

Calendar No. 561

118TH CONGRESS }
2d Session }

SENATE

{ REPORT
118-246

A BILL TO ASSIST TRIBAL GOVERNMENTS IN THE MANAGEMENT OF BUFFALO AND BUFFALO HABITAT AND THE REESTABLISHMENT OF BUFFALO ON INDIAN LAND

NOVEMBER 18, 2024.—Ordered to be printed

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

R E P O R T

[To accompany S. 2908]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, S. 2908, to assist Tribal governments in the management of buffalo and buffalo habitat and the reestablishment of buffalo on Indian land, having considered the same, reports favorably thereon, with amendments and recommends that the bill, as amended, do pass.

PURPOSE

S. 2908 improves the capacity of Indian Tribes (Tribes), as defined by the Indian Self-Determination and Education Assistance Act, and Tribal organizations to manage American Plains bison or *bison bison bison*, (buffalo); expand Tribal decision-making in federal buffalo management activities; and promote buffalo herd and habitat management for cultural, subsistence, and economic development.

BACKGROUND AND NEED

Historically, buffalo provided food, shelter, tools, clothing, AND more to Native peoples living in North America. In some cases, buffalo also filled critical roles in Native religions and cosmologies.¹ It is estimated that there were anywhere from 30 to 60 million buf-

¹FY 2025 American Indian & Alaska Native Public Witness Hearing: Hearing Before the Subcomm. on the Interior, Env't, & Related Agencies of the H. Comm. on Approps., 118th Cong. 1 (2024) (statement of Ervin Carlson, President, InterTribal Buffalo Council) (hereinafter "Public Witness Hearing").

falo throughout North America in the early 19th century.² By the late 19th and early 20th centuries, however, the number of buffalo dwindled to approximately 1,000, largely due to habitat loss and unchecked overhunting, and as the result of a deliberate strategy to displace and diminish Native peoples who depended upon the buffalo.³

Today, there are approximately 20,500 buffalo in conservation herds and an estimated 420,000 in commercial herds.⁴ For many Indian Tribes, buffalo continue to be a vital part of their connection to their homelands, languages, cultural practices, and a source of economic development.⁵ However, Tribes face hurdles in managing buffalo herds on Tribal lands, such as land loss, lack of government or non-governmental revenue sources to sustain management efforts, habitat degradation and connectivity issues, and climate change.⁶

SUMMARY OF S. 2908 AS ORDERED REPORTED

S. 2908 establishes a permanent program within the Department of the Interior (DOI) to improve the capacity of Tribes and Tribal organizations to manage buffalo and buffalo habitat, including through grants, cooperative agreements, and technical assistance; clarifies the applicability of state and federal law; and authorizes annual appropriations of \$14 million.

SECTION-BY-SECTION ANALYSIS OF S. 2908 AS ORDERED REPORTED

Section 1—Short title

This section sets forth the short title as the “Indian Buffalo Management Act.”

Section 2—Findings; purposes

Section 2(a) sets forth the findings of Congress and describes the cultural, historical, dietary, economic, and spiritual importance of buffalo restoration to Indian Tribes.

Section 2(b) establishes the purposes of the bill—

- Fulfill the Federal-Tribal government-to-government relationship with regard to buffalo management;
- Improve the capacity of Indian Tribes and Tribal organizations to manage buffalo;
- Protect, conserve, and enhance buffalo;

² *Where the Buffalo Roamed*, NAT'L PARK SERV., (Dec. 5, 2022), <https://www.nps.gov/gosp/learn/nature/where-the-buffalo-roamed.htm>; ANDREW C. ISENBERG, *THE DESTRUCTION OF THE BISON: AN ENVIRONMENTAL HISTORY, 1750–1920* at 12 (2000).

