LEGISLATIVE SUMMARY SHEET

Tracking No. 0119-21

DATE: July 13, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES SENATOR, BEN RAY LUJÁN, PRIORITIES AND INITIATIVES THAT IMPACT THE NAVAJO NATION

PURPOSE: An action related to the Naabik'iyati' Committee, supporting United States Senator, Ben Ray Lujan's, priorities and initiatives that impact the Navajo Nation.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: A Johnson
Website Posting Time/Date:
Posting End Date: 07-26-21
Eligible for Action: 07-27-21

PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL – Third Year 2021

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0119-21

AN ACTION

RELATING TO NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES SENATOR, BEN RAY LUJÁN, PRIORITIES AND INITIATIVES THAT IMPACT THE NAVAJO NATION

WHEREAS:

A. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council with the enumerated authority to "review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments." 2 N.N.C. §701 (A)(7).

B. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.

C. On January 3, 2021, Ben Ray Luján (Senator Luján) was sworn into office as a United States (U.S.) Senator representing New Mexico. He previously served as U.S. Representative for New Mexico's Third Congressional District and House Assistant Speaker in the 116th Congress.

D. Senator Luján has established several priorities under his administration that impact Indian Country and the Navajo Nation:

1. Protecting Native American (Native) Voting Rights in support of the *Native American Voting Rights Act.* Today Native peoples, particularly those living on Navajo Tribal lands, continue to face linguistic, geographic, and legal barriers to voting. States are restricting Native voting rights by printing ballots only in English, closing or moving polling places hundreds of miles off Tribal and Navajo Nation lands, and requiring addresses from Native voters whose homes on the reservation or in villages do not have physical addresses. This type of disenfranchisement is unacceptable and a stain on the U.S. Government's federal trust responsibility and democracy.

2. Expanding Funding for Native Voting Access in the Four Corners Area. The nonpartisan Protection and Advocacy for Voting Access (PAVA) program allocates funds to 55 legally-established Protection and Advocacy (P&A) Systems across the country to improve access to the ballot (poll worker training and American Disabilities Act compliance) for Natives and Americans with disabilities.

3. Protecting Native Youth and Tribal Officers. The Violence Against Women Reauthorization Act of 2013 (VAWA) authorized tribes, to include the Navajo Nation, to exercise special domestic violence criminal jurisdiction (SDVCJ) to arrest and prosecute non-Indians for domestic violence (DV), dating violence, and violations of protection orders if certain conditions are met:

(a) The victim must be Indian, (b) the non-Indian offender has sufficient ties to the tribe, (c) and the tribe guarantees the non-Indian offender has constitutional protections on a par to those provided in a federal or state forum.

4. The Navajo Nation has a high rate of domestic violence. VAWA does not currently authorize Tribes to prosecute crimes against Tribal officers responding to DV situations under SDVCJ to include police officers of the Navajo Nation.

5. Safeguarding Native Children's Welfare. There is an enormous need for family violence prevention and treatment resources in Navajo Nation communities. Statistics reflect that Native women, including Navajo women, are more likely than any other population to experience domestic violence. In fact, more than one in three Native women experience domestic violence at some point in their lives.

Further, Native children, including Navajo children experience child abuse and neglect at an elevated rate.

6. Fully Funding Water Infrastructure Needs on Tribal Lands. The COVID-19 pandemic has made it clear that safe water, reliable sanitation, and hygienic conditions are essential on Tribal lands and the Navajo Nation and are essential to protecting human health. Due to lack of basic water and sanitation infrastructure, many Navajo communities, particularly those in remote areas, have been unable to adhere to the Centers for Disease Control's recommended sanitation and hygiene practices, compounding the pandemic's impact.

E. Senator Luján has championed efforts to expand quality health care and protect patients with pre-existing conditions, preserve our natural resources and sacred sites, build a clean energy economy, and uplift the middle-class.

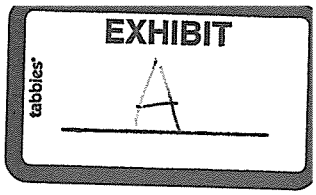
F. Throughout his time in Congress, Senator Luján has fought to increase New Mexicans', including Navajo tribal members, access to quality health care no matter where they live. He has had legislation signed into law to bolster the Children's Health Insurance Program and strengthen Medicaid and Medicare.

