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TO ESTABLISH THE NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION, AND FOR OTHER PURPOSES

JUNE 16, 2003.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 555]

The Committee on Indian Affairs, to which was referred the bill (S. 555), to establish the Native American Health and Wellness Foundation, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE

The purposes of the Native American Health and Wellness Foundation Act of 2003 (S. 555) are to encourage, accept, and administer private gifts of real or personal property, and the income or interest from such gifts for the benefit of, or in support of, the mission of the Indian Health Service; and to undertake and conduct such other activities as will further the health and wellness activities and opportunities of Native Americans.

BACKGROUND

Of all groups in the United States, Native Americans continue to experience the lowest health status in the nation. The incidence rates for diabetes, tuberculosis, alcoholism, and Fetal Alcohol Syndrome (FAS) are higher among Native Americans than for other Americans.

Similarly, mental illness, cancer, obesity, heart disease, and infant mortality rates continue to plague Native communities at staggering rates.¹

The health disparities that exist between the Native American population and the general U.S. population highlights the need for innovative strategies to elevate awareness of these health problems and to promote the health and wellness of Native people.

To address the health care needs of Native Americans, Congress annually appropriates funds to the Indian Health Service (IHS), the primary agency responsible for providing health services to more than 1.6 million American Indians and Alaska Natives. The provision of health care services involves a system comprised of the Indian Health Service, Tribal and Urban Indian (“I/T/U”) operated facilities and programs. In Fiscal Year 2003, the Indian Health Service budget totaled \$2.87 billion, of which a majority was spent on direct care and a lesser amount in the area of prevention. The I/T/U system received additional support through the reauthorization of the Special Diabetes Program for Indians (“SDPI”) which increased funding 50%, to \$150 million annually from Fiscal Year 2004 through Fiscal Year 2008 to help prevent and treat Native Americans with diabetes.

While the I/T/U system has received modest increases in recent spending bills for the IHS and SDPI, funding for Native American health care is still inadequate to meet the basic health care needs of Native people.

Many tribes have availed themselves of the opportunities afforded by the Indian Self Determination and Education Assistance Act, 25 U.S.C. 450 et seq., to assume responsibility for health programs formerly administered by the IHS, and more effectively administer some or all health programs for their communities.

These “self governance” tribes have become very creative in designing health and wellness programs, with very limited funds, tailored to the needs of their communities. These programs vary from tribe to tribe, as each has a different focus based on their tribal health priorities, such as disease prevention, tertiary care, and treatment. Those tribes that manage to secure additional resources through other funding sources are able to provide expanded services to their members.

Notwithstanding the limited funding, Native communities have begun to gradually raise their health status through the efforts of the Indian Health Service and Native health providers. However, there remains a significant disparity between available Federal funding and the documented need for health care in Native communities. To continue closing the gap between funding and need, other sources of funds for Native health must be tapped, including private, tribal and charitable sectors.

The Native American Health and Wellness Foundation Act of 2003 addresses the severe health problems facing Indian Country by attracting new resources and increasing attention to Native health issues through the creation of a Federally-chartered charitable and nonprofit corporation, the “Native American Health and Wellness Foundation”.

¹U.S. Department of Health and Human Services, Indian Health Service, Facts on Indian Health Disparities, 2002.

The Native American Health and Wellness Foundation is similar to existing foundations enacted and established by Congress. The American Indian Education Foundation² and the Fish and Wildlife Foundation³ have been successful in achieving their intended purposes and serve as the model for the Native American Health and Wellness Foundation.

The Native American Health and Wellness Foundation will assist the Indian Health Service to meet its mission to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level, and to further the health and wellness activities and opportunities for Native people.

SUMMARY OF MAJOR PROVISIONS

The Native American Health and Wellness Foundation Act of 2003 amends the Indian Self-Determination and Education Assistance Act by adding a new Title VIII to provide for the creation of the Native American Health and Wellness Foundation, a Federally-chartered charitable and nonprofit corporation.

The purposes and duties of the Foundation are to encourage, accept and administer private gifts of real or personal property, and the income or interest from such gifts, for the benefit of, or in support of, the mission of the Indian Health Service. The Foundation will also undertake and conduct such other activities as will further the health and wellness of Native Americans.

The Foundation will be established by a committee appointed by the Secretary of the Department of Health and Human Services. This committee will establish the initial constitution and bylaws for the Foundation, and appoint the initial members of the Board of Directors for the Foundation. The Board of Directors will be the governing body of the Foundation.

