

NATIVE AMERICAN BUSINESS INCUBATORS PROGRAM
ACT

NOVEMBER 20, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany S. 607]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 607) to establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 607 is to establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities.

BACKGROUND AND NEED FOR LEGISLATION

For decades, Native American¹ communities have struggled with a wide array of difficulties relating to economic development on their land, including poor access to capital, remote and rural locations, and degradation of the local infrastructure. Only around half of all Native Americans (16 or older) residing on or near tribal communities have jobs, and a quarter of Native families earn an income that is below the federal poverty line.²

Today, approximately 56 million acres of land are held in trust by the United States (through the Department of the Interior) for

¹ In this report, the terms “Native American,” “Native,” and “Indian” are used interchangeably.

² 2013 American Indian Population and Labor Force Report, Department of the Interior.

the benefit of individual Indians and Indian tribes.³ Many of these lands are in remote areas, and none may be leased for business, agriculture, or mineral uses without the approval of the Secretary of the Interior.⁴ Trust land is generally a prerequisite for a tribe to conduct gambling under the Indian Gaming Regulatory Act.⁵

The economies of Indian reservations in remote areas, where casinos may be a break-even proposition at best, suffer from great poverty. Many reservations and other Indian communities lack grocery stores, retail outlets, or banks. Residents may have to travel great distances (sometimes up to a two-hour drive) to buy groceries or go to a bank, while spending their disposable income on purchases off the reservation. Tribes have sought to keep dollars on their reservations to create sustainable economies, but they face a variety of challenges:

- *Federal Approval.* As stated above, tribes and individual Indians may not lease their trust land without the permission of the Secretary of the Interior (this problem is not directly addressed by S. 607).

- *Legal Systems and Infrastructure.* To attract businesses to reservations, tribal governments need to provide business-friendly laws and independent court systems. Companies and investors, Indian and non-Indian alike, rely on governments to ensure fair competition, maintain law and order, and create laws and judicial systems that help enforce contracts and property rights. Not all tribal governments have enacted the kinds of business and commercial codes that businesses and banks need before they will locate and operate on reservations. Additionally, many components of tribal infrastructure need significant repair or replacement.

- *Access to Capital.* In many Native American communities, there is a lack of equity resources, such as home equity or intergenerational family assets. Likewise, trust land cannot be used as collateral, so access to capital is complicated further in Indian Country. Even if access to private capital is available, it may come at a higher cost.

- *Remote Locations.* The remoteness of many Indian communities diminishes the possibility of building commercial markets for goods and services or developing many types of industrial or manufacturing economies.

- *Sovereign Immunity.* Under a legal doctrine developed by federal courts, Indian tribes enjoy sovereign immunity against States and private citizens. Such sovereign immunity exists on and off an Indian reservation. A tribe may not be sued unless its sovereign immunity is waived by the tribe or by Congress, which has not debated this issue in many years. Tribes consider sovereign immunity a valid exercise of self-governance which promotes economic development. Developers or investors unfamiliar with a tribe's use of sovereign immunity may be reluctant to engage in business ventures with it.

In recent years, Congress has enacted laws to grant tribes stronger, more comprehensive control over businesses, agricultural, and residential leasing of tribal lands. One example is the Helping

³ <https://www.bia.gov/frequently-asked-questions>.

⁴ 25 U.S.C. 177; 25 U.S.C. 415.

⁵ 25 U.S.C. 2701 et seq.

Expedite and Advance Responsible Tribal Home Ownership Act of 2012, or the HEARTH Act.⁶ Congress has also enacted multiple laws to assist these communities in obtaining access to capital in the forms of loan guarantees, procurement programs, and community development financial institutions (CDFIs). One of these laws, the Native American Business Development, Trade Promotion, and Tourism Act of 2000,⁷ aids tribes with business development and helps ensure that tribal businesses follow all legal and regulatory requirements, among other things.

While Congress has attempted to alleviate challenges experienced by tribal businesses, various challenges remain. As mentioned previously, many Indian reservations and communities are in predominantly rural, remote locations, and enticing entrepreneurs to fund and support businesses in these areas can be difficult.

S. 607 is premised on the idea that programs supporting business incubators are uniquely able to support tribal businesses in ways that broad legislation cannot, as incubators can be tailored to fit the needs of the various regions where tribal businesses exist. As defined in the bill, a business incubator is an organization that provides physical workspace and facilities resources to startups and established businesses and is designed to accelerate the growth and success of businesses through a variety of business support resources and services. By offering services that range from workplace enhancement, comprehensive skills training, and networking assistance, business incubators have been a reliable and consistent solution to the many problems that continue to plague Indian Country.