³ NAT'L PARK SERV., *supra* note 2; *see also* ANDREW C. ISENBERG, *supra* note 2, at 12 (discussing that some estimate the number of buffalo dropped to as low as a few hundred by the early twentieth century); ANDREW C. ISENBERG, *Toward a Policy of Destruction: Buffaloes, Law, and the Market, 1803–83*, 12 GREAT PLAINS Q. 227, 235–37 (1992); *see generally* Jeff M. Martin, et al., *Integrated Evidence-Based Extent of Occurrence for North American Bison (Bison bison) Since 1500 CE and Before*, ECOLOGY, Sept. 5, 2022.

⁴ *Plains Bison*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/species/plains-bison-bison-bison-bison> (last visited Nov. 6, 2024).

⁵ *See Public Witness Hearing*, *supra* note 1, at 1–4 (statement of Ervin Carlson, President, InterTribal Buffalo Council) (describing how the restoration of buffalo herds on Tribal lands will benefit the Tribes involved).

⁶ *Protecting Bison*, NAT'L PARK SERV., (Sept. 24, 2024), <https://www.nps.gov/subjects/bison/protecting-bison.htm>; *Landmark Study Demonstrates Cultural, Ecological, and Economic Benefits of Tribal Bison Restoration*, SMITHSONIAN'S NAT'L ZOO & CONSERVATION BIOLOGY INST., (Jan. 31, 2022), <https://nationalzoo.si.edu/news/landmark-study-demonstrates-cultural-ecological-and-economic-benefits-tribal-bison-restoration>.

- Promote the use and development of buffalo habitat to the maximum practicable benefit of Tribes;
- Develop buffalo herds for cultural, subsistence, and economic development activities; and
- Promote Tribal decision-making in federal, local, regional, or international buffalo management activities.

Section 3—Definitions

This section sets forth the definitions used in the bill.

Section 4—Buffalo resource management

Section 4(a) establishes a permanent program within the DOI to promote and develop the capacity of Tribes and Tribal organizations to protect, conserve, and manage buffalo and buffalo habitat, and to promote the inclusion of Tribes and Tribal organizations in departmental, international, national, regional, and local decision-making and forums about buffalo and buffalo habitat management.

Section 4(b) directs the Secretary of the Interior to enter into contracts and cooperative agreements with, and to award grants to, Tribes and Tribal organizations to plan and implement buffalo restoration, management, and commercial activities, or other related activities, and to support the use and deployment of Tribal and Tribal organizational mobile meat processing facilities for buffalo. This section also clarifies the applicability of federal and state law to diseased or escaped buffalo originating from Tribal lands.

Section 4(c) directs the Secretary of the Interior to provide technical assistance to Tribes and Tribal organizations that enter into contracts or cooperative agreements or receive grants under the Act.

Section 5—Consultation; coordination

Section 5(a) directs the Secretary of the Interior to consult, within one year of enactment, and thereafter on an ongoing basis, with Tribes and Tribal organizations on departmental programs affecting buffalo and buffalo habitat.

Section 5(b) directs the Secretary of the Interior to develop a policy relating to buffalo and buffalo habitat management activities on Tribal land in accordance with the goals and objectives of buffalo management programs approved by Indian Tribes and Tribal laws and ordinances.

Section 6—Protection of information

This section provides protections against disclosure of information that is deemed by a Tribe or Tribal organization to be culturally-sensitive, proprietary, or otherwise confidential.

Section 7—Buffalo from Federal land

Section 7(a) authorizes the Secretary of the Interior to enter into agreements with Tribes or Tribal organizations to transport surplus buffalo on federal land administered by the Department onto Tribal land.

Section 7(b) authorizes Tribes and Tribal organizations to apply to the Secretary of the Interior to receive surplus buffalo from federal land under subsection 7(a).

Section 7(c) authorizes the Secretary of the Interior to waive charges related to the disposal of surplus buffalo under subsection 7(a).

Section 8—Treaty rights retained

This section clarifies that nothing in the bill diminishes or extinguishes the treaty rights of any Tribe.

Section 9—Authorization of appropriations

This section authorizes appropriations of \$14,000,000 for Fiscal Year 2024 and for each fiscal year thereafter to implement the program.

