

SONOSKY

SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY, LLP

A NATIONAL LAW FIRM DEVOTED TO REPRESENTING NATIVE AMERICAN INTERESTS

INTRODUCTION

We provide a summary of Indian affairs legislation considered in Congress in the First Session of the 116th Congress that concluded in December. We have divided the legislation by subject matter, including such topics as Tribal Governance, Public Safety, Health, Environment, Natural Resources and Cultural Resources, Economic Development and Taxes, Infrastructure, and Veterans' Affairs. Some legislation was enacted into law, while other measures will continue to move through the legislative process in the Second Session of the 116th Congress that began in January.

TRIBAL GOVERNANCE

1. PROGRESS for Indian Tribes Act, S.209, H.R. 2031 – On June 27, the Senate passed S. 209, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, a bill that would make technical changes to the Indian Self-Determination Act of 2019, and important changes to the Department of the Interior Self-Governance program to align with the Self-Governance Program at the Department of Health and Human Services. The House Natural Resources Committee approved the Senate-passed bill on December 5. This bill now awaits passage by the House of Representatives, and will then be sent to the President for his signature. The bill has been pending in Congress for more than a decade and it is an

LEGISLATIVE BULLETIN

JANUARY 2020

116TH CONGRESS
FIRST SESSION UPDATE

exciting next step in Tribal self-determination and self-governance for it to have been approved by the House Natural Resources Committee. We expect the House to take up the bill early this year.

2. Repealing Existing Substandard Provision Encouraging conciliation with Tribes Act (RESPECT Act), S.

2071, H.R. 3684– On November 19, the Senate passed S. 2071, the RESPECT Act. This bill would repeal certain antiquated and, in many cases, offensive laws that remain in place in federal statutes related to Indian Affairs. The bill is now pending in the House Natural Resources Committee, where we expect consideration by the Committee and the House early this year.

3. Indian Programs Advance Appropriations Act, S. 229, H.R. 1128 – In past government shutdowns, consistent with Federal treaties and trust obligations, Indian tribes had urged Congress and the White House to ensure that the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), and Indian Health Service (IHS) did not experience a lapse in funding. The 35-day government shutdown in 2018-2019 highlighted the harmful impacts to Indian country when BIA, BIE and IHS experience a lapse in funding. Without agency awarding officials able to allocate federal funds, Tribes were forced to exhaust carryover funds, look to Tribal resources, close for the duration of the government shutdown, or operate without paying their employees.



SONOSKY

SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY, LLP

A NATIONAL LAW FIRM DEVOTED TO REPRESENTING NATIVE AMERICAN INTERESTS

In response to requests from numerous Tribes, identical legislation was introduced in the Senate and House in 2019 to require advance funding of certain accounts of the Department of the Interior and Department of Health and Human Services that provide annual appropriations to BIA, BIE and the IHS. This legislation would provide advance funding by requiring new budget authority provided in an appropriations Act for the “covered accounts” be made available for the fiscal year and include advance budget authority for the following fiscal year. The “covered accounts” include BIA and BIE’s Operation of Indian Programs (OIP), the majority of BIA and BIE accounts, Contract Support Costs, and the Indian Guaranteed Loan Program accounts. For the IHS, the “covered accounts” include the Indian Health Services and Contract Support Cost accounts.

The respective Secretaries would be required to include in materials submitted to Congress in support of the President’s annual budget, “detailed estimates of the funds necessary for the covered accounts” for the subsequent fiscal year. There was significant resistance to the measure in the House and the Senate Budget Committees and thus no action was taken on the measure in the First Session.

Because the Indian Health Service is the only federal health care program that is not protected during a government shutdown many believe that there is a greater possibility of moving forward only with the Indian Health Service advance funding measure. Thus, bills to address advance appropriations for only the Indian Health Service were introduced including: H.R.195, S. 2541, H.R.

1135. However, notwithstanding the equity of this issue, there has been no action on these bills to date.

4. Marijuana Legislation – There has been a great deal of activity associated with federal laws involving marijuana. On September 25, the House passed the Secure and Fair Enforcement Banking Act, H.R. 1595 that would change federal banking laws to allow federally insured banks to provide services to state- and tribal-authorized marijuana industries.

Beyond amending the federal banking laws, there have been a number of bills that would decriminalize marijuana at the federal level or recognize State and Tribal laws that decriminalize and permit the production, distribution, and sale of marijuana. One such bill, the Tribal Marijuana Sovereignty Act of 2019, H.R. 1416, was introduced by Congressman Young (R-AK). The measure would ensure that a tribe that is “legally authorized” to produce, purchase, or possess marijuana would not impact that tribe’s allocation of Federal funds or other benefits. H.R. 1416 would also permit Indian Health Service professionals to make “recommendations” regarding the use of marijuana for medical treatment. Such recommendations under the legislation, however, do not include dispensing marijuana.

The House Judiciary Committee approved the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, H.R. 3884, in November, 2019. This is a comprehensive bill that would decriminalize marijuana at the federal level,

and address issues related to past criminal convictions and access to federal benefits and services. In addition, the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, S. 1028, is pending in the Senate. S. 1028 would decriminalize marijuana in states that decriminalized and descheduled cannabis from the schedule of controlled substances. For tribes, it would permit them to decriminalize marijuana so long as they are located in a state that has decriminalized it.

5. Tribal Labor Sovereignty Act, H.R. 779, S. 226 – On January 29, the Tribal Labor Sovereignty Act was approved by the Senate Indian Affairs Committee. The measure would clarify that tribes are exempt from the requirements of the National Labor Relations Act (NLRA).

6. Native American Voting Rights Act, S. 739, H.R. 1694 – The measure was introduced in the House and Senate in March 2019. The legislation would increase Native access to voter registration sites and polling locations, authorize tribal ID cards for voting purposes. The bill would also address the devastating effects of *Shelby County v. Holder*, the 2013 U.S. Supreme Court decision that struck down provisions of the Voting Rights Act of 1965. The measure would prohibit states from undertaking discriminatory actions in Indian country without Department of Justice agreement and government-to-government consultation. The House measure was referred to the House Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties. S. 739 was referred to the Senate Judiciary Committee on March 12, 2019.

7. Tribal Border Crossing Parity Act, H.R. 2496 – This bill would amend the Immigration and Nationality Act (8 U.S.C. § 1359) to extend border crossing privileges between the Canada and the United States, that are now extended to Indian people with 50% or more blood quantum, to all Indians born in Canada or the United States who are enrolled or eligible to be enrolled in a federally recognized Indian tribe in either country. The House measure

was referred to the Judiciary Committee's Subcommittee on Immigration and Citizenship.

PUBLIC SAFETY

1. Violence Against Women Act, H.R. 1585, S. 2843 – On April 4, the House passed the Violence Against Women Act Reauthorization of 2019 (VAWA 2019), H.R. 1585. This bill would expand VAWA's tribal special criminal jurisdiction to include violent crimes committed by non-Indians against children or elders, assaults against law enforcement officers, and the crimes of stalking, sexual violence, sex trafficking and obstruction of justice.

For sexually violent crimes, sex trafficking, stalking, assault against law enforcement officers, or obstruction of justice charges, a defendant would not have to reside in Indian country, be employed in Indian country, or be the spouse of an Indian to be prosecuted. These types of crimes can be committed without any connection to a tribal community. Under the bill, Congress has determined that tribes should possess the authority to prosecute such violent offenders.

