



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #REN-19-027

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TITLE: Calling on Congress to Establish an Indefinite Discretionary Appropriation for the Indian Health Service to Fund Section 105(l) Lease Obligations under the Indian Self-Determination and Education Assistance Act

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, in accordance with the definitions of the Indian Self-Determination and Education Assistance Act (ISDEAA) at 25 USC § 450b, a tribal organization is recognized as a governing body of any tribal nation and includes any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; and

WHEREAS, the primary goals of NCAI are to protect and enhance treaty rights, in addition to improving the health and wellbeing of Native people; and

WHEREAS, Section 105(l) of the ISDEAA requires the Indian Health Service (IHS), upon tribal request, to enter into a lease for a facility owned or leased by the tribal nation or organization and used to carry out its ISDEAA agreement; and

WHEREAS, as established in *Maniilaq Association v. Burwell (2016)*, IHS must compensate the tribal nation or organization fully for its reasonable facility expenses under Section 105(l); and

WHEREAS, on July 10, 2018, IHS sent a Dear Tribal Leader Letter (DTLL) proposing to fund a \$13 million FY 2018 shortfall of Section 105(l) ISDEAA lease costs by reprogramming funding from IHS unallocated inflation increases; and

WHEREAS, on July 25, 2018, NCAI sent a letter to IHS asking it to seek and obtain a supplemental appropriation of \$13 million from Congress; and

WHEREAS, on September 14, 2018, IHS sent a follow-up DTLL informing tribal nations that it had decided that in order to meet FY 2018 105(l) lease funding requirements it had reprogrammed \$25 million from the \$70.4 million increase identified for inflation; and

WHEREAS, on March 2, 2019, IHS issued an additional DTLL stating that:

- IHS has received 100 105(l) lease proposals from tribal nations and tribal organizations, totaling approximately \$39 million for FY 2019; and
- In addition to an initial \$5 million that IHS identified in the base services appropriation, Congress provided IHS an increase of \$25 million for tribal clinic operational costs in FY 2019; and
- Base IHS appropriation increases IHS's capacity to address the anticipated FY 2019 funding need, but full FY 2019 need remains unknown; and
- FY 2018 reprogramming was done on a one-time basis in the hopes that other options might become available in FY 2019; and
- Due to the continued need for resources beyond those identified for tribal clinic operational costs in FY 2019, IHS is legally required to use a portion of the funds included in the IHS appropriation to fund 105(l) leases; and

WHEREAS, unless additional funding is provided in IHS appropriations, the additional funds required for 105(l) leases will come at the expense of the overall health program and result in cuts in services for both direct service and self-governance tribes as 105(l) lease costs increase; and

WHEREAS, the National Tribal Budget Formulation Workgroup's Recommendations on the IHS Fiscal Year 2021 Budget include IHS taking adequate steps to fully address 105(l) leasing obligations while protecting other IHS programs for FY 2021 and work proactively with Congress to ensure its full payment as an indefinite appropriation.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on Congress to establish an indefinite discretionary appropriation to fully fund Section 105(l) ISDEAA lease obligations to tribal nations and organizations as necessary; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

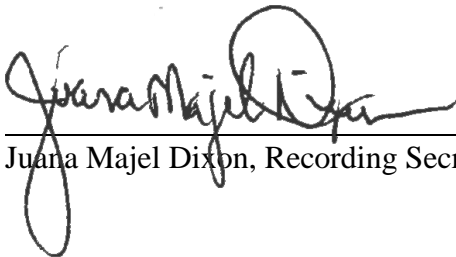
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2019 Mid-Year Conference of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.



Jefferson Keel, President

ATTEST:



Juana Majel Dixon, Recording Secretary