LEGISLATIVE HISTORY

On September 21, 2023, Senator Heinrich (D–NM) and Senator Mullin (R–OK) introduced S. 2908, the *Indian Buffalo Management Act*. On the same day, the Senate referred the bill to the Committee on Indian Affairs. Senators Tester (D–MT) and Sullivan (R–AK) later joined as co-sponsors. On June 12, 2024, the Committee held a legislative hearing to receive testimony on S. 2908. On September 25, 2024, the Committee met at a duly convened business meeting to consider the bill. Senator Murkowski, on behalf of Senator Heinrich, timely filed an amendment to add Tribal and Tribal organization mobile meat processing facilities as eligible for inclusion in contracts, cooperative agreements, and grant support. The amendment also revised the definition of Tribal organization to conform to the House reported version of H.R. 6368. The Committee ordered S. 2908, as amended, favorably reported.

On November 13, 2023, Representatives LaMalfa (R–CA), Peltola (D–AK), Torres (D–CA), Cole (R–OK), and Obernolte (R–CA) introduced H.R. 6368, the *Indian Buffalo Management Act*. On the same day, the bill was referred to the Committee on Natural Resources. Representatives Leger Fernandez (D–NM) and Davids (D–KS) later joined as cosponsors. On November 28, 2023, H.R. 6368 was further referred to the House Natural Resources Subcommittee on Indian and Insular Affairs. On December 5, 2023, the Subcommittee held a hearing to receive testimony on the bill. On March 12, 2024, the Subcommittee discharged the bill and the Committee considered H.R. 6368 at a mark-up session. Representative LaMalfa offered an amendment revising the definition of Tribal Organization. The amendment was agreed to by unanimous consent. The Committee ordered the bill, as amended, reported by unanimous consent.⁷ On June 27, 2024, the Committee reported H.R. 6368, as amended, and the bill was placed on the Union Calendar.⁸ To date, no further action on the bill has been taken in the House of Representatives.

117th Congress. On October 21, 2021, Senators Rounds (R–SD), Senator Heinrich (D–NM), Senator Smith (D–MN), Senator Luján (D–NM), and Inhofe (R–OK) introduced S. 3051, the *Indian Buffalo Management Act*. On the same day, the bill was referred to this Committee. Senator Tester (D–MT) later joined as a cosponsor. The Senate took no further action on the bill in the 117th Congress.

⁷ H.R. REP. NO. 118–563, at 4 (2024).

⁸ *Id.* at 1.

On March 18, 2021, Representatives Young (R-AK) and Torres (D-CA) introduced H.R. 2074, the *Indian Buffalo Management Act*. On the same day, the bill was referred to the Committee on Natural Resources. Thirteen additional members later joined as cosponsors. On May 21, 2021, H.R. 2074 was referred to the Subcommittee on Indigenous Peoples of the United States. On October 13, 2021, the Subcommittee discharged the bill and the Committee held a mark-up session. Representative Young offered an amendment making a technical change to clarify how program funds were to be used.⁹ The amendment was agreed to by unanimous consent. On the same day, the Committee ordered the bill, as amended, reported by unanimous consent. On December 1, 2021, under suspension of the rules, the House passed H.R. 2074, as amended, by a vote of 373 to 52. H.R. 2074 was received in the Senate on December 9, 2021. The Senate took no future action on the bill in the 117th Congress.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the Senate Committee on Indian Affairs during the 118th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation's estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

⁹Don Young, *Amendment to H.R. 2074*, H.R. MISC. DOC., https://naturalresources.house.gov/uploadedfiles/hr_2074_young_amendment_1_revised.pdf (last visited Nov. 7, 2024).

ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION

Bill number	Title	Status	Last action	Budget function	Direct spending 2025-2034	Revenues, 2025-2034	Spending subject to appropriations, 2025-2029 [millions]	Pay-As-You Go procedures apply?	Budgetary effects after 2034	Mandates	Contact
S. 2908	Indian Buffalo Management Act	Ordered reported	09/25/24	450	0	0	\$49	No	No	No	Julia Aman

S. 2908 would authorize the appropriation of \$14 million annually for the Department of the Interior to assist tribal governments in restoring and managing buffalo herds on their land. CBO estimates that enacting S. 2908 would not affect direct spending or revenues. CBO estimates that implementing the bill would cost \$49 million over the 2025-2029 period, assuming appropriation of the authorized amounts. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2908, as reported, will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE TESTIMONY

The written statement of the Honorable Bryan Newland, Assistant Secretary for Indian Affairs, U.S. Department of the Interior, before the Committee on Indian Affairs, delivered on June 12, 2024 follows below:

Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on S. 2908, "*Indian Buffalo Management Act*," S. 3263, "Poarch Band of Creek Indians Parity Act," S. 4000, "To reaffirm the applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes," and S. 4442, "To amend the Crow Tribe Water Rights Settlement Act of 2010 to make improvements to that Act, and for other purposes."

S. 2908, Indian Buffalo Management Act

The North American Bison, commonly called buffalo, is the official mammal of the United States and plays an important role in the history and ecology of this continent. For many Tribes, buffalo play a significant role in their identity, subsistence, economic development, and conservation and land management practices. The historical, cultural, and spiritual connection between buffalo and Tribes cannot be overstated. Buffalo sustained many Indian Tribes in North America for many centuries before they were nearly exterminated by non-Indian hunters in the mid-1800s.

Indian Tribes have long desired the reestablishment of buffalo throughout Indian Country. The successful restoration of buffalo allows an Indian Tribe to benefit from the reintroduction of buffalo into the diets of the members of the Indian Tribe. Working to restore buffalo and increase Tribal access to buffalo is a priority for the Biden administration and for Secretary Haaland. The BIA's Branch of Fish, Wildlife, and Recreation funds buffalo restoration and management activities through annual appropriations. S. 2908, the Indian Buffalo Management Act, would establish a permanent program within the Department to develop and promote Tribal ownership, conservation, and management of buffalo and buffalo habitat on Indian lands.

Under S. 2908, two entities are eligible for program participation: Indian Tribes, as defined by the Indian Self-Determination and Education Assistance Act (ISDEAA), and

Tribal organizations organized under Section 17 of the Indian Reorganization Act (IRA). The Department recommends amending the definition of “Tribal organization” to avoid the exclusion of Tribal corporations Federally chartered under Section 3 of the Oklahoma Indian Welfare Act, P.L. 74–816, or Tribal organizations contracting for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members. The Department looks forward to working with the sponsors on these issues.

S. 2908 authorizes \$14 million in annual appropriations. The Department previously testified on H.R. 6368, the House companion to S. 2908, in which we raised concerns about the lack of dedicated funding for the activities authorized under H.R. 6368. For both bills, activities will be eligible for contracting or compacting by Tribes under ISDEAA. In the event of a Tribe utilizing ISDEAA, as amended, to contract or compact that permanent program, the Secretary may be required to utilize funds from other programs to meet the Department’s statutory obligations under ISDEAA. The Department appreciates the opportunity to work with Congress to ensure that we have the resources to implement the provisions of S. 2908 if enacted and strongly supports the provision authorizing dedicated funding.

Buffalo once roamed this continent in the tens of millions and the Department appreciate efforts to improve management of this vital species. The Department recognizes our shared interest in modernizing buffalo management in Indian Country and appreciates Congress’s attention to this effort. The Department supports S. 2908. The Department welcomes the opportunity to work with the sponsors and the Committee to provide technical assistance to clarify eligible entities and to ensure that other offices at the Department can enter into co-stewardship and co-management agreements with Indian Tribes.

Conclusion

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, thank you for the opportunity to provide the Department’s views.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2908 or its reported version.

CHANGES IN EXISTING LAW

On February 9, 2023, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.