A companion to the House measure, S. 2843, was introduced in the Senate on November 13, 2019 by California Senator Feinstein, Ranking member of the Senate Judiciary Committee. S. 2843 is largely identical to the House-passed H.R. 1585. Senator Ernst (R-IA) introduced the Republican VAWA bill, S. 2920. Senator Ernst's bill recognizes the need to expand tribal jurisdiction to cover additional crimes, including crimes against children and law enforcement and sexual violence, and includes important provisions regarding missing and murdered indigenous women. S. 2920 also appends the text of the Tribal Labor Sovereignty Act to the measure. However, Senator Ernst's S. 2920 includes several provisions that would undermine the independence of tribal courts, destabilize the protections offered in tribal courts under the Indian Civil Rights Act, hold tribal courts to standards higher than any federal, state, or territorial court in the country, erode Tribal sovereignty by providing a cause of action for defendants to sue Tribes for civil rights violations, while also subjecting them to

oversight and review by the U.S. Department of Justice that no other courts experience. S. 2920 would be a step backwards for tribes and the victims of violent crimes.

In addition to the VAWA reauthorization, there a number of other measures intended to address the issue missing and murdered indigenous women which would increase coordination, communication and data collection among Federal, State, Tribal, and local law enforcement agencies – including medical examiner and coroner offices – to positively impact the response to cases of missing and murdered American Indians and Alaska Natives.

2. Alaska Tribal Public Safety Empowerment Act, S. 2616 – On October 16, Senator Murkowski (R-AK) introduced the Alaska Tribal Public Safety Empowerment Act, S. 2616. The measure would recognize the authority of Tribal governments in Alaska to battle violent crimes against women and children in their communities and represents a significant recognition of Tribal jurisdiction in Alaska to protect Alaska Natives and reduce the disproportionate violence they experience.

3. Tribal Law and Order Act Reauthorization, S.210 – On January 29, the Senate Committee on Indian Affairs approved the Tribal Law and Order Act Reauthorization, S. 210. The Tribal Law and Order Act was enacted in 2010 to enhance law enforcement services, encourage interagency cooperation, and improve Federal accountability for public safety in Indian communities.

S. 210 would make important changes in the Tribal Law & Order Act to improve the ability of tribal governments to access, enter information into, and obtain information from, federal criminal databases, improve tribal judicial systems, improve tribal juvenile justice programs, and clarify federal authority to arrest and detain individuals subject to civil commitment orders.

HEALTH

1. Reauthorization of the Special Diabetes for Program Indians (SDPI), H.R. 2680 – As part of the FY 2020 Appropriations bill, Pub. L. 116-94, Congress extended the authorization for the SDPI program until May, 2020. There is significant bipartisan support for this measure, so we think there is no doubt the program will be extended in the spring.

2. Tribal Nutrition Improvement Act, H.R. 2494, S. 1307 – These measures would allow a tribe to assume from a nearby local educational agency (LEA), and in lieu of a state, responsibility for administration of the school breakfast program, the school lunch program, the child and adult care food program, or the summer food service program for children. H.R. 2494 was referred to the House Committee on Education and Labor on May 2, 2019. S. 1307 was referred to the Senate Agriculture, Nutrition, and Forestry Committee.

3. Native Health Access Improvement Act, H.R. 4533 – The bill amends the Public Health Service Act to create a behavioral health program for Indians and, in coordination with the Assistant Secretary for Mental Health and Substance Use, award grants for the prevention and treatment of mental health and substance use disorders, similar to the Special Diabetes Program for Indians. This program would be funded from mandatory money and all tribes would have access to it. The bill would also make technical changes to the Affordable Care Act to ensure that the definition of Indian is uniform throughout the Act. The bill was referred to the House Natural Resources Committee's Subcommittee for Indigenous Peoples of the United States on October 7, 2019. A similar measure, S. 3126, was introduced in the Senate by Minnesota Senator Smith on December 19, 2019, and referred to the Senate Indian Affairs Committee.

4. Native Health and Wellness Act, H.R. 4534 – The measure would create a new tribal block grant program within the Center for Disease control to combat disease, promote health and improve health disparities in Indian communities. The bill would also create a new program for the recruitment and retention of Indian people into the health professions. The bill was referred to the House Committee on Energy and Commerce.

