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NATIVE AMERICAN HOUSING ENHANCEMENT ACT OF 2005

OCTOBER 27, 2005.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 797]

The Committee on Indian Affairs, to which was referred the bill (H.R. 797) to amend the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing programs for Indians, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the Native American Housing Enhancement Act of 2005, H.R. 797, is to amend certain provisions of Federal Indian housing laws to establish consistency among Federal Indian housing programs, to increase the availability of Indian housing programs and to correct a technical oversight in Native American Housing Assistance and Self Determination Act of 1996, 25 U.S.C. 4101 et seq. (NAHASDA).

BACKGROUND

In 1996, Congress passed NAHASDA to increase the availability of affordable housing for American Indians and Alaska Natives by allowing the housing funds to be leveraged with other Federal and private funds, among other purposes. The NAHASDA, which is administered by the Department of Housing and Urban Development, provides Indian tribes or their tribally designated housing entities the flexibility to use the housing funds according to tribal priorities including housing construction, infrastructure development, or planning. The Housing Act of 1949 (42 U.S.C. 1471 et seq.), admin-

istered by the Department of Agriculture, also includes housing programs for Indian tribes and their members. The Cranston-Gonzales National Affordable Housing Act, P.L. 101-625, November 28, 1990 (104 Stat. 4079), 42 U.S.C. 12701 et seq., was amended in 1992 to create the YouthBuild program for young adults. See P.L. 102-550, Title I, § 164, October 28, 1992 (106 Stat. 3723), 42 U.S.C. 12899 et seq. However, with the enactment of NAHASDA in 1996, Indian tribes were no longer eligible to apply for Cranston-Gonzales National Affordable Housing Act YouthBuild funding.

DEPARTMENT OF AGRICULTURE HOUSING PROGRAMS

The Housing Act of 1949 (42 U.S.C. 1471 et seq.) authorizes various housing programs administered by the Department of Agriculture, including programs for Indian tribes. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) prohibits exclusion of persons from participation in or receiving benefits of federally funded programs or activities based on race, color and national origin. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) generally prohibits such discrimination in the provision of housing and housing services. Because housing programs operated by Indian tribes or their housing instrumentalities on reservations and other Indian areas are intended to serve the housing needs of Indian people, NAHASDA exempts the Indian tribes and their designated housing entities from these statutes in carrying out affordable housing activities under NAHASDA. See § 201(b)(6) of NAHASDA, 25 U.S.C. 4131 (b)(6). However, there is no such exemption for Indian tribes in the Housing Act of 1949.

Section 4 of H.R. 797 amends Title V of the Housing Act of 1949 by adding a new section that: (1) states that Federally recognized Indian tribes (and their instrumentalities) “who exercise powers of self government shall comply with the Indian Civil Rights Act” of 1968 (25 U.S.C. 1301-1303) when receiving assistance under that title of the 1949 Housing Act; and (2) exempts Indian tribes that are covered by the Indian Civil Rights Act of 1968 or that are acting under § 201(b) of NAHASDA from Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.). The purpose of this amendment is to provide consistency in the requirements of Indian housing programs under the 1949 Housing Act with those of NAHASDA.

YOUTHBUILD PROGRAMS

The YouthBuild program of the Cranston-Gonzales National Affordable Housing Act provides young adults with opportunities to develop new leadership and job skills by participating in home construction projects. The Secretary of Housing and Urban Development is authorized to make YouthBuild planning and implementation grants to eligible organizations or agencies. See 42 U.S.C. 12899a, 12899b and 12899c. With the enactment of NAHASDA in 1996, however, Indian tribes and their housing authorities were no longer eligible for YouthBuild grants. See P.L. 104-330, 504(a). Indian tribes and their designated housing entities may instead use NAHASDA block grant funding to develop YouthBuild programs. However, the Committee has been made aware that NAHASDA block grant funding is frequently insufficient to meet tribal housing

priorities and, at the same time, adequately support YouthBuild type programs. Accordingly, H.R. 797 would amend section 12899f(2) of the Cranston-Gonzales National Affordable Housing Act to include Indian tribes, tribally designated housing entities and other agencies primarily serving Indians to the definition of eligible applicants and thereby increase the availability of YouthBuild programs for Indian communities.

ACCESS TO GRANTS UNDER NAHASDA

Section 104(a)(2) of NAHASDA (25 U.S.C. 4114(a)(2)) prohibits the Secretary of Housing and Urban Development from reducing housing grants awarded to Indian tribes based solely on (1) the tribe's retention of program income, (2) the amount of such income retained by the tribe, (3) the tribe's retention of reserve amounts from the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), or (4) whether the recipient has expended retained program income for housing related activities. However, the NAHASDA does not expressly prohibit the Secretary from restricting a tribe's access to, or even from disallowing a tribe or tribally designated housing entity from applying for, housing grants—as opposed to reducing grant amounts—when those same circumstances exist.

This technical oversight could result in denying Indian tribes or their designated housing entities the opportunity to apply for or receive NAHASDA grants, because the prohibition is limited to reducing the tribe's or housing entity's grant amount. Congress intended to broaden the housing grant opportunities for Indian tribes, not limit them, and correcting the technical oversight would be consistent with that original intent. Consequently, H.R. 797 corrects this technical oversight by amending NAHASDA to prohibit the Secretary from restricting tribal access to housing grants based solely on the four circumstances specified in section 104(a) of NAHASDA.

