

118TH CONGRESS
1ST SESSION

S. 2385

To provide access to reliable, clean, and drinkable water on Tribal lands,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2023

Mr. BENNET (for himself, Mr. HEINRICH, Mr. HICKENLOOPER, Ms. WARREN,
Mr. WYDEN, Mr. KING, Mr. PADILLA, and Mr. SANDERS) introduced the
following bill; which was read twice and referred to the Committee on In-
dian Affairs

A BILL

To provide access to reliable, clean, and drinkable water
on Tribal lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Access to Clean
5 Water Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) access to reliable, clean, and drinkable
9 water is an essential human need and critical to the

1 public health, well-being, educational attainment,
2 and economic development of all communities in the
3 United States;

4 (2) many countries, along with the United Na-
5 tions, have recognized the urgency of the need to ac-
6 cess reliable, clean, and drinkable water by passing
7 laws or resolutions relating to the human right to
8 water and sanitation, including—

9 (A) recognizing these water and sanitation
10 needs exist among indigenous peoples; and

11 (B) establishing aggressive targets for
12 achieving universal access to those basic serv-
13 ices;

14 (3) in the United States, access to reliable,
15 clean, and drinkable water has long been a signifi-
16 cant problem in many Native communities, such that
17 nearly half of all households in those communities do
18 not have access to reliable water sources, clean
19 drinking water, or basic sanitation, and are signifi-
20 cantly more likely than White households to lack in-
21 door plumbing;

22 (4) the trust responsibility of the Federal Gov-
23 ernment to Indian Tribes requires the Federal Gov-
24 ernment to ensure the survival and welfare of Indian

1 Tribes, and the failure to provide basic water service
2 cannot be reconciled with that trust responsibility;

3 (5) the COVID–19 pandemic had, and con-
4 tinues to have, a disproportionate impact on Native
5 communities due to a multitude of factors, includ-
6 ing—

7 (A) persistent economic disadvantages;

8 (B) racial inequity; and

9 (C) lack of public health infrastructure, in-
10 cluding access to running water;

11 (6) on January 27, 2021, President Biden
12 issued Executive Order 14008 (42 U.S.C. 4321
13 note; relating to tackling the climate crisis at home
14 and abroad), which provides that it is the policy of
15 the Biden Administration to secure environmental
16 justice and spur economic opportunity for disadvan-
17 taged communities that have been historically
18 marginalized and overburdened by pollution and
19 underinvestment in housing, transportation, water
20 and wastewater infrastructure, and health care;

21 (7) through the bipartisan Infrastructure In-
22 vestment and Jobs Act (Public Law 117–58; 135
23 Stat. 429), Congress provided funding for the Indian
24 Health Service and the Environmental Protection
25 Agency to support the construction and repair of

1 Tribal clean water infrastructure, but inadequate re-
2 sources are available to Indian Tribes to assist with
3 accessing those construction and repair funding pro-
4 grams and to support the operation and mainte-
5 nance of water infrastructure;

6 (8) filling the gaps in funding described in
7 paragraph (7) is necessary to successfully implement
8 the historic investment in clean water infrastructure
9 in Native communities;

10 (9) technical assistance to Indian Tribes is nec-
11 essary to ensure that Indian Tribes are able—

12 (A) to access and take advantage of the
13 new funding described in paragraph (7);

14 (B) to develop the managerial, financial,
15 and regulatory framework necessary for a fully
16 functional and self-sustaining utility; and

17 (C) to engage appropriate outside consult-
18 ants to assist as needed;

19 (10) advances in water technology, including
20 treatment, sensors, and innovative pipeline mate-
21 rials, can assist in—

22 (A) accelerating efforts to provide uni-
23 versal access to reliable, clean, and drinkable
24 water for all Native communities; and

1 (B) enhancing resilience in the face of cli-
2 mate change;

3 (11) the COVID–19 pandemic has been a stark
4 reminder that access to reliable, clean, and drinkable
5 water to support basic hygiene is a matter of life or
6 death for all individuals in the United States;

7 (12) it is in the interest of the United States,
8 and it is the policy of the United States, that all ex-
9 isting Native communities be provided with safe and
10 adequate water supply systems as soon as prac-
11 ticable; and

12 (13) both appropriate funding at the level of
13 unmet need and a “whole of government” approach
14 among all Federal agencies are essential to provide
15 a meaningful solution to the lack of access to clean
16 water on Tribal lands.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) INDIAN TRIBE.—The term “Indian Tribe”
20 has the meaning given the term in section 4 of the
21 Indian Self-Determination and Education Assistance
22 Act (25 U.S.C. 5304).

23 (2) NATIVE COMMUNITY.—The term “Native
24 community” means—

25 (A) an Indian Tribe; and

1 (B) a Native Hawaiian community.

2 (3) NATIVE HAWAIIAN.—The term “Native Ha-
3 waiian” has the meaning given the term in section
4 801 of the Native American Housing Assistance and
5 Self-Determination Act of 1996 (25 U.S.C. 4221).

6 (4) TECHNICAL ASSISTANCE.—The term “tech-
7 nical assistance” means any contracted or govern-
8 mental expertise—

9 (A) to facilitate Native community access
10 to repair and construction funding for clean
11 water facilities made available through the In-
12 frastructure Investment and Jobs Act (Public
13 Law 117–58; 135 Stat. 429) or the rural devel-
14 opment mission area of the Department of Ag-
15 riculture; and

16 (B) to support Native communities in de-
17 veloping the managerial, financial, and regu-
18 latory capacity necessary for a fully functional
19 and self-sustaining utility.