The Secretary is authorized to provide personnel, facilities and other administrative support services to the Foundation for the first five years after the Foundation is established.

LEGISLATIVE HISTORY

S. 555 was introduced on March 6, 2003, by Senator Campbell for himself and for Senator Inouye, and was referred to the Committee on Indian Affairs. Senator McCain was added as a cosponsor on March 11, 2003.

On April 9, 2003, a hearing on S. 555 was conducted by the Committee at which time the Department of Health and Human Services declined to take a formal position on the legislation.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. This Act may be cited as the Native American Health and Wellness Foundation Act of 2003.

²25 U.S.C. Part F—American Indian Education Foundation establishes a Federally-chartered charitable and nonprofit corporation to encourage, accept, and administer private resources to benefit and support the mission of the Office of Indian Education Programs of the Bureau of Indian Affairs, and to further the educational opportunities of American Indians who attend a Bureau-funded school.

³16 U.S.C. Chapter 57—National Fish and Wildlife Foundation establishes a Federally-chartered charitable and nonprofit corporation to encourage, accept, and administer private resources to benefit the activities and services of the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, and to further the conservation and management of fish, wildlife, plants, and other natural resources.

Sec. 2. Native American Health and Wellness Foundation. This section amends the Indian Self-Determination and Education Assistance Act by adding at the end a new Title VIII. Within the new Title, the following new sections are added to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.):

Section 801 provides definitions for the term "Board", "Committee", "Foundation", "Secretary" and "Service".

Section 802 provides for the establishment of the Native Americans Health and Wellness Foundation. The Foundation will be incorporated and domiciled in the District of Columbia as a federally chartered charitable and nonprofit corporation. The duties of the Foundation are to accept and administer private gifts of real and personal property to benefit and support the Indian Health Service, and to undertake other activities that will further health and wellness activities for Native Americans.

Section 802 further authorizes the establishment of a Committee which shall, within 180 days, incorporate the Foundation, establish the constitution and initial bylaws of the Foundation, provide the initial operation of the Foundation, and appoint the initial members of the Board. The Board will be the governing body of the Foundation, and will have at least 11 members, the selection and terms of which shall be governed by the constitution and bylaws of the Foundation.

Section 802 additionally authorizes appropriations for the Foundation, and authorizes the Secretary to transfer donated funds to the Foundation. The Foundation will be subject to audits as if it were a corporation under part B of subtitle II, Title 36, United States Code. Employees, agents, officers or Board members of the Foundation shall not be considered Federal employees.

Section 803 authorizes the Secretary to provide additional administrative services and support to the Foundation during the first five years after the Foundation is established.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On May 14, 2003, the Committee, in an open business session, considered S. 555. During consideration of S. 555 the amendment recommended by the Department was unanimously approved by the Committee. Following adoption of the amendment, the Committee voted unanimously to favorably report S. 555, as amended, to the full Senate with a recommendation that the bill do pass.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 555 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 30, 2003.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 555, the Native American Health and Wellness Foundation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Eric Rollins.

Sincerely,

BARRY B. ANDERSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 555—Native American Health and Wellness Foundation Act of 2003

S. 555 would establish the Native American Health and Wellness Foundation, a charitable and nonprofit corporation to support the mission of the Indian Health Service (IHS). The foundation would assist federal, state, tribal, and other entities in efforts to further health and wellness activities and opportunities for Native Americans.

Funding for the foundation would be provided through a transfer of any donated funds currently held by the Department of Health and Human Services (HHS) as well as other donations solicited and received by the foundation itself. (Donations to HHS are recorded in the federal budget as revenues.) The bill would authorize the appropriation of \$500,000 annually for the foundation's administrative expenses. This amount would be adjusted in later years for inflation. S. 555 would allow the Secretary of Health and Human Services to provide reimbursable administrative and financial support to the foundation during the first five years of its operation.

Assuming appropriation of the amounts authorized, CBO estimates that implementing S. 555 would cost about \$400,000 in 2004 and \$3 million over the 2004–2008 period. Any additional assistance provided by HHS, which would probably be less than \$500,000 annually, must be fully reimbursed by the foundation and would have no net impact on discretionary spending. The transfer of donated funds from HHS to the foundation would increase direct spending. Based on information from IHS, CBO estimates that these donations total less than \$500,000 annually. S. 555 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Eric Rollins. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rule of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 555 will not require the promulgation of regulations so the regulatory and paperwork impact should be minimal.

