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### AMENDING TITLE 36 OF THE UNITED STATES CODE TO ESTABLISH THE AMERICAN INDIAN EDUCATION FOUNDATION

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OCTOBER 20, 1999.—Ordered to be printed

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

### REPORT

[To accompany S. 1290]

The Committee on Indian Affairs, to which was referred the bill (S. 1290) to amend title 36 of the United States Code to establish the American Indian Education Foundation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 1290 is to establish an American Indian Education Foundation (Foundation), a charitable, non-profit corporation that would be authorized to: (1) encourage, accept, and administer private gifts in support of the Bureau of Indian Affairs' (BIA) Office of Indian Education; (2) conduct activities that will further educational opportunities of American Indians and Alaska Natives attending BIA schools; and (3) assist Federal, State, tribal, and individual entities that will further the educational opportunities of American Indians and Alaska Natives attending BIA schools.

#### BACKGROUND

Currently, there is no formal mechanism that would enable those in the non-public sectors who desire to provide financial support to the education of Indian children in schools administered by the Bureau of Indian Affairs. In FY 2000, it will cost approximately \$3,100 to send an Indian child to elementary or secondary school. S. 1290 would serve as the means to enable the contribution of pri-

vate gifts in support of American Indian and Alaska Native students attending BIA schools. Similar foundations have been established to facilitate the support of the National Park Service and national fish and wildlife initiatives. The proposed American Indian Education Foundation is modeled after these foundations.

The Congress established the National Park Foundation (NPF) in 1967. The NPF's purpose is to raise funds for the National Park Service in an official capacity. The Foundation receives contributions from other foundations, corporations and individuals and in turn makes funds available to individual parks through a competitive grants program. At the end of Fiscal Year 1998, the NPF helped raise over \$10 million. One of the main purpose of the NPF is to assist parks in developing their own fund raising capacity through volunteers, referred to as "friends" organizations. Through grants of staff time and other support, NPF helps offset some fund raising start-up costs for such organizations.

Congress established the National Fish and Wildlife Foundation (NFWF) in 1984. The NFWF identifies conservation needs, reviews proposed projects, fosters cooperative partnerships, and dedicates a mixture of Federal and non-Federal funds to on-the-ground conservation projects. The NFWF makes funds available in the form of challenge grants, matching contributions with NFWF funds. The NFWF has made more than 2,900 grants, committing over \$127 million in Federal funds, matched with non-Federal dollars, and delivering more than \$367 million for conservation.

#### SECTION-BY-SECTION ANALYSIS OF S. 1290

Section 1 provides the Short-Title of the Act as the "American Indian Education Foundation Act of 1999" (Foundation).

Section 2 amends Part B of subtitle II of title 36, United States Code, by inserting after chapter 215 the heading "Chapter 216. American Indian Education Foundation" and listing Sections 280101 through 280109 under that heading. A section-by-section analysis of those sections is set forth below:

Section 21601 addresses the organization of the Foundation, providing that it is to be a federally-chartered corporation with a perpetual existence. The section provides that the Foundation is a charitable, nonprofit corporation which is not an agency or instrumentality of the United States. Section 21601 further provides that the Foundation is to be incorporated and domiciled in the District of Columbia. Section 21601 sets forth the definitions for the following terms as used in the Act. The term "American Indian" has the meaning given the term "Indian" in section 4(d) of the Indian Self-Determination and Assistance Act—

"Indian" means a person who is a member of an Indian tribe; and "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

The term “Bureau funded school” has the meaning given that term in section 1146 of the Education Amendments of 1978—

Bureau funded school is: (A) a Bureau [of Indian Affairs] school; (B) a contract school; or (C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988 [25 U.S.C.A. § 2501 et seq.].

Section 21602 sets forth the purposes of the Foundation, which are: (1) to encourage, accept, and administer private gifts of real and personal property or any income derived from such property or other interest therein for the benefit of or in support of the mission of the Office of Indian Education programs of the Bureau of Indian Affairs or any office which may be a successor to the Office of Indian Education; (2) to undertake and conduct such other activities as will further the educational opportunities of American Indians who attend a Bureau-funded school; and (3) to participate with and otherwise assist Federal, State and tribal governments, agencies, entities, and individuals in undertaking and conducting activities that will further the educational opportunities of American Indians attending Bureau-funded schools.