20 **SEC. 4. DEPARTMENT OF AGRICULTURE RURAL DEVELOP-**
21 **MENT.**

22 (a) EXTENSION OF AUTHORITY FOR GRANTS AND
23 LOANS.—In addition to the purposes for which grants and
24 loans may be provided under sections 306C and 306D of
25 the Consolidated Farm and Rural Development Act (7

1 U.S.C. 1926e, 1926d), the Secretary of Agriculture (re-
2 ferred to in this section as the “Secretary”) may make
3 or insure loans and make grants to eligible entities de-
4 scribed in subsection (c) for technical assistance.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
6 tion to amounts otherwise available, there are authorized
7 to be appropriated to the Secretary for each of fiscal years
8 2024 through 2028—

9 (1) \$100,000,000, to remain available until ex-
10 pended, to make or insure loans and make grants
11 under sections 306C and 306D of the Consolidated
12 Farm and Rural Development Act (7 U.S.C. 1926e,
13 1926d), and for the additional purposes described in
14 subsection (a), to eligible entities described in sub-
15 section (c) to provide for the development, use, and
16 control of water (including the extension or improve-
17 ment of existing water supply systems); and

18 (2) \$30,000,000, to remain available until ex-
19 pended, for eligible entities described in subsection
20 (c) to contract for technical assistance.

21 (c) ELIGIBLE ENTITIES.—An entity eligible to re-
22 ceive a grant or an award of financial or technical assist-
23 ance using amounts appropriated under paragraph (1) or
24 (2) of subsection (b) or amounts otherwise available under

1 sections 306C and 306D of the Consolidated Farm and
2 Rural Development Act (7 U.S.C. 1926c, 1926d)—

3 (1) is a Native community; and

4 (2) in the case of a grant under section 306D
5 of that Act (7 U.S.C. 1926d), includes a consortium
6 formed pursuant to section 325 of Public Law 105–
7 83 (111 Stat. 1597).

8 (d) NO MATCHING CONTRIBUTION.—The funds
9 made available under subsection (b) shall not require any
10 matching contribution otherwise required by any other
11 provision of law (including regulations).

12 (e) PRIORITY FOR FUNDING.—In making or insuring
13 loans or making grants to eligible entities using amounts
14 appropriated under subsection (b), the Secretary shall—

15 (1) treat members of an eligible entity in the
16 same manner as individuals who reside in a colonia
17 for purposes of subsections (a)(2)(B) and (c)(2) of
18 section 306C of the Consolidated Farm and Rural
19 Development Act (7 U.S.C. 1926c); and

20 (2) make or insure the loans or make the
21 grants without requiring an eligible entity or the
22 members of an eligible entity to demonstrate an in-
23 ability to finance the proposed project—

24 (A) from the resources of the eligible entity
25 or members; or

1 (B) through commercial credit.

2 (f) INTERAGENCY COLLABORATION.—The Secretary
3 shall consult with the Director of the Indian Health Serv-
4 ice regarding agency collaboration, project prioritization,
5 and staffing needs to ensure the amounts appropriated
6 under subsection (b) are used in the most effective manner
7 to promote access to water and sanitation.

8 **SEC. 5. INDIAN HEALTH SERVICE.**

9 (a) DEFINITION OF SECRETARY.—In this section, the
10 term “Secretary” means the Secretary of Health and
11 Human Services, acting through the Director of the In-
12 dian Health Service.

13 (b) SANITATION FACILITIES CONSTRUCTION PRO-
14 GRAM.—For purposes of section 7(a)(1) of the Act of Au-
15 gust 5, 1954 (42 U.S.C. 2004a(a)(1)), “Indian homes,
16 communities, and lands” for which the Secretary has au-
17 thority to construct, improve, extend, or otherwise provide
18 and maintain, by contract or otherwise, essential sanita-
19 tion facilities, including domestic and community water
20 supplies and facilities, drainage facilities, and sewage-dis-
21 posal and waste-disposal facilities under that section shall
22 include community structures that are essential to the life
23 of a Native community and provide indispensable edu-
24 cational, economic, and community services, such as

1 schools, hospitals, nursing homes, teachers' homes, Tribal
2 offices, and post offices.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—In addi-
4 tion to amounts otherwise available, there is authorized
5 to be appropriated to the Secretary \$20,000,000 for each
6 of fiscal years 2024 through 2028, to remain available
7 until expended, to construct, improve, extend, or otherwise
8 provide and maintain essential sanitation facilities, includ-
9 ing domestic and community water supplies and facilities,
10 drainage facilities, and sewage-disposal and waste-disposal
11 facilities, for community structures described in subsection
12 (b).

13 (d) TECHNICAL ASSISTANCE FUNDING.—In addition
14 to amounts otherwise available, there is authorized to be
15 appropriated to the Secretary \$30,000,000 for each of fis-
16 cal years 2024 through 2028, to remain available until ex-
17 pended, for Indian Tribes and Native communities to
18 enter into contracts for—

19 (1) technical assistance; and

20 (2) activities authorized under section
21 302(b)(2) of the Indian Health Care Improvement
22 Act (25 U.S.C. 1632(b)(2)).

23 (e) OPERATION AND MAINTENANCE FUNDING.—

1 (1) IN GENERAL.—The Secretary may provide
2 financial assistance for the operation and mainte-
3 nