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105TH CONGRESS *1st Session* | SENATE | REPORT 105–60

ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ACT OF 1997

JULY 31, 1997.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 399]

The Committee on Environment and Public Works, to which was referred the bill (S. 399), a bill to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish the United States Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

GENERAL STATEMENT

Background

The Morris K. Udall Scholarship and Excellence in National Environmental Policy Act of 1992 was signed into law by President Bush on March 19, 1992. The Act established the Morris K. Udall Foundation for several purposes including: (1) to award scholarships and fellowships to outstanding students intending to pursue careers in the environment and internships to outstanding Native Americans and Alaska Native college students intending to pursue careers in health care and tribal public policy; (2) to provide for a panel of experts to meet annually to discuss contemporary environmental issues; and (3) to establish a program for environmental policy research and a program for environmental conflict resolution.

Although the Morris K. Udall Foundation was originally charged with the task of establishing a program for environmental dispute resolution, it has lacked the funding and explicit direction that would enable it to run a program that could provide conflict-resolu-

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tion services. Thus, although the Foundation has sponsored seminars and workshops on conflict resolution, it has been unable to provide a program for environmental conflict resolution.

Congressional legislation

On March 5, 1997, Senator McCain introduced S. 399, the Environmental Policy and Conflict Resolution Act of 1997, which was referred to the Committee on Environment and Public Works. On July 24, 1997, the committee considered the bill, and ordered it reported, as amended, by voice vote. Senator Thomas voted against the motion to report the bill.

SUMMARY OF S. 399

As amended and ordered reported by the Committee on Environment and Public Works, the bill includes one title with eight sections amending the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to allow the Morris K. Udall Foundation to establish the United States Institute for Environmental Conflict Resolution. The Institute would offer alternative dispute-resolution services, including assessment, mediation, and other related services to facilitate the resolution of environmental disputes between parties without resorting to protracted and costly litigation.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 contains the short title.

Section 2. Definitions

Section 2 defines key terms used in the bill. Specifically, this section defines an "environmental dispute" as a dispute or conflict relating to the environment, public lands, or natural resources.

Section 3. Board of trustees

Section 3 includes a provision to add the chairperson of the President's Council on Environmental Quality (CEQ) as a non-voting, ex-officio member of the Morris K. Udall Foundation Board of Trustees. Adding the chairperson of CEQ to the Udall Board's membership would reinforce the role of CEQ in overseeing the dispute-resolution activities of the Institute. This section further provides that the chairperson of CEQ would not be eligible to serve as chairperson of the Board of Trustees.

Section 4. Purpose

Section 4 establishes the United States Institute for Environmental Conflict Resolution for the purposes of providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States. The bill provides that an additional purpose of the Institute is to complement Executive Order 12988, signed February 5, 1997. Executive Order 12988 directs Federal agencies to make greater use of alternative dispute resolution in litigation involving the United States.

In the past two decades, Federal courts have handed down over 5,000 decisions on environmental litigation. Approximately 400 to 500 environmental lawsuits are filed each year in the nation's Federal courts. In its Sixteenth Annual Report, CEQ estimated that 85 percent of Environmental Protection Agency's regulations are challenged at some time in the courts by litigants who find the rules too stringent or too lax. In short, resorting to the courts is all too common in environmental disputes.

Section 5. Authority

Section 5 authorizes the Morris K. Udall Foundation to establish the United States Institute for Environmental Conflict Resolution and to identify and conduct appropriate programs to provide assessment, mediation, training, and other related services to resolve environmental disputes. The Institute is intended to give stakeholders in environmental disputes involving the Federal Government the opportunity to resolve their disputes outside the courtroom through the use of the mediation and dispute-resolution services.

When the Udall Foundation was established in 1992, it was charged with the task of establishing a program for environmental dispute resolution. The Foundation has sponsored workshops and seminars on conflict resolution; however, it has lacked the explicit direction and funding necessary to provide conflict-resolution services. This section provides the direction for the Foundation to carry out environmental dispute resolution.

Section 5 also directs the Institute to provide these services, to the maximum extent practicable, using conflict-resolution providers within the geographic proximity of the conflict. This provision was included to promote the Institute's use of dispute-resolution providers with special knowledge of local disputes, wherever it is practicable to do so, rather than the use of dispute-resolution providers from outside the affected area who may lack a complete understanding of localized or regional disputes.

Section 6. Use of the institute by a Federal agency

Section 6 authorizes Federal agencies to enter into contracts and expend funds to obtain services from the Institute for environmental conflict resolution. The Institute is intended to use the payments received from agencies for its services to fund operational expenses in the out-years when the authorization of appropriations has expired.

Section 6 also requires a Federal agency to notify the chairperson of the President's Council on Environmental Quality when using the Institute. When a dispute involves two or more Federal agencies, concurrence of the chairperson is required. This provision is in no way intended to impede an agency's use of the Institute's services. The chairperson is to indicate concurrence or non-concurrence within 20 days of notification by the agencies to use the Institute's services.