EXECUTIVE COMMUNICATIONS

There have been no executive communications received on this legislation.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 555, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 93-638

To provide maximum Indian participation in the Government and education of the Indian People; to provide for the full participation of Indian Tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own education activities; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

* * * * *

**[TITLE V] TITLE VII—AMERICAN INDIAN
EDUCATION FOUNDATION**

[SEC. 501] SEC. 701. AMERICAN INDIAN EDUCATION FOUNDATION.

* * * * *

[SEC. 502] SEC. 702. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) PROVISION OF SUPPORT BY SECRETARY.—* * *

(2) may provide funds to reimburse the travel expenses of the members of the Board under section **[501] 701**; and

* * * * *

[SEC. 503] SEC. 703. DEFINITIONS. * * *

(2) the term “Foundation” means the Foundation established by the Secretary pursuant to section **[501] 701**; and

* * * * *

**TITLE VIII—NATIVE AMERICAN HEALTH AND
WELLNESS FOUNDATION**

SEC. 801. DEFINITIONS.

In this title:

(1) *BOARD.*—The term “Board” means the Board of Directors of the Foundation.

(2) *COMMITTEE.*—The term “Committee” means the Committee for the Establishment of Native American Health and Wellness Foundation established under section 802(f).

(3) *FOUNDATION.*—The term “Foundation” means the Native American Health and Wellness Foundation established under section 802.

(4) *SECRETARY.*—The term “Secretary” means the Secretary of Health and Human Services.

(5) *SERVICE.*—The term “Service” means the Indian Health Service of the Department of Health and Human Services.

SEC. 802. NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION.

(a) *IN GENERAL.*—As soon as practicable after the date of enactment of this title, the Secretary shall establish, under the laws of the District of Columbia and in accordance with this title, the Native American Health and Wellness Foundation.

(b) *PERPETUAL EXISTENCE.*—The Foundation shall have perpetual existence.

(c) *NATURE OF CORPORATION.*—The Foundation—

(1) shall be a charitable and nonprofit federally chartered corporation; and

(2) shall not be an agency or instrumentality of the United States.

(d) *PLACE OF INCORPORATION AND DOMICILE.*—The Foundation shall be incorporated and domiciled in the District of Columbia.

(e) *DUTIES.*—The Foundation shall—

(1) encourage, accept, and administer private gifts of real and personal property, and any income from or interest in such gifts, for the benefit of, or in support of, the mission of the Service;

(2) undertake and conduct such other activities as will further the health and wellness activities and opportunities of Native Americans; and

(3) participate with and assist Federal, State, and tribal governments, agencies, entities, and individuals in undertaking and conducting activities that will further the health and wellness activities and opportunities of Native Americans.

(f) *COMMITTEE FOR THE ESTABLISHMENT OF NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION.*—

(1) *IN GENERAL.*—The Secretary shall establish the Committee for the Establishment of Native American Health and Wellness Foundation to assist the Secretary in establishing the Foundation.

(2) *DUTIES.*—Not later than 180 days after the date of enactment of this section, the Committee shall—

(A) carry out such activities as are necessary to incorporate the Foundation under the laws of the District of Columbia, including acting as incorporators for the Foundation;

(B) ensure that the Foundation qualifies for and maintains the status required to carry out this section, until the Board of Directors is established;

(C) establish the constitution and initial bylaws of the Foundation;

(D) provide for the initial operation of the Foundation, including providing for temporary or interim quarters, equipment, and staff; and

(E) appoint the initial members of the Board in accordance with the constitution and initial bylaws of the Foundation.

(g) *BOARD OF DIRECTORS.*—

(1) *IN GENERAL.*—The Board of Directors shall be the governing body of the Foundation.

(2) *POWERS.*—The Board may exercise, or provide for the exercise of, the powers of the Foundation.

(3) *SELECTION.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), the number of members of the Board, the manner of selection of the members (including the filling of vacancies), and the terms of office of the members shall be as provided in the constitution and bylaws of the Foundation.

(B) *REQUIREMENTS.*—

(i) *NUMBER OF MEMBERS.*—The Board shall have at least 11 members, who shall have staggered terms.

