

RESOLUTION OF THE
NAABIK'ÍYATI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23RD Navajo Nation Council---Second Year, 2016

AN ACTION

RELATING TO NAABIK'ÍYATI'; SUPPORTING H.R. 511 AND S. 248, THE
TRIBAL LABOR SOVEREIGNTY ACT OF 2015

WHEREAS:

- A. The Navajo Nation established the Naabik'íyati' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyati' Committee to coordinate all federal programs and to assist and coordinate all requests for information, appearances and testimony relating to federal legislation impacting the Navajo Nation. 2 N.N.C. §§ 164 (A) (9), 700 (A), 701 (A) (4), 701(A) (6) (2012); *see also* CO-45-12.
- B. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
- C. H.R. 511, Tribal Labor Sovereignty Act of 2015 and S. 248, Tribal Labor Sovereignty Act of 2015, are identical pieces of legislation in the House and Senate of the United States 114th Congress, 1st Session, that clarify the rights of Indians and Indian Tribes on Indian lands by amending the National Labor Relations Act, 29 U.S.C. 152 to provide that any enterprise or institution owned and operated by an Indian tribe and located on its land is not considered an employer, thus excluding such enterprises or institutions from coverage by the Act. H.R. 511 attached as Exhibit A. S. 248 attached as Exhibit B.
- D. The National Labor Relations Act was enacted by Congress in 1935 to ensure fair labor practices and it explicitly excluded Federal and state governmental employees from the federal law. Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises were never defined, mentioned or excluded from the law. See Senate Report 114-140 attached as Exhibit C.

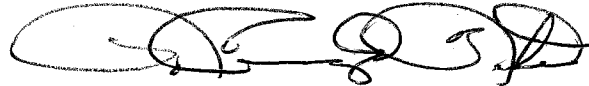
- E. The Congressional bills are intended to strengthen tribal sovereignty and address those instances where a Tribe is acting as an employer and conducting its business on tribal lands. See Senate Report 114-140
- F. H.R. 511 has passed the full House of Representatives and is waiting for action in the Senate, and S. 248 has passed Senate committees and is waiting for action by the full Senate.
- G. Navajo Nation law provides for union and employment agency activities and the rights of Navajo workers, with conditions, and currently there are three collective bargaining agreements with the United Mine Workers which include Navajo Head Start, Division of Public Safety and the Executive Branch. 15 N.N.C. § 606.

NOW THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation supports the Congressional bills, H.R. 511 and S. 248, the Tribal Labor Sovereignty Act of 2015, as it strengthens tribal sovereignty by amending the National Labor Relations Act to include Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises with Federal and state governments as excluded from the National Labor Relations Act. The Navajo Nation respectfully requests President Obama to continue to honor the federal trust relationship with Native American tribes and sign the Congressional bill into law.
- B. The Navajo Nation hereby authorizes the Navajo Nation President, the Navajo Nation Speaker, and their designees, to strongly advocate for the passage of the Tribal Labor Sovereignty Act of 2015.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Navajo Nation Council Chambers, Window Rock (Arizona), at which a quorum was present and that the same was passed by a vote of in 15 favor and 2 oppose, this 21st Day of January, 2016.

A handwritten signature in black ink, appearing to read "LoRenzo Bates". The signature is stylized and somewhat cursive, with a large initial "L" and "B".

Honorable LoRenzo Bates, Chairperson
Naabik'íyáti' Committee

Motion: Davis Filfred
Second: Edmund Yazzie

NAVAJO NATION

RCS# 261

Naa'bik'iyati Committee

1/21/2016

05:34:52 PM

Amd# to Amd#

Legislation No. 0408-15

PASSED

MOT Filfred

Supporting HR 511 and S 248,

SEC Yazzie

the Tribal Labor Sovereignty

Act of 2015

Yea : 15

Nay : 2

Not Voting : 7

Yea : 15

Begay, K

Bennett

Hale

Tsosie

Begay, M

Chee

Perry

Witherspoon

Begay, NM

Daniels

Pete

Yazzie

BeGaye, N

Filfred

Slim

Nay : 2

Phelps

Damon

Not Voting : 7

Bates

Crotty

Shepherd

Tso

Brown

Jack

Smith



II

114TH CONGRESS
1ST SESSION

H. R. 511

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2015

Received

AN ACT

To clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Tribal Labor Sov-
3 ereignty Act of 2015”.