Section 7. Authorization of appropriations

Section 7 authorizes appropriations of $9,250,000 over a 5-year period beginning in fiscal year 1998. Of the $9,250,000 total, the

bill provides $3,000,000 for capital start-up costs in fiscal year 1998 and $1,250,000 for each of fiscal years 1998 through 2002 for operational costs. This section provides the necessary funding to carry out dispute resolution that the Foundation has lacked in the past.

Section 8. Conforming amendments

Section 8 contains conforming amendments.

REGULATORY IMPACT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

Given the incentive-based and non-regulatory nature of the bill, the regulatory impact of the reported bill is expected to be minimal. S. 399 adds no new regulatory burden because use of the Institute is voluntary. Thus, the bill's regulatory impact, if any, should be de minimis.

The bill would not have any impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee makes the following evaluation of the Federal mandates contained in the reported bill.

S. 399 imposes no Federal intergovernmental mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not impose any Federal Private Sector mandates either. The reported bill will have no effect on the competitive balance between the public and private sectors.

HEARINGS

No hearings were held on S. 399.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of legislation be noted in the report.

On July 24, 1997, the committee considered S. 399, and accepted the Chafee amendment in the nature of a substitute, which was further amended by the Baucus amendment. Senator Chafee's motion to report the bill as amended was agreed to by voice vote, with Senator Thomas voting "no."

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of a reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1997.

Hon. JOHN H. CHAFEE,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 399, the Environmental Policy and Conflict Resolution Act of 1997.

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

Sincerely,

JUNE E. O'NEIL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 399, Environmental Policy and Conflict Resolution Act of 1997, as ordered reported by the Senate Committee on Environment and Public Works on July 24, 1997.

Summary: S. 399 would create an Institute for Environmental Conflict Resolution within the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation. The bill would authorize $4.25 million in fiscal year 1998 and $1.25 million in each of fiscal years 1999–2002 to be appropriated to the foundation's trust fund. The total $9.25 million in authorizations would result in about $2 million in increased interest payments to the trust fund over the fiscal years 1998–2002. The interest earned (but not the principal) could be spent by the foundation without additional appropriations and would therefore be subject to pay-as-you-go procedures. In fiscal year 1998, spending subject to pay-as-you-go procedures would total about $175,000.

S. 399 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 399 is shown in the following table.

DIRECT SPENDING

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Direct spending under current law:						
Estimated budget authority	1	1	1	1	1	1
Estimated outlays	1	1	1	1	1	1
Proposed changes:						
Estimated budget authority	—	(1)	(1)	(1)	(1)	1
Estimated outlays	—	(1)	(1)	(1)	(1)	1
Spending under S. 399:						
Estimated budget authority	1	1	2	2	2	2
Estimated outlays	1	1	1	2	2	2

[1] Less than $500,000.

The costs of this legislation fall within budget function 500 (Education, Employment, Training, and Social Services).

Basis of Estimate: The Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation was established in 1992 to provide educational resources to promote studies in the natural environment and Native American public health and tribal policy. The foundation is operating expenses and scholarship funds come from interest earned on its $20 million trust fund. S. 399 would create an Institute for Environmental Conflict Resolution within the foundation, and would authorize to be appropriated to the trust fund $4.25 million in fiscal year 1998 and $1.25 million in each of fiscal years 1999–2002. The Institute would provide assessment, mediation, and other related services to resolve environmental disputes involving U.S. agencies.

Enactment of S. 399 would increase trust fund balances and thus increase interest earned. CBO estimates that the trust fund would earn approximately $2 million more over the 1998–2002 period than would have been earned under current law. These additional earnings would be spent on the capital expenditures and operating expenses of the Institute created by S. 399.

If the $9.25 million authorized by this bill were to serve as an authorization of appropriations for the Institute—rather than as an appropriation to the foundation's trust fund—CBO estimates that the resulting outlays would total $2 million in fiscal year 1998 and $9 million over fiscal years 1998–2002. Under such a scenario, these outlays would be considered discretionary spending and would not be subject to pay-as-you-go procedures.

Intergovernmental and Private Sector Impact: S. 399 contains no intergovernmental or private sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal cost—Christina Hawley Sadoti; Impact on State, local, and tribal Governments—Marc Nicole; Impact on the private sector—Patrice Gordon.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: existing law as proposed to be omitted is printed inside of [bold brackets]; new matter proposed to be added to existing law is printed in italic; and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

TITLE 20—EDUCATION

CHAPTER 66—MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

* * * * * * *

§ 5602. Definitions

For the purposes of this chapter—

(1) * * *

* * * * * * *

(4) the term "environmental dispute" means a dispute or conflict relating to the environment, public lands, or natural resources;

[(4)**]***(5)* the term "Foundation" means the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation established under section 5603(a) of this title;

(6) the term "Institute" means the United States Institute for Environmental Conflict Resolution established pursuant to section 7(a)(1)(D);

[(6)**]***(7)* the term "institution of higher education" has the same meaning given to such term by section 1141(a) of this title;**[**and**]**

[(7)**]***(8)* the term "State" means each of the several States, the District of Columbia, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federal States of Micronesia, and the Republic of Palau (until the Compact of Free Association is ratified)**[**.**]***; and*

[(5)**]***(9)* the term **[**"fund"**]***"Trust Fund"* means the Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund established in section 5606 of this title**[**;**]**.

