



NATIONAL
CONGRESS OF
AMERICAN
INDIANS



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111th CONGRESS
LEGISLATIVE AND
REGULATORY UPDATE



NATIONAL CONGRESS OF AMERICAN INDIANS
Legislative and Regulatory Update: 111th Congress
October 8th, 2009

Brief Overview – Since the NCAI Midyear meeting in June, this session of Congress has been dominated by a major national debate over health care reform that is now coming to a climax. Although the fate of the overall legislation is still unknown, it has received a recent boost from Congressional budget analysts who found that the Senate Finance Committee measures would reduce the federal deficit. NCAI has devoted a significant effort in the past four months toward ensuring that the Indian Health system is protected within the overall legislation, and advocating for the inclusion of a provision to ensure that tribally provided health care benefits are not subject to taxation.

Appropriations have moving in the regular order, and have been generally favorable with 9% increases for BIA programs and 13% increases for Indian health care. A detailed update on appropriations is provided separately. In June and July, tribes worked very actively to ensure that tribal authority to regulate employment was included in consideration of the Employee Free Choice Act. However the EFCA has faded from Congressional consideration this year, and the challenge will be to maintain a long term effort to educate Congress on this issue. Tribes have also been pushing successfully for the enactment of the Tribal Law and Order Act, to improve public safety on tribal lands. This legislation was approved by the Senate Committee on Indian Affairs in September and will be the subject of a House Judiciary Committee hearing later this fall. NCAI has also continued its efforts to expedite tribes' access to Recovery Act funding.

In this year the Obama Administration has made steady progress in completing its appointments in positions of importance to Indian country, although some key appointments remain to be filled such as the vacancies at the National Indian Gaming Commission, the Office of Special Trustee, and the Bureau of Indian Education. We should soon see the administration begin new action on the initiatives that have been requested by tribal leaders.

Provided below are brief updates on a number of major legislative and regulatory issues of interest to tribal governments.

National Health Insurance Reform- America's Affordable Health Choices Act

Congress is engaged in a significant effort to reform the nation's health care system by expanding coverage to the uninsured, reducing costs, and improving quality. In the House, the three committees with jurisdiction over health policy – the Ways and Means, Energy and Commerce, and Education and Labor Committees have developed H.R. 3200. This bill is currently being revised by Leadership and the House Rules committee prior to being brought to the House floor for full vote.

In the Senate, two committees of jurisdiction are working on health reform. The Health, Education, Labor and Pensions (HELP) Committee approved its version of health reform

and introduced S. 1679 on September 17. The Finance Committee is currently considering its version of the bill. Once Finance has completed consideration, its bill will be blended with the provisions of the HELP Committee's bill and brought to the Senate floor for a vote. It is anticipated that the floor consideration will take place the third week in October. After both bills have been approved, the House and Senate versions of the Affordable Health Choices Act will be "conferenced" or merged together before final approval and delivery to the President for his signature. Their goal is completion by the first week in December.

NCAI has been working closely with each committee, leadership in the House and Senate, and the Administration to ensure that the Indian health delivery system is protected and preserved. The primary effort is to ensure that Indian people would not be subject to the penalties that will apply to the general population for failure to obtain health insurance. In addition, to ensure that Indian health care providers would be assured admission to provider networks. In the Senate, we have met with great success in including Indian Country's recommendations throughout the legislation. While we have met with some resistance in the House, many of these obstacles have been overcome. NCAI's work now focuses on guaranteeing that the provisions we now have in each respective bill remains as the bills are conferenced together.

IRS Audits of Tribal Benefit Plans

Over the past two years, the IRS has initiated 139 audits that focus specifically on the use of tribal government revenues to provide benefits to tribal members. In a letter to the Senate Finance Committee, the IRS has identified tribal health benefit programs as "problematic tax avoidance schemes." NCAI has been working with many tribes to develop an amendment to the federal tax code to ensure that tribal health benefit programs are protected from IRS taxation.

Congressman Becerra (D-CA, 31st) and Congressman Nunes (R-CA, 21st) have introduced legislation to clarify that health benefits provided by tribal governments to members and their dependents should be excluded from gross income. Since then, NCAI, tribal leaders and partner organizations have worked to secure a number of co-sponsors in the House. At the same time the bill was being introduced in the House, the Senate Committee on Indian Affairs held a hearing on the issue on September 18th, 2009. The hearing was successful in gaining support within the Senate with Senator Conrad (D-ND) placing language similar to the House in the Finance Committee's Chairman's mark of the America's Healthy Future Act. The hearing was also successful in garnering the IRS view of tribally-provided general welfare benefits to their members. The IRS logic of not excluding tribes based of the federal trust relationship seemed shaky at best when compared to other classes of beneficiaries such as Medicare and Veterans who receive benefits regardless of income.

NCAI would urge all tribes to ask your Congressman to co-sponsor the Congressman Becerra and Nunes bill in the House and weigh in with Senators on the Finance Committee to make sure they keep the provision in the health care reform effort. If your tribe is faced with an IRS audit on this matter, be sure to retain competent tax counsel and

consider contacting Senate Finance Committee Chair Max Baucus to discuss concerns with the IRS characterization of tribal benefit programs as tax avoidance schemes.

NCAI, in response to tribal leader input, has undertaken an effort to engage high-level policymakers at the Department of Treasury and the Internal Revenue Service. As part of that outreach, NCAI was instrumental in contributing to the guidelines for the \$2 billion tax exempt bonding authority. In addition, representatives of both agencies will be assembling during the NCAI Annual conference to hold a dialog with tribal leaders directly. While these are important first steps in addressing tribal leader concerns, we anticipate tax and finance issues being a key issue for tribal consultation in the near future.