G. Senator Luján has further championed for New Mexico families and he has been an unwavering supporter of women's rights, LGBTQ+ rights, and continues to advance causes important to New Mexico and Navajo families.

I. Senator Luján's legislative priorities and initiatives, as provided in **Exhibit A,** have a significant impact to the Navajo Nation.

NOW THEREFORE BE IT RESOLVED:

A. The Navajo Nation supports U.S. Senator, Ben Ray Luján's priorities and initiatives as provided in **Exhibit A.**



Request for Input on Senator Luján Indian Affairs Bills

If you would like to provide input or comments on any of the below legislation, or provide an official letter or resolution of support, please contact Alanna Purdy Montesinos at Alanna_PurdyMontesinos@lujan.senate.gov. Comments and input are appreciated both before and after introduction of the bills.

Protect Native Voting Rights

Less than a hundred years ago, the United States recognized Native Americans as citizens entitled to a right to participate in our elections. Today Native peoples, particularly those living on Tribal lands, continue to face linguistic, geographic, and legal barriers to voting. States are restricting Native voting rights by printing ballots only in English, closing or moving polling places hundreds of miles off Tribal lands, and requiring addresses from Native voters whose homes on the reservation or in villages do not have physical addresses. In 2021, this type of disenfranchisement is unacceptable, and it's a stain on our federal trust responsibility and democracy.

While we are proud of the bipartisan legacy of the 1965 Voting Rights Act created, it left critical work undone on behalf of Native voters that warrant our immediate action. The *Native American Voting Rights Act* will address these gaps in existing law by:

- Requiring election officials to accept Tribal, BIA, and IHS identification cards for voter registration and identification purposes, even if the IDs do not have a residential address
- Allowing voters living on Tribal lands to use the address of a tribally-designated building as their mailing or residential address for voting purposes
- Requiring states and precincts to honor requests from Tribes to place polling, early voting and voter registration sites and ballot dropboxes on Tribal lands
- Ensuring states and precincts seek Tribal consent prior to decreasing the number of or eliminating polling locations, early voting sites or ballot drop boxes on Tribal lands
- Allowing Tribal voters to pick up and drop off their ballots at their local Tribal government buildings or another tribally-designated building
- Empowering Tribal governments to request federal election observers when they believe Native voters may be disenfranchised
- Requiring the Attorney General to consult annually with Tribes on federal voting issues to improve consultation and coordination between governments
- Allowing Tribes to determine the form of assistance in places that require Native language assistance under the Voting Rights Act
- Establishing a Native American Voting Rights Task Force grant program in coordination with the Department of the Interior and the Department of Justice so that each state with a federally-recognized Tribe can establish its own Native American Voting Rights Task Force
- Directing the Government Accountability Office (GAO) to conduct a study on the prevalence of non-traditional and non-existent addresses on Tribal lands

Expand Funding for Native Voting Access in the Four Corners Area

The nonpartisan Protection and Advocacy for Voting Access (PAVA) program allocates funds to 55 (of 57) legally-established Protection and Advocacy (P&A) Systems across the country for efforts to improve access to the ballot (poll worker training, ADA compliance, etc.) for Americans with disabilities. The nonpartisan PAVA program allocates funds to 55 (of 57) legally-established Protection and Advocacy (P&A) Systems across the country for efforts to improve access to the ballot (poll worker training, ADA compliance, etc.) for Americans with disabilities. P&As are congressionally mandated, legally based disability rights agencies that work to protect individuals with disabilities by empowering them and advocating on their behalf. There are a total of 57 P&As located in all 50 states, the District of Columbia, Puerto Rico, the U.S. territories (U.S. Virgin Islands, Guam, the Northern Marianas Islands (CNMI) and American Samoa) and the Native American Disability Law Center.

When the PAVA program was passed in 2002 as part of the Help American Vote Act (HAVA), an oversight in the definitions section led to two of the 57 P&As being left out of the funding formula: the Northern Marianas Protection and Advocacy System, Inc. and the Native American Disability Law Center. This means that these two P&As lack the funds necessary to address barriers to voting for people with disabilities – despite well-documented access issues for voters with disabilities in both areas.

