

Calendar No. 534

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
113-260

TO ENCOURAGE THE STATE OF ALASKA TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH INDIAN TRIBES IN THE STATE RELATING TO THE ENFORCEMENT OF CERTAIN STATE LAWS BY INDIAN TRIBES, TO IMPROVE THE QUALITY OF LIFE IN RURAL ALASKA, TO REDUCE ALCOHOL AND DRUG ABUSE, AND FOR OTHER PURPOSES

SEPTEMBER 18, 2014.—Ordered to be reported

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

R E P O R T

[To accompany S. 1474]

The Committee on Indian Affairs, to which was referred the bill (S. 1474) to encourage the state of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes, to improve the quality of life in rural Alaska, to reduce alcohol and drug abuse, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 1474 is to supplement State jurisdiction in Alaska Native villages with enhanced tribal and local authority to improve the quality of life in rural Alaska by helping to address and reduce domestic violence against Alaska Native women and children along with alcohol and drug abuse.

BACKGROUND AND NEED FOR LEGISLATION

Many Indian tribes and Alaska Native villages face significant public safety challenges and struggle to combat staggering rates of violent crime with inadequate resources and technology. There are 229 Federally recognized tribes in Alaska, which are often geographically isolated by rivers, oceans, and mountains. Alaska tribes can exercise civil authority; however, the recent reauthorization of the Violence Against Women Act (VAWA) has clouded to what extent that civil authority lies over non-tribal members. Only a handful of tribes in Alaska have any law enforcement presence. Those

tribes that do have peace officers or tribal police provide basic law enforcement and those offices have little training or equipment.

In Alaska there are approximately 100 tribal courts exercising tribes' jurisdiction. Many of these tribes have developed their own constitutions, ordinances and protocols that incorporate the tribes' traditional values and practices. Tribal courts in Alaska typically address civil issues such as child welfare, Indian Child Welfare Act cases, customary adoptions, public intoxication, disorderly conduct, domestic violence, and minor juvenile offenses, through tribal remedies.

The State of Alaska has asserted exclusive criminal jurisdiction over all lands, including Alaska Native Claims Settlement Act and tribal land. Approximately 370 State troopers have primary responsibility for law enforcement in rural Alaska, but have a full-time presence in less than half of the remote Alaska Native villages. Seventy-five villages lack any law enforcement presence at all. The State exercises its jurisdiction through the provision of law enforcement and judicial services from a set of regional locations under the direction and control of State commissioners and judges.

The 2013 reauthorization of VAWA prohibited Alaska tribes—with the exception of the Metlakatla Indian Community—from the criminal jurisdiction expansions granted to other non-Alaskan tribes. Section 910 of VAWA further prohibited Alaska tribes—with the exception of the Metlakatla Indian Community—from issuing and enforcing domestic violence protective orders against non-member Alaska Natives and non-Natives. In 2013, the Indian Law and Order Commission issued a report, entitled "A Roadmap for Making Native America Safer," that recommended several changes to Federal law to improve public safety conditions in rural Alaska, including changes that would allow Alaska Native tribes to exercise criminal jurisdiction in their villages.

The Committee on Indian Affairs held a legislative hearing on S. 1474 on April 2, 2014, where Alaska tribes and the Department of the Interior testified in support of the bill.

LEGISLATIVE HISTORY

S. 1474 was introduced on August 1, 2013, by Senator Mark Begich and Senator Lisa Murkowski. The bill was referred to the Committee on Indian Affairs. On April 2, 2014, the Committee held a hearing on the bill. On May 21, 2014, the Committee met to consider the bill. One substitute amendment was offered by Senator Begich, and the bill, as amended, was adopted unanimously and ordered favorably reported to the Senate by voice vote.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Senator Begich filed an amendment in the nature of a substitute. The bill as amended, would do the following:

Section 1—Short title

The Act may be cited as the "Alaska Safe Families and Villages Act of 2014".

Section 2—Findings and purposes

Section 2 states the findings of Congress and purposes for the need for this act.

The substitute amendment added statistics and other findings supporting the need for the legislation. New findings include references to the Indian Law and Order Commission Report, which was not complete at the time of the bill's introduction. The amended language also expands the bill's purpose to support tribes in the State in the enforcement and adjudication of tribal laws relating to child abuse and neglect, domestic violence, and drug and alcohol offenses.

Section 3—Definitions

Section 3 defines the key terms used throughout this act.

Section 4—Alaska Safe Families and Villages Self Governance Intergovernmental Program

Section 4 establishes authority for the United States Attorney General to create the "Alaska Safe Families and Villages Self Governance Intergovernmental Grant Program" to make grants available to Alaska Native tribes carrying out intergovernmental agreements with the State of Alaska, in an effort to provide more local tools and options to combat village public safety issues. Section 4 also provides guidelines for tribes that seek to enter into such agreements and establishes support for the use and execution of tribal remedies.

The following are required for tribes to be deemed eligible for the program:

- Submit an application;
- Have three fiscal years of clean financial records;
- Demonstrate sufficient capacity to conduct the program, such as a history operating children's courts, or other social service or law enforcement programs; and
- Certify or evidence intent to enter into negotiations relating to an intergovernmental agreement with the State.

Section 4 allows tribes that are still in the planning phase and do not yet have a formalized agreement with the State to be deemed eligible for the grant program.

Section 5—Alaska Safe Families and Villages Self Governance Tribal Law Project

The provisions in Section 5 are conceptually modeled after prior versions of the bill (S. 1192), which would expand tribal authority over certain matters relating to child abuse, neglect, domestic violence, and drug and alcohol related offenses. This section does not require tribes to enter into agreements with the State.