“Carcieri Fix” Legislation Introduced in Senate and House

In early October, Senator Byron Dorgan (ND), Chair of the Indian Affairs Committee, introduced S. 1703, legislation to clarify that all federally recognized tribes are eligible to participate in the benefits of the Indian Reorganization Act including the acquisition of land in trust status. The companion has been introduced in the House by Representative Tom Cole (OK). This legislation would correct any uncertainties that have arisen as a result of the Supreme Court’s decision in *Carcieri v. Salazar*. The legislation has been co-sponsored by Senators Inouye (HI), Akaka (HI), Baucus (MT), Bingaman (NM), Tester (MT), Udall (NM), and Franken (MN). NCAI strongly supports this legislation, pursuant to NCAI Resolutions. NCAI would encourage all tribes to ask their Senators and Representatives to also co-sponsor the legislation, and to urge its passage by Congress.

NCAI is also working with the Department of Interior on the legal interpretation of the *Carcieri* decision, during the time that the legislation is pending. We have urged the views that under the Indian Commerce Clause, all Indian tribes that have maintained historical continuity and have not been terminated by Treaty or an Act of Congress, remain “under federal jurisdiction” in 1934 and up to the present.

NCAI is concerned that some news articles have linked the *Carcieri* case to the issue of off-reservation gaming. We will need to emphasize that they are entirely separate issues. Trust land acquisition is a fundamental right of Indian tribes to address basic community needs such as housing, natural resources protection and cultural purposes. Many reservations have been affected by land loss and are entirely inadequate, and the basic need for trust or restricted lands has existed for hundreds of years. On the other hand, since 1988 the acquisition of land in trust for gaming has been strictly regulated under Section 20 of the Indian Gaming Regulatory Act which prohibits gaming on trust lands acquired after 1988.

Tribal Law and Order Act Moves Forward in Senate

With the recent reports detailing the disproportionate crime rate and lack of law enforcement response in Indian communities, Congress is paying significant attention to longstanding tribal concerns about law enforcement. The Senate Committee on Indian Affairs has held a series of hearings on law enforcement over the past two years, and Senator Dorgan has sponsored a major piece of legislation (S. 797) that would enhance

coordination between federal agencies to improve investigation and prosecution of Indian country crimes, encourage more aggressive federal prosecution of reservation crimes at the federal level, enhance the sentencing authority of tribal courts, fund existing programs meant to improve tribal courts, jails, youth programs and policing efforts in Indian country. The bill has 14 co-sponsors and bi-partisan support in the Senate. The House version of the bill (H.R. 1924) is sponsored by Congresswoman Herseth-Sandlin and currently has seven co-sponsors. With the support of the Department of Justice, the Senate Committee on Indian Affairs marked up and unanimously approved the legislation in September, and it will soon be ready for Senate floor action. The House Judiciary Committee plans a hearing on the legislation in the near future, and NCAI is urging that the legislation be finalized and sent to the President by the end of this year. NCAI would urge tribal leaders to contact Members of the House of Representatives and ask them to sign onto H.R. 1924 as co-sponsors, and to reach out to House and Senate leadership and ask them to move the legislation this year.

In related developments, the Department of Justice has scheduled a tribal leaders listening session on law enforcement issues with Attorney General Eric Holder on October 28-29, 2009 in St. Paul, Minnesota. For many years tribal leaders have been very concerned with the DOJ's unwillingness to seriously address its responsibilities for prosecuting crime on Indian reservations. Details are available on the Department of Justice website.

The American Recovery and Reinvestment Act and Indian Country

The National Congress of American Indians has continued to play a major role following the enactment of the American Recovery and Reinvestment Act (Recovery Act). NCAI continues to inform Indian Country through postings on our website at www.IndianCountryWorks.org of the opportunities available to apply for federal program spending to tribal governments that totaled \$2.8 billion, and to offer training to assist the efforts of American Indian and Alaska Native communities to compete successfully for Recovery Act funding and tax incentive provisions.

Funding Opportunities - At this juncture, federal agencies have paid out nearly \$107 billion in Recovery Act contracts, grants and loans, many of them awarded to Indian Country. Indian and Alaska Native tribal governments are recipients of Recovery Act program dollars under a wide variety of federal programs, both traditional Indian Country-serving programs, such as those administered by the Bureau of Indian Affairs and Indian Health Service, as well as less-known programs benefiting tribes, such as grants for rural law enforcement and transportation, engineering and construction job training.

While many funding opportunities under the Recovery Act are now closed, the Department of Energy has yet to announce the funding opportunity for the competitive (vs. formula, already distributed) component of the Energy Efficiency and Conservation Block Grant. Applications for the Centers for Disease Control and Prevention cooperative agreements to tribes and communities under the Communities Putting Prevention to Work program, and the National Institutes of Health Community

Infrastructure grants program for health science research have December deadlines. Some Recovery Act money remains available until the total appropriated amount is used up or until September 30, 2010, including for the following programs: the Environmental Protection Agency Clean Water and Drinking Water State Revolving Funds; the Department of Agriculture Rural Development community facilities program; the Department of Agriculture Rural Business Enterprise Grants; and the Economic Development Administration's programs in the Department of Commerce. Finally, additional funding will become available under the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP) through the Department of Agriculture's Rural Utilities Service (RUS) and the Commerce Department's National Telecommunications and Information Administration (NTIA), respectively, perhaps early next year.

Reporting Requirements - The emphasis under the Recovery Act recently shifted from funding opportunities to reporting requirements under the Act. Recipients were to submit spending reports by October 10th, which detailed the amount of funding received, amount spent, project scope and timetable, number of jobs created, and related data. NCAI continues to work with the Administration to clarify the kind of information tribes must disclose to meet Recovery Act reporting requirements, particularly to clarify that tribes may submit separate audits for Recovery Act funds. During the time period of October 11 to October 29, federal agencies will view and comment on recipient reporting data, and allow for corrections to be made, before Recovery Act recipient information is posted on www.Recovery.gov on or about November 1.