4 **SEC. 2. DEFINITION OF EMPLOYER.**

5 Section 2 of the National Labor Relations Act (29
6 U.S.C. 152) is amended—

7 (1) in paragraph (2), by inserting “or any In-
8 dian tribe, or any enterprise or institution owned
9 and operated by an Indian tribe and located on its
10 Indian lands,” after “subdivision thereof,”; and

11 (2) by adding at the end the following:

12 “(15) The term ‘Indian tribe’ means any Indian
13 tribe, band, nation, pueblo, or other organized group or
14 community which is recognized as eligible for the special
15 programs and services provided by the United States to
16 Indians because of their status as Indians.

17 “(16) The term ‘Indian’ means any individual who
18 is a member of an Indian tribe.

19 “(17) The term ‘Indian lands’ means—

20 “(A) all lands within the limits of any Indian
21 reservation;

22 “(B) any lands title to which is either held in
23 trust by the United States for the benefit of any In-
24 dian tribe or individual or held by any Indian tribe
25 or individual subject to restriction by the United
26 States against alienation; and



II

Calendar No. 220

114TH CONGRESS
1ST SESSION

S. 248

[Report No. 114-140]

To clarify the rights of Indians and Indian tribes on Indian lands under
the National Labor Relations Act.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2015

Mr. MORAN (for himself, Mr. HOEVEN, Mrs. FISCHER, Mr. LANKFORD, Mr. INHOFE, Mr. THUNE, Mr. CRAPO, Mr. DAINES, Mr. RISCH, Mr. ROUNDS, Mr. GARDNER, and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 10, 2015

Reported by Mr. BARRASSO, without amendment

A BILL

To clarify the rights of Indians and Indian tribes on Indian
lands under the National Labor Relations Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Labor Sov-
5 ereignty Act of 2015”.

1 **SEC. 2. DEFINITION OF EMPLOYER.**

2 Section 2 of the National Labor Relations Act (29
3 U.S.C. 152) is amended—

4 (1) in paragraph (2), by inserting “or any en-
5 terprise or institution owned and operated by an In-
6 dian tribe and located on its Indian lands,” after
7 “subdivision thereof”; and

8 (2) by adding at the end the following:

9 “(15) The term ‘Indian tribe’ means any Indian
10 tribe, band, nation, pueblo, or other organized group
11 or community which is recognized as eligible for the
12 special programs and services provided by the
13 United States to Indians because of their status as
14 Indians.

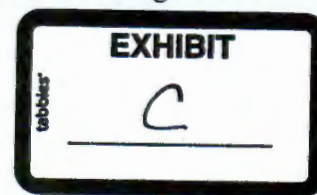
15 “(16) The term ‘Indian’ means any individual
16 who is a member of an Indian tribe.

17 “(17) The term ‘Indian lands’ means—

18 “(A) all lands within the limits of any In-
19 dian reservation;

20 “(B) any lands title to which is either held
21 in trust by the United States for the benefit of
22 any Indian tribe or individual or held by any
23 Indian tribe or individual subject to restriction
24 by the United States against alienation; and

25 “(C) any lands in the State of Oklahoma
26 that are within the boundaries of a former res-



[Senate Report 114-140]
[From the U.S. Government Publishing Office]

114th Congress	}		Calendar No. 220
			{ Report
		SENATE	
1st Session	}		{ 114-140

TRIBAL LABOR SOVEREIGNTY ACT OF 2015

September 10, 2015.--Ordered to be printed

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

R E P O R T

[To accompany S. 248]

The Committee on Indian Affairs, to which was referred the bill (S. 248) to clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

Purpose

The purpose of S. 248 would amend and clarify the National Labor Relations Act (NLRA or the Act) so that federally-recognized Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises would be provided equity and parity under the law with respect to other governmental employers.

