

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

September 25, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x69725)

Markup: **S. 607 (Sen. Tom Udall)**, to establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities.
Thursday, September 27, 2018; at 10:15 a.m. in 1324 Longworth HOB

S. 607 (Sen. Tom Udall), Native American Business Incubators Program Act

Summary of the bill

S. 607 was introduced by Sen. Tom Udall on March 13, 2017, and passed the Senate on March 22, 2018, by voice vote. The bill would establish within the Department of the Interior a “business incubator” program to promote entrepreneurship and economic development on Indian reservations. It would also require the Department of the Interior to coordinate its business incubator activities with other federal agencies to promote Native American business development.

Cosponsors

Sen. Maria Cantwell (D-WA), Sen. Jon Tester (D-MT), Sen. Elizabeth Warren (D-MA)

Background

For decades, Native American¹ 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.²

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, or

¹ In this memo, the terms “Native American,” “Native,” and “Indian” are used interchangeably.

² 2013 American Indian Population and Labor Force Report, Department of the Interior.

mineral uses without the approval of the Secretary of the Interior.³ Trust land is generally a prerequisite for a tribe to conduct gambling under the Indian Gaming Regulatory Act.⁴

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.* As stated above, tribes and individual Indians may not least their trust land without the permission of the Secretary of the Interior (this problem is not directly addressed by S. 607).
- *Legal Systems and Infrastructure.* To attract businesses to 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 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 businesses, agricultural, and residential leasing of tribal lands through the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, or the HEARTH Act.⁵

³ 25 U.S.C. 177; 25 U.S.C. 415.

⁴ 25 U.S.C. 2701 et seq.

⁵ Public Law 112-151, 25 U.S.C. 415.

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 (CDFIs). One of these laws, the Native American Business Development, Trade Promotion, and Tourism Act of 2000,⁶ aids tribes with business development and helps ensure that 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.

S. 607 is premised on the idea that 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. As defined in the bill, a business incubator is an organization that provides physical workspace and facilities resources to startups and established businesses and is designed to accelerate the growth and success of businesses through a variety of business support resources and services. 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 S. 607

Sec. 4. 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. 5. Regulations.

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

Sec. 6. 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. 7. Agency Partnerships.

⁶ 25 U.S.C. 4301 et seq.

- Directs the Secretary of the Interior to coordinate with the Secretary of Agriculture, Secretary of Commerce, Secretary of the 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. 8. Authorizations of Appropriations.

- Authorizes the appropriation of \$5 million for each of fiscal years 2019 through 2023.

Cost

The CBO has estimated that S. 607 would cost \$18 million, subject to appropriation, over the 2018-2022 period.⁷

Administration Position

On January 17, 2018, the Department of the Interior testified on H.R. 4506, which contains substantially similar language to that of S. 607. The Department supported the underlying goals of the bill, but it also had concerns about several provisions that duplicate existing law or extend beyond existing authorities. In response to the hearing, the Department submitted technical amendments to H.R. 4506 to the Natural Resources Committee on May 4, 2018.

On July 24, 2018, the Department of the Interior testified on S. 607 before the Subcommittee on Indian, Insular and Alaska Native Affairs. During his testimony, Darryl LaCounte, Acting Deputy Bureau Director – Office of Trustee Services, Bureau of Indian Affairs, repeated the same opinion on S. 607 that the Department has regarding H.R. 4506. He stated that while the Department agrees with the intent and goal of S. 607, further technical amendments are needed before it can fully support the bill.

Anticipated Amendments

None.

Effect on Current Law (Ramseyer)

None.

⁷ <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s607.pdf>