NEED FOR LEGISLATION

The legislation is necessary to make the requirements applicable to Indian tribes and their housing entities under the Housing Act of 1949 consistent with NAHASDA; to allow Indian tribes to have access to YouthBuild program grants; and to make a technical correction to section 104(a)(2) of NAHASDA.

LEGISLATIVE HISTORY

The bill, H.R. 797, was introduced in the House of Representatives on February 14, 2005 by Representative Renzi for himself and Representative Matheson. Representative Rahall joined as a cosponsor on April 6, 2005. The House passed H.R. 797 on April 6, 2005, and after being received from the House, the bill was referred to the Senate Committee on Indian Affairs. A companion bill, S.475, was introduced on February 28, 2005, by Senator Johnson for himself and Senator Enzi, and subsequently referred to the Committee on Indian Affairs.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on June 29, 2005, the Committee by voice vote ordered the bill to be reported favorably, without amendment, to the full Senate.

SECTION-BY-SECTION ANALYSIS

Section 1: Short title

This section sets forth the short title of the bill, the “Native American Housing Enhancement Act of 2005.”

Section 2: Findings

This section sets forth Congressional findings, including findings that the United States has a unique obligation to Indians, that Indians experience some of the worst housing conditions in the country, that members of Indian tribes are given a preference for housing programs under NAHASDA, and that the Housing Act of 1949 should be amended to allow for the preference given to Indians for Indian housing programs.

Section 3: Treatment of program income

This section sets forth a technical amendment to section 104(a)(2) of NAHASDA to prohibit the Secretary from restricting tribal access to grants based solely on the circumstances specified in that section.

Section 4: Civil rights compliance

This section amends title V of the Housing Act of 1949, 42 U.S.C. 1471, et seq., by adding a new section that (1) requires federally-recognized Indian tribes exercising powers of self-government (or their instrumentalities) to comply with the Indian Civil Rights Act of 1968 (25 U.S.C. 1301–1303) when receiving assistance under the 1949 Housing Act, and (2) provides an exemption from title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) and title VII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.) to tribes that are covered by the Indian Civil Rights Act (title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303) or that are acting under section 201(b) of NAHASDA (25 U.S.C. 4131(b)).

Section 5: Eligibility of Indian tribes for YouthBuild grants

This section amends section 457(2) of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12899f(2)) to include Indian tribes, tribally designated housing entities and other agencies primarily serving Indians as eligible applicants for YouthBuild grants.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate dated, July 25, 2005, was prepared for S. 475, a companion bill introduced in the Senate which is almost identical to H.R. 797:

S. 475—Native American Housing Enhancement Act of 2005

S. 475 would amend the Native American Housing and Self-Determination Act of 1996 to increase Indian tribes’ access to funding

authorized by that act. Specifically, the bill would permit tribes to receive new grants even if they still retain program income from earlier years. The bill would also amend title V of the Housing Act of 1949 to allow tribes to target funds to Indians in the administration of tribal housing projects. In addition, the bill would make Indian tribes eligible to receive YouthBuild grants.

CBO estimates that implementing S. 475 would have no significant effect on the federal budget and would not affect direct spending or revenues.

S. 475 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit tribal governments that receive federal housing funds.

The CBO staff contact for this estimate is Chad Chirico. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY 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 to be incurred in carrying out the bill. The Committee believes that H.R. 797 will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has received no official executive communications on H.R. 797.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of Rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of H.R. 797 will result in the following changes in the law (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*):

25 U.S.C. 4114(a) (P.L. 104-330, Title I, § 104(a))

§ 4114. Treatment of program income and labor standards

(a) PROGRAM INCOME.—

(1) AUTHORITY TO RETAIN.—

* * * * *

(2) PROHIBITION OF REDUCTION OF GRANT.—The Secretary may not *restrict access to or* reduce the grant amount for any Indian tribe based solely on—

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained;

(C) whether the recipient retains reserve amounts described in section 4140 of this title; or

(D) whether the recipient has expended retained program income for housing-related activities.

* * * * *

Title V of the Housing Act of 1949, 42 U.S.C. 1471 (63 Stat. 432) is amended by adding a new section 544 as follows:

SEC. 544. INDIAN TRIBES.

(a) *IN GENERAL.*—*Federally recognized Indian Tribes who exercise powers of self-government (or their instrumentalities) shall comply with the Indian Civil Rights Act (title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303) when receiving assistance under this title.*

(b) *EXEMPTION.*—*Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) shall not apply to—*

(1) tribes covered by the Indian Civil Rights Act (title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303); or

(2) tribes acting under section 201(b) of the native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4131(b)).

* * * * *

42 U.S.C. 12899f(2)**42 U.S.C. 12899f. Definitions.**

For purposes of this part:

(1) **ADJUSTED INCOME.**—

* * * * *

(2) **APPLICANT.**—The term “applicant” means a public or private nonprofit agency, including—

(A) a community-based organization;

(B) an administrative entity designated under section 103(b)(1)(B) of the Job Training Partnership Act;

(C) a community action agency;

(D) a State and local housing development agency;

(E) a community development corporation;

(F) a State and local youth service and conservation corps; **[and]**

(G) *an Indian tribe, tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)), or other agency primarily serving Indians; and*

[(G)] (H) any other entity eligible to provide education and employment training under other Federal employment training programs.