a result, the President and Congress disagreed on whether this bill ever became law. According to the report issued by the congressional Research Service on this matter:

President Bush provoked a pocket veto dispute when he issued a memorandum of disapproval on December 20, 1991, of this bill to create a Morris K. Udall scholarship fund (S. 1176). The veto occurred after the Senate recessed from November 27, 1991 to January 3, 1992. Bush stated in his veto message: "Because the Congress is adjourned, this means that this bill will not become a law." [Public Papers of the Presidents, 1991, II, at 1651.]

Instead of treating the pocket veto as a regular veto and taking an override vote, the Senate tried a different strategy. On February 4, 1992, it passed similar legislation (S. 2184) that included a section repealing S. 1176, implying that the Bush pocket veto was invalid and that S. 1176 had become law. [138 Cong. Rec. 1389-93 (1992).]

After the House passed S. 2184 on March 3 [Id. at 4078-82.], President Bush signed the bill into law. Section 2 of the bill contained this language: "The Morris K. Udall Scholarship and Excellence in National Environmental Policy Act, S. 1176, One Hundred Second Congress, is hereby repealed." [106 Stat. 78, Sec. 2 (1992).] However, in signing the bill, Bush remarked: "S. 2184 purports to 'repeal' S. 1176, passed in the last session of the Congress and presented to me in December. Because the bill came to me during an adjournment of the Congress and I withheld my signature, S. 1176 never became law. Therefore, the section of S. 2184 purporting to repeal S. 1176 can have no effect." [Public Papers of the Presidents, 1992-93, I, at 473.]

The bill that did become law, S. 2184, was introduced in the Senate on February 4, 1992, read twice, considered, read the third time, and passed without amendment by voice vote. On February 5, 1992, S. 2184 was received in the House and held at the desk. On March 3, 1992, S. 2184 was considered by the House under suspension of the rules and was passed by voice vote. On March 19, 1992, S. 2184 was signed by President, and became Public Law 102-259.

The enactment of Public Law 102-259 [106 Stat. 84], the Morris K. Udall Scholarship and Excellence in National Environmental Policy Act, accomplished the following:

- Repealed the Morris K. Udall Scholarship and Excellence in National Environmental Policy Act (S. 1176, 102d Congress).
- Established the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (the Foundation), as an independent entity of the executive branch, to be located in Tucson, Arizona.
- Set forth provisions for a Board of Trustees and an Executive Director of the Foundation.
- Provided that the Foundation, among its other specified purposes, is to establish, and assist in developing and implementing, a Program for Environmental Policy Research and Environmental Conflict Resolution at the Udall Center for Studies in Public Policy (the Center) at the University of Arizona.
- Authorized the Foundation, in consultation with the Center, to identify and conduct appropriate programs, activities, and services to carry out its specified purposes, including: (1) increasing awareness of the importance of natural resources, public lands, and environment; (2) identifying critical environmental issues; (3) developing resources to train professionals in environmental and related fields; (4) providing educational outreach regarding environmental policy; and (5) developing resources to properly train Native American and Alaska Native professionals in health care and public policy.
- Authorized the Foundation to conduct a national competition and to award undergraduate scholarships, graduate and faculty fellowships, internships in governmental agencies or environmental organizations and grants for individuals (Morris K. Udall Scholars) to study: (1) in fields related to the environment; and (2) if they are Native American or Alaska Native, in health care and tribal public policy.
- Directed the Foundation to award grants to the Center for: (1) annual expert panel discussions; (2) research on environmental policy and on Native American and Alaska Native health care and tribal public policy issues; and (3) sharing practical experiences of visiting policymakers. Directs the Foundation to provide assistance from the Fund established under this Act to the Center to maintain a repository, and assure public availability, for Morris K. Udall's papers and other appropriate public papers. Directs the Foundation to determine program priorities, but requires that certain amounts be used for specified activities.
- Established the Morris K. Udall Scholarships and Excellence in National Environmental Policy Trust Fund, in the Treasury, to be administered by the Foundation.
- Provided for investment of Fund assets, and for Fund expenditures and audits.
  - Set forth administrative provisions for the Foundation.
  - Authorized appropriations.