Tax Exempt Bonds

The Internal Revenue Code has limited the authority of Indian tribal governments to issue tax-exempt bonds to only "essential governmental function(s)." As interpreted by the Internal Revenue Service, it has severely limited tribes' ability to finance development projects. NCAI has long sought to ensure tribes have the same ability to finance development projects as is currently enjoyed by State and local governments. The Recovery Act includes bonding authority that moved tribal governments closer to that goal by authorizing the use of \$2 billion in tax exempt economic development bonding authority similar to the authority used for decades by other state and local governments.

The Recovery Act defines a "tribal economic development bond" as any bond issued by an Indian tribal government where: (1) the interest on the bond would be exempt from tax under Code Section 103 if issued by a state or local government, and (2) the bond is designated by the Indian tribal government as a "tribal economic development bond." In the Recovery Act, the term "tribal economic development bond" does not include any bond used to finance: (1) a gaming facility or gaming business property; or (2) any facility located outside the Indian reservation (as defined in Code Section 168(j)(6), which defines the term "reservation" for purposes of accelerated depreciation on Indian lands).

The Departments' of Treasury and Interior, through inter-agency consultation, were charged with developing the guidelines for the allocation of the economic development

bonding authority. The allocation guidelines were released in early July. The guidelines limited the first round of funding to a \$30 million allocation for each tribal applicant and defined the use of funds relative to gaming establishments which were listed in the Recovery Act as a prohibited use of funds for economic bonding purposes.

The Recovery Act authorized the Treasury Department to award \$2 billion in Tribal Bond authority to tribal governments through two award rounds of \$1 billion each. Recipients of the first application round were those announced on September 15th. The first application round was oversubscribed with 58 tribes awarded allocations during the first round of funding which subsequently reduced the total allocation per tribal applicant to \$22 million from \$30 million. The second application deadline is January 2, 2010. Tribal Bonds may be issued by tribes either as traditional tax-exempt bonds or as Build America Bonds.

Additional Finance Tools - The Recovery Act included additional provisions for bonding authority including: \$400 million in Qualified School Construction Bonds (Section 1521), Clean Renewable Energy Bonds (Section 1111), and Qualified Energy Conservation Bonds (Section 1112).

Tax Exempt Study - The Recovery Act requires the Department of Treasury to conduct a study on the effects of tribal economic development bonds, including whether restrictions in Code Section 7871(c) should be eliminated, and report back to Congress no later than one year after the date of enactment. Section 7871 (c) refers to the term "essential governmental function" which does not include any function that is not customarily performed by state and local governments and further prohibits tribal governments from issuing any tax-exempt private activity bonds, with the exception of certain bonds for manufacturing facilities.

Clean Energy – Renewable Energy and Energy Efficiency

On June 26, 2009, the House passed the American Clean Energy and Security Act (HR 2454), sponsored by Representatives Waxman (CA) and Markey (MA) the first legislation passed by a Congressional body to address climate change. The Act addresses both clean energy issues (reduction of the greenhouse gas emissions (GHGs) which cause climate change) and climate issues (adaptation to the impacts of climate change).

Regarding clean energy issues, HR 2454 seeks to reduce the national GHG emission by 83% by the year 2050, through among other things, the promotion clean energy production, establishment of a cap and trade system for major GHG emitters, carbon capture and sequestration, improvements to regional and national electricity transmission, and improvements to the energy efficiency of homes and buildings. NCAI supported passage of the Act while reserving the right to improve on tribal positions, particularly significant increases in federal support for tribal renewable energy deployment and energy efficiency activities.

On July 16, 2009, the Senate Committee on Energy and Natural Resources placed the Senate version of clean energy legislation– the American Clean Energy Leadership Act

(S. 1462) – sponsored by Senator Bingaman, on the Senate calendar. NCAI is working with its partners to improve tribal positions, including ensuring tribal participation in transmission planning, energy efficiency, and streamlining of permitting and environmental reviews. The Act will likely be considered by the full Senate after it has considered the Clean Energy Jobs and American Power Act (CEJAPA), the Senate version of climate legislation, described below.

On September 30, the Senate Committee on Environment and Public Works introduced the Clean Energy Jobs and American Power Act (CEJAPA), sponsored by Senators Kerry and Boxer. Like HR 2454, it seeks to reduce national GHG production by 83% by 2050, although at a slightly more aggressive rate, through among other things, a cap and trade system, promotion of clean energy production, promotion of nuclear energy, carbon capture and sequestration, and energy efficiency measures. Among other things, Tribes are provided 1% of allowances provided to states and tribes for renewable energy and energy efficiency activities (compared to 0.5% in HR 2454), and NCAI will advocate for improvements, including increases in tribal percentages of relevant allocations.

Unlocking the Potential of Tribal Energy Resources

On September 10, 2009 the Senate Committee on Indian Affairs introduced a tribal energy concept paper, seeking ways to unlock the potential of tribal energy resources, including legislative solutions. Senator Byron Dorgan (D-ND), Chairman of the Senate Committee on Indian Affairs, and Senator John Barrasso (R-WY), Vice Chairman of the Committee, released the paper identifying barriers and solutions. The Committee identified three major barriers to Indian energy development: (1) outdated laws and cumbersome regulations for tribal energy development and programs; (2) lack of tribal access to the transmission grid; and (3) difficulty in obtaining financing and investment for energy projects. The Committee is holding several roundtables with Indian tribes to ascertain their thoughts on the paper, and is drafting legislation. NCAI provided comments to the concept paper, is hosting an outreach session at the NCAI Annual Meeting on Tuesday evening, and is working with partners on the development of suggested legislation moving on a parallel track with the Committee.

