

# American Indian Law and Policy Alert

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## Tribal Appropriations and Provisions Included in House Democrats' Phase 4 Proposal – the HEROES Act

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On Tuesday, May 12, 2020, House Democrats introduced **H.R. 6800** – The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, also known as the CARES 2.0 bill. This \$3 trillion package would provide additional emergency supplemental appropriations in order to address challenges related to the COVID-19 pandemic. The bill includes increased aid for state, local and Tribal governments; extended unemployment insurance benefits; and additional direct payments in the amount of \$1,200 to individual Americans. The House will meet on Friday, May 15, 2020 to consider the legislation, which is expected to pass by a party line vote. However, the legislation is expected to stall in the Senate.

### Key Tribal Provisions

There are numerous Tribal-related provisions in the House version of the draft HEROES Act.

**Coronavirus State Fiscal Relief Fund** – Perhaps the most significant tribal provision in the draft HEROES ACT is the establishment of a new fund, the Coronavirus State Fiscal Relief Fund, with a set aside of \$20 billion in funding to assist Tribal governments with the fiscal impacts from the public health emergency caused by COVID-19. In Section 191301, the bill affirms the federal district court decision in *Confederated Tribes of the Chehalis Reservation et al v. Mnuchin* (Case No. 1:20-cv-01002) and clarifies Congress' intent that only federally recognized Tribal Governments are eligible to receive this money. Further, the Treasury Secretary would be required to redistribute any returned, received, or recouped amounts to eligible Tribal governments and disclose detailed descriptions of funding allocation formulas and methodology. Finally, and perhaps most importantly, Section 191303 provides substantially greater flexibility to Tribal governments in their use of any funds received, including to replace lost, delayed, or decreased revenues stemming from the public health emergency. In addition, the date range of allowable expenses would be extended from January 31, 2020 (instead of March 1, 2020) through December 31, 2020.

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**Tribal-Specific Funding Provisions** – Provided below is an overview of several key Tribal-specific funding provisions related to funding appropriations or mandates designed to prevent, prepare for, and respond to the COVID-19 public health emergency:

- **Bureau of Indian Affairs** – \$900 million to meet Tribal government needs, including:
  - \$780 million to continue Tribal government operations and programs to clean Tribal facilities;
  - \$100 million to address overcrowded housing; and
  - \$20 million for sanitation needs (for water hydration and hygiene issues).
- **Indian Health Service** – \$2.1 billion to address health care needs, including:
  - \$1 billion to account for lost third party revenues as a result of reduced medical care;
  - \$64 million to assist Urban Indian Organizations;
  - \$10 million to assist with sanitation, hydration and hygiene needs;
  - \$500 million to provide health care (include telehealth services, medical supplies, and personal protective equipment);
  - \$140 million to expand broadband infrastructure and information technology for telehealth and electronic health records system purposes;
  - \$20 million to provide health care, housing and isolation units for domestic violence victims and homeless Native Americans; and
  - No less than \$366 million to provide isolation or quarantine space.
- **Centers for Disease Control and Prevention** – \$2.1 billion to support federal, state, and local public health agencies, including \$100 million to assist Tribes, Tribal organizations, Urban Indian health organizations, or health providers serve Tribes.
- **Substance Abuse and Mental Health Services Administration** – \$3 billion to support increased mental health support, substance abuse treatment, and outreach, including not less than \$150 million specifically for Tribes, Tribal organizations, Urban Indian health organizations or health service providers across a variety of programs.
- **Assistance to Homeowners** – \$75 billion to states, territories, and Tribes to address the ongoing needs of homeowners struggling to afford their housing due directly or indirectly to the impacts of the pandemic by providing direct assistance with mortgage payments, property taxes, property insurance, utilities, and other housing related costs.
- **Benefit for Broadband Service During Emergency Periods Relating to COVID-19** – Entitles households in which a member has been laid off or furloughed to get a \$50 benefit, or a \$75 benefit on Tribal lands, to put toward the monthly price of internet service during the COVID-19 public health emergency.
- **COVID-19 Testing and Awareness** – Requires the CDC to coordinate with Tribes and other governments' health departments to establish and implement a national evidence-based system for testing, contact tracing, surveillance, containment and mitigation of COVID-19, as well as award grants to carry out testing.

- **E-Rate Support for Wi-Fi Hotspots, Other Equipment and Connected Devices During Emergency Periods Related to COVID-19** – Authorizes \$5 billion in funding for a temporary disbursement to be administered through the Federal Communications Commission’s E-rate Program for schools and libraries to provide internet service in a technologically neutral way to students and teachers, prioritizing those without internet access at home. Five percent of the funds are set aside for schools and libraries that serve people living on Tribal lands.
- **Highways** – \$15 billion for grants to support the ongoing work of state, Tribal, and territorial Departments of Transportation and certain local governments with \$150 million available for the Tribal Transportation Program.
- **Veterans** – Allows Urban Indian Organizations to seek reimbursement from the Veterans Administration for care provided to qualified Urban native veterans and ensures coverage for Native veterans.
- **Violence Against Women Act** – Includes \$4 million for assistance to Tribal governments and other funding through Tribal set-asides.
- **Voting** – Requires certain accommodations for Indian Tribes that would apply in the November 2020 election. For example, requires states or political subdivisions to collect ballots from designated locations and to provide Indian Tribes with accurate precinct maps for all precincts located within Indian lands at least 60 days before an election. It also permits an Indian Tribe to designate buildings as ballot pickup and collection locations at no cost to the Indian Tribe. Provisions also permit absentee ballots for federal elections, use of designated buildings for addresses, language accessibility, and enforcement by the Attorney General.

**Additional General Funding Provisions** – In addition, there are certain general funding provisions that may provide potential resources for Tribal governments:

- **Administration for Children and Families** – \$10.1 billion to provide supportive and social services for families and children through programs including \$7 billion for Child Care and Development Block Grants and \$1.5 billion for the Low-Income Home Energy Assistance Program (LIHEAP), which includes Tribal LIHEAP.
- **Administration for Community Living** – \$100 million to provide direct services such as home-delivered and prepackaged meals, and supportive services for seniors and disabled individuals, and their caregivers, of which \$1 million is for Native American elder nutrition and supportive services.
- **Expansion of Broadband** – \$1.5 billion to close the homework gap by providing funding for Wi-Fi hotspots and connected devices for students and library patrons, and \$4 billion for emergency home connectivity needs.
- **Federal Emergency Management Agency** – \$1.3 billion in assistance, including \$200 million for the Emergency Food and Shelter Program; \$500 million for Assistance to Firefighter Grants; \$500 million for Staffing for Adequate Fire and Emergency Response grants; and \$100 million for Emergency Management Performance Grants.
- **Payroll Tax Deferral Allowed for Recipients of Certain Loan Forgiveness** – Allows businesses receiving Paycheck Protection Program (PPP) loan forgiveness to defer payment of payroll taxes under Section 2302 of the CARES Act.

## Legislative Outlook

The Senate is expected to wait to consider the new package until June. Senate Republicans have already expressed opposition to the bill and a desire to wait to pass another COVID-19 response package until they see how the economy reacts in the short-term, especially with many States launching reopening efforts in the coming weeks.

In addition, Senate Leader Mitch McConnell has been adamant about wanting to see liability protections added to any forthcoming COVID-19 spending packages in order to protect health care providers and businesses that will be reopening soon. In order to address this concern, [Leader McConnell announced](#) that Senate Republicans are expected to introduce a standalone COVID-19 liability reform bill in the next two weeks. The bill will likely include a heightened standard of gross negligence or recklessness for COVID-19 litigation, and protections against frivolous cases.

On May 5, 2020, Senators Todd Young (R-IN) and Michael Bennet (D-CO) announced their plans to introduce a bill to revamp and improve the PPP and to launch a loan program to assist small and mid-sized businesses. The Senators' new Reviving the Economy Sustainably Towards a Recovery in Twenty-twenty (RESTART) Act is expected to be introduced in the next two weeks.

For more information, please visit [Akin Gump's COVID-19 Resource Center](#) and the [May 12, 2020 COVID-19 Policy Update](#).

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