#### *105th Congress Legislative Activities*

On November 13, 1997, H.R. 3042 was introduced and referred to the Committee on Education and the Workforce, and to the Committee on Resources, discharged from the committees, considered by the House and passed by unanimous consent. On January 28, 1998, H.R. 3042 was received in the Senate, read twice, and placed

on Senate Legislative Calendar under General Orders, Calendar No. 302. On January 29, 1998, H.R. 3042 passed the Senate without amendment by unanimous consent. On February 11, 1998, H.R. 3042 was signed by the President and became Public Law 105–156.

Public Law 105–156 [112 Stat. 9, 12] H.R. 3042, the Environmental Policy and Conflict Resolution Act of 1997 did the following:

- Amended the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to include on the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation the chairperson of the President’s Council on Environmental Quality.

- Revised the purposes and authority of the Foundation to include establishment of the United States Institute for Environmental Conflict Resolution to assist the Government in implementing environmental assessment provisions of the National Environmental Policy Act of 1969.

- Established the Environmental Dispute Resolution Fund in the Treasury for the establishment and operation of the Institute.

- Established procedures for use by a Federal agency of the Foundation and the Institute to provide assessment, mediation, or related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.

- Authorized appropriations to the Fund for capitalization and operation costs.

#### *106th Congress Legislative Activities*

On October 24, 2000, H.R. 5528 was introduced and referred to the House Committee on Resources. On October 25, 2000, a committee hearing was held. On October 26, 2000, H.R. 5528 was considered by the House under suspension of the rules and passed by voice vote, with an amendment to the title. On October 27, 2000, H.R. 5528 was received in the Senate, read twice and placed on the Calendar. On December 11, 2000, H.R. 5528 passed Senate without amendment by unanimous consent. On December 27, 2000, H.R. 5528 was signed by President and became Public Law 106–568.

Public Law 106–568, title VIII, Sec. 817(c), [114 Stat. 2918], H.R. 5528, the Omnibus Indian Advancement Act, did the following:

- Inserted in subsection (b): “, by conducting management and leadership training of Native Americans, Alaska Natives, and others involved in tribal leadership, providing assistance and resources for policy analysis, and carrying out other appropriate activities.”.

- Added subsection (c): “(c) Training of Professionals in Health Care and Public Policy. There is authorized to be appropriated to carry out section 6(7) \$12,300,000 for the 5-fiscal year period beginning with the fiscal year in which this subsection is enacted.”.

#### *107th Congress Legislative Activities*

On March 21, 2002, S. 2064 was introduced and referred to the Committee on Environment and Public Works. On June 21, 2002, S. 2064 was reported by the Committee on Environment and Public Works, accompanied by written report S. Rept. 107–168, and was placed on Senate Legislative Calendar under General Orders, Cal-

endar No. 432. On October 4, 2002, S. 2064 was passed Senate without amendment by unanimous consent. On October 7, 2002, S. 2064 was referred to the Committee on Education and the Workforce and to the Committee on Resources. On November 25, 2002, S. 2064 was referred to the Subcommittee on Select Education. The bill did not emerge from the House committee before the final adjournment of the 107th Congress.

*108th Congress Legislative Activities*

On January 15, 2003, S. 163, a bill similar to the measure passed by the Senate in the 107th Congress, was introduced and referred to the Committee on Environment and Public Works. On April 9, 2003, S. 163 was reported favorably to the Senate and placed on the Senate Legislative Calendar under General Orders, Calendar No. 64.

HEARINGS

No hearings were held in the 108th Congress.

