

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

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'ÍYÁTI'; CONCURRING WITH DINÉ BI OLTA SCHOOL BOARD ASSOCIATION IN OPPOSING U.S. SENATE BILL 2580 ENTITLED "REAFFIRMING AMERICAN INDIAN STANDARDS OF EDUCATION ACT OF 2016"

WHEREAS:

- A. The Health, Education and Human Services Committee (HEHSC) is a standing committee of the Navajo Nation Council. It has the authority to review and recommend resolutions regarding certain matters, including health, education and social services. 2 N.N.C. §§ 164 (A)(9), 400 (A), 401 (B)(6)(a) (2012); *see also* CO-45-12.
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. It has the authority to "review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments." 2 N.N.C. §701(A)(7).
- C. The Navajo Nation has a government-to-government relationship with the federal government.
- D. Senate bill 2580, entitled "Reforming American Indian Standards of Education Act of 2016," is introduced in the United States Senate. Its purposes include - "to establish the Indian Education Agency to streamline the administration of Indian education." See attached Exhibit "A."
- E. The Diné Bi Olta School Board Association (DBOSBA) an organization that represents local community school boards on the Navajo Nation, opposes S.2580. In its written testimony opposing the bill, the Association suggests - "Rather than moving forward with S.2580, the

[Senate Committee on Indian Affairs] should conduct a thorough review of the Interior's implementation of PL 95-561 and PL 100-297 (25 USC 2000 through 2021) and provide ... clear suggestions/directives to [Department of the Interior] concerning implementation of these laws." See Exhibit "B," DBOSBA written testimony April 6, 2016.

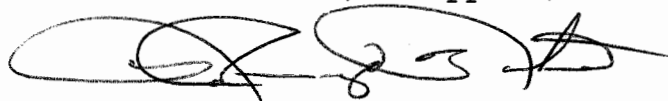
F. P.L. 95-561, Elementary and Secondary Education Amendments of 1978, created a system of contract education positions for Bureau of Indian Education operated schools and dormitories. P.L. 100-297, Hawkins-Sanford Elementary and Secondary School Improvements Act of 1988, was enacted to improve elementary and secondary education.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation hereby opposes S.2580 and concurs with written statement of the Diné Bi Olta School Board Association regarding this opposition. The written statement is attached hereto as Exhibit "B."

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 Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 13 in favor, 0 oppose, this 26th day of May, 2016.



LoRenzo Bates, Chairperson
Naabik'íyáti' Committee

Motion: Honorable Seth Damon
Second: Honorable Raymond Smith, Jr.

NAVAJO NATION

RCS# 425

Naa'bik'iyati Committee

5/26/2016

05:14:22 PM

Amd# to Amd#

Legislation No. 0136-16

PASSED

MOT Damon

Concurring with Dine' Bi Olta

SEC Smith

School Board Assoc. in Opposing

U.S. Senate Bill 2580

Yea : 13

Nay : 0

Not Voting : 11

Yea : 13

Begay, K

Damon

Jack

Tso

BeGaye, N

Filfred

Slim

Tsosie

Bennett

Hale

Smith

Yazzie

Chee

Nay : 0

Not Voting : 11

Bates

Crotty

Pete

Vacant

Begay, NM

Daniels

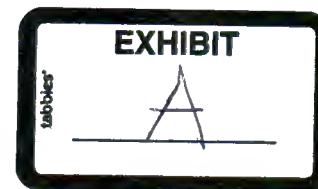
Phelps

Witherspoon

Brown

Perry

Shepherd



114TH CONGRESS
2D SESSION

S. 2580

To establish the Indian Education Agency to streamline the administration
of Indian education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2016

Mr. BARRASSO introduced the following bill; which was read twice and
referred to the Committee on Indian Affairs

A BILL

To establish the Indian Education Agency to streamline the
administration of Indian education, and for other purposes.

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 “Reforming American
5 Indian Standards of Education Act of 2016” or the
6 “RAISE Act of 2016”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) AGENCY.—The term “Agency” means the
2 Indian Education Agency established by section
3 3(a).

