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TO ALLOW TRIBAL GRANT SCHOOLS TO PARTICIPATE IN THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM

JULY 9, 2019.—Ordered to be printed

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

R E P O R T

[To accompany S. 279]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 279) to allow tribal grant schools to participate in the Federal Employee Health Benefit program, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill is intended to improve the education of students by allowing Bureau of Indian Education (BIE) tribal grant school employees to be eligible for participation in the Federal Employee Health Benefits (FEHB) and the Federal Employees Group Life Insurance (FEGLI) programs.

BACKGROUND AND NEED FOR LEGISLATION

The BIE administers a school system that serves approximately 47,000 elementary and secondary students attending 183 schools and dormitories located in 23 states.[1] The BIE directly operates 54 schools. Indian Tribes operate BIE "contract" schools through the Indian Self-Determination and Education Assistance Act

[1] The Bureau also supports post-secondary institutions in Indian Country, including two federally-operated post-secondary schools.

(ISDEAA)[2] and BIE "grant" schools through the Tribally Controlled Schools Act of 1988 (TCSA).[3]

In 2010, Congress added section 409 to the Indian Health Care Improvement Act (IHCIA). This new section authorizes Tribes with ISDEAA contracts and urban Indian organizations operating health programs under IHCIA Title IV to purchase FEHB and FEGLI coverage for their employees. Tribes and urban Indian organizations that participate in these two programs cover the full cost of the employer share and, as a result, the Federal government incurs no additional costs when eligible Tribal and urban Indian employers opt into these programs.

However, IHCIA section 409 does not reference BIE grant schools in the list of eligible FEHB and FEGLI participants. As such, Tribally-operated BIE grant schools cannot equally access the benefits extended to Tribes under IHCIA section 409. The Department of the Interior's Office of the Solicitor and the Office of Personnel Management confirmed that BIE grants are ineligible to participate without a change to the statute in 2012.[4] According to the National Indian Education Association, the exclusion of BIE grant schools from IHCIA section 409 creates "inequity in healthcare access among employees at tribal schools within the same community and across the nation."[5]

Currently, all federally-operated BIE schools and four [of the five?] BIE contract schools participate in the FEHB and FEGLI programs.[6] According to Principal Deputy Assistant Secretary of Indian Affairs John Tahsuda, access to these programs results in budgetary and staffing benefits for these schools. He testified, "Participation in the FEHB Program reduced costs associated with providing employee benefits as well as aided organizations in their recruitment and retention efforts."[7]

Many BIE grant schools face challenges covering the cost of benefits for their employees because they do not have access to lower-cost options through the FEHB and FEGLI. The National Congress of American Indians and the National Indian Health Board both note many BIE grant schools must then utilize a portion of their educational services funding to pay for health and life insurance plans.[8] In turn, this extra cost burden reduces funding for other ISEP supported activities (e.g., textbooks, teacher's aides, and extracurricular programs).

Cecelia Firethunder, President of the Oglala Lakota Nation Education Coalition, testified in front of the Committee about the impacts of this cost burden on the six BIE grant schools located on

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[2] Pub. L. No. 93-638.

[3] Pub. L. No. 100-297.

[4] *Legislative Hearing to receive testimony on S. 279, S. 790, & S. 832 Before the S. Comm. on Indian Affairs*, 116th Cong. (2017) (statement of John Tahsuda, Princ. Deputy Assistant Sec'y of Indian Affairs, U.S. Dep't of the Interior).

[5] Letter from Robert Butterfield, President, Nat'l Indian Education Association, to Sen.'s John Hoeven & Tom Udall, Chairman & Vice Chairman, S. Comm. on Indian Affairs (Apr. 30, 2019) (on file with S. Comm. on Indian Affairs).

[6] *Supra* note 2.

[7] *Id.*

[8] Letter from Victoria Kitcheyan, Chairperson, Nat'l Indian Health Board, to Sen. John Thune (Apr. 12, 2019) (on file with S. Comm. on Indian Affairs).; Letter from Jefferson Keel, President, Nat'l Congress of American Indians, to Sen.'s John Hoeven & Tom Udall, Chairman & Vice Chairman, S. Comm. on Indian Affairs (Apr. 29, 2019) (on file with S. Comm. on Indian Affairs).

the Pine Ridge Reservation.[9] She noted, "our schools, however, struggle to cover the costs of high health insurance premiums and deductibles . . . This, in turn, directly and adversely affects the consistency and quality of the educational services our students receive." She estimated that access to FEHB would save one BIE grant school on the Pine Ridge Reservation, the Little Wound School, $1,000,000 per year.