The Native American Disability Law Center already serves the four corners region, largely overlapping with Navajo Nation. The Law Center serves all Native Americans with disabilities living anywhere in the Four Corners area of New Mexico, Utah, Arizona and Colorado. Like other P&As, the issues the Law Center addresses includes civil rights, education, health care, and rights to public and private services. The Law Center would use the additional funding to advocate for increased access for many Native American voters with disabilities.

The *PAVA Program Inclusion Act* fixes this oversight without changing the overall authorization or other elements of the PAVA program. The funds are also explicitly barred from being used to initiate or further litigation. This legislation would provide a long overdue technical fix to HAVA, explicitly authorizing the distribution of grant funds to both the Native American Disability Law Center and CNMI P&As for FY2021 and future appropriations moving forward. The Native American Disability Law Center and the CNMI P&As would receive a minimum of $35,000 a year to do voter access work just like the other US territories, while each state will continue to receive a minimum of $70,000 a year in PAVA grant funds.

The National Disability Rights Network as well as all 57 P&A systems across the country have endorsed this bill. The Navajo Nation, the Southern Ute Tribe, and the San Juan County Commission in Utah also supported the bill in the 116th Congress.

Protect Native Youth and Tribal Officers

The Violence Against Women Reauthorization Act of 2013 (VAWA) authorized Tribes to exercise special domestic violence criminal jurisdiction (SDVCJ) to arrest and prosecute non-Indians for domestic violence (DV), dating violence, and violations of protection orders if certain conditions are met: (1) the victim must be Indian; (2) the non-Indian offender has sufficient ties to the tribe; and (3) the tribe guarantees the non-Indian defendant constitutional protections on a par to those provided in a federal or state forum.

Tribes have identified three gaps in the 2013 law that Congress must address to bolster the ability of Tribal governments to protect DV victims, Native children, and Tribal law enforcement officers. After completion of the first Tribal VAWA pilot program, the Department of Justice testified before the Senate Committee on Indian Affairs about the need to correct these loopholes.

1. Protecting Native Youth. VAWA does not permit Tribes to utilize SDVCJ to prosecute non-Indian defendants for violent acts committed against children – even though many Tribes report violence against children co-occurs in SDVCJ cases. In a Tribal community in Michigan, a non-Indian defendant made sexual advances on his partner's child, but the Tribal court could not prosecute the defendant. This gap in SDVJC allowed the perpetrator to remain at large until state police later arrested him for sexually assaulting another child.
2. Protecting Tribal Officers. VAWA does not currently authorize Tribes to prosecute crimes against Tribal officers responding to DV situations under SDVCJ. One pilot program Tribe in North Carolina reported that a non-Indian defendant threatened to kill Tribal officers and struck a jailer. All were Tribal members. The Tribal court dismissed charges against the defendant for these crimes because the crimes are not covered under SDVCJ.
3. Clarifying Congressional Intent. VAWA does not allow Tribes to exercise SDVCJ in cases of attempted or threatened DV because of definitional uncertainty. In one Tribal community in Arizona, a Tribal member called police after her partner attempted to strike her but missed due to being highly intoxicated. The Tribe could not prosecute the individual until he subsequently returned to their home and physically assaulted the victim.

The *Native Youth & Tribal Officer Protection Act* addresses these gaps by:

- Restoring Tribal jurisdiction over (1) crimes against children and (2) crimes against Tribal officials exercising Tribal *VAWA* jurisdiction;
- Clarifying definitions to ensure tribes can prosecute threatened and attempted DV;
- Extending through 2022 the authorization for grants to help Tribes implement VAWA jurisdiction;
- Requiring increased inter-agency coordination among IHS, BIE, and BIA to increase awareness of victim services available for survivors of DV; and
- Requiring that federal employees in IHS, BIE, and BIA receive training to recognize and appropriately respond to cases of DV.

Safeguard Native Children's Welfare

There is an enormous need for family violence prevention and treatment resources in Tribal communities. Native women are more likely than any other population to experience domestic violence. In fact, more than one in three Native women experience domestic violence at some point in their lives. Further, Native children experience child abuse and neglect at an elevated rate. They are victims of child maltreatment at a rate of 13.8 per 1,000 children, compared to the national rate of 9 per 1,000. Studies show that in 49–70 percent of cases, men who abuse their partners also abuse their children, while child abuse investigations reveal violence against the mother in 28 to 59 percent of all cases. Child abuse prevention funding is vital to the well-being of Tribal communities. Beyond the emotional trauma, victims of child maltreatment are more likely to require special education services, more likely to be involved in the juvenile and criminal justice systems, and more likely to have long-term mental health needs.

