

**S. 226, Tribal Labor Sovereignty Act 2019**

As ordered reported by the Senate Committee on Indian Affairs on January 29, 2019

Millions of Dollars				Spending Subject to Appropriation
	Direct Spending	Revenues	Net Deficit Effect	
2019	0	0	0	0
2019-2024	0	0	0	0
2019-2029	0	0	0	0
Pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>		
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?		No
		Contains private-sector mandate?		Yes, Under Threshold

S. 226 would add Indian 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 tribes, even if they are located on a tribal reservation. However, the NLRB does not assert the jurisdiction over tribal enterprises that carry out traditional tribal or governmental functions.

CBO estimates that implementing S. 226 would not significantly affect the workload of the NLRB and thus would have no effect on the federal budget.

S. 226 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) on employees of certain tribal enterprises. By excluding those 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. By eliminating that right 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 a total of about 20,000 to 30,000 claims each year from employees, unions, or employers alleging unfair labor practices. 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 2018, claims with the NLRB resulted in about 1,200 cases in which employees were reinstated and in awards of about \$54 million in back pay and other costs. The mandate, however, applies only to a narrow group of employees of certain tribal enterprises, and historically, the NLRB has asserted jurisdiction over a small number of tribal enterprises. 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 (\$164 million in 2019, 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. Limiting such an outcome for employees may have a broader impact than that measured by the value of forgone monetary awards and settlements for claims brought before the NLRB. However, that broader impact is not considered part of the direct cost of the mandate under UMRA.

The CBO staff contacts for this estimate are Meredith Decker (for federal costs) and Andrew Laughlin (for private-sector mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.