5. Tribal Elder Care Improvement Act, H.R. 5323 – The bill would create a demonstration program to fund a wider range of Tribal programs to provide in-home and community services to elders.

6. Assessment of Indian Health Service Act of 2019, S. 498 – The measure would initiate an independent assessment by a reputable private entity of the healthcare delivery systems and financial management processes of IHS. The measure was introduced by Senator Rounds (R-SD) and referred to the Senate Indian Affairs Committee.

7. Urban Indian Health Parity Act, S. 1180, H.R. 2316 – The bill amends title XIX of the Social Security Act (42 U.S.C. §1396d(b)) to extend the full federal medical assistance percentage (FMAP) to urban Indian organizations. The measures were referred to the Senate Finance Committee and House Committee on Energy and Commerce, respectively.

SOCIAL SERVICES AND HOUSING

1. Native American Housing Assistance and Self-Determination Reauthorization Act, H.R. 5319 – This bill would reauthorize and make important improvements to the Indian Housing Block Grant (IHBG) Program under NAHASDA. This measure has been introduced for the last six years, but has not advanced in the Senate due to the opposition of Utah Senator Lee to the measures reauthorizing the Native Hawaiian housing program. H.R. 5319 was referred to the House Finance Committee on December 5, 2019.

2. Native American Housing Affordability Act of 2019, S. 2725 – The measure would amend the HUD Section 184 guaranteed loan program to streamline the process for Secretarial approval. S. 2725, introduced by Senator Rounds (R-SD), was referred to the Senate Banking Committee.

3. Tribal Access to Homeless Assistance Act, H.R. 4029 – The bill would amend the McKinney-Vento Homeless Assistance Act to give Tribes greater access to HUD homeless assistance grants. The House passed the measure on November 18, 2019.

4. Native American Child Protection Act, H.R. 4957 – The bill would authorize \$30 million in new funding for Tribal foster care programs. On

December 5, the House Natural Resources approved the bill. The Administration testified in support of the measure.

5. Strengthening Services for Native Elders Act, S. 2696 – The measure would authorize funding to increase and improve tribal elder care programs, in particular the ability of tribal elder programs to provide in-home care for elders. S. 2696 was introduced by Senator Murkowski (R-AK) and was referred to the Senate Committee on Health, Education, Labor, and Pensions on October 24, 2019.

6. Native American Suicide Prevention Act, S. 467, H.R. S. 467 – The measures would amend the Public Health Service Act to require States and their grant designees to collaborate with tribal government to develop and implement statewide suicide intervention and prevention strategies.

7. The American Indian and Alaska Native Child Abuse Prevention and Treatment Act (AI/AN CAPTA), S. 1329, H.R. 2549 – The bills would amend the Child Abuse and Prevention Treatment Act (CAPTA) to increase funding for tribal nations and tribal organizations to support AI/AN youth, require that tribal nations be considered in the equal geographic distribution of CAPTA funds, and require that GAO issue a report on child abuse and prevention efforts in Indian Country.

EDUCATION

1. Esther Martinez Native Languages Programs Reauthorization Act – On December 20, the President signed the Esther Martinez Native Languages Programs Reauthorization Act, S. 256, into law as Pub. L 116-101. This Act reauthorizes the federal native language programs through FY 2024 and at a funding level of \$13 million annually. It also authorizes these grants to be for up to five years instead of three.

2. Native Educator Support and Training Act, S.1161 – The bill amends the Higher Education Act of 1965, 20 U.S.C. § 1031 et seq., to create a scholarship program for individuals who want to train as teachers and work in Indian communities. S. 1161 was introduced by Senator Tester (D-MT) and referred to the Senate Indian Affairs Committee on April 11, 2019.

3. Native American Language Vitalization Act, H.R. 4188 – The measure would provide funding for tribal colleges and universities to improve native language training programs.

