

TO DEEM AN URBAN INDIAN ORGANIZATION AND EMPLOYEES THEREOF
TO BE A PART OF THE PUBLIC HEALTH SERVICE FOR THE PURPOSES OF
CERTAIN CLAIMS FOR PERSONAL INJURY, AND FOR OTHER PURPOSES

DECEMBER 15, 2020.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6535]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6535) to deem an urban Indian organization and employees thereof to be a part of the Public Health Service for the purposes of certain claims for personal injury, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 6535 is to deem an urban Indian organization and employees thereof to be a part of the Public Health Service for the purposes of certain claims for personal injury.

BACKGROUND AND NEED FOR LEGISLATION

The Indian Health System, commonly referred to as the I/T/U system, is made up of the Indian Health Service (IHS), tribal health programs (THPs), and urban Indian organizations (UIOs). UIOs play a pivotal role in the system and provide culturally competent care for the over seventy percent of American Indians and Alaska Natives who live in urban centers.

The Federal Tort Claims Act¹ (FTCA) is the federal law that allows parties claiming to have been injured by negligent actions of employees of the United States to file claims against the federal government. The FTCA also provides authority for the federal government to defend against such claims. In 1988 and again in 1990, Congress extended the Federal Tort Claims Act to negligent acts of tribal contractors carrying out contracts, grants, or cooperative agreements pursuant to the Indian Self-Determination and Education Assistance Act.²

Currently, both IHS and THPs receive FTCA malpractice coverage for their employees, but UIOs do not. The ability of Urban Indian Organizations to provide cost-effective health services has been jeopardized by the lack of FTCA coverage commonly afforded to other federally funded Indian health programs. The skyrocketing cost of malpractice insurance in recent years has compromised the scope of services that UIOs can provide pursuant to contracts or grants that they receive from IHS.

UIOs must spend millions of dollars in scarce resources on insurance coverage when those resources could be better utilized to expand services available to urban Indian patients. H.R. 6535 creates parity within the I/T/U system by extending FTCA coverage to urban Indian organizations, who currently are forced to divert resources away from health care in order to foot exorbitant liability costs themselves. FTCA coverage would also free up millions of dollars for UIOs to provide necessary health care services in response to COVID-19, as UIOs are uniquely positioned to deliver health care services in COVID-19 hot spots.

The Administration supports such a change and included language to that effect in its Department of Health and Human Services FY 2021 IHS Congressional Budget Justification.³

COMMITTEE ACTION

H.R. 6535 was introduced on April 17, 2020, by Representative Ruben Gallego (D-AZ). The bill was referred to the Committee on Natural Resources, and in addition to the Committee on Energy and Commerce and the Committee on the Judiciary. Within the Natural Resources Committee, the bill was referred to the Subcommittee for Indigenous Peoples of the United States. On July 22, 2020, the Subcommittee held a hearing on the bill. On July 29, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 6535: hearing by the Subcommittee for Indigenous Peoples of the United States held on July 22, 2020.

¹ August 2, 1946, ch. 646, Title IV, 60 Stat. 812, 28 U.S.C. Part VI, Chapter 171 and 28 U.S.C. § 1346.

² Pub. L. 93-638, 25 U.S.C. § 450f (d) and 25 U.S.C. 458§ aaa-15.

³ https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY_2021_Final_CJ-IHS.pdf.

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, September 2, 2020.

Hon. RAUL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6535, a bill to deem an urban Indian organization and employees thereof to be a part of the public health service for the purposes of certain claims for personal injury, and for other purposes.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 6535, a bill to deem an urban Indian organization and employees thereof to be a part of the Public Health Service for the purposes of certain claims for personal injury, and for other purposes			
As ordered reported by the House Committee on Natural Resources on July 29, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	6	22
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	6	22
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 6535 would include Urban Indian Health Programs (UIHPs) and their employees in the pool of individuals and entities that receive liability protection under the Federal Tort Claims Act (FTCA). Under the FTCA, the federal government pays for court judgments and compromise settlements of lawsuits out of the Judgement Fund. The Judgement Fund is a permanent, indefinite appropriation that is available to pay monetary awards against the United States that are judicially or administratively ordered. Under current law, UIHPs are health care organizations that are grantees of the Indian Health Service (IHS) but are not considered federal entities and therefore their employees are not covered under the FTCA.

