CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 21, 2017

H.R. 986
Tribal Labor Sovereignty Act of 2017

As ordered reported by the House Committee on Education and the Workforce on June 29, 2017

H.R. 986 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 generally 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 H.R. 986 would not significantly affect the workload of the NLRB and thus would have no effect on the federal budget. Because enacting the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 986 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 986 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

By excluding tribal enterprises located on tribal land from the definition of employer for purposes of the National Labor Relations Act, the bill would eliminate the right of employees of such enterprises to file a claim, individually or through a union, regarding certain labor practices. Currently, employees may file a claim against tribal employers over which the NLRB asserts jurisdiction alleging unfair labor practices under the act that prohibit or interfere with collective activities to improve wages and working conditions. By eliminating the right of employees to file such claims with the NLRB, the bill would impose a private-sector mandate. The direct cost of the mandate would be the value of forgone monetary awards resulting from claims that would have been filed with the NLRB in the absence of the bill.

According to the NLRB, it currently receives about 20,000 to 30,000 claims in total each year from employees, unions, or employers alleging unfair labor practices and more than half of all claims are withdrawn or dismissed. Other claims may be settled by the parties or adjudicated by the NLRB. Successful claims may result in remedies such as reinstatement of discharged employees and back pay for the period of unemployment, as well as payment of dues, fines or other costs. In fiscal year 2016, claims with the NLRB resulted in about 600 cases in which employees were reinstated and in awards of about $53 million in back pay and other costs. Case documents show that the NLRB has asserted jurisdiction over only a small number of tribal enterprises since 2004 (fewer than 10). Based on those data, CBO estimates that the cost of the mandate would not be substantial and would fall below the annual threshold established in UMRA for private-sector mandates ($156 million in 2017, adjusted annually for inflation).

Successful claims filed with the NLRB also may result in a requirement on employers that would allow their employees to form a union and bargain collectively. Imposing such a requirement on employers may have a broader impact than that measured by the value of forgone monetary awards and settlements for claims brought before the NLRB. However, under UMRA that broader impact is not considered part of the direct cost of the mandate.

On February 16, 2017, CBO issued an estimate for S. 63, the Tribal Labor Sovereignty Act of 2017, as ordered reported by the Senate Committee on Indian Affairs. That bill is identical to H.R. 986, and the estimates are the same for both bills.

The CBO staff contacts for this estimate are Christina Hawley Anthony (for federal costs) and Amy Petz (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.