ROLLCALL VOTES

On Wednesday, April 9, 2003, at 9:30 a.m., in room 406 of the Dirksen Senate Office Building, the full committee on Environment and Public Works held a business meeting to markup S. 163. The committee agreed to the bill by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

The bill does not 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. 163 would not impose any 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, April 21, 2003.

Honorable JAMES M. INHOFE,  
*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. 163, the Environmental Policy and Conflict Resolution Advancement Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

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*S. 163, Environmental Policy and Conflict Resolution Advancement Act of 2003, as reported by the Senate Committee on Environment and Public Works on April 9, 2003.*

*Summary*

S. 163 would reauthorize expenditures of the Environmental Dispute Resolution Fund, which pays for the operations of the U.S. Institute for Environmental Dispute Resolution. Current law authorizes the appropriation of about \$1 million a year through 2002 to that fund. S. 163 would authorize the appropriation of \$4 million a year from fiscal year 2004 through 2008 to that fund. The funding would be for operating costs and a new grant program to help non-Federal entities, such as State and local and tribal governments, use the services of the Institute.

Assuming appropriation of the amounts authorized in S. 163, CBO estimates that implementing the bill would cost \$18 million over the 2004–2008 period. S. 163 would not affect direct spending or revenues.

S. 163 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

*Estimated Cost to the Federal Government*

The estimated budgetary impact of S. 163 is shown in the following table. The costs of this legislation fall within budget function 300 (environment and natural resources

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION:						
Spending Under Current Law:						
Budget Authority <sup>1</sup> .....	1	0	0	0	0	0
Estimated Outlays .....	1	0	0	0	0	0
Proposed Changes:						
Authorization Level .....	0	4	4	4	4	4
Estimated Outlays .....	0	2	4	4	4	4
Spending Under S. 163:						
Authorization Level <sup>1</sup> .....	1	4	4	4	4	4
Estimated Outlays .....	1	2	4	4	4	4

<sup>1</sup>The 2003 level is the amount appropriated for that year to the Environmental Dispute Resolution Fund.

For this estimate, CBO assumes that the amounts authorized by the bill would be appropriated for each fiscal year. Outlay estimates are based on information from the U.S. Institute for Environmental Dispute Resolution, as well as historical spending patterns for this program.

#### *Intergovernmental and Private-Sector Impact*

S. 163 contains no intergovernmental or private-sector mandates as defined in UMRA would impose no costs on State, local, or tribal governments.

*Estimate Prepared By:* Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Greg Waring; Impact on the Private Sector: Lauren Marks.

*Estimate Approved By:* Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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:

#### 20 U.S. CODE, SECTION 5609

#### TITLE 20—EDUCATION

#### CHAPTER 66—MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

#### **Sec. 5609. Authorization of appropriations**

##### (a) TRUST FUND

There is authorized to be appropriated to the Trust Fund \$40,000,000 to carry out the provisions of this chapter.

**[(b) ENVIRONMENTAL DISPUTE RESOLUTION FUND—**There are authorized to be appropriated to the Environmental Dispute Resolution Fund established under section 5607a of this title—

**[(1) \$4,250,000 for fiscal year 1998, of which—**

**[(A) \$3,000,000 shall be for capitalization; and**

**[(B) \$1,250,000 shall be for operation costs; and**

[(2) \$1,250,000 for each of the fiscal years 1999 through 2002 for operation costs.]

*(b) ENVIRONMENTAL DISPUTE RESOLUTION FUND*

*There is authorized to be appropriated to the Environmental Dispute Resolution Fund established by section 10 \$4,000,000 for each of fiscal years 2004 through 2008, of which—*

*(1) \$3,000,000 shall be used to pay operations costs (including not more than \$1,000 for official reception and representation expenses); and*

*(2) \$1,000,000 shall be used for grants or other appropriate arrangements to pay the costs of services provided in a neutral manner relating to, and to support the participation of non-Federal entities (such as State and local governments, tribal governments, nongovernmental organizations, and individuals) in, environmental conflict resolution proceedings involving Federal agencies.*