

REPEALING EXISTING SUBSTANDARD PROVISIONS
ENCOURAGING CONCILIATION WITH TRIBES ACT

DECEMBER 7, 2022.—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

[To accompany S. 789]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 789) to repeal certain obsolete laws relating to Indians, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 789 is to repeal certain obsolete laws relating to Indians.

BACKGROUND AND NEED FOR LEGISLATION¹

Federal Indian law has existed since the foundation of the United States, and it serves to govern the relationship between the federal government and American Indians and Alaska Natives. Policies that reflect the principles of federal Indian law have undergone many transformations throughout American history, as it was once the policy of the federal government to commit violence and forced displacement against tribal communities. Although the federal Indian laws of today better uphold the principles of tribal self-determination and sovereignty, many enacted laws that reflect the prior federal policy eras of genocide, removal, assimilation, or termination still remain in federal law.

¹Also see generally S. REP. NO. 117-19 (2021), <https://www.congress.gov/117/crpt/srpt19/CRPT-117srpt19.pdf>.

S. 789 will address this concern by repealing eleven outdated statutes, many of which upheld harmful policies in the colonial and Indian boarding school eras.

COMMITTEE ACTION

S. 789 was introduced on March 17, 2021, by Senator Mike Rounds (R–SD). A House companion bill, H.R. 3158, was introduced on May 12, 2021, by Representative Tom O’Halloran (D–AZ).

S. 789 was referred to the Senate Committee on Indian Affairs. On March 24, 2021, the Committee considered the bill and ordered it reported favorably without amendment. The Committee reported the bill on April 28, 2021. On May 27, 2021, the Senate passed the bill without amendment by voice vote.

The House received the bill, it was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On April 27, 2022, the Subcommittee held a hearing on the bill. On June 15, 2022, 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 clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee for Indigenous Peoples of the United States held on April 27, 2022.

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, as well as clause 3(d) of rule XIII of the Rules of the House of Representatives, 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 26, 2022.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 789, the RESPECT Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

| S. 789, RESPECT Act | | | |
|--|------|-------------------------------------|-----------|
| As ordered reported by the House Committee on Natural Resources on June 15, 2022 | | | |
| By Fiscal Year, Millions of Dollars | 2022 | 2022-2027 | 2022-2032 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 0 | 0 | 0 |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |

S. 789 would repeal several laws relating to Native Americans that were enacted in the late 19th century and early 20th century and that, according to the Department of the Interior, are no longer enforced. On that basis, CBO estimates that enacting S. 789 would have no effect on the federal budget.

On April 7, 2021, CBO transmitted a cost estimate for S. 789, the RESPECT Act, as ordered reported by the Senate Committee on Indian Affairs on March 24, 2021. The two bills are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, 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 repeal certain obsolete laws relating to Indians.

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

According to CBO, this bill contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CHAPTER TWO OF THE REVISED STATUTES OF THE UNITED STATES

CHAPTER TWO—PERFORMANCE OF ENGAGEMENTS BETWEEN THE UNITED STATE AND INDIANS

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【SEC. 2080. Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe if in his opinion the same can be done consistently with good faith and legal and national obligations.】

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【SEC. 2087. No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and head-men of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.】

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【SEC. 2100. No moneys or annuities stipulated by any treaty with an Indian tribe for which appropriations are made shall be expended for, or paid, or delivered to any tribe which, since the next preceding payment under such treaty, has engaged in hostilities against the United States, or against its citizens peacefully or lawfully sojourning or traveling within its jurisdiction at the time of such hostilities; nor in such case shall such stipulated payments or deliveries be resumed until new appropriations shall have been made therefor by Congress.】

【SEC. 2101. No delivery of goods or merchandise shall be made to the chiefs of any tribe, by authority of any treaty, if such chiefs have violated the stipulations contained in such treaty upon their part.】

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ACT OF MARCH 3, 1875 (CHAPTER 132)

AN ACT making appropriations for the current end contingent expenses of the Indian Department, and for fulfilling treaty-stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes.

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CHEYENNES AND ARAPAHOES.

For eighth of thirty installments provided to be expended under tenth article of treaty of October twenty-eighth, eighteen hundred and sixty seven, twenty thousand dollars.

For purchase of clothing, as per same article, fourteen thousand five hundred dollars.

For pay of physician and teacher, as per thirteenth article of same treaty, two thousand five hundred dollars.

For pay of carpenter, farmer, blacksmith, miller, and engineer, as per same article, five thousand two hundred dollars.