The Indian Child Protection and Family Violence Prevention Act (ICPFVPA) was enacted in 1990, following widespread reports that Native children were being physically and sexually abused in Bureau of Indian Affairs (BIA) boarding schools in the 1980s. Further review of the issue led to the conclusion that incidents of abuse of children on Indian reservations were grossly underreported, and that such underreporting resulted from the lack of a mandatory Federal reporting law. Additionally, background investigations of Federal employees who care for, or teach, Indian children were found to be deficient, and that current programs and funding were inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse and family violence in Indian Country.

The goal of the ICPFVPA was to identify the scope of the problem, to fill any gaps in Tribal child welfare services to ensure better coordination between child welfare and domestic violence programs, and to reduce such incidents by providing funds for mental health treatment. It mandated greater coordination between law enforcement and child protection agencies serving Native children, improved reporting standards before and during investigations of alleged child abuse and neglect, and required criminal background checks for BIA, Indian Health Service (IHS) and Tribal employees with contact or control over Native children. It also authorized funding to create Indian Child Resource and Family Service Centers in each of the BIA regional areas, which would consist of multi-disciplinary teams of personnel with experience and training in the prevention, identification, investigation, and treatment of child abuse and neglect.

The *Native American Child Protection Act* bill modernizes and reauthorizes three programs that were originally established by the ICPFVPA, which expired in 1997:

1. The Child Abuse Treatment Grant Program – competitive grant program through IHS that will increase Tribe's capacity to treat victims of abuse
2. The National Indian Child Resource and Family Services Center – it would create this Center under BIA to help tribes and urban Indian organizations with training and best practices in child abuse treatment and prevention
3. Indian Child Protection and Family Violence Prevention Program – formula grant program specifically geared for prevention, as well as investigation of child abuse in Indian Country. Would provide each Tribe with money sufficient for at least one caseworker.

The bill improves the programs by:

- Expanding the scope of the grant programs to ensure they address child abuse *and* neglect.
- Increasing grant program authorization amounts to levels that would realistically allow Tribes to address child abuse treatment and prevention (bill authorizes $93M total).

- Putting an emphasis on culturally-competent programs and care.
- Including urban Indian organizations as a beneficiary of the National Center and an eligible partner in applying for grants.
- Clarifying agency responsibilities in carrying out programs as well as reporting requirements.
- The original statute calls for Regional Indian Child Resource Centers but this was never implemented. Our bill would consolidate all resources in one National Center.

The *Native American Child Protection Act* would aid the 23 Tribes in New Mexico by improving funding opportunities for them to address child abuse and welfare reports and provide resources to victims of abuse. It would provide enough funding for each Tribe to fund one caseworker. The legislation also increases the overall grant programs authorization amount from $10 million to $30 million and establishes a national Center funded at $3 million per year to assist in nationwide coordination of training resources and best practices.

Given the prevalence of child neglect reports and investigations in the state, the legislation's expansion of the term "child abuse" to include neglect would directly benefit applicants in the state. According to the Annie E. Casey Foundation's 2020 KIDS COUNT Report, child abuse in New Mexico got worse over the last decade (increasing from 13 per 1,000 in 2010 to 15 per 1,000 in 2018). Emotional abuse accounted for 28 percent of child abuse cases in 2018 and neglect for 80 percent of cases in the state.

The state is also acknowledging the timeliness of this issue by pursuing legislation to bolster child abuse protections for Native children. New Mexico's proposed ICWA law would clarify legal definitions of key terms including Indian child and Tribe, as well as strengthen the legal definitions for active efforts, fictive kin, member, and relative, in ways respectful of the Tribes' culture and unique status as sovereign tribal nations. New Mexico Children, Youth and Families Department is supportive of the New Mexico State Indian Child Welfare Act.

The *Native American Child Protection Act* is supported by NCAI and the National Indian Child Welfare Association (NICWA), the Friends Committee on National Legislation. The Casey Family Foundation and the Tribal Law and Policy Institute testified in favor of the bill. BIA and IHS were also supportive under the Trump Administration.

