

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

May 3, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Markup: **H.R. 4506 (Rep. Norma Torres)**, To provide incentives to encourage tribal job creation and economic activity, and for other purposes.
May 8, 2018 at 10:15 a.m.; 1324 Longworth HOB

H.R. 4506 (Rep. Norma Torres), the “Jobs for Tribes Act”

Summary of the bill

H.R. 4506 was introduced by Rep. Norma Torres on November 30, 2017. Title I of the bill would amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000,¹ the Buy Indian Act,² and the Native Programs Act of 1974³ to increase access to capital for Indian tribes and businesses. Title II would establish within the Department of the Interior a “business incubator” program to promote entrepreneurship and economic development on Indian reservations. Title II would also require the Department of the Interior to coordinate its business incubator activities with other federal agencies to promote Native American business development. Title III would direct the Secretary of State to aid countries in the Western Hemisphere to promote and facilitate entrepreneurship among their indigenous peoples by strengthening the capacity of civil society organizations and local governments, and supporting projects involving sustainable natural resource management, agricultural development, and handicraft production.

H.R. 4506 was referred to the Committee on Natural Resources, which then referred the bill to the Subcommittee on Indian, Insular and Alaska Native Affairs. The Subcommittee held a hearing on the bill on January 17, 2018. The bill was also referred to the Committees on Foreign Affairs and Education and Workforce. To date, neither committee has held a hearing or otherwise considered H.R. 4506.

Cosponsors

¹ 25 U.S.C. 4301 et seq.

² 25 U.S.C. 47.

³ 42 U.S.C. 2991 et seq.

Rep. Tom Cole (R-OK), Rep. Aumua Amata Coleman Radewagen (R-AS), Rep. Raul M. Grijalva (D-AZ), Rep. Sheila Jackson Lee (D-TX), Rep. Ron Kind (D-WI), Rep. Tom O'Halleran (D-AZ), Rep. Ro Khanna (D-CA), Rep. Jimmy Gomez (D-CA), Rep. Derek Kilmer (D-WA), Rep. Betty McCollum (D-MN), Rep. Gregory Meeks (D-NY), Rep. Darren Soto (D-FL), and Rep. Frederica S. Wilson (D-FL).

Background

For decades, Native American⁴ communities have struggled with a wide array of difficulties relating to economic development on their land, including poor access to capital, remote and rural locations, and degradation of the local infrastructure. Only around half of all Native Americans (16 or older) residing on or near tribal communities have jobs, and a quarter of Native families earn an income that is below the federal poverty line.⁵

Today, approximately 56 million acres of land are held in trust by the United States (through the Department of the Interior) for the benefit of individual Indians and Indian tribes. Many of these lands are in remote areas, and none may be leased for business, agriculture, and mineral uses without the approval of the Secretary of the Interior. Trust land is generally a prerequisite for a tribe to conduct gambling under the Indian Gaming Regulatory Act.⁶

The economies of Indian reservations in remote areas, where casinos may be a break-even proposition at best, suffer from great poverty. Many reservations and other Indian communities lack grocery stores, retail outlets, or banks. Residents may have to travel great distances (sometimes up to a two-hour drive) to buy groceries or go to a bank, while spending their disposable income on purchases off the reservation. Tribes have sought to keep dollars on their reservations to create sustainable economies, but they face a variety of challenges:

- *Federal Approval.* Tribes and individual Indians may not lease their trust land without the permission of the Secretary of the Interior (this problem is not directly addressed by H.R. 4506).
- *Legal Systems and Infrastructure.* To attract businesses to the reservations, tribal governments need to provide business-friendly laws and independent court systems. Companies and investors, Indian and non-Indian alike, rely on governments to ensure fair competition, maintain law and order, and create laws and judicial systems that help enforce contracts and property rights. Not all tribal governments have enacted the kinds of business and commercial codes that businesses and banks need before they will locate and operate on reservations. Additionally, many components of tribal infrastructure need significant repair or replacement.
- *Access to Capital.* In many Native American communities, there is a lack of equity resources, such as home equity or intergenerational family assets. Likewise, trust land

⁴ In this memo, the terms “Native American,” “Native” and “Indian” are used interchangeably.

⁵ 2013 American Indian Population and Labor Force Report, Department of the Interior.

⁶ 25 U.S.C. 2701 et seq.

cannot be used as collateral, so access to capital is complicated further in Indian Country. Even if access to private capital is available, it may come at a higher cost.

- *Remote Locations.* The remoteness of many Indian communities diminishes the possibility of building commercial markets for goods and services or developing many types of industrial or manufacturing economies.
- *Sovereign Immunity.* Under a legal doctrine developed by federal courts, Indian tribes enjoy sovereign immunity against States and private citizens. Such sovereign immunity exists on and off an Indian reservation. A tribe may not be sued unless its sovereign immunity is waived by the tribe or by Congress, which has not debated this issue in many years. Tribes consider sovereign immunity a valid exercise of self-governance which promotes economic development. Developers or investors unfamiliar with a tribe's use of sovereign immunity may be reluctant to engage in business ventures with it.

In recent years, Congress has enacted laws to grant tribes stronger, more comprehensive control over business, agricultural, and residential leasing of tribal lands through the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, or the HEARTH Act.⁷ Congress has also enacted multiple laws to assist these communities in obtaining access to capital in the forms of loan guarantees, procurement programs, and community development financial institutions (CDFI). One of these laws, the Native American Business Development, Trade Promotion, and Tourism Act of 2000,⁸ provides assistance for tribes for business development and in ensuring tribal businesses follow all legal and regulatory requirements, among other things.