Climate Legislation – Domestic and Natural Resource Adaptation to Climate Change Impacts

- HR 2454 and CEJAPA, mentioned in the clean energy section, also contain provisions supporting state and tribal efforts to address the impacts of climate change upon their infrastructures and natural resources. Under both bills, Tribes are allocated 1% of the allowances provided to states and tribes for domestic adaptation. NCAI has consistently advocated for increases in tribal percentages of relevant allocations and the ability to use such funds flexibly, such as for capacity-building and strategic planning. Alaska Native Villages should be provided additional considerations due to the imminent threats they face every day.

Overall, in HR 2454, tribes are provided 3% of all allowances dedicated to natural resources adaptation, which emanate from several sources. NCAI supports an overall increase to 5%, to more accurately reflect their land base, the high value of undisturbed habitat on their lands, the historical lack of federal financial support for tribal

conservation and climate adaptation, and the significant need for tribes to build capacity for climate adaptation.

Public and Indian Housing Crime and Drug Elimination Program Reauthorization Act of 2009 - On June 23rd, U.S. Senator Tim Johnson (SD) introduced S. 1327, Public and Indian Housing Crime and Drug Elimination Program Reauthorization Act of 2009. This legislation would reauthorize the public and Indian housing drug elimination program within the Department of Housing and Urban Development (HUD). This program provides access to drug abuse treatment and drug education; provide security services; and creates a new office within HUD, the *Office of Policy Development and Research Review and Evaluation Plan*. This office will be responsible to conduct and review existing research relating to preventing; and reduce violent and drug-related crime. This bill has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

Indian Veterans Housing Opportunity Act of 2009 (HR. 3553)

On September 10, 2009, Rep. Ann Kirkpatrick (AZ.) introduced the Indian Veterans Housing Opportunity Act of 2009. H.R. 3553 would correct an oversight in the Native American Housing Assistance and Self-Determination Act (NAHASDA) that has caused disabled Veterans, their families and their survivors to be denied help because they are receiving Veterans' and survivor benefits. H.R. 3553 would change the definition of income to specifically exclude Veterans' compensation and survivor benefits, ending this unfair practice and lifting the burden on Native American Veterans. This bill has been referred to the House Committee on Financial Services. NCAI would encourage all tribes to ask their House Representatives to co-sponsor the legislation, and to urge its introduction and passage in the Senate.

Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act) [H.R. 2523] - In May, U.S. Congressman Martin Heinrich (D-NM) introduced the H.R. 2523, Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act). The HEARTH Act would amend (25 U.S.C. 415) leases of restricted lands by expediting the lease approval process by allowing tribal governments to approve trust land leases and submit them directly to the Secretary of the Interior. The intentions of the HEARTH Act would eliminate obstacles for prospective Native American homeowners when seeking approval from the Bureau of Indian Affairs to buy a home on tribal land.

Although the legislation is aimed at improving tribal housing efforts, it is actually a set of amendments that would make the Navajo Leasing Act open to all tribes and would also affect other forms of commercial and agricultural leasing.

The Navajo Leasing Act of 2000 was a special law that provided the Navajo Nation with the ability to lease tribal land without Secretarial approval. The Navajo Leasing Act requires that the Navajo Nation first create tribal leasing regulations that are consistent with the BIA regulations and that include an environmental review process. After these regulations are created and approved by the Secretary, the Navajo Nation can lease its

land without Secretarial approval. NCAI has some questions regarding how this relates to the broader trust reform effort; and what is Navajo Nation's experience with the current statute. NCAI would encourage tribes to review the legislation for discussion during the NCAI Annual Meeting where a resolution has been introduced.

Transportation Reauthorization

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, authorizes the current tribal transportation provisions including the Indian Reservation Roads Program (IRR), Indian Reservation Roads Bridge Program (IRRB), and the Tribal Transit Grant Program (TTGP), and this authorization expired on September 30, 2009.

Due to an over packed legislative agenda and not having sufficient time to consider this reauthorization, both Houses of Congress have decided to extend SAFETEA-LU. However, there is conflicted timeline on how long to extend SAFETEA-LU. The Senate was to extend up to 18 months because they want to resolve the problems of the Highway Trust Fund so it can help pay for highway projects. This 18 month extension is supported not only by the Senate but also by the Obama Administration. While, the U.S. House of Representatives does not want to delay enactment of new authorization because of the impact of job loss, they want a 3 month extension. On September 30, 2009, both the House and Senate passed a one month extension of SAFETEA-LU in the Conference report of HR 2918 - H Rept. 111-265, the FY 2010 Legislative Branch Appropriation. The deadline for Congress to negotiate another final extension for SAFETEA-LU is October 31, 2009.

Transportation Reauthorization of Indian Programs of 2009 (TRIP Act)

This March, the Senate Committee on Indian Affairs released a draft bill titled, *Transportation Reauthorization of Indian Programs of 2009 (TRIP Act)*. TRIP Act addresses tribal transportation provisions for the upcoming authorization of the transportation bill. The Committee solicited comments from Tribal Leaders on the TRIP Act. As result of the enactment of the extension of SAFETEA-LU, the TRIP Act is on hiatus until the Second Congressional Session when the Senate considers the next transportation authorization.

Indian Healthcare Improvement Act (IHCIA)

The House released its bill [HR 2708] for IHCIA in June 2009. The language is similar to what was passed out of the Natural Resources committee in the 110th Congress. The bill has been referred to Ways and Means and Energy and Commerce but no further action has taken place. The Senate has not released its version of the IHCIA. The key for passage of the IHCIA is flexibility. Because of the focus on health insurance reform, it will be difficult to get a standalone Indian health bill passed this session. We must stay open for multiple options for movement as it is likely that both the House and the Senate will be looking for options to include their IHCIA bills into the larger health insurance reform legislation.