Provide Advance Appropriations for Indian Programs

The federal trust relationship ensures that Tribal governments and their citizens receive funding for basic governmental services, continued stewardship of their lands, education and healthcare. The federal budget is a reflection of the extent to which the United States honors its promises to American Indian/Alaska Native people. However, since 1998 Congress has not enacted federal appropriation bills in a timely manner, thus hampering federal Tribal programs' budgeting, recruitment and retention of personnel, provision of services, facility maintenance, and construction efforts. The Indian Health Service (IHS) and Bureau of Indian Affairs (BIA), including the Bureau of Indian Education (BIE), fund many critical public services within Tribal nations, including hospitals, schools, law enforcement, child welfare programs, and more.

Advance appropriations is a budgetary solution that would allow federal programs serving Tribes to have their funding enacted a year in advance and would protect the treaty and trust responsibilities from future lapses in appropriations and not count against spending caps. Moving federal Indian programs including the BIA, BIE and IHS to the advance appropriations process will protect Tribal governments from cash

flow problems that regularly occur due to delays in the enactment of annual federal appropriations legislation. President Biden affirmed this solution by putting advance appropriations for Fiscal Year 2023 in his Fiscal Year 2022 budget request for the Indian Health Service.

The *Indian Programs Advance Appropriations Act* will provide funding certainty for IHS, BIE and BIA by authorizing their budgets to be funded a year in advance. The bill also requires the President's budget and the supporting documents submitted to Congress to include detailed estimates related to the advance appropriations and includes advance funding for contract support costs to provide certainty for Tribal Nations who operate IHS or BIA programs under self-governance contracts and compacts. Providing federal funds for these programs a full year in advance will ensure that the nation can better meet its commitment to uphold trust and treaty responsibilities throughout Tribal lands and Native communities. If advance appropriations are enacted for BIA, BIE and IHS, it would provide agencies with a stable budget to fulfill the federal trust obligations to Tribal Nations and their members.

Fully Fund Water Infrastructure Needs on Tribal Lands

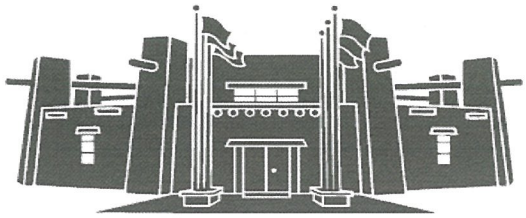
The COVID-19 pandemic has made it clear that safe water, reliable sanitation, and hygienic conditions are essential to protecting human health. Due to lack of basic water and sanitation infrastructure, many Native communities, particularly those in remote areas, have been unable to adhere to the Centers for Disease Control's recommended sanitation and hygiene practices, compounding the pandemic's impact.

The Indian health Service (IHS) is one of the primary providers of community water projects in American Indian and Alaska Native communities. IHS has identified nearly $2.6 billion in estimated costs for 1,563 water infrastructure projects to address existing drinking water and wastewater needs in its 2019 Annual Report to Congress on Sanitation Deficiency Levels for Indian Homes and Communities. Specifically, IHS determined that over 110,500 Native households need some form of sanitation facility improvement, over 51,700 are without access to adequate sanitation facilities, and over 6,600 are without access to a safe water supply system and/or sewage disposal system. In a typical year, IHS is only able to invest $130 million to fund feasible water projects identified in the report to address existing water and wastewater needs.

More than 80 percent of the cost of the highest deficiency level projects per IHS's sanitation deficiency database were located in the IHS Alaska and Navajo Area regions. IHS has not released its 2020 report yet, but has already indicated that the cost to fund all needed projects will rise above $3 billion in fiscal year 2020.

The *Indian Health Service Sanitation Facilities Construction Enhancement Act* authorizes $2.6 billion for fiscal year 2022 to build the 1,563 projects identified in the 2019 report. The bill requires that projects be built to address the greatest deficiency needs first. This will bring clean drinking water and wastewater to Native families across New Mexico and the nation, many for the first time.

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Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO : Hon. Eugenia Charles-Newton, Delegate
24th Navajo Nation Council

FROM : _____
Troy D. Cook, Senior Court Advocate
Office of Legislative Counsel

DATE : July 13, 2021

RE : **AN ACTION RELATING TO NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES SENATOR, BEN RAY LUJÁN, PRIORITIES AND INITIATIVES THAT IMPACT THE NAVAJO NATION**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. As to format, the resolution as drafted is legally sufficient. Regarding substance, as with any legislation, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

21-150-1