For this estimate, CBO used information from the Department of Treasury's Bureau of the Fiscal Service about the number and level of payments from the Judgement Fund that were used to settle claims and litigation on behalf of IHS employees. While UIHPs are not part of IHS, they provide similar services, and CBO expects they would experience a similar rate of lawsuits and settlements.

According to the Judgement Fund data, over the last five years an average of about \$19.5 million has been paid out for medical malpractice claims against IHS employees, or about \$2,700 per year per IHS clinical employee. UIHPs employ about 1,150 clinical workers and CBO estimates that payments from the Judgement Fund would total about \$3 million per year once fully implemented. CBO expects that it would take some time for patients to initiate legal action against UIHPs and for the legal system to finalize judgements and settlements against the UIHPs. Therefore, CBO estimates that the outlays from the Judgement Fund would gradually increase until reaching a stable level by 2025. In total, CBO estimates that H.R. 6535 would increase direct spending from the Judgement Fund by \$22 million over the 2020–2030 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 1. The costs of the legislation fall within budget function 800 (general government).

TABLE 1.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 6535, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON JULY 29, 2020

	By fiscal year, millions of dollars—													2020– 2025	2020– 2030
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030				
	Increases in Direct Spending														
Pay-As-You-Go Effect	0	0	0	1	2	3	3	3	3	3	3	3	6	22	

Components may not sum to totals because of rounding.

The CBO staff contact for this estimate is Robert Stewart. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to deem an urban Indian organization and employees thereof to be a part of the Public Health Service for the purposes of certain claims for personal injury.

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.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

INDIAN HEALTH CARE IMPROVEMENT ACT

* * * * *

TITLE V—HEALTH SERVICES FOR URBAN INDIANS

* * * * *

SEC. 519. DEEMING AN URBAN INDIAN ORGANIZATION AND EMPLOYEES THEREOF TO BE A PART OF THE PUBLIC HEALTH SERVICE FOR THE PURPOSES OF CERTAIN CLAIMS FOR PERSONAL INJURY.

Section 102(d) of the Indian Self-Determination and Education Assistance Act shall apply—

(1) to an Urban Indian organization to the same extent and in the same manner as such section applies to an Indian tribe, a tribal organization, and an Indian contractor; and

(2) to the employees of an Urban Indian organization to the same extent and in the same manner as such section applies to employees of an Indian tribe, a tribal organization, or an Indian contractor.

* * * * *

DISSENTING VIEWS

I oppose H.R. 6535 in its current form due to new information provided to the Committee by the Indian Health Service after the July 29, 2020, markup of the bill. One week prior to the markup, the Indian Health Service testified that the Department had some concerns with the bill and would like to provide technical assistance. Additional questions for the record were submitted to the Indian Health Service after the hearing but answers have not been received.

However, the Committee has received some unofficial information regarding concerns and accompanying technical assistance from the Indian Health Service. The concerns with the bill as written include:

- Failure to cover urban Indian organizations' board of directors and officers. As defined by the Indian Health Care Improvement Act (IHCA), one of the unique elements of urban Indian organizations (UIOs) is that they are non-profit organizations governed by urban-Indian controlled boards of directors under 25 U.S.C. 1603(29). The Indian Self-Determination and Education Assistance Act (ISDEAA) provision (25 U.S.C. 5321(d)) that would apply under H.R. 6535 references "employees". Board members and officers generally are not included in the definition of "employee".
- Uncertainty about the date of applicability. That same ISDEAA provision provided prospective Federal Tort Claims Act (FTCA) coverage, i.e., it applied only to claims filed on or after the specified dates, which correspond to the dates of enactment of the related FTCA coverage.
- Lack of clarity on the authority being extended. UIOs receive contracts/grants under the IHCA and do not operate under the ISDEAA. Therefore, applying an ISDEAA provision to UIOs "to the same extent and in the same manner" as it applies to tribes and tribal organizations operating under the ISDEAA could create uncertainty about the scope of the authority being extended to UIOs.

There is general agreement and support that FTCA protections should be extended to urban Indian organizations, but the bill language should mirror the technical assistance provided by the Indian Health Service. At the July 29, 2020, markup of H.R. 6535, the Chairman committed to working with me to resolve any outstanding concerns with several pieces of legislation. Since that

time, there has been little response to Republican requests to engage in meaningful dialogue to resolve unintended consequences with H.R. 6535.

ROB BISHOP.

