



## MEMORANDUM

July 29, 2022

TO: TRIBAL HEALTH CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***Senate Releases Draft Interior, Environment and Related Agencies Appropriations bill; Includes IHS advance Appropriations and Mandatory funding for 105(l) leases and Contract Support Costs***

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On July 28, 2022, the Senate Appropriations Committee (SAC) released its draft FY 2023 Interior, Environment, and Related Agencies Appropriations bill. The bill overall contains \$42.2 billion in discretionary funding appropriations, which is an increase of 11 percent over the FY 2022 enacted level. For the Indian Health Service (IHS) in FY 2023 the bill would provide \$7.38 billion (12%) over current funding. Within this amount, \$5.2 billion would be provided for Services (a \$557.5 million increase) and \$1.1 billion for Facilities (a \$141 million increase). This is \$1.5 billion below the amount requested for IHS by the Biden Administration and \$741 million below the amount recommended by the [House Appropriations Committee](#).

Like the House bill, the Senate draft legislation would not enact the President's budget proposal to reclassify all of IHS funding to mandatory in FY 2023. However, there are some other notable policy changes in the draft bill as follows.

**IHS Advance Appropriations:** The Senate draft bill would provide advance appropriations for most of the IHS budget. This change has been long requested by Tribal Nations and was supported by the Biden Administration to ensure stability in the IHS budget in the Administration's FY 2022 budget request. The FY 2023 draft Senate appropriations bill would include IHS advance appropriations for FY 2024 in the amount of \$5.577 billion for IHS. Advance appropriations would be provided for most IHS funding areas with the exception of Electronic Health Records, Sanitation Facilities Construction, and Health Care Facilities Construction. The SAC noted that these accounts are "project based" so funding will continue to be provided annually. According to the draft committee report, "This budgetary change will enable IHS to continue to provide health services without interruption or uncertainty, improving the quality of care and providing peace of mind for patients and medical providers" (p. 120).

**Contract Support Costs / 105(l) leases Mandatory Funding:** Starting in FY 2024, the Senate draft Interior bill would provide Contract Support Costs (CSC) and 105(l) leases as "mandatory funding." Because the full costs of these line-items are required to be funded by law, increases costs in these areas can mean there is less discretionary funding available for other

IHS and Bureau of Indian Affairs (BIA) services. Making these programs mandatory will mean that they are automatically funded outside the discretionary appropriations process and therefore will not impact the rest of the budget in the Interior Appropriations bill. This change in funding classification has also long been requested by Tribal Nations. For FY 2023, the bill retains an “indefinite discretionary” appropriation, as has been the case in previous fiscal years.

The bill text is available [here](#). The Committee report accompanying the draft Senate bill provides further details on FY 2023 funding. That report is available [here](#). (IHS starts on page 119 and the summary table starts on page 219). A summary of the whole Senate Interior bill can be found [here](#).

Some highlights of the draft Senate Interior Appropriations bill are as follows:

- Hospitals and Health Clinics (H&HC): The Senate bill includes a \$390 million increase for this item which funds core health services. The bill would provide \$15 million for the domestic violence prevention initiative which is level funded with FY 2023. It also recommends to consolidate the Indian Health Care Improvement Fund (IHCIF) into H&HC, and recommends \$74 million for this account. This change was requested as part of the IHS FY 2023 Budget request. The bill includes \$9 million for maternal health which is \$3 million over FY 2022 enacted.
- Electronic Health Records: The bill includes \$190 million for the replacement of the IHS’s Electronic Health Record system. Report language notes that it is important that IHS’s new system be compatible with the new Department of Veterans’ Affairs system.
- Mental Health/ Alcohol and Substance Abuse: The Committee provides modest increases for Mental Health and Alcohol and Substance Abuse line items. But the report directs the IHS to “increase its support for culturally competent preventive, educational, and treatment services programs and partner with academic institutions with established [American Indian and Alaska Native] training and health professions programs to research and promote culturally responsive care” (p. 123). The report also includes \$13 million to continue a “Special Behavioral Health Pilot Program.” It encourages IHS to “examine” if grants “should be made available to address all types of drug abuse” (p. 123-24).
- Community Health Representatives: Within the line item, IHS provides \$5 million for the Community Health Aide Program (CHAP) but notes that “this expansion should not divert funding from the existing CHAP program which shall continue at current levels” (p.124).
- Facilities: The bill provides a 15% increase for IHS facilities in FY 2023. Relative to the FY 2022 enacted level, Maintenance & Improvement would receive a 12% increase; Health Care Facilities Construction would receive a 27% increase; and Equipment would receive a 31% increase. Sanitation Facilities Construction (SFC) would receive a 2% increase. It also includes \$3 million for “to provide technical assistance, training, and guidance to sanitation operators, families, and communities regarding the operation and

maintenance of water supply and sewage disposal facilities” (p. 126). The SFC line item also contains \$15.2 million for “congressionally directed spending projects” (aka “earmarks”).

As previously reported, the House passed its Interior Appropriations bill in July. However, there has not yet been an agreement between the two chambers or with Republicans on topline spending for FY 2023. It is highly likely that overall funding for IHS (and other programs serving Indian Country) will be less in FY 2023 than has been proposed by the both the House and Senate Appropriations Committees, as was the case in FY 2022. Given the politics of this election year, it is also possible that full FY 2023 appropriations will not be enacted before the start of the 118<sup>th</sup> Congress in January 2023.

We will continue to provide updates as the FY 2023 Appropriations process unfolds in Congress. As always, please do not hesitate to reach out with any questions.

***Conclusion***

If you have any questions or would like further information on the topics raised in this report, please do not hesitate to contact Geoff Strommer ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745), Elliott Milhollin ([milhollin@hobbsstrauss.com](mailto:milhollin@hobbsstrauss.com) or 202-822-8282), or Caitrin Shuy ([cshuy@hobbsstrauss.com](mailto:cshuy@hobbsstrauss.com) or 202-822-8282).