Need for Legislation

The NLRA was enacted by Congress in 1935 to ensure fair labor practices and it explicitly excluded Federal and state governmental\1\ employers from the federal labor law. Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises were never defined, mentioned, or excluded from the law. The National Labor Relations Board's (NLRB or the Board) decisions and orders, have varied in the applicability of the Act on Indian tribes, and their institutions or enterprises.

\1\Including any corporations wholly-owned by these governmental

entities.

Background

The NLRB is an independent Federal agency established by the Act. The Act recognizes the right of employees to engage in collective bargaining through representatives of their own choosing. However, certain employers are excluded from the Act such as those of the Federal and State governments, including wholly-owned government corporations, state lotteries and liquor stores. The NLRA never mentions Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises.

The primary responsibility of the NLRB is to administer the Act. The NLRB conducts elections, investigates charges, facilitates settlements, decides cases, and enforces orders. The NLRB is governed by a five-person board and a general counsel, appointed by the President and confirmed by the Senate.

NATIONAL LABOR RELATIONS BOARD DECISIONS

In two cases from 1935 to 2004, the Board declined to assert its jurisdiction over tribally-owned enterprises located on tribal lands in the Fort Apache Timber Co. (1976)\2\ and Southern Indian Health Council (1988).\3\ The NLRB held that tribally-owned businesses operating on their Indian lands were exempt from the NLRA's definition of employer. However, in Sac & Fox Indus. (1992),\4\ the Board held that a tribally-owned and operated factory that was located off Indian lands was subject to the NLRA.

\2\ Fort Apache Timber Co., 226 NLRB 503 (1976).
 \3\ Southern Indian Health Council, 290 NLRB 436 (1988).
 \4\ Sac & Fox Indus., 307 NLRB 241 (1992).

The San Manuel Case

In 2004, the NLRB ruled in the San Manuel Indian Bingo & Casino\5\ (a casino located on its reservation, and owned and operated\6\ by the San Manuel Band of Serrano Mission Indians) that the NLRA applies to tribal enterprises located on Indian lands. This was the first instance in which the Board applied the NLRA to a tribally-owned business on tribal lands. Furthermore, in this decision the Board determined future jurisdictional questions of the applicability of the NLRA will be decided on a case-by-case basis. In 2007, the U.S. Court of Appeals for the District of Columbia affirmed\7\ the Board's 2004 San Manuel decision.

\5\ San Manuel Indian Bingo & Casino, 341 NLRB 138 (2004).
 \6\ The Indian Gaming Regulatory Act, Pub. L. No. 100-497 (Codified as 25 U.S.C. Sec. 2701 et seq.) (1988), states that all gaming revenue must be used for tribal government purposes. Tribal government services could include, but is not limited to: health care, social services, housing, utilities, educational assistance, and emergency services.
 \7\ San Manuel Indian Bingo & Casino v. NLRB, 475 F.3d 1306 (D.C. Cir. 2007).

The Chickasaw Nation Case

After the U.S. Supreme Court's decision in Noel Canning,⁸ which ruled the Board was invalidly appointed, the 10th Circuit case of Chickasaw Nation v NLRB was remanded back to the Board. On June 4, 2015, the Board issued a decision on the application of the NLRA to the Chickasaw Nation, which operates a tribally-owned enterprise known as the WinStar Casino on tribal lands. In that ruling,⁹ the Board decided not to assert jurisdiction over the Chickasaw Nation. Specifically, the Board cited the Chickasaw Nation's treaty with the United States blocked the Board from asserting its jurisdiction over the tribe's casino. It is unknown what immediate effect the Chickasaw Nation decision will have on other tribal cases since the Board's decision was based on a treaty specific to the Chickasaw Nation.

