

Calendar No. 160

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-122

A BILL TO REPEAL THE ACT ENTITLED “AN ACT TO CONFER JURISDICTION ON THE STATE OF IOWA OVER OFFENSES COMMITTED BY OR AGAINST INDIANS ON THE SAC AND FOX INDIAN RESERVATION”

JUNE 28, 2017.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 381]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 381) to repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation,” having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 381 is to repeal a federal statute which had conferred criminal jurisdiction upon the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation.

BACKGROUND

In 1948, Congress granted the State of Iowa jurisdiction over criminal misdemeanor and non-major offenses committed by or against Indians of the Sac and Fox Tribe of the Mississippi in Iowa (Tribe) on the Sac and Fox Reservation.¹ The 1948 Act did not, however, strip the Tribe of jurisdiction, resulting in Tribe and the State having concurrent jurisdiction over the same types of of-

¹ Act of June 30, 1948, Pub. L. No. 80-846, 62 Stat. 1161. A major shift in Federal Indian policy began around that time when these types of laws were enacted as well as other statutes formally ending the government-to-government relationship between the United States and certain Indian tribes. Otherwise known as the “Termination Era,” this period was shaped by laws and policies geared towards assimilating Native Americans into mainstream American society. This Era and policies have been disavowed long ago by Congress.

fenses.² The Tribe has accordingly developed a substantial and functional tribal law enforcement and criminal justice system with criminal codes, tribal courts, a police department, tribal probation officers, and a tribal prosecutor.

Although the Tribe has made progress in developing its own criminal justice system, the challenges erected by the 1948 Act persist. For instance, under the current system of concurrent tribal and state jurisdiction, defendants may be subject to prosecution in both state and tribal courts for the same offense. This system also presents difficulties for victims, who may be subpoenaed to testify in both state and tribal courts.

While the State may still exercise jurisdiction on the Tribe's reservation under the 1948 Act, the Iowa Legislature passed legislation supporting a repeal of the 1948 Act on April 8, 2016.³ However, Congressional action is required to codify this repeal.⁴

LEGISLATIVE HISTORY

In the 114th Congress, this bill was introduced and referred to the Committee on Indian Affairs. The Committee held a legislative hearing on S. 3216 on September 14, 2016, at which the Tribe and the Department of the Interior provided testimony in support. No further action was taken on S. 3216 prior to the end of the 114th Congress.

In the 115th Congress, Senator Grassley, along with Senators Ernst and Senator Leahy, introduced this bill, S. 381, on February 15, 2017. Senator Udall joined as a cosponsor on March 27, 2017. On March 28, 2017, the Committee considered S. 381 at a duly called business meeting. By voice vote, the Committee ordered the bill be reported favorably.

Representative Rod Blum introduced an identical companion bill to S. 381 in the House of Representatives on February 15, 2017. Representatives Steve King, David Loebsack, and David Young joined as co-sponsors. This legislation was referred to the House Committee on Natural Resources, where it awaits further consideration.

SUMMARY OF THE BILL

The bill, S. 381, repeals the Act of June 30, 1948, which conferred state jurisdiction over crimes committed by and against Indians on the Sac and Fox Indian Reservation.⁵

The bill is intended to bring clarity and finality to the jurisdictional confusion affecting the Sac and Fox Indian Reservation. Both the State of Iowa, and the Sac and Fox Tribe of the Mississippi in Iowa agree that this legislation is necessary to ensure that jurisdictional matters will no longer detract from their ultimate goal of

²The Federal government retained jurisdiction over major crimes on the Tribe's reservation. See Felix S. Cohen's Handbook of Federal Indian Law, Ch. 9 (2012) (providing a general guide to criminal jurisdiction in Indian Country). Congress also enacted a more comprehensive law in 1953 known as "Public Law 280." See 18 U.S.C. § 1162, 28 U.S.C. § 1360, 25 U.S.C. §§ 1321–1326. Public Law 280 gave states criminal jurisdiction over crimes committed by or against Indians on reservation lands in five states: California, Minnesota, Nebraska, Oregon, and Wisconsin. Alaska was later added in connection with its admission to the union in 1958. See Act of Aug. 8, 1958, Pub. L. 85–615, 72 Stat. 545.

³Iowa General Assembly, Senate File 2022 (2016).

⁴The use of procedures for retrocession for Public Law 280, a separate federal statute, may be inapplicable for the 1948 Act.

⁵See *supra* note 1.

preventing crime and holding criminals accountable for their actions.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1—Repeal

This section repeals the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation,” approved June 30, 1948.

COST AND BUDGETARY CONSIDERATIONS

JUNE 2, 2017.

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 381, a bill to repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation.”

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.

Enclosure.

S. 381—To repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation”

S. 381 would repeal a 1948 law that gave the state of Iowa jurisdiction over criminal offenses committed by or against Indians on the Sac and Fox Indian Reservation; thus criminal jurisdiction would revert to either the Sac and Fox Nation or the federal government.

As a result of the repeal, the Sac and Fox Nation would be eligible for funding from the Bureau of Indian Affairs (BIA) to equip and run its existing tribal court, law enforcement operations, and detention facility. The amount of such funding would depend on how much assistance the tribe would request after enactment. Based on information from BIA reports on the funding provided to tribes of a similar size, CBO estimates that the tribe would be eligible for up to \$7 million a year in assistance; that spending would be subject to appropriations. However, based on testimony and public statements from BIA and the tribe about the amount of assistance the tribe intends to apply for, CBO estimates that implementing S. 381 would have no significant federal cost over the 2018–2022 period.

Enacting S. 381 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 381 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 381 will have minimal impact of regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 381.

CHANGES IN EXISTING LAW (CORDON RULE)

On January 31, 2017, the Committee on Indian Affairs unanimously approved a motion to waive the Cordon rule. Thus, in the opinion of the committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.