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SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL AGREEMENT IMPLEMENTATION ACT OF 2003

OCTOBER 4, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany S. 551]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (S. 551) to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

S. 551 is a bill to implement an Intergovernmental Agreement between the Southern Ute Indian Tribe (the "Tribe") and the State of Colorado (the "State"), concerning administration of the Clean Air Act on the Southern Ute Reservation. The bill authorizes the United States Environmental Protection Agency (EPA) to treat the Tribe as a state for the purpose of any air program application submitted by the Tribe to the EPA under section 301(d) of the Clean Air Act. It also provides that the Tribe is allowed to enforce an approved air program on all lands within the outer boundaries of its reservation. The Tribe and the State can terminate the Intergovernmental Agreement, and if the Agreement is terminated, then the EPA will withdraw treatment of the Tribe as a state. The Tribe and the Commission both are empowered to enforce the terms of any approved air program and bring suit in Federal District Court to enforce their orders. In addition, nothing in the bill is intended to alter, amend or modify any right or authority of any person to bring a civil action under section 304 of the Clean Air Act. The bill also provides for judicial review of decisions of the Commission.

BACKGROUND AND NEED FOR LEGISLATION

The Tribe, the State, and the EPA disagreed for over a decade on the eligibility of the Tribe and the State to receive a delegation of authority to administer programs under the Clean Air Act on the Southern Ute Indian Reservation. In order to resolve these jurisdictional disputes, on December 13, 1999, the Tribe and the State entered into an Intergovernmental Agreement that permits the Tribe to develop a comprehensive air quality program that is applicable to all land within the outer boundaries of the Tribe's Reservation. The Intergovernmental Agreement also establishes a Southern Ute Indian Tribe/State of Colorado Environmental Commission (the Commission).

S. 551 is needed to allow the Tribe, the State and EPA to implement the Intergovernmental Agreement.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Thursday, September 30, 2004, the Full Committee met in open markup session and ordered S. 551 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering S. 551 reported. A motion by Mr. Bilirakis to order S. 551 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of the bill is to implement an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado that allows the Tribe to administer air quality programs within the exterior boundaries of its reservation.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that S. 551, the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 2004.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 551, the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003.

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

Sincerely,

ROBERT A. SUNSHINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 551—Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003

S. 551 would authorize the Environmental Protection Agency (EPA) to treat the Southern Ute Indian Tribe as a state under section 301(d) of the Clean Air Act. S. 551 would allow the tribe to accept delegation of EPA's authority under the Clean Air Act in the

same manner as states. Enacting S. 551 would provide that, if the tribe submits an application under section 301(d) and if the application is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The act also would give jurisdiction for enforcement of those delegated powers to the U.S. District Court for the District of Colorado. According to EPA, enacting this legislation would not change the Southern Ute Indian Tribe's eligibility for federal grants in any manner. Thus, CBO estimates that enacting this legislation would not have a significant effect on the federal budget.

S. 551 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. This legislation would implement an agreement entered into voluntarily by the state of Colorado and the Southern Ute Indian Tribe, and any costs incurred by either the state or the tribe would stem from their acceptance of that agreement.

On August 15, 2003, CBO transmitted a cost estimate for S. 551 as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003. In addition, on September 16, 2004, CBO transmitted a cost estimate for S. 551 as ordered reported by the House Committee on Energy and Commerce on September 15, 2004. The three versions of the legislation are very similar, and our cost estimates are the same.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs) and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill, the "Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003."

Section 2. Findings and purpose

Section 2 states that Congress finds that the Intergovernmental Agreement is consistent with existing law. This section also lists the purpose of the bill as to implement and enforce clean air programs on the Southern Ute Indian Reservation and establish the Commission.

Section 3. Definitions

Section 3 defines the terms specific to the bill.

Section 4. Tribal authority

This section authorizes the Administrator of the EPA to treat the Tribe as a state for purposes of air program applications under section 301(d) of the Clean Air Act. It also authorizes that any air program is applicable to all lands within the exterior boundaries of the Reservation. If the Intergovernmental Agreement is terminated, then the EPA will withdraw its recognition of the Tribe as a state.

Section 5. Civil enforcement

Section 5 authorizes the Tribe or the Commission to bring a civil suit in Federal District Court for the District of Colorado to enforce any orders that they may issue. The right of a person to bring civil actions under section 304 of the Clean Air Act is preserved.

Section 6. Judicial review

Section 6 provides that any decision of the Committee that would be subject to appellate review if made by the Administrator of the EPA, is subject to appellate review in the United States Court of Appeals for the Tenth Circuit.

Section 7. Disclaimer

Section 7 provides that nothing in the bill is intended to modify or affect the Clean Air Act or the Act to Confirm the Boundaries of the Southern Ute Reservation in Colorado, or any administrative or case law relating to them.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

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