4. Native American Education Opportunity Act, H.R. 4586 – The bill would create a program for tribes to use federal Indian education funding for Indian children to attend private elementary and secondary schools with those federal funds. The measure was referred to the House Committee on Education and Labor on October 1, 2019.

ENVIRONMENTAL, NATURAL AND CULTURAL RESOURCES

1. Recovering America's Wildlife Act of 2019, H.R. 3742 – The bill was approved by the House Natural Resources Committee on December 5, 2019. The measure includes a Tribal title (title II), Tribal Wildlife Conservation and Restoration, that establishes in the U.S. Treasury an account to be known as the “Tribal Wildlife Conservation and Restoration Account,” and provides a \$14.5 million grant program to fund Tribal Natural Resource programs. The program would be funded from federal taxes collected from the sale of hunting and fish equipment.

2. Coastal and Great Lakes Community Enhancement Act, H.R. 729 – The measure, H.R. 729, was passed by the House on December 10. The bill would amend the Coastal Zone Management Act to provide competitive grants to tribal nations carrying out restoration, protection, or preservation activities in tribal coastal zone areas that hold ecological, cultural, sacred significance or traditional, historic, and esthetic value to the tribal nation. The House-passed bill has been sent to the Senate.

3. Indian Buffalo Management Act, H.R. 5153 – The bill would specifically authorize a \$14 million program within the Department of the Interior to support tribal efforts to restore bison to tribal territories. This program is currently operated pursuant to the Snyder Act. This bill would also authorize the transfer of bison from federal lands to tribal lands. The measure was referred to the House Natural Resources Committee's Subcommittee for Indigenous Peoples of the United States.

4. Native American Seeds of Protection Act of 2019, H.R. 3916, S. 2241 – The measures would authorize the study of seeds and foods that mimic Native American seeds or traditional foods that are available in the commercial marketplace and are fraudulently identified as authentic Native American seeds or traditional foods; the availability and long-term viability of Native American seeds; the extent to which Federal laws protect Native American seeds and traditional foods from infringement; and the means by which authentic Native American seeds and traditional foods might be protected.

5. Safeguard Tribal Objects of Patrimony Act of 2019 (STOP Act), S. 2165, H.R. 3846 – The bills would prohibit the export of sacred items to foreign countries, increase penalties for illegal trafficking, fill gaps in domestic law that make international return of these items nearly impossible, create a framework for the voluntary return of items prior to attempted export, and create federal and tribal working groups to assist in coordinating and aiding federal agencies whose work involves protecting or facilitating repatriation of tribal cultural heritage. The House Natural Resources Subcommittee for Indigenous Peoples of the United States held a hearing on H.R. 3846 on September 19, 2019.

ECONOMIC DEVELOPMENT AND TAXES

1. Tax Extenders, as part of the FY 2020 Omnibus – The FY 2020 Appropriations Act also extended the Indian Employment tax credit and the accelerated depreciation for property and Indian Reservations to December 2020. These tax provisions had expired in December 2017.

2. Tribal Youth Tax Parity Act, S. 2079 H.R. 2810 – These measures would amend the tax law so that minor trust accounts would not be subject to what is commonly known as the “Kiddie Tax” that subjects unearned income of minors to the tax rates of their parents, which is intended to prevent wealthy parents from transferring their money to their children to avoid tax liabilities. The measures are pending with the Senate Finance and House Ways and Means Committees.

3. Tribal Sports Wagering bill, H.R. 5502 – The bill would remove Federal barriers to offering mobile sports wagers on Indian lands provided the tribe and state have agreed on the terms and conditions for

such wagers in the Tribe-State compact under IGRA. The bill was referred to the House Natural Resources Committee on December 19, 2019.