There are several native business incubator networks serving Indian country throughout the United States; however S. 607 would establish a new program within the Department of the Interior. The bill would also require the Department of the Interior to coordinate its business incubator activities with other federal agencies to promote Native American business development.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

- Provides that this Act may be cited as the “Native American Business Incubators Program Act.

Sec. 2. Findings

- Provides Congressional findings.

Sec. 3. Definitions

- Defines terms used in the Act.

Sec. 4. Establishment of program

- Requires the Department of the Interior to establish a grant program in the Office of Indian Energy and Economic Development for establishing and operating business incubators that serve Native American communities.

⁶Public Law 112–151, 25 U.S.C. 415.

⁷25 U.S.C. 4301 et seq.

- A business incubator is an organization that: (1) provides physical workspace and facilities resources to startups and established businesses; and (2) is designed to accelerate the growth and success of businesses through a variety of business support resources and services. Grant applicants may be institutions of higher education, private nonprofits, Native American tribes, or tribal nonprofits.

Sec. 5. Regulations

- Directs the Secretary of the Interior to issue new regulations to implement the program 180 days after the bill is signed into law.

Sec. 6. Schools to business incubator pipeline

- The Secretary of the Interior must facilitate the establishment of relationships between grant recipients and educational institutions serving Native American communities.

Sec. 7. Agency partnerships

- Directs the Secretary of the Interior to coordinate with the Secretary of Agriculture, Secretary of Commerce, Secretary of the Treasury and the Administrator of the Small Business Administration to ensure that business incubators receiving grant funds under the program have the information and materials they need to apply for each agenda's business and entrepreneurial development programs.

Sec. 8. Authorizations of appropriations

- Authorizes the appropriation of \$5 million for each of fiscal years 2019 through 2023 to carry out the program.

COMMITTEE ACTION

S. 607 was introduced on March 13, 2017, by Senator Tom Udall (D-NM). The Senate passed the bill by voice vote on March 22, 2018. In the House of Representatives, the bill was referred to the Committee on Natural Resources and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. The Subcommittee held a hearing on the bill on July 24, 2018. On September 27, 2018, the Committee on Natural Resources met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of

the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 607, the Native American Business Incubators Program Act.

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

Sincerely,

KEITH HALL,
Director,

Enclosure.

S. 607—Native American Business Incubators Program Act

Summary: S. 607 would authorize the Bureau of Indian Affairs (BIA) to award grants to eligible public and private organizations to provide physical workspaces and other resources to Native American entrepreneurs and businesses. The legislation would authorize the appropriation of \$5 million annually over the 2019–2023 period.

CBO estimates that implementing S. 607 would cost \$18 million over the 2019–2023 period, assuming appropriation of the authorized amounts. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 607 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 607 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 607 is shown in the following table. The costs of the legislation fall within budget function 450 (community and regional development).

| | By fiscal year, in millions of dollars— | | | | | 2019– 2023 |
|--|---|------|------|------|------|---------------|
| | 2019 | 2020 | 2021 | 2022 | 2023 | |
| INCREASES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Authorization Level | 5 | 5 | 5 | 5 | 5 | 25 |
| Estimated Outlays | 1 | 3 | 4 | 5 | 5 | 18 |

Basis of estimate: For this estimate, CBO assumes that S. 607 will be enacted near the end of 2018 and that the authorized amounts will be appropriated for each fiscal year beginning in

2019. Estimated outlays are based on historical spending patterns for similar programs.

S. 607 would authorize the appropriation of \$5 million annually over the 2019–2023 period to fund a grant program to aid the development of Native American businesses. The program would be managed by BIA and would include providing physical workplaces, business skills training, and access to networks of potential investors, among other services. All grants would be awarded for three-year periods and could be renewed for additional three-year terms. CBO estimates that implementing the program would cost \$18 million over the 2019–2023 period and \$7 million after 2023.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 607 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Intergovernmental and private-sector impact: S. 607 contains no intergovernmental or private-sector mandates as defined in UMRA. Tribal governments would benefit from grants established in the bill to support the growth of Native American businesses and Native American entrepreneurs. Any costs to tribal governments would result from complying with conditions of assistance.

Previous CBO estimate: On April 21, 2017, CBO transmitted an estimate for S. 607 as ordered reported by the Senate Committee on Indian Affairs on March 29, 2017. The two versions of S. 607 are similar and the differences in CBO's estimate of their cost reflect differences in CBO's assumed date of enactment of the legislation.

Estimate prepared by: Federal costs: Robert Reese; Mandates: Rachel Austin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; Susan Willie, Chief, Public and Private Mandates; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. Section 5 of this bill directs the Secretary of the Interior to issue regulations to implement the program authorized by this bill.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