No Child Left Behind (Reauthorization Bill)

It is unclear when the reauthorization of the No Child Left Behind bill will be put back on the legislative calendar. The committees in both the House and the Senate that have jurisdiction over this legislation are occupied with health insurance reform so any possible movement will be delayed until the Spring session. The Department of Education has begun work on their draft recommendations for the bill and NCAI has met with the Secretary to begin laying the groundwork for the incorporation of Indian Country priorities into their base recommendations. Our recommendations are made in collaboration with the National Indian Education Association and other tribal organizations and include: (1) Improving and Expanding Title VII to Address the Unique Cultural and Educational Needs of Native Children; (2) Improving Cooperation among Tribes, States, and the Federal Government; and (3) Strengthening NCLB to Provide Support for Instruction in Native American Languages.

Water Infrastructure

On July 16, 2009, the Water Infrastructure Financing Act, sponsored by Sen. Cardin (MD) and passed by the Senate Environment and Public Works Committee, was placed on the Senate calendar. The bill amends the Clean Water Act and Safe Drinking Water Acts, including establishing the tribal set-asides under the respective State Revolving Funds to 1.5%. The Obama Administration supports and increase of the tribal set-aside to 2%, and NCAI to 3%, as over 13% of tribal homes lack fundamental access to safe drinking water and basic sanitation, compared to less than 1% of homes nationwide.

DHS Pushes Back REAL ID Deadline for States Seeking Extension

The Department of Homeland Security published a notice in the Federal Register on September 28, 2009 giving state governments until December 1, 2009, an additional two months, to submit a request for extended period of time to comply with the Real ID Act of 2005. The Real ID Act of 2005 requires states to issue enhanced driver's licenses or personal identification cards with minimum federal security standards by January 1, 2010. No state has achieved compliance and most anticipate they will not meet the deadline. At least 12 states have enacted legislation opposed to REAL ID compliance.

Many tribal members seeking a state driver's license from states which comply will be impacted because of federal requirements to present a birth certificate in order to receive a driver's license. Tribes are encouraged to continue to press the Department of Homeland Security to accept tribal documentation as acceptable forms of ID for obtaining REAL ID state driver's licenses. The Federal Register notice can be found at [Federal Register](#), September 28, 2009 (Volume 74, Number 186), Page 49308-4930, or at the DHS website <http://edocket.access.gpo.gov/2009/E9-23381.htm>.

Child Welfare

On September 15, 2009, the House Ways and Means Committee held a hearing on the Implementation of the Fostering Connections to Success and Increasing Adoptions Act. This Act authorizes tribes, for the first time, to receive administer the Title IV-E federal programs for foster care and adoption assistance. NCAI has facilitated numerous tribal discussions regarding implementation of the Act. Tribal accomplishments and barriers to

access were outlined by NCAI through testimony presented at the hearing. Key implementation issues include developing strategies for culturally-appropriate technical assistance, tribal court and code reform, and resources for establishing tribal IV-E data systems. NCAI will be establishing a task force to discuss implementation challenges and provide recommendations to the HHS Administration for Children & Families as final regulations are being developed.

Eagle Feathers and the Fish and Wildlife Service

Over the summer months, the US Fish and Wildlife Service (FWS) conducted an investigation into the illegal selling of eagle feathers. NCAI, in collaboration with other national organizations, met with FWS and DOJ to express concerns regarding the investigation. One of the primary concerns is the disconnection between the statutes governing access and possession of feathers and the federal regulations. FWS agreed to the tribal request for the establishment of an advisory group to discuss and make recommendations regarding, the acquisition, gifting, possession, and use of feathers. NCAI is currently working on this issue through the Human, Religious and Cultural Concerns Committee.

Federal Recognition

On October 1, 2009, the Indian Tribal Federal Recognition Administrative Act (HR 3690) was introduced by Rep. Eni Faleomaevaga (AS). This bill was referred to the House Natural Resources Committee where it awaits consideration. HR 3690 establishes a Commission on Recognition of Indian Tribes to review and act on petitions by Indian groups applying for federal recognition. Major provisions include the following:

Creation of an independent commission - The independent commission consists of 7 commissioners to be appointed by the President, with the advice and consent of the Senate. These commissioners are authorized to promulgate regulations governing their operations, hire staff, and conduct proceedings as required by the bill to process petitions for recognition from tribes. Petitions for recognition presently pending before the Department of the Interior are transferred to the commission. The commission terminates 12 years from the date of the first meeting of the commission, unless extended by an act of Congress.

Consolidation of criteria for tribal existence - The bill consolidates the 7 mandatory criteria currently in the regulations into 2 criteria. These 2 criteria contain all the substantive criteria of the existing regulations: first, proof of descent from an historic tribe; and second, proof of a community (including proof of political authority.) In addition, the bill adds methods for proving these criteria.

Transparency of recognition process - The bill provides for two stages in consideration of petition – a preliminary hearing and an adjudicatory hearing. At both stages, the evidence is examined in public instead of behind closed doors. In addition, deadlines for every step of the process are set which will result in a final decision on most petitions within 2 years. The bill also includes other ways to shorten the process for tribes that are plainly tribes and other groups that are plainly not Indian.

Human Services

With tribal members living longer, the demand for Long Term Care services in Indian Country is increasing. LTC consists of the wide spectrum of health and social services required to care for individuals who are limited in their capacity to care for themselves due to physical, cognitive, or mental disability. The Center for Medicaid/Medicare Services Technical Tribal Advisory Group (CMS TTAG) produced a preliminary report on long term care issues in Indian Country. CMS has contracted the development of a comprehensive report on long term care along with recommendations on how CMS, IHS, and tribes can collaborate and streamline access to resources. This comprehensive report is due out in January 2010. NCAI actively participates as a member of the CMS TTAG.

The Temporary Aid to Needy Families Act (TANF) is scheduled for reauthorization. Over half of all tribes participate in the Tribal TANF program. In preparation for the planned legislative opportunity, NCAI held a pre-meeting at this session. The purpose is to discuss and provide an opportunity to present recommendations that will improve access and provide tools for tribal programs to assist needy families. These recommendations will be sent to the Senate Finance Committee prior to introduction of legislation.