4 (2) ASSISTANT DIRECTOR.—The term “Assist-
5 ant Director” means, as applicable—

6 (A) the Assistant Director of Education
7 Curriculum described in section 3(c)(1); or

8 (B) the Assistant Director of Facilities
9 Management described in section 3(c)(2).

10 (3) DEPARTMENT.—The term “Department”
11 means the Department of the Interior.

12 (4) DIRECTOR.—The term “Director” means
13 the Director of Indian Education described in sec-
14 tion 3(b)(1).

15 (5) INDIAN TRIBE.—The term “Indian tribe”
16 has the meaning given the term in section 4 of the
17 Indian Self-Determination and Education Assistance
18 Act (25 U.S.C. 450b).

19 (6) SECRETARY.—The term “Secretary” means
20 the Secretary of the Interior.

21 **SEC. 3. ESTABLISHMENT.**

22 (a) IN GENERAL.—There is established within the
23 Department an independent agency to be known as the
24 “Indian Education Agency”.

25 (b) DIRECTOR.—

1 (1) IN GENERAL.—The head of the Agency
2 shall be the Director of Indian Education.

3 (2) APPOINTMENT.—The Director shall be ap-
4 pointed by the President by and with the advice and
5 consent of the Senate.

6 (3) PERIOD OF APPOINTMENT.—The Director
7 shall be—

8 (A) appointed for a term of 6 years; and

9 (B) eligible for reappointment for an un-
10 limited number of terms.

11 (4) REMOVAL.—The Director may be removed
12 by the President before the expiration of the term of
13 the Director only for cause.

14 (5) VACANCIES.—Any vacancy in the position
15 of Director shall not affect the functions or authori-
16 ties of the Agency, but shall be filled in the same
17 manner as the original appointment.

18 (c) ASSISTANT DIRECTORS.—

19 (1) ASSISTANT DIRECTOR OF EDUCATION CUR-
20 RICULUM.—

21 (A) IN GENERAL.—There shall be in the
22 Agency an Assistant Director of Education
23 Curriculum, who shall be appointed by the Di-
24 rector.

1 (B) DUTIES.—The Assistant Director shall
 2 be responsible for the functions of the Agency—
 3 (i) relating to education curriculum;
 4 and
 5 (ii) that the Director may delegate to
 6 the Assistant Director.

7 (2) ASSISTANT DIRECTOR OF FACILITIES MAN-
 8 AGEMENT.—

9 (A) IN GENERAL.—There shall be in the
 10 Agency an Assistant Director of Facilities Man-
 11 agement, who shall be appointed by the Direc-
 12 tor.

13 (B) DUTIES.—The Assistant Director shall
 14 be responsible for the functions of the Agency—
 15 (i) relating to facilities management;
 16 and
 17 (ii) that the Director may delegate to
 18 the Assistant Director.

19 **SEC. 4. TERMINATION OF BUREAU OF INDIAN EDUCATION;**
 20 **TRANSFER OF FUNCTIONS.**

21 (a) TERMINATION OF BUREAU OF INDIAN EDU-
 22 CATION.—Effective beginning on the date of enactment of
 23 this Act, the Bureau of Indian Education (including any
 24 predecessor office described in Federal law) is terminated.

25 (b) TRANSFER OF FUNCTIONS.—

1 (1) IN GENERAL.—Any function or authority
2 relating to Indian education that, as of the day be-
3 fore the date of enactment of this Act, was per-
4 formed or carried out by the Secretary or any bu-
5 reau, office, or other unit of the Department is
6 transferred to the Director.

7 (2) REFERENCES.—Any reference in any other
8 Federal law to the Secretary, the Department, or
9 any bureau, office, or other unit of the Department
10 with respect to the functions or authorities trans-
11 ferred under paragraph (1) is deemed to refer to the
12 Director or the Agency, as appropriate.

13 **SEC. 5. REPORTS.**

14 (a) IN GENERAL.—Not later than 18 months after
15 the date of enactment of this Act, and annually thereafter,
16 the Director, in consultation with affected Indian tribes,
17 shall prepare a report describing the implementation of
18 this Act, including—

- 19 (1) the activities of the Agency;
20 (2) an assessment of the effectiveness of this
21 Act; and
22 (3) recommendations for legislation to improve
23 the functioning of the Agency.