Because of the potential benefits of participation, the National Congress of American Indians, National Indian Health Board, National Indian Education Association, the All Pueblo Council of Governors, the Great Plains Chairmen's Health Board, United Tribes of North Dakota, Saint Stephens Indian School Educational Association, the Santa Fe Indian School, and the Standing Rock Sioux Tribe support extending FEHB and FEGLI eligibility to BIE grant schools.

SUMMARY OF THE BILL

The bill, S. 279, amends IHCIA section 409 to make tribally-operated BIE grant schools operating under the TCSA eligible to participate in the FEHB and FEGLI programs.

LEGISLATIVE HISTORY

On January 30, 2019, Senators Thune and Rounds introduced S. 279, the Tribal School Federal Insurance Parity Act. Senators Udall, Heinrich, Barrasso, and Tester are cosponsors of the bill. On May 1, 2019, the Committee on Indian Affairs held a legislative hearing on S. 279. At this legislative hearing, John Tahsuda III, Principal Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, and Cecelia Firethunder, President, Oglala Lakota Nation Education Coalition, testified in support of the bill.

On May 15, 2019, the Committee on Indian Affairs of the Senate met at a duly called business meeting to consider three bills, including S. 279. No Committee Members filed amendments to S. 279. The Committee passed all three bills, including S. 279, en bloc by voice vote and ordered the bills, without amendment, reported favorably.

Congressman Dusty Johnson introduced a companion bill, H.R. 895, the Tribal School Federal Insurance Parity Act, on January 30, 2019. The House of Representatives referred the bill to the Committees on Natural Resources, Oversight and Reform, and Energy and Commerce, of the House of Representatives. On February 15, 2019, H.R. 895, the Committee on Natural Resources referred the bill to the Subcommittee on Indigenous Peoples of the United States. Since receiving the referral, the Subcommittee has taken no action on the bill.

During the 115th Congress, Senators Thune and Rounds introduced S. 3030, the Tribal School Federal Insurance Parity Act on June 7, 2018. The Senate referred the bill to the Committee on Indian Affairs. Senators Udall, Heitkamp, and Tester joined the bill as cosponsors on July 26th, August 2nd, and September 5th of

[9] *Legislative Hearing to receive testimony on S. 279, S. 790, & S. 832 Before the S. Comm. on Indian Affairs,* 116th Cong. (2017) (statement of Cecilia Firethunder, President, Oglala Lakota Nation Education Coalition).

2018, respectively. After receiving the referral, the Committee took no action on the bill.

On June 7, 2018, Representative Noem introduced a companion bill, H.R. 6030, the Tribal School Federal Insurance Parity Act in the House of Representatives, which referred the bill to the Committees on Natural Resources, Oversight and Government Reform, and Energy and Commerce. On June 12, 2018, H.R. 6030, the Committee on Natural Resources referred H.R. 6030 to the Subcommittee on Indian, Insular and Alaska Native Affairs. After receiving the referral, the Subcommittee took no action on the bill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 states S. 279 may be cited as the "Tribal School Federal Insurance Parity Act."

Section. 2. Amendment to the Indian Health Care Improvement Act

Section 2 amends section 409 of the Indian Health Care Improvement Act by inserting "or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.)" after "(25 U.S.C. 450 et seq.)".

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated May 28, 2019, was prepared for S. 279:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 28, 2019.

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. 279, the Tribal School Federal Insurance Parity Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 279, Tribal School Federal Insurance Parity Act As ordered reported by the Senate Committee on Indian Affairs on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0

Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The Affordable Care Act, Public Law 111–148, allows certain Indian tribes, tribal organizations, and urban Indian organizations to purchase health insurance through the Federal Employees Health Benefits (FEHB) program for their employees. The Office of Personnel Management administers the program, but the tribes or tribal organizations purchase the insurance for their employees and must pay at least 70 percent of the premium. The employees pay the rest.

S. 279 would allow tribal grant schools (as defined by the Tribally Controlled Schools Act of 1988) to participate in that arrangement. Because the schools would be paying the employer share of the premiums for FEHB health insurance for their employees, enacting the bill would not affect the federal budget.

The CBO staff contact for this estimate is Lori Housman. The estimate was reviewed by Leo Lex, 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. 279 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 279.

CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to

dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

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