4. The Indian Community Economic Enhancement Act of 2019, S. 212, H.R. 1937 – On June 27, the Senate passed S. 212, which is intended to increase access to capital for Indian tribes and Tribal businesses, increase opportunities for Indian business promotion, and create mechanisms and tools to attract investments in Indian communities by amending the Buy Indian Act, the Native American Programs Act of 1974, and the Native American Business Development, Trade Promotion, and Tourism Act of 2000, to elevate the Office of Native American Business Development to the Office of the Secretary of Commerce, and to expand the Buy Indian Act. The bill also would require interagency cooperation to promote private investment in Indian Country and update securities regulations to provide tribal nations market access for debt and equity securities. The measure was referred to the House Natural Resources Committee's Subcommittee for Indigenous Peoples of the United States on July 3, 2019.

5. Native American Business Outreach Act of 2019, H.R. 5280, S. 2191 – The measures would create a program within the Small Business Administration, funded at \$5 million annually, to provide outreach and training to potential small businesses in Indian communities.

6. Native American Business Incubators Program Act, S. 294, H.R. 1900 – the measures would authorize a program in the Office of Indian Energy and Economic Development within Interior to provide competitive grants to tribes or tribal colleges to develop incubator programs to develop and provide support for native entrepreneurs. S. 294 was passed by the Senate on June 28, 2019. S. 294 has been referred to the House Natural Resources Subcommittee for Indigenous Peoples of the United States.

7. Native American Millennium Challenge Demonstration Act, S. 126, H.R. 558 – The bills would create a program within the Department of Interior modeled on the Millennium Challenge Corporation, which was created to provide United States aide to underdeveloped foreign countries, to

provide similar assistance to underdeveloped tribal and Alaska Native areas.

8. Empowering Rural Economies Through Alaska Native Sustainable Arts and Handicrafts, S. 804, H.R. 1806 – The measures amend the Marine Mammal Protection Act of 1972 to protect the cultural practices and livelihoods of makers of Alaska Native fossilized ivory products. The Act allows for the interstate sale of eligible items. The bill would also prevent states from prohibiting the importation, sale, offers for sale, transfer, trade, barter, possession, or possession with intent to sell, transfer, trade, or barter of mammoth, mastodon, or walrus ivory, marine mammal bones, teeth, or baleen produced pursuant to the Act. S. 804 was referred to the Senate Committee on Commerce, Science and Transportation on March 11, 2019.

INFRASTRUCTURE

1. Addressing Underdeveloped and Tribally Operated Streets (AUTOS) Act, S. 1211, and S. 2302, the America's Transportation Infrastructure Act of 2019 – The AUTOS Act was approved by Senate Indian Affairs Committee on June 19, 2019 and then incorporated within Title IV of S. 2302, the America's Transportation Infrastructure Act of 2019. S. 2302, in turn, was approved by the Senate Committee on Environment and Public Works on July 30, 2019. S. 2302 is the five-year reauthorization of the FAST Act, Pub. L. 114-94, which funds the Federal-Aid program financing all State departments of transportation with funds from the Highway Trust Fund (HTF), as well as funding transportation, transit, and highway safety programs for Federal lands and Indian Tribes, including the Tribal Transportation Program (TTP), the Federal Lands Highway Program, Federal Lands Access Program, the Nationally Significant Federal Lands and Tribal Projects (NSFLTP) Program, the Federal Transit Administration's Public Transportation on Indian Lands Program (49 U.S.C. 5311(c)), and numerous Department of Transportation discretionary and competitive construction, safety, and planning grant programs.

S. 2302 would increase the Tribal Transportation Program to \$565 million in FY 2021, with stepped increases of \$15 million annually thereafter through FY 2025, double the TTP safety grant program (to about \$20 million annually), move

the TTP Facilities Bridge Program back to the Highway Trust Fund (\$18 - \$24 million) rather than a “take-down” within the TTP, include authorization for the design and construction of *new* bridges in addition to the reconstruction or replacement of existing bridges, restore a High Priority Projects (HPP) Program to the Tribal Transportation Program.