24 (b) SUBMISSION.—The Director shall submit each re-
25 port described in subsection (a) to—

1 (1) the Committee on Indian Affairs of the Sen-
2 ate;

3 (2) the Committee on Natural Resources of the
4 House of Representatives; and

5 (3) the Committee on Education and the Work-
6 force of the House of Representatives.

7 **SEC. 6. REGULATIONS.**

8 (a) IN GENERAL.—The Director shall promulgate
9 such regulations as the Director determines are appro-
10 priate to perform the functions of the Director.

11 (b) AUTONOMY.—No regulation promulgated pursu-
12 ant to subsection (a) shall be subject to approval or review
13 by the Secretary.

14 **SEC. 7. PERSONNEL.**

15 (a) COMPENSATION OF DIRECTOR AND ASSISTANT
16 DIRECTORS.—

17 (1) DIRECTOR.—The Director shall be com-
18 pensated at a rate equal to that of level IV of the
19 Executive Schedule under section 5315 of title 5,
20 United States Code.

21 (2) ASSISTANT DIRECTORS.—Each Assistant
22 Director shall be compensated at a rate equal to
23 that of level V of the Executive Schedule under sec-
24 tion 5316 of title 5, United States Code.

1 (3) TRAVEL EXPENSES.—The Director and
2 each Assistant Director shall be allowed travel ex-
3 penses, including per diem in lieu of subsistence, at
4 rates authorized for employees of agencies under
5 subchapter I of chapter 57 of title 5, United States
6 Code, while away from their homes or regular places
7 of business in the performance of their duties.

8 (b) STAFF.—

9 (1) TRANSFER OF PERSONNEL.—Effective be-
10 ginning on the date of enactment of this Act, the
11 personnel employed in connection with the functions
12 or authorities transferred under section 4(b)(1) are
13 transferred to the Director.

14 (2) ADDITIONAL PERSONNEL.—The Director
15 may, without regard to the civil service laws, appoint
16 and terminate such additional personnel as may be
17 necessary to enable the Director to perform the
18 functions of the Director.

19 (3) COMPENSATION.—The Director may fix the
20 compensation of the personnel of the Agency other
21 than the Director or the Assistant Directors without
22 regard to chapter 51 and subchapter III of chapter
23 53 of title 5, United States Code, relating to classi-
24 fication of positions and General Schedule pay rates,
25 except that the rate of pay for the other personnel

1 may not exceed the rate payable for level V of the
2 Executive Schedule under section 5316 of that title.

3 (c) DETAIL OF GOVERNMENT EMPLOYEES.—Any
4 Federal Government employee may be detailed to the
5 Agency without reimbursement, and such detail shall be
6 without interruption or loss of civil service status or privi-
7 lege.

8 (d) PROCUREMENT OF TEMPORARY AND INTERMIT-
9 TENT SERVICES.—The Director may procure temporary
10 and intermittent services under section 3109(b) of title 5,
11 United States Code, at rates for individuals that do not
12 exceed the daily equivalent of the annual rate of basic pay
13 prescribed for level V of the Executive Schedule under sec-
14 tion 5316 of that title.

15 (e) PREFERENCE.—

16 (1) IN GENERAL.—In the selection of each indi-
17 vidual to be employed by the Director pursuant to
18 section 3(c) and subsections (b)(2), (c), and (d) of
19 this section, the Director shall give preference to
20 members of Indian tribes.

21 (2) APPLICABILITY.—The preference described
22 in paragraph (1) shall apply only to initial hiring,
23 and shall not apply to promotion, lateral transfer,
24 reassignment, reductions in force, or any other em-
25 ployment practice.

1 (f) CIVIL SERVICE LAWS.—All personnel of the Agen-
2 cy other than the Director shall be covered by the civil
3 service laws.

4 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated to the Direc-
6 tor such sums as are necessary to carry out this Act.

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DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.