Section 21603 addresses the governing body of the Foundation. The Foundation’s board of directors is to serve as the governing body of the Foundation. The board is authorized to exercise or provide for the exercise of the powers of the Foundation. Section 21603 also provides that subject to section 3 of the American Indian Education Foundation Act of 1999, the constitution and bylaws of the Foundation shall provide for the number of members of the board, the manner of selection of those members, the filling of vacancies for the board, and the terms of office of the members of the board, except that the board shall have at least eleven members, two of whom shall be the Secretary of the Interior and the Assistant Secretary of the Interior for Indian Affairs, who shall serve as ex officio nonvoting members. Section 21603 further provides that the members of the board shall be citizens of the United States who are knowledgeable or experienced in American Indian education, and to the extent practicable, shall represent diverse points of view relating to the education of American Indians. Section 21603 provides that the officers of the Foundation shall be a secretary elected from among members of the board and any other officers provided for in the constitution and bylaws of the Foundation. The section provides that the secretary shall serve, as the director of the board, as its chief operating officer and shall be knowledgeable and experienced in matters relating to education in general and education of American Indians in particular. The section further provides that the manner of election, term of office, and duties of the officers shall be as provided in the constitution and bylaws of the Foundation. Section 21603 states that except for travel expenses, no compensation shall be paid to a member of the board by reason of service as a member. The section provides that a member of the board shall be reimbursed for actual and necessary travel and subsistence expenses incurred by that member in the performance of the duties of the Foundation.

Section 21604 authorizes the Foundation to exercise certain enumerated powers. The Foundation shall adopt a constitution and by-

laws for the management of its property and the regulation of its affairs; shall adopt and alter a corporate seal; may make contracts subject to the limitation of this chapter; may acquire (through a gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation; may sue or be sued; and may carry out any other act necessary and proper to carry out the purposes of the Foundation.

Section 21605 provides that the principal office of the Foundation shall be in the District of Columbia. The section further provides that the activities of the Foundation may be conducted, and offices may be maintained throughout the United States in accordance with the constitution and the bylaws of the Foundation.

Section 21606 provides that the Foundation shall comply with the law on service of process of each State in which it is incorporated and of each State in which the Foundation carries on activities.

Section 21607 provides that the Foundation shall be liable for the acts of its officers and agents acting within the scope of their authority, and that members of the board are to be personally liable only for gross negligence in the performance of their duties.

Section 21608 provides that beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation may not exceed 10 percent of the sum of the amounts transferred to the Foundation under Section 21609 during the preceding fiscal year; and donations received from private sources during the preceding fiscal year. The section also provides that the appointment of officers and employees of the Foundation shall be subject to the availability of funds. Section 21608 provides that the members of the board, and the officers, employees, and agents of the Foundation shall not, by reason of their association with the Foundation, be considered to be officers, employees, or agents of the United States.

Section 21609 authorizes the Secretary of the Interior to transfer to the Foundation funds held by the Department of Interior under the Act of February 14, 1931 (46 Stat. 1106, chapter, 171; 25 U.S.C. 451) if the transfer or use of such funds is not prohibited by any term under which the funds were donated. This section also provides for the amendment of the table of chapters for part B of subtitle II of Title 36, United States Code.

Section 3 provides that not later than six months after the date of enactment, the Secretary of the Interior shall appoint the initial voting member of the board of directors under section 21603 of title 36, United States Code, and that the initial members of the board shall have staggered terms as determined by the Secretary of the Interior. The section further provides that the composition of all successive boards after the initial board shall be in conformity with the constitution and bylaws of the Foundation. Section 3 further provides that subject to reimbursement provisions, during the 5-year period beginning on the date of enactment of this Act, the Secretary of the Interior may provide personnel, facilities, and other administrative support services to the Foundation; may provide funds to reimburse the travel expenses of the members of the board under section 21603(c)(2) of title 36, United States Code; and shall

require and accept reimbursements from the Foundation for the personnel, facilities, and other administrative support services provided and travel expense reimbursement funds provided. Section 3 provides that reimbursements accepted under paragraph (1)(C) shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing services described in paragraph (1)(A) and the travel expenses described in paragraph (1)(B). Finally, section 3 provides that notwithstanding any other provision of this section, the Secretary of the Interior may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in paragraph (1), on a space available, reimbursable cost basis.