In addition, title IV of S. 2302 would streamline safety projects within Indian country by requiring the Secretary of Transportation, or the head of another Federal agency (e.g., Interior Secretary) responsible for NEPA compliance requirements related to a Tribal transportation safety project, to promote the use of categorical exclusions for Tribal safety improvement projects, to enter into programmatic agreements with a Tribe that permits the Tribe to determine, on behalf of the Secretary of the Interior and the Secretary of Transportation, whether a project is eligible for a categorical exclusion under NEPA, authorize an appropriation of \$50 million in FY 2021 for the BIA Road Maintenance Program, with stepped increases of \$2 million annually through FY 2025 (requires an annual appropriation by Congress), require studies and reports to Congress of Tribal deferred road maintenance needs, best practices to improve the quality and quantity of motor vehicle crash data in Indian country, including a directive to BIA law enforcement to report and share crash report data with States using State motor vehicle crash report formats, elevates the U.S. Department of Transportation Deputy Assistant Secretary for Tribal Government Affairs to an Assistant Secretary position, and establishes an Office of Tribal Government Affairs (i.e., an Office of Self-Governance) to oversee the Tribal Transportation Self-Governance Program (TTSGP).

2. Tribal Internet Expansion Act, H.R. 4449 – The measure would amend the Universal Service principles for access in rural and high cost areas found in the Communications Act to include Indian Country and areas with high populations of tribal communities. The bill was referred to the House Committee on Energy and Commerce.

3. Tribal Energy Reauthorization Act, S. 2610 – The bill would expand energy development programs in the Department of Energy to better include Alaska Native communities. The measure

was referred to the Senate Committee on Indian Affairs.

VETERANS

1. Nursing Home Care for Native American Veterans Act, S. 2558, H.R. 4532 – The measures would authorize funding for the creation of veteran nursing homes on tribal lands. The bills were referred to the House and Senate Committee on Veterans’ Affairs.

2. Veterans Medical Marijuana Safe Harbor Act, S. 445, H.R. 1151 – The bills would allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the VA as authorized by a state or tribal nation. S. 445 was referred to the Judiciary Committee. H.R. 1151 was referred to Energy and Commerce, Judiciary, and Veterans’ Affairs Committees.

3. Remove the Stain Act, H.R. 3467 – The measure would rescind each of the 20 Congressional Medals of Honor awarded for War acts at Wounded Knee on December 29, 1890. H.R. 3467 was referred to the House Armed Services Committee for further consideration.

4. Health Care Access for Urban Native Veterans Act, H.R. 4153, S. 2365 – The bills would amend the Indian Health Care Improvement Act to provide Native veterans coverage by the VA for services at urban Indian health centers.

5. Native American Veteran Parity in Access to Care Today Act, H.R. 4908 – The measure would prohibit the VA from charging a native veteran a copayment for health care services provided at a veteran health care facility.

6. Tribal Veterans Health Care Enhancement Act, S. 1010 – The bill would amend the Indian Health Care Improvement Act to allow IHS to cover the cost of a copayment of a native veteran receiving medical care or services from VA. Covered medical care includes any medical care administered at a facility of VA, including any services rendered under a contract with a non-VA health care provider.

7. Department of Veterans Affairs Tribal Advisory Committee Act of 2019, S. 524, H.R. 2791 – The legislation would create a committee within the VA to improve services to Native veterans from the VA. The Senate Veterans' Affairs Committee held a hearing on the measure in May 2019. H.R. 2791 was referred to the House Veteran's Affairs Committee. Notwithstanding significant bipartisan support, enactment of this measure is uncertain this Session.

TRIBAL TRUST LANDS

1. Lytton Rancheria Homelands Act and the St. Ynez Band of Chumash Restoration Act – National Defense Authorization Act included two provisions to take land into trust for the Lytton Rancheria and the St. Ynez Band of Chumash, both in California.

2. The Indian Reorganization Act Amendments, H.R. 375, S. 2808 – On May 15, the House passed H.R. 375, a bill to amend the Indian Reorganization Act to clarify that the Secretary of the Interior has the authority to take land into trust for all tribes. While there is bipartisan support for S. 2808, it is far from the sixty votes that are needed to pass the measure in the Senate.