Violence Against Women

On January 26, 2009, the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009 was introduced by Patrick Leahy (VT). On October 1, 2009, the Senate Report was released. Section 107 allows tribal coalitions to access and provide assistance through the national resource center on workplace responses to assist victims of domestic and sexual violence. Section 108 allows that funds shall remain available until expended and that grants provided shall be for a period of 24 months. Section 113 of the bill expands the National Baseline Study on violence against Indian women to ensure that Alaska Native women are included in the study. It also amends the Violence Against Women and Department of Justice Reauthorization Act of 2005 to require the Attorney General to submit annual reports to the House and Senate Judiciary Committees and the Senate Committee on Indian Affairs on the study of violence against Indian women. This section also requires the Department of Justice to submit annual reports, and upon completion of the study, a final report to Congress.

For more information on these or on any other issue, please contact NCAI at 202-466-7767, or you may also contact any of the NCAI staff by e-mail. For a complete listing of NCAI staff please see our website at www.ncai.org.

NCAI Appropriations Update October 8th, 2009

Overview of Appropriations Activity

As this legislative update goes to print, only one of the regular twelve appropriations bills had been signed into law at the start of the fiscal year -- the Legislative Branch bill, which also included a continuing resolution (CR) to keep the government running through October 31st. The CR keeps most discretionary programs operating at FY 2009 levels, with the exception of the Veterans Health Administration which will receive \$3.85 billion more than in FY09 and the Census, which will receive funding at a rate of \$7.1 billion, \$3.9 billion more than it received in FY09.

The House on Wednesday adopted the Agriculture appropriations conference agreement by a 263-162 vote. Senate consideration is not expected until next week. The House and Senate have passed their versions of the Interior-Environment and the Transportation-HUD spending bills and each are pending conference. The House has passed its version of the Commerce-Justice-Science bill and the Senate continues to work on its bill. The Senate is expected to act on several other pending fiscal 2010 spending bills before getting to the measure for the departments of Labor, Health and Human Services (HHS), and Education. Negotiations with the House will push enactment off until later in the session.

Below is an overview of key funding levels and provisions that affect tribes in the Interior-Environment, Commerce-Justice-Science, and Transportation-HUD appropriations bills..

Interior-Environment Appropriations

The Interior-Environment bill includes the Bureau of Indian Affairs (BIA), Office of Special Trustee (OST), and the Indian Health Service (IHS). Table 1 shows the overall funding for BIA and IHS from the FY09 Omnibus levels to the Senate Committee recommended levels for FY2010. The next action on this bill will be House-Senate conference. During the Senate debate on the Interior bill, an amendment was adopted to provide \$1.5 million out of historical accounting to be available for estate planning assistance.

Below is the overall funding trend for BIA and IHS from FY09 to the FY10 Senate recommended levels.

Table 1

	FY09 Omnibus	FY09 ARRA	FY09 Total w. ARRA & Supp	FY10 Request	FY10 House Cmte Mark	FY10 Senate Cmte Mark	FY10 Sen vs. FY10 Request	FY10 Sen vs. FY09 Omni	Net % Δ, FY09 Omni vs. FY10 Sen Mark
BIA	2,376,131	500,000	2,876,131	2,537,404	2,558,694	2,592,917	55,513	216,786	9%
IHS	3,581,124	500,000	4,081,124	4,034,625	4,052,375	4,034,625	0	453,501	13%

House Committee Report Language

The House has passed its version of the Interior spending bill and the Senate has reported it out of the Senate Appropriations Committee. The House committee report (H Rept 111-180, p. 3) included language on "Native American Programs." The full text of the language is included at the link. The House Appropriations Committee expressed concern about the cultural, social and health-related impacts in Indian Country from domestic violence and substance abuse. The committee noted that numerous tribal leaders testified on these areas and that the underlying problem is lack of sufficient law enforcement to target these crimes. The Committee held an oversight hearing to discuss law enforcement needs and jurisdictional challenges that diminish tribes' abilities to enforce laws and prosecute crimes. The

committee stated that it provided additional resources to the BIA and IHS over the President's requested increases to protect Native Americans and to assist and treat victims of crime and addiction. The committee also expressed concern about the various federal funding sources and grant programs for Native American programs that are not well coordinated, citing that in the area of law enforcement there are numerous competitive grant programs and direct funding sources which create a patchwork of funding opportunities that tribes must navigate. The committee stated tribes might receive funds to purchase police vehicles but no funding to maintain them, and that similar examples of poor coordination of funding sources exist in health care, housing, education and other areas.

I.) DEPARTMENT OF INTERIOR, INDIAN AFFAIRS

The Senate version would provide the Operation of Indian Programs (OIP) an eight and a half percent increase of \$180 million over the FY09 enacted amount, not including ARRA funds passed last year, which added \$40,000 to OIP. The House version would provide an eight percent increase of \$171 million over FY09. Under the Indian Affairs construction account, the Senate version would provide a \$7 million increase over the FY09 level, not including the \$450 million ARRA funding for BIA construction. The House level would provide \$200 million for BIA construction, \$18 million below the FY09 enacted amount, not including ARRA. Table 2 shows the FY09 enacted amount, the FY2010 President's budget request amount, the FY2010 House allowance, and the Senate Appropriations Committee recommended levels and the difference between the Senate and the previous three.

Table 2

Item	FY 2009 Enacted	FY10 Budget Request	FY10 House Allowance	FY10 Senate Cmte	Senate Committee Recommendation Compared With (+ or -)		
					FY09 Enacted	FY10 Budget Request	FY10 House Allowance
In thousands							
Operation of Indian Programs, Tribal Budget System							
Tribal Government	402,531	416,572	422,862	418,572	16,041	2,000	-4,290
Human Services	137,448	136,996	136,996	138,059	611	1,063	1,063
Trust, Natural Res Mgmt	147,710	160,768	174,768	161,618	13,908	850	-13,150
Trust, Real Estate Svcs	150,087	152,493	152,493	152,493	2,406		
Education	716,153	796,300	796,300	797,900	81,747	1,600	1,600
Public Safety/Justice	270,785	303,855	303,855	328,855	58,070	25,000	25,000
Community/Econ Dev	43,589	43,910	44,910	43,910	321		-1,000
Exec Dir/Admin Services	260,327	267,915	267,915	267,915	7,588		
Public Law 111-5 (ARRA)	40,000				-40,000		
Total, OIP	2,168,630	2,278,809	2,300,099	2,309,322	140,692	30,513	9,223
<i>Non-emergency</i>	-2,128,630	-2,278,809	-2,300,099	-2,309,322	(+180,692)	(+30,513)	(+9,223)
<i>Emergency</i>	-40,000				(-40,000)		
Construction							
Education	128,837	112,994	112,994	112,994	-15,843		
Public safety and justice	39,399	39,407	39,407	64,407	25,008	25,000	25,000
Resources management	40,306	38,385	38,385	38,385	-1,921		
General administration	2,060	2,064	2,064	2,064	4		
Construction Mgmt	7,086	7,150	7,150	7,150	64		
Public Law 111-5 (ARRA)	450,000				-450,000		
Total, Construction	667,688	200,000	200,000	225,000	-442,688	25,000	25,000
<i>Non-emergency</i>	-217,688	-200,000	-200,000	-225,000	(+7,312)	(+25,000)	(+25,000)
<i>Emergency</i>	-450,000				(-450,000)		

Indian Affairs, Operation of Indian Programs

Tribal Government – Under this activity, the House recommended an increase of \$6.3 million above the President's requested level and \$11.8 million over the FY09 Omnibus level for contract support costs (CSC). The Senate recommended a \$2 million increase over the President's proposed level and \$7.5 million over the FY09 Omnibus amount, which would be an increase for CSC.

Human Services – Under this activity, the Senate recommended an increase of \$1.6 million above the President's budget request for the Housing Improvement Program, which would restore the program to the FY09 level plus fixed costs.

Trust, Natural Resources – The House version recommended a \$2 million increase for Fish, Wildlife, and Parks and a \$12 million increase for Rights Protection. The House Committee report included language stating that the natural resources programs in BIA have been chronically underfunded. The Senate did not provide any increase to Rights Protection or Fish, Wildlife, and Parks but recommended \$850,000 for the Tribal Management/Development program.

Public Safety and Justice – The House Committee recommended \$303.9 million for this activity, the same as the President's request. The Senate recommended \$328.9 million, \$25 million above the budget request; this represents half of the \$50 million of additional funding the Senate Committee is providing for increased law enforcement activities in Indian Country. The Senate Committee has provided language in the bill directing that these funds shall be for public safety and justice programs as authorized by the Emergency Fund for Indian Safety and Health, established by section 601 of Public Law 110-293. \$20 million would be for law enforcement, of which \$10 million is for criminal investigations and police services, \$5 million for detention and corrections, \$1 million for law enforcement special initiatives, \$1 million for training at the Indian Police Academy, and \$3 million for management. \$5 million would be for tribal courts.

The House report included language instructing the Department to conduct consultation with tribal leaders and tribal justice officials in the development of regulatory and other actions that affect public safety and justice in Indian Country.

The language also instructed the Department to participate, along with the Department of Justice, tribal, and state officials in an interagency working group to clarify and resolve the law enforcement jurisdictional challenges that have hindered criminal investigations and prosecutions in Indian Country, and to identify challenges and needs related to tribal justice systems. The working group is to develop recommendations on how to streamline federal, state, and tribal response to criminal investigations and prosecutions and submit a report to the Committee within 90 days of the enactment of the Act. One of the goals for the working group is the development of protocols to ensure that federal law enforcement agencies that decline to initiate an investigation or that terminate an investigation of an alleged violation of federal law in Indian Country without referral for prosecution submit to the appropriate tribal official a report describing the rationale for terminating the investigation; the type of crime alleged; the status of the alleged perpetrator; and the status of the victim. The protocols should also ensure that the US Attorneys coordinate with tribal prosecutors sufficiently well in advance of prosecution deadlines mandated by the statute of limitations to permit tribal prosecutors to pursue cases. The working group should also review and define the responsibilities of Assistant US Attorneys serving as Tribal Liaisons in order to better coordinate the prosecution of crimes on reservations.

The House also instructed the Department to coordinate with the Department of Justice to develop a priority list for detention facility construction, targeting tribal areas with the greatest need, and work with

Justice to incorporate the priority system into the ranking criteria for detention center grants. Language was included instructing DOI to 1.) work with DOJ to develop a voluntary annual training for tribal court officials to promote improvements in judicial systems and 2.) engage the services of the Office of Inspector General to ensure funds are spent wisely, goals and objectives for performance are established, and program results are measured.

The Senate Committee included language recognizing the high crime rate in Indian country and the need for more Indian law enforcement personnel. It noted that less than 3,000 tribal and BIA officers patrol more than 56 million acres of Indian land. The Indian Police Academy graduates only 80 new officers each year and has an annual attrition rate of 47 percent. The Committee applauded the Bureau for taking an important first step in establishing increased training opportunities, and directed BIA to provide a strategy and timeline for boosting Indian law enforcement training, including the possible addition of a second academy in the Northern Great Plains.

Bureau of Indian Affairs, Construction

The House recommended the same as requested by the President, \$200 million for BIA construction. The Senate recommended an increase of \$25 million for a total of \$225 million, with the increase for Public Safety and Justice: \$20 million for facilities improvement and repair and \$5 million for employee housing.