§ 5603. Establishment of Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation

(a) ESTABLISHMENT.—

* * * * * * *

(b) BOARD OF TRUSTEES.—The Foundation shall be subject to the supervision and direction of the Board of Trustees. The Board shall be comprised of **[**twelve**]***thirteen* trustees, eleven of whom shall be voting members of the Board, as follows:

(1) * * *

* * * * * * *

(7) The chairperson of the President's Council on Environmental Quality, who shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.

* * * * * * *

§ 5604. Purpose of Foundation

It is the purpose of the Foundation to—

(1) * * *

(4) establish a Program for Environmental Policy Research and an Environmental Conflict Resolution *and Training* at the Center;

(5) develop resources to properly train professionals in the environmental and related fields;

(6) provide educational outreach regarding environmental policy; [and]

(7) develop resources to properly train Native American and Alaska Native professionals in health care and public policy[.]*; and*

(8) establish as part of the Foundation the United States Institute for Environmental Conflict Resolution to assist the Federal government in implementing section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331) by providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States; and

(9) complement the direction established by the President in Executive Order 12988 (61 Fed. Reg. 4729; relating to civil justice reform).

§ 5605. Authority of Foundation

(a) AUTHORITY OF FOUNDATION.—

(1) IN GENERAL.—

(A) * * *

* * * * * * *

(D) INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION.—

(i) IN GENERAL.—The Foundation shall—

(I) establish the United States Institute for Environmental Conflict Resolution as part of the Foundation; and

(II) identify and conduct such programs, activities, and services as the Foundation determines appropriate to permit the Foundation to provide assessment, mediation, training, and other related services to resolve environmental disputes.

(ii) GEOGRAPHIC PROXIMITY OF CONFLICT RESOLUTION PROVISION.—In providing assessment, mediation, training, and other related services under clause (i)(II) to resolve environmental disputes, the Foundation shall consider, to the maximum extent practicable, conflict resolution providers within the geographic proximity of the conflict.

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(7) COORDINATION.—The Foundation shall assist in the development and implementation of a Program for Environmental Policy Research and Environmental Conflict Resolution *and Training* to be located at the Center.

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(8) USE OF THE INSTITUTE BY A FEDERAL AGENCY.—

(a) AUTHORIZATION.—A Federal agency may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.

(b) PAYMENT.—

(1) IN GENERAL.—A Federal agency may enter into a contract and expend funds to obtain the services of the Institute.

(2) PAYMENT INTO TRUST FUND.—A payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Trust Fund.

(c) NOTIFICATION AND CONCURRENCE.—

(1) NOTIFICATION.—An agency or instrumentality of the Federal Government shall notify the chairperson of the President's Council on Environmental Quality when using the Foundation or the Institute to provide the services described in subsection (a).

(2) NOTIFICATION DESCRIPTIONS.—A notification under paragraph (1) shall include a written description of—

(A) the issues and parties involved;

(B) prior efforts, if any, undertaken by the agency to resolve or address the issue or issues; and

(C) other relevant information.

(3) CONCURRENCE.—

(A) IN GENERAL.—In a case that involves a dispute or conflict between 2 or more agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality), an agency or instrumentality of the Federal Government shall obtain the concurrence of the chairperson of the President's Council on Environmental Quality before using the Foundation or Institute to provide the services described in subsection (a).

(B) INDICATION OF CONCURRENCE OR NONCONCURRENCE.—The chairperson of the President's Council on Environmental Quality shall indicate concurrence or nonconcurrence under subparagraph (A) not later than 20 days after receiving notice of the dispute or conflict.

* * * * * * *

§ 5606. Establishment of Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund" to be administered by a Foundation. The [fund] *Trust Fund* shall consist of amounts appropriated to it pursuant to section 5609 of this title and amounts credited to it under subsection (b) of this section.

* * * * * * *

§ 5607. Expenditures and audit of trust fund

(a) IN GENERAL.—The Foundation shall pay from the interest and earnings of the [Fund] *Trust Fund* such sums as the Board

determines are necessary and appropriate to enable the Foundation to carry out the provisions of this chapter.

* * * * * * *

§ 5609. Authorization of appropriations

[There are authorized to be appropriated to the Fund[1]**]** *(a) TRUST FUND.—There is authorized to be appropriated to the Trust Fund* $40,000,000 to carry out the provisions of this chapter.

(b) ADDITIONAL AMOUNTS.—There are authorized to be appropriated to the Trust Fund to carry out this Act an additional amount of—

(1) $4,250,000 for fiscal year 1998, of which—

(A) $3,000,000 shall be for capitalization; and

(B) $1,250,000 shall be for operation costs; and

(2) $1,250,000 for each of fiscal years 1999 through 2002 for operation costs.

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