DBOSBA

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FAX (928) 871-5148



Testimony of the
DINÉ BI OLTA SCHOOL BOARD ASSOCIATION
Senate Committee on Indian Affairs Hearing
April 6, 2016

S. 2580 "Reforming American Indian Standards of Education (RAISE)"

S. 2580 would terminate the Bureau of Indian Education (BIE) and transfer its authority to a new "independent" agency within the Department of the Interior (DOI). This Bill fails to understand that this transfer already occurred in 1978 under **PL 95-561**. One of the reasons why this is not well understood is that the DOI has failed to implement various portions of the existing law. Many of the frustrations of the Congress and Indian country alike with the performance of the Bureau are due to this failure to establish a complete education system, as well as provide the opportunity for tribes to do the same using the provisions of the self-determination laws, PL 93-638 and PL 100-297.

25 USC 2006 (a) through (e) is key to understanding the importance of the 1978 reforms of PL 95-561.

- 25 USC Section 2006 (a) contains the provision that first established line authority for the Director of what is now BIE.
- 25 USC Section (b) makes it clear that the Director is to "*direct and supervise the operations of all education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs.*" This language is clear !
- 25 USC Section 2006 (c) makes it clear that functions and positions at the agency and area level are subject to contract by tribes and tribal organizations unless the functions involved are determined to be "inherently federal." This is a concept that has been refined under Interior's Tribal Self-Governance Program.
- 25 USC Section 2006 (d) makes it clear that BIE must monitor and evaluate BIE programs, must provide all services and support functions involving personnel matters, and must provide technical and coordinating assistance related to contracting, budgeting, personnel, curriculum and O & M.
- 25 USC Section 2006 (e) provides detail on how the construction program is to function.

The law established a new contract educator system that operates in a manner very similar to that of most states. (25 USC 2012) This system was a dramatic improvement over the civil service system (title 5) that was in place before it and has generally worked well as long as BIE management understood it and was committed to implement it.

The law established the requirement for an equalization formula for the distribution of funding. (25 USC 2007) This formula (ISEP), developed by a combination of tribal and Bureau educators and a few expert consultants, was a great improvement over the previous method that was rife with favoritism and inequity.

The law also calls for a Division of Budget Analysis (25 USC 2009) which the Bureau has ignored. The law (25 USC 2001 (h))also called for studies of various funding formulas (Transportation, ISEP, Administrative Cost Grants, small schools adjustments, O & M funding, etc. Failure to conduct such studies has made it more difficult to form an objective justification for funding increases.

Local input and control of education is provided for in BIE operated schools for those school boards and communities who do not wish to assume more complete control under a contract or grant. The process, which involves decision making by the school board but also providing an appeal option for the local school supervisor, is found in 25 USC 2012 (d) (4) for hiring of personnel and 25 USC 1130 (b) (3) (B) for approval of the school's budget and expenditures. This process again works well when principals and supervisors implement it in good faith. Currently, it appears that the law is being deliberately violated.

Much more could be said concerning provisions of law that have not been implemented by Interior. Regarding the support/administrative services that should long ago have been transferred to Education (BIE), it seems that the BIA has resisted these transfers because it (the BIA) would almost undoubtedly be forced to relinquish staff and funding to the BIE. While the GAO and Congressional oversight committees have often pointed to the Bureau's poor results, the idea that it is DOI's failure to move forward with a restructuring that is at the heart of the problem is usually missed. Currently the BIE is undergoing a restructuring that once again ignores the authorizing legislation. This is very disappointing and greatly increases the potential for failure.

DBOSBA Recommendation:

Rather than moving forward with S. 2580, DBOSBA believes that the Committee should conduct a thorough review of the Interior's implementation of PL 95-561 and PL 100-297 (25 USC 2000 through 2021) and provide a set clear suggestions/directives to DOI concerning implementation of these laws. A great deal of thought and good sense went into the statute and the lengthy rule making process that followed. DBOSBA believes there is a good foundation there that needs to be given a chance. Included in these suggestions to Interior should be one that calls for an independent budget justification (Greenbook) for BIE, put together by its own new Budget Division, in cooperation with the affected tribes and school officials.

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