For transportation of goods for the Cheyennes and Arapahoes, five thousand dollars: Provided, That the Secretary of the Interior is hereby directed to reserve from that portion of said annuities due, or to become due, to said Cheyenne Indians, the sum of two thousand five hundred dollars for Adelaide German, and two thousand five hundred dollars for Julia German, two white children, aged five and seven years, respectively, who were captured in Kansas by said Cheyenne Indians while en route from Georgia to Colorado, and cause the same to be placed to the credit of the said Adelaide and Julia German, on the books of the Treasury of the United States, to bear interest at the rate of five per centum per annum, and use from time to time the income from the same in such manner as he may deem expedient for their maintenance, education, and support, until they attain the age of twenty one years, when the principal and all unexpended interest shall be paid them; that if either said Adelaide German or Julia German should die without issue, the whole sum due the decedent shall revert to the Survivor; and should both die without issue, the whole sum shall revert to the United States; but if either said Adelaide German or Julia German, or both, have lawful issue, then, at the death of either parent, the amount due to her in her own right, or which she may have inherited, shall become the inheritance of her own issue【; that the Secretary of the Interior be authorized to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States】.

* * * * *

【SEC. 2. That none of the appropriations herein made, or of any appropriations made for the Indian service, shall be paid to any band of Indians or any portion of any band while at war with the United States or with the white citizens of any of the States or Territories.

【SEC. 3. That for the purpose of inducing Indians to labor and become self-supporting, it is provided that hereafter, in distributing the supplies and annuities to the Indians for whom the same are appropriated, the agent distributing the same shall require all able-bodied male Indians between the ages of eighteen and forty-five to perform service upon the reservation, for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered; and the allowances provided for such Indians shall be distributed to them only upon condition of the performance of such labor, under such rules and regulations as the agent may prescribe: Provided, That the Secretary of the Interior may, by written order, except any particular tribe, or portion of tribe, from the operation of this provision where he deems it proper and expedient.】

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SECTION 7 OF THE ACT OF JUNE 23, 1879 (CHAPTER 35)

AN ACT Making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes.

【SEC. 7. The Secretary of War shall be authorized to detail an officer of the Army, not above the rank of captain, for special duty with reference to Indian education.】

ACT OF MARCH 3, 1893 (CHAPTER 209)

AN ACT making appropriations for current and contingent expenses, and fulfilling treaty stipulations with Indian tribes, for fiscal year ending June thirtieth, eighteen hundred and ninety-four.

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MISCELLANEOUS SUPPORTS.

【The Secretary of the Interior may in his discretion, establish such regulations as will prevent the issuing of rations or the furnishing of subsistence either in money or in kind to the head of any Indian family for on account of any Indian child or children between the ages of eight and twenty-one years who shall not have attended school during the preceding year in accordance with such regulations. This provision shall not apply to reservations or part of reservations where sufficient school facilities have not been furnished nor until full notice of such regulations shall have been given to the Indians to be affected thereby.】

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FOR SUPPORT OF SCHOOLS.

【Hereafter the Secretary of the Interior may in his discretion withhold rations, clothing and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school a reasonable portion of the year.】

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SECTION 18 OF THE ACT OF JUNE 30, 1913 (CHAPTER 4)

AN ACT Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and fourteen

FIVE CIVILIZED TRIBES.

SEC. 18. For expenses of administration of the affairs of the Five Civilized Tribes, Oklahoma, and the compensation of employees, including such attorneys as the Secretary of the Interior may, in his discretion employ in connection with probate matters affecting individual allottees of the Five Civilized Tribes, \$250,000: Provided, That during the fiscal year ending June thirtieth, nineteen hundred and fourteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: Equalization of allotments per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters, and mining trustees of the tribes for the current fiscal year at salaries not exceeding those for the last fiscal year; and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year: Provided further, That the Secretary of the Interior is hereby authorized to continue the tribal schools of the Choctaw and Chickasaw Nations for the current fiscal year.

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【That hereafter the Commissioner of Indian Affairs is authorized in his discretion to withhold any annuities or other payments due to Osage Indian minors, above six years of age, whose parents fail, neglect, or refuse to place such minors in some established school for a reasonable portion of each year and to keep such children in regular attendance thereof. The Commissioner of Indian Affairs is authorized to make such rules and regulations as may be necessary to put this provision into force and effect.】

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ACT OF JUNE 21, 1906 (CHAPTER 3504)

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

TITLE I

GENERAL PROVISIONS.

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COMMISSIONER.

【The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, is hereby authorized and directed to select and designate some one of the schools or other institution herein specifically provided for as an “Indian Reform School”, and to make all needful rules and regulations for its conduct, and the placing of Indian youth therein: Provided, That the appropriation for collection and transportation, and so forth, of pupils, and the specific appropriation for such school so selected shall be available for its support and maintenance: Provided further, That the consent of parents, guardians, or next of kin shall not be required to place Indian youth in said school.】

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SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