Tribes can apply directly with the Department of Justice (DOJ) to participate in the Alaska Self Governance Tribal Law Project. Once approved, the participating tribe would be eligible to exercise civil jurisdiction concurrent with the State over (A) any member of, or person eligible for membership in, the Indian tribe; and (B) any nonmember of the Indian tribe, if the nonmember resides or is located in the remote Alaska Native village in which the Indian tribe operates.

The intent is to hold village residents' locally accountable for troublesome behavior, to minimize village residents' entanglement in the complex state judicial and incarceration systems, and to support local public safety presence that is predictable, accountable, respected, and culturally relevant in an effort to decrease public safety problems in remote Alaska Native villages by providing more tools for tribal governments and tribal courts.

Section 5 holds participating tribes accountable to the protections found in Title II of the Indian Civil Rights Act, which includes due process and the right to a jury of one's peers, for all tribally imposed civil sanctions. There is no limit on the number of tribes that can apply and participate in this program.

Section 6—Administration

Section 6 clarifies the effects of the bill, including provisions that explicitly state that the bill does not establish Indian Country within the state, nor does it confer criminal jurisdiction on a tribe, unless agreed to in an intergovernmental agreement with the State.

Section 7—Technical assistance

Section 7 provides for expanded technical assistance by the Attorney General to Indian tribes within the State of Alaska.

Section 8—Funding

Section 8 makes participating tribes eligible for DOI—Bureau of Indian Affairs tribal court and law enforcement programs and funding.

Section 9—Repeal of special rule for State of Alaska

Section 9 repeals Section 910 of the Violence Against Women Reauthorization Act of 2013 (18 U.S.C. 2265 note; Public Law 113–4) which prohibits Alaska tribes—other than the Metlakatla Indian Community—from issuing and enforcing domestic violence protective orders against non-member Alaska Natives and non-Natives.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated September 12, 2014, was prepared for S. 1474:

SEPTEMBER 12, 2014.

Hon. JON TESTER,
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. 1474, the Alaska Safe Families and Villages Act of 2014.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1474—The Alaska Safe Families and Villages Act of 2013

Summary: S. 1474 would direct the Department of Justice (DOJ) to make grants to Alaskan Indian tribes to assist them in forming intergovernmental agreements with the state of Alaska. Such agreements would aim to reduce domestic violence and drug abuse and improve the criminal justice system. The bill also would authorize DOJ to provide Alaskan tribes with training and technical assistance on certain judicial matters.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1474 would cost \$14 million over the 2015–2019 period. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 1474 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring states to give full faith and credit to court orders and decrees issued by some Alaskan tribes. CBO estimates that the cost to comply with that mandate would be small and well below the threshold established in that act (\$76 million in 2014, adjusted annually for inflation).

S. 1474 also contains a private-sector mandate as defined in UMRA by eliminating an existing right of action against the state of Alaska for the actions carried out by tribes participating in grant programs established by the bill. CBO estimates that the cost of complying with the mandate would fall below the private-sector threshold established in UMRA (\$152 million in 2014, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effects of S. 1474 are shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice)

Based on information from DOJ about the cost of establishing and maintaining new programs for Indian tribes in remote areas of Alaska, CBO estimates that implementing S. 1474 would require funding of \$16 million over the 2015–2019 period. We expect DOJ to use those funds to hire additional staff in Alaska, provide training and technical assistance to Indian tribes, and award grants to selected tribes. CBO assumes that the estimated amounts will be appropriated near the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities.

Pay-As-You-Go considerations: None.

Estimated impact on state and local Governments: S. 1474 contains an intergovernmental mandate as defined in UMRA by requiring states to give full faith and credit to court orders and decrees issued by some Alaskan tribes. Some, but not all, states currently recognize the actions of tribal courts. Based on information from state representatives, CBO expects that the tribes would be issuing relatively few orders that would need to be enforced by other jurisdictions and the costs for states to enforce those orders would be small and well below the threshold established in that act (\$76 million in 2014, adjusted annually for inflation).

Estimated impact on the private sector: S. 1474 would impose a private-sector mandate as defined in UMRA by eliminating an existing right of action against the state of Alaska. The legislation would authorize Indian tribes in Alaska that participate in the programs established by the bill to enforce certain state and tribal laws on Indian land. The legislation also would eliminate liability

for the state, or any political subdivision of the state, for the actions carried out by tribes participating in those programs. The cost of the mandate would be the value of forgone compensation for damages that would have been awarded to private entities in claims against the state of Alaska. Because of the relatively low cap on damages that can be awarded in actions against Alaska, CBO estimates that the annual cost of complying with the mandate would fall below the private-sector threshold established in UMRA (\$152 million in 2014, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Marin Burnett.

Estimate approved by: Theresa Gullo, 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. 1474 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1474.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1474, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter printed in italic):

18 U.S.C. 2265 note; Public Law 113–4 (Violence Against Women Reauthorization Act of 2013)

[SEC. 910. SPECIAL RULE FOR THE STATE OF ALASKA

(a) **EXPANDED JURISDICTION.**—In the State of Alaska, the amendments made by sections 904 and 905 shall only apply to the Indian country (as defined in section 1151 of title 18, United States Code) of the Metlakatla Indian Community, Annette Island Reserve.

(b) **RETAINED JURISDICTION.**—The jurisdiction and authority of each Indian tribe in the State of Alaska under section 2265(e) of title 18, United States Code (as in effect on the day before the date of enactment of this Act)—

(1) shall remain in full force and effect; and

(2) are not limited or diminished by this Act or any amendment made by this Act.

(c) **SAVINGS PROVISION.**—Nothing in this Act or an amendment made by this Act limits or diminishes the jurisdiction of the State

of Alaska, any subdivision of the State of Alaska, or any Indian tribe in the State of Alaska.】