⁸NLRB v. Noel Canning, 573 U.S. ___, 134 S. Ct. 2250, 189 L. Ed. 2d 538 (2014).

⁹Chickasaw Nation, 362 NLRB 109 (2015).

U.S. COURT OF APPEALS

Meanwhile, several Indian labor cases have appeared before the U.S. Court of Appeals for the 6th and 10th Circuits. In the Little River Band of Ottawa Indians,¹⁰ the 6th Circuit held that the NLRB could enforce provisions of the Act against the Indian tribe. However, the 10th Circuit held in Pueblo of San Juan,¹¹ that the Pueblo's right to adopt a tribal labor ordinance preempts the NLRA and affirmed the decision of the district court. Thus, given the split interpretations from the Circuit courts and the Board, legislation is needed to ensure clarity and parity in the application of the NLRA to Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises.

¹⁰NLRB v. Little River Band of Ottawa Indian Tribal Gov't, No. 14-2239 (6th Cir. June 9, 2015).

¹¹NLRB v. Pueblo of San Juan, 280 F.3d 1278 (10th Cir. N.M. 2000).

TRIBAL SOVEREIGNTY

In Cherokee Nation v. Georgia, 30 U.S. 1, (1831), the U.S. Supreme Court declared that Indian tribes are "domestic dependent nations." Reinforcing Tribes' status as nations, several court cases¹² have recognized and upheld that Indian tribes have the attributes of sovereignty including: sovereign immunity and authority over their members and territory. Additionally, the Indian Self-Determination and Education Assistance Act of 1975 and the Native American Housing and Self-Determination Act of 1996, in particular, recognize the exercise of tribal authority by deferring to tribal personnel, wages, and labor laws in carrying out programs. This bill is intended to strengthen tribal sovereignty and addresses those instances where a Tribe is acting as an employer and conducting

its business on tribal lands.

\12\Montana v. United States, 450 U.S. 544, 564-565 (1981); Nat'l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 854-855 (1985); Strate v. A-1 Contractors, 520 U.S. 438, 453 (1997); South Dakota v. Bourland, 508 U.S. 679, 695 (1993); Nevada v. Hicks, 533 U.S. 353, 360 (2001).

BUREAU OF INDIAN AFFAIRS POSITION

On December 7, 2011, Deputy Solicitor of Indian Affairs, Patrice Kunesh, sent a letter\13\ to the Acting General Counsel of the Board, Lafe Soloman, requesting the NLRB ``re-evaluate its position on tribal issues and to help advance the Federal government's commitments to Indian Country, particularly with regard to respecting tribes as sovereign governments.'' The Deputy Solicitor of Indian Affairs then went on to state that ``[t]ribal governments should be given at least the same exception as provided to state governments in the NLRA.''

\13\Letter from Patrice Kunesh, Deputy Solicitor of Indian Affairs, U.S. Department of the Interior, to Lafe Soloman, Acting General Counsel, NLRB (Dec. 7, 2011)

Legislative History

On January 22, 2015, Senator Jerry Moran (R-KS) introduced S. 248, along with Senators Mike Crapo (R-ID), Steve Daines (R-MT), Deb Fischer (R-NE), John Hoeven (R-ND), James Inhofe (R-OK), James Lankford (R-OK), and John Thune (R-SD). Senators James Risch (R-ID) Mike Rounds (R-SD), Cory Gardner (R-CO), and John McCain (R-AZ) were later added as co-sponsors. The bill was referred to the Senate Committee on Indian Affairs. On March 4, 2015, the Committee held a legislative hearing on the bill. On June 10, 2015, the Committee met to consider the bill. The Committee then ordered the bill to be reported favorably to the Senate by voice vote.