Indian Land Consolidation

The budget request proposes to transfer the Indian Land Consolidation Program from the Office of the Special Trustee to BIA in order to better align funding with management of the program. The budget includes \$3.0 million to maintain this program and to develop alternatives to target future efforts to reduce fractionalization.

ILCP (\$ in thousands)	FY 2008 Enacted	FY 2009 Enacted	FY 2010 Request	FY 2010 House	FY2010 Senate
Indian Land Consolidation Program	[9,844]*	*	3,000	3,000	3,000

* Funded in the Office of Special Trustee’s budget.

II.) HEALTH AND HUMAN SERVICES, INDIAN HEALTH SERVICE

The House version recommended a total of \$4.05 billion for IHS, \$17.8 million over the President’s budget request, and \$471.3 million and 13.1 percent over the FY09 enacted amount, not including ARRA. The Senate recommended a total of \$4.03 billion, the same as the budget request, and \$453.5 million and 12.7 percent over the FY09 enacted amount. Table 3 shows the levels for IHS line items from FY09 enacted levels through the FY2010 Senate Committee recommended levels. The House Committee Report noted that the historic increases proposed for IHS will do much to address shortfalls associated with past budget requests that neglected to provide for pay cost increases, medical inflation, and growing population needs.

Table 3

Item	FY 2009 Enacted	FY10 Budget Request	FY10 House Allowance	FY10 Senate Cmte	Senate Committee Recommendation Compared With (+ or -)		
					FY09 Enacted	FY10 Budget Request	FY10 House Allowance
Indian Health Services							
Clinical Services							
IHS & tribal health delvry:	2,625,707	2,949,809	2,953,559	2,949,809	324,102		-3,750

Preventive Health	135,227	144,315	144,315	144,315	9,088		
Urban health program	36,189	38,139	43,139	38,139	1,950		-5,000
Indian health professions	37,500	40,743	40,743	40,743	3,243		
Tribal management	2,586	2,586	2,586	2,586			
Direct operations	65,345	68,720	68,720	68,720	3,375		
Self-governance	6,004	6,066	6,066	6,066	62		
Contract support costs	282,398	389,490	398,490	389,490	107,092		-9,000
(Public Law 111-5) ARRA	85,000				-85,000		
Total	3,275,956	3,639,868	3,657,618	3,639,868	363,912		-17,750
<i>Non-emergency</i>	-3,190,956	-3,639,868	-3,657,618	-3,639,868	(+448,912)		(-17,750)
<i>Emergency</i>	-85,000				(-85,000)		
(Non-contract services)	-2,641,479	-2,860,521	-2,878,271	-2,860,521	(+219,042)		(-17,750)
(Contract care)	-634,477	-779,347	-779,347	-779,347	(+144,870)		
Indian Health Facilities							
Maint/improvement	53,915	53,915	53,915	53,915			
Sanitation facilities	95,857	95,857	95,857	95,857			
Construction facilities	40,000	29,234	29,234	29,234	-10,766		
Facilities/envl hlth suppt	178,329	193,087	193,087	193,087	14,758		
Equipment	22,067	22,664	22,664	22,664	597		
(Public Law 111-5) ARRA	415,000				-415,000		
Total, Facilities	805,168	394,757	394,757	394,757	-410,411		
<i>Non-emergency</i>	-390,168	-394,757	-394,757	-394,757	(+4,589)		
<i>Emergency</i>	-415,000				(-415,000)		
TOTAL, IHS	4,081,124	4,034,625	4,052,375	4,034,625	-46,499		-17,750
<i>Non-emergency</i>	-3,581,124	-4,034,625	-4,052,375	-4,034,625	(+453,501)		(-17,750)
<i>Emergency</i>	-500,000				(-500,000)		

The House bill would provide an increase of \$17.6 million over the President's budget request. Changes to the budget request include increases of \$2.5 million for Domestic Violence, \$1.25 million for the Dental Health Program, \$5 million for Urban Indian Health Program, and \$9 million for Contract Support Costs.

The House Committee Report included language to express deep concern about the problem of domestic violence, particularly violence against women and children in Indian Country. The Committee expects the Service to work with DOI and DOJ to provide the needed services and support to victims. The report also questioned the DHHS policy on witness subpoenas and is concerned that it may hinder the Indian Health Service mission to promote the health and well-being of all Native Americans.

The Senate version recommends the same amounts as proposed in the President's budget request.

Commerce-Justice-Science Appropriations

The House has passed its version of the Commerce-Justice-Science bill and the Senate continues to work on its bill.

CJS Programs (in millions)	FY09 Enacted	House	Senate
Tribal detention facilities	10	10	10
Tribal courts	9	25	10
Tribal alcohol and substance abuse	6	12	7
Research and analysis (VAWA 904)	1	1	1

Tribal sex offender registry	1		1
Anti-meth activities in Indian Country		5	
Tribal youth -	25	25	25
Tribal COPS	20	40	20

In the House version of the CJS bill, language was included on the prosecution of serious crimes in Indian Country. The House version also includes an additional \$6 million for the hiring of additional Assistant U.S. Attorneys to increase the rate of needed prosecutions and provides a proportional increase to the appropriation for the Federal Bureau of Investigation to support additional criminal investigations.

Transportation-HUD Appropriations

The Senate passed the Transportation-HUD funding bill. The next step is for the House and Senate conference.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	FY 2009 Enacted	FY 2010 Request	FY 2010 House	FY 2010 Senate
(\$ in millions)				
Indian Housing Block Grant	645	645	750	670
Title VI Loans Program Account	2	2	2	2
Native Hawaiian Housing Block Grant	10	10	12	13
Indian Community Development Block Grant	65	65	65	65

**NATIONAL
CONGRESS OF
AMERICAN
INDIANS**

Tel: 202.466.7767
Fax: 202.466.7797
1516 P Street, NW
Washington, DC 20005
www.ncai.org