3. The Mashpee Reservation Reaffirmation Act, H.R. 312 – On May 15, the House passed the measure to reaffirm, ratify, and confirm the 2015 decision by the Department of the Interior to take land into trust on behalf of the Mashpee Wampanoag Tribe. The Administration reversed this decision in 2018 after a legal challenge brought in Massachusetts. There has been no action on this measure in the Senate due to the strong opposition by Rhode Island Senators Reed and Whitehouse, who, acting on behalf of State officials, seek to prevent economic competition to Rhode Island's casinos from a Mashpee Wampanoag gaming facility in Massachusetts.

4. Other Tribal land bills. – Congress also considered several other bills to restore tribal lands including the Eastern Band of Cherokee Historic Lands Reacquisition Act; the Leech Lake Band of Ojibwe Reservation Restoration Act; the Yurok Lands Act; and the Winnebago Land Transfer Act.

SETTLEMENTS

1. Two settlements were approved by Congress in 2019, the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act, S. 216, which was included in the FY 2020 National Defense Authorization Act (Pub. L. 116-99), to provide compensation to the Spokane Tribe for the taking of the lands for the construction of the Grand Coulee dam, and the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act, S. 50, also included in the FY 2020 National Defense Authorization Act. The measure will allow the Department of the Interior to assess and improve the sanitary conditions on access sites the Columbia River that were intended to provide Columbia River tribes access to traditional fishing grounds.

2. Several other bills to amend previous tribal settlement acts were introduced including: the Klamath Tribe Judgment Fund Act that would repeal the Klamath Tribe Judgment Fund Act and require any remaining funds to be deposited with the Klamath Tribe; the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act that would amend the two Tribes' recognition legislation to allow the tribes to engage in gaming under the Indian Gaming Regulatory Act (IGRA); and the Miami Tribe of Oklahoma Equitable Settlement Act, H.R. 396, that would allow the Miami Tribe to bring a lawsuit in the Court of Federal Claims for monetary damages for the taking of their land in Illinois.

WATER RIGHTS

Several pieces of legislation were introduced to resolve specific tribal water settlements including the Confederation Salish and Kootenai Tribes of Montana, the Fort Belknap Tribe of Montana, the Hualapai Tribe of Arizona, the Navajo Tribe-Utah, and the Kickapoo Tribe of Kansas. No final action was taken on any of these bills.

In addition, Congress considered the Bureau of Reclamation Water Rights Settlement Act Fund to reauthorize the account in Treasury specifically to fund for tribal water settlements.

FEDERAL TRIBAL RELATIONSHIP

1. Little Shell Recognition, S. 51 H.R. 295 – As we reported last month, the Little Shell Tribe of Montana, after years of effort, secured acknowledgement as a Federally recognized Indian tribe when the Tribe's recognition legislation was included in the National Defense Authorization Act which the President signed into law on December 20, 2019.

2. Bills to nullify the fraudulent Supplemental Treaty between the Warm Springs Tribes and the United States of 1865, H.R. 1803 and S. 832 – The 1865 Warm Springs Treaty has long been viewed as a fraudulent treaty and has never been enforced by the United States. S. 832, an act to nullify the Treaty, was passed by the Senate on June 27, 2019. The House Natural Resources' Subcommittee for Indigenous Peoples of the United States held a hearing on H.R. 1803 on June 5, 2019.

3. A measure to terminate the Creek Nation of Oklahoma's relationship with the United States until it "restores tribal citizenship to Creek Freedmen," H.R. 1514 – Congressman Danny Davis (D-IL) introduced H.R. 1514 on March 5, 2019. The measure has been referred to the House Committees on Judiciary and Natural Resources.

CONCLUSION

The Second Session of the 116th Congress is now under way. We will continue to report on these matters as actions warrant.

Respectfully Submitted,

**SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP**

By: Mary J. Pavel
Matthew S. Jaffe