In the 113th Congress, Senator Moran introduced, S. 1477, the Tribal Labor Sovereignty Act of 2013.\14\ It was referred to the Committee on Indian Affairs where no further action was taken. A similar bill, H.R. 1226, was introduced in the House of Representatives by Representative Kristi Noem and no further action was taken.

\14\In the 114th Congress, S. 248, the Tribal Labor Sovereignty Act of 2015 has identical language to the 113th Congress introduced bill, S. 1477, the Tribal Labor Sovereignty Act of 2013.

Additional Senate Actions. In the 111th Congress, Senator Inouye sent a letter\15\ to Senator Kennedy, then-Chairman of the Committee on Health, Education, Labor, and Pensions (HELP), requesting that the legislation under consideration\16\ include an amendment giving Indian tribes equal treatment that Federal and state governments receive under the NLRA. In the letter, it stated the Constitution of the United States ``acknowledges Indian tribes as governments under the Commerce Clause and the Supremacy Clause.'' Furthermore, Senator Inouye's letter recommended the HELP Committee consider an amendment to S. 560,

the Employee Free Choice Act, which would clarify the definition of employer to include Indian tribes.

 \15\Letter from Sen. Daniel Inouye, U.S. Senate, to Sen. Edward Kennedy, U.S. Senate (Jun. 1, 2009).

\16\The Employer Free Choice Act, S. 560, 111th Cong. (2009).

Section-by-Section Analysis of Bill as Ordered Reported

Section 1--Short Title

Section 1 states S. 248 may be cited as the ``Tribal Labor Sovereignty Act of 2015.''

Section 2--Definition of Employer

The bill amends Section 2(2) of the National Labor Relations Act (29 U.S.C. 152) by including in the list of employers that are excluded from the NLRA, ``any enterprise or institution owned and operated by an Indian tribe and located on its Indian lands.''. The bill intends to provide parity, under the law alongside Federal and State governments, to federally-recognized Indian tribes, tribal governments, and tribally-owned and operated institutions and enterprises.

Cost and Budgetary Considerations

U.S. Congress,
 Congressional Budget Office,
 Washington, DC, June 25, 2015.

Hon. John Barrasso,
 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. 248, the Tribal Labor Sovereignty Act of 2015.

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

Sincerely,

Keith Hall.

Enclosure.

Summary: S. 248 would add tribes to the list of entities that are excluded from the definition of ``employer'' for purposes of the National Labor Relations Act. Through the National Labor Relations Board (NLRB), the National Labor Relations Act protects the rights of most private-sector employees to form a union and to bargain collectively. Adding tribes to the list of excluded employers would treat them similarly to state and local governments. Currently, the NLRB asserts jurisdiction over the commercial enterprises owned and operated by Indian tribes, even if they are located on a tribal reservation. However, the NLRB does not assert jurisdiction over tribal enterprises that carry out traditional tribal or governmental functions.

Enacting S. 248 would not significantly affect the workload of the NLRB, so it would have no effect on the federal budget. The bill would not affect direct spending or revenues;

therefore, pay-as-you-go procedures do not apply.

S. 248 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

S. 248 would impose a private-sector mandate, as defined in UMRA, on employees of tribal enterprises located on tribal land. The bill would eliminate the federal right of those employees to join together to improve their wages and working conditions, with or without a union. Furthermore, the bill would eliminate the right of those employees to file a claim, individually or through a union, with the NLRB regarding the labor practices by tribal employers that prohibit or interfere with activities to improve wages and working conditions in enterprises on tribal land. Under the bill, such practices would no longer be considered unfair labor practices by those employers under the National Labor Relations Act.

The cost of the mandate would be the value of forgone awards and compensation. Based on information from the NLRB, CBO expects that the mandate would apply to employees of a limited number of tribal enterprises. Consequently, CBO expects that the cost of the mandates would not be substantial and would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

The CBO staff contact for this estimate is Christina Hawley Anthony. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

[all]