#### LEGISLATIVE HISTORY

S. 1290, the American Indian Education Foundation Act of 1999 was introduced on June 28, 1999 by Senator Inouye for himself and for Senators Domenici, Dorgan, Conrad, Bingaman, Johnson, Daschle, and Akaka with Senator Baucus joining as co-sponsor on July 1, 1999. The bill was referred to the Committee on Indian Affairs. A hearing on S. 1290 was held on July 1, 1999. On August 4, 1999, the Committee on Indian Affairs convened a business meeting to consider S. 1290 and other measures that had been referred to the Committee. The Committee ordered S. 1290 favorably reported to the full Senate without amendment.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On August 4, 1999, the Committee on Indian Affairs, in an open business session, ordered S. 1290 favorably reported to the full Senate without amendment.

#### COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1290 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 1, 1999.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*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. 1290, the American Indian Education Foundation Act of 1999.

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

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

#### *S. 1290—American Indian Education Foundation Act of 1999*

S. 1290 would establish the American Indian Education Foundation, a charitable and nonprofit corporation to support the mission

of the Office of Indian Education Programs within the Bureau of Indian Affairs (BIA). The foundation would assist federal, state, tribal, and other entities in efforts to improve educational opportunities for American Indians attending BIA-funded schools. Funding for the foundation would be provided through a transfer of donated funds currently held by the Department of Interior (DOI) as well as other donations solicited and received by the foundation itself. In addition, S. 1290 would allow the Secretary of the Interior to provide reimbursable administrative and financial support to the foundation during its first five years of operation.

Based on information from DOI, CBO estimates that implementing S. 1290 would not significantly affect the federal budget over the 2000–2004 period. Assistance provided by DOI during the first five years, which would probably not exceed \$500,000 in any year, would be subject to appropriation and must be fully reimbursed by the foundation. Thus, CBO estimates that this provision would have no net impact on discretionary spending. The transfer of donated funds from DOI to the foundation would increase direct spending in 2000; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that these donations total less than \$500,000. S. 1290 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act and would impose no costs on the budgets of tribal, state, or local governments.

The CBO staff contact is Megan Carroll. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

The Committee has concluded that enactment of S. 1290 will create no regulatory or paperwork burdens.

#### EXECUTIVE COMMUNICATIONS

Set forth below is the testimony of Michael J. Anderson, the Deputy Assistant Secretary for Indian Affairs within the Department of the Interior on S. 1290.

#### TESTIMONY OF THE DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, MICHAEL J. ANDERSON, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the Committee. I am pleased to be here to request your approval of the Administration's proposed American Indian Education Foundation Act of 1999 sponsored by Senator Inouye and other members of this Committee. The First Lady spoke on behalf of this worthwhile initiative at the ceremony she hosted announcing the design of the Sacajawea Dollar coin and to celebrate the contributions of American Indian and Alaska Native women, just one day after our legislative proposal was submitted to the Congress.

The purpose of the American Indian Education Foundation is to encourage gifts of real and personal property and

income for the support of the mission of the Bureau of Indian Affairs (BIA), Office of Indian Education Programs, as well as to benefit American Indian and Alaska Native children enrolled in elementary and secondary schools. Congress has authorized similar foundations in the past to benefit other activities within the Department of the Interior (Department) such as the National Park Foundation and the Fish and Wildlife Foundation. Congress has also passed legislation creating foundations in the Department of Agriculture.

Let me begin by outlining what the Department believes to be the principal reasons why an American Indian Education foundation is needed.

First, while Congress and the Administration have worked together over the past few years to strengthen Indian Education, Indian schools still have numerous needs that can never be met through Federal funds alone. As an example, teachers serving in Indian schools are not fully prepared to meet the needs of students who will be entering the technological workforce of the 21st Century. While Federal funds support curriculum development and ongoing school operations, there is little to no funding available to cover the costs of training teachers in using the technology that will soon be coming into the schools, through the BIA's Access Native America program. Funds raised by the American Indian Education Foundation could be used to pay for teacher training programs at our schools.

Another example is the tremendous need for Family Literacy Programs in Indian communities. It has been established through numerous studies that early childhood and family literacy programs, such as our Family and Child Education (FACE) program, work. While the BIA has been able to support 22 of these programs, which annually serve over 1,600 families and children, and family literacy programs in other agencies also provide support for BIA-connected programs, there is a need to have these programs in all communities. The proposed foundation could support these activities.

Second, there is substantial private interest in supporting Indian education activities, but, up until now, there has been no national organization formed to support the BIA's educational activities. In the past, individuals have donated funds for Indian education that are invested by the Office of Trust Funds Management. These funds amount to more than \$900,000 and are used to fund activities according to the donor's wishes. Other groups, companies, and individuals have approached the BIA wanting to make donations for specific projects or activities at our schools. The proposed foundation would facilitate such contributions. Once the foundation is recognized by the Internal Revenue Service as a tax-exempt charity, contributions to the foundation would be tax-deductible.

Third, a National nonprofit foundation whose sole purpose is to raise funds for American Indians at the elementary and secondary education level does not currently exist. I'm sure that a number of Foundations have come to mind, including the American Indian Scholarship (AIS) Foundation, which exists to support students enrolled in colleges and universities. Some local schools or tribes have their own local nonprofits to solicit bequests and gifts for their own individual members, but there is no nationwide foundation to support the K-12 education of American Indian students. To their credit, local community businesses often do provide support to schools, donating food for Bingo fundraising events or buying yearbook ads, but their capacity for giving is limited by their geographic isolation. A small trading post on an Indian reservation can only give so much. The American Indian Education Foundation could solicit far larger donations through its national mission.

The BIA has worked hard over the past years to bring corporations and schools together in joint partnerships. The Microsoft Corporation has supplied equipment and software to the 19 schools involved in the Four Directions Project, one of the first Technology Innovation Challenge Grants funded by the U.S. Department of Education. In 1997, the Four Directions Project received the prestigious Government Technology Leadership Award for its innovation in bringing together partners that provide teacher training in a distributed computer environment. The Intel Corporation has supported technology initiatives at the Santa Fe Indian School, providing equipment, teacher training, and student training on how to refurbish old computers. These contributions alone exceed \$2 million. The Office of Indian Education Programs is currently working with Tech Corps on a pilot project supported by Compaq to provide online technical support to schools over the Internet. The project connects experienced network administrators from the private sector with inexperienced and, in some cases, untrained school network administrators over the Internet to help them solve technical problems in their schools buildings. This will provide the schools with some of the help they need to make their school networks a success.

There is so much that can be done by the creation of partnerships with industry. A Foundation would be a viable entity to actively seek support on behalf of Indian children.

Next, let me address how the American Indian Education Foundation will be organized. An 11-member Board of Directors will govern the American Indian Education Foundation. The Secretary of the Interior and the Assistant Secretary for Indian Affairs will be ex officio non-voting members. Within six months of enactment of the legislation, the Secretary of the Interior will appoint nine additional Directors to serve on the Board without compensa-



tion. The members of the Board will be chosen based on their knowledge of Indian education and their diverse points of view. Members will be appointed for staggered terms. The Board of Directors will adopt a constitution and by-laws and be governed under the laws for nonprofit corporations in the District of Columbia. The Board of Directors will also be responsible for hiring the American Indian Education Foundation Chairman.

The American Indian Education Foundation will operate similarly to the National Park Foundation. It will operate separately from the Department of the Interior and the BIA. The proposed legislation authorizes the American Indian Education Foundation to receive some administrative support from the Department of the Interior during its initial five years of operation but does not request additional dollars. It is anticipated that the American Indian Education Foundation will be self-supporting after this five-year period.

In closing, Mr. Chairman, I thank you for the opportunity to express the Administration's support for this legislation and encourage your positive consideration. The education of Indian children is one of the highest priorities of the Department, and we must all work together to ensure that no stone is left unturned to gather resources to ensure that the American Indian and Alaska Native children have the very best educational opportunities these United States can provide.

I will be happy to answer any questions you may have.

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set out in the accompanying Committee report. The Committee finds that enactment of S. 1290 (specifically Section 2) will change the existing law as follows.

IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after the item relating to chapter 215 the following:

#### **“CHAPTER 216. AMERICAN INDIAN EDUCATION FOUNDATION**

- “Sec.
- “21601. Organization.
- “21602. Purposes.
- “21603. Governing body.
- “21604. Powers.
- “21605. Principal office.
- “21606. Service of process.
- “21607. Liability of officers and agents.
- “21608. Restrictions.
- “21609. Transfer of donated funds.

Additionally, Section 21609 (Transfer of donated funds), Section B, amends the United States Code table of chapters as follows:

(B) CLERICAL AMENDMENT.—The table of chapters for part B of subtitle II of title 35, United States Code, is amended by inserting after the item relating to Chapter 215 the following:

“216. American Indian Education Foundation .....21601”.