While Congress has attempted to alleviate challenges experienced by tribal businesses, various challenges remain. As mentioned previously, many Indian reservations and communities are in predominantly rural, remote locations, and enticing entrepreneurs to fund and support businesses in these areas can be difficult.

Title II of H.R. 4506 is premised on the idea that federal grant programs supporting business incubators are uniquely able to support tribal businesses in ways that broad legislation cannot, as incubators can be tailored to fit the needs of the various regions where tribal businesses exist. By offering services that range from workplace enhancement, comprehensive skills training, and networking assistance, business incubators have been a reliable and consistent solution to the many problems that continue to plague Indian Country.

Major Provisions of H.R. 4506

Title I – Indian Economic Enhancement Act of 2017

Sec. 103. Native American Business Development, Trade Promotion, and Tourism Act of 2000.

⁷ Public Law 112-151, 25 U.S.C. 415.

⁸ 25 U.S.C. 4301 et seq.

- Amends current law to enhance the Office of Native American Business Development (ONABD) by establishing a budget, having the Director report directly to the Secretary of Commerce, and augmenting the Director's duties, including: (1) advising the Department of Commerce regarding the relationship between the United States and Indian tribes; and (2) serving as the point of contact for tribes, tribal organizations, and members of tribes regarding economic development and doing business in Indian lands.
- The ONABD, the Office of the Assistant Secretary for Indian Affairs, and the CDFI fund must coordinate to support economic development in Native American communities.
- Waives a matching funds requirement in a CDFI assistance program benefiting Native American community development.
- Government Accountability Office must conduct a study that assesses: (1) current programs and services that assist Native American communities with business and economic development; (2) assistance provided to Native Americans pursuant to loan, bond, and tax incentive programs; and (3) alternative incentives for tribal governments to invest in a Native American community development investment fund or bank.

Sec. 104. Buy Indian Act.

- Amends the Buy Indian Act to require the Departments of the Interior and Health and Human Services to use Native American labor and purchase Native American industry products when applicable and unless impracticable and unreasonable, and to require reporting to ensure full implementation of this authority.

Sec. 105. Native American Programs Act of 1974.

- Reauthorizes and amends the Native American Programs Act of 1974 to permit the Administration for Native Americans to award competitive economic development grant assistance to certain Native American CDFIs and to prioritize grants to develop tribal codes, court systems or master plans relating to economic development.

Title II – Native American Business Incubators Program Act

Sec. 204. Establishment of Program.

- Requires the Department of the Interior to establish a grant program in the Office of Indian Energy and Economic Development for establishing and operating business incubators that serve Native American communities. A business incubator is an organization that: (1) provides physical workspace and facilities resources to startups and established businesses; and (2) is designed to accelerate the growth and success of businesses through a variety of business support resources and services. Grant applicants may be institutions of higher education, private nonprofits, Native American tribes or tribal nonprofits.

Sec. 205. Regulations.

- Directs the Secretary of the Interior to implement the incubator program six months after the bill is signed into law.

Sec. 206. Schools to Business Incubator Pipeline.

- The Secretary of the Interior must facilitate the establishment of relationships between grant recipients and educational institutions serving Native American communities.

Sec. 207. Agency Partnerships.

- Directs the Secretary of the Interior to coordinate with the Secretary of Agriculture, Secretary of Commerce, Secretary of Treasury and the Administrator of the Small Business Administration to ensure that business incubators receiving grant funds under the program have the information and materials they need to apply for each agency's business and entrepreneurial development programs.

Sec. 208. Authorizations of Appropriations.

- Authorizes the appropriation of \$5 million for each of fiscal years 2018 through 2023 and "such sums" as may necessary thereafter.

Title III – Indigenous Peoples Exchange and Economic Cooperation Act

Sec. 304. Strategy.

- Requires the President to develop a strategy to promote and facilitate cross-investments between Native American tribes and indigenous peoples in tribal businesses and commercial enterprises that involve indigenous peoples, such as sustainable natural resource management, agricultural development and handicraft production.

Sec. 305. United States Assistance to Support Indigenous Peoples.

- Directs the Secretary of State to provide assistance to countries in the Western Hemisphere in a manner that promotes and facilitates entrepreneurship among indigenous peoples by strengthening the capacity of civil society organizations and local governments, and supporting projects involving sustainable natural resource management, agricultural development and handicraft production.

Cost

CBO has estimated that S. 1116, the Indian Community Economic Enhancement Act of 2017, and S. 607, the Native American Business Incubators Program Act, would cost \$139 million⁹ and \$18 million¹⁰ respectively over the 2018-2022 period. S. 1116 and S. 607 are Titles I and II respectively of H.R. 4506.

Administration Position

At the January 17, 2018 hearing on the bill, the Department of the Interior testified in support of the goals of the bill but had several concerns about several provisions that would be duplicative of existing law or extend beyond existing authorities. No technical assistance has been received by the Committee to date to resolve these issues.

⁹ <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s1116.pdf>

¹⁰ <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s607.pdf>

[Ramsever \(effect on current law\)](#)

Anticipated Amendment

The Committee anticipates that amendments will be filed to make technical changes to the bill. This includes a change to address an anticipated \$296 million CBO score.