(ii) *INITIAL VOTING MEMBERS.*—The initial voting members of the Board—

(I) shall be appointed by the Committee not later than 180 days after the date on which the Foundation is established; and

(II) shall have staggered terms.

(iii) *QUALIFICATION.*—The members of the Board shall be United States citizens who are knowledgeable or experienced in Native American health care and related matters.

(C) *COMPENSATION.*—A member of the Board shall not receive compensation for service as a member, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred in the performance of the duties of the Foundation.

(h) *OFFICERS.*—

(1) *IN GENERAL.*—The officers of the Foundation shall be—

(A) a secretary, elected from among the members of the Board; and

(B) any other officers provided for in the constitution and bylaws of the Foundation.

(2) *SECRETARY.*—The secretary of the Foundation shall serve, at the direction of the Board, as the chief operating officer of the Foundation.

(3) *ELECTION.*—The manner of election, term of office, and duties of the officers of the Foundation shall be as provided in the constitution and bylaws of the Foundation.

(i) *POWERS.*—The Foundation—

(1) shall adopt a constitution and bylaws for the management of the property of the Foundation and the regulation of the affairs of the Foundation;

(2) may adopt and alter a corporate seal;

(3) may enter into contracts;

(4) may acquire (through a gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;

(5) may sue and be sued; and

(6) may perform any other act necessary and proper to carry out the purposes of the Foundation.

(j) *PRINCIPAL OFFICE.*—

(1) *IN GENERAL.*—The principal office of the Foundation shall be in the District of Columbia.

(2) *ACTIVITIES; OFFICES.*—The activities of the Foundation may be conducted, and offices may be maintained, throughout the United States in accordance with the constitution and by-laws of the Foundation.

(k) *SERVICE OF PROCESS.*—The foundation shall comply with the law on service of process of each State in which the Foundation is incorporated and of each State in which the foundation carries on activities.

(l) *LIABILITY OF OFFICERS, EMPLOYEES, AND AGENTS.*—

(1) *IN GENERAL.*—The Foundation shall be liable for the acts of the officers, employees, and agents of the Foundation acting within the scope of their authority.

(2) *PERSONAL LIABILITY.*—A member of the Board shall be personally liable only for gross negligence in the performance of the duties of the member.

(m) *RESTRICTIONS.*—

(1) *LIMITATION ON SPENDING.*—Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation shall not exceed 10 percent of the sum of—

(A) the amounts transferred to the Foundation under subsection (o) during the preceding fiscal year; and

(B) donations received from private sources during the preceding fiscal year.

(2) *APPOINTMENT AND HIRING.*—The appointment of officers and employees of the Foundation shall be subject to the availability of funds.

(3) *STATUS.*—A member of the Board or officer, employee, or agent of the Foundation shall not by reason of association with the Foundation be considered to be an officer, employee, or agent of the United States.

(n) *AUDITS.*—The Foundation shall comply with section 10101 of title 36, United States Code, as if the Foundation were a corporation under part B of subtitle II of that title.

(o) *FUNDING.*—

(1) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out subsection (e)(1) \$500,000 for each fiscal year, as adjusted to reflect changes in the Consumer Price Index for all-urban consumers published by the Department of Labor.

(2) *TRANSFER OF DONATED FUNDS.*—The Secretary shall transfer to the Foundation funds held by the Department of Health and Human Services under the Act of August 5, 1954 (42 U.S.C. 2001 et seq.), if the transfer or use of the funds is not prohibited by any term under which the funds were donated.

SEC. 803. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) *PROVISION OF SUPPORT BY SECRETARY.*—Subject to subsection (b), during the 5-year period beginning on the date on which the foundation is established, the Secretary—

(1) may provide personnel, facilities, and other administrative support services to the Foundation;

(2) may provide funds to reimburse the travel expenses of the members of the Board; and

(3) shall require and accept reimbursements from the Foundation for—

(A) services provided under paragraph (1); and

(B) funds provided under paragraph (2).

(b) REIMBURSEMENT.—Reimbursements accepted under subsection (a)(3)—

(1) shall be deposited in the Treasury of the United States to the credit of the applicable appropriations account; and

(2) shall be chargeable for the cost of providing services described in subsection (a)(1) and travel expenses described in subsection (a)(2).

(c) CONTINUATION OF CERTAIN SERVICES.—The Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) if the facilities and services—

(1) are available; and

(2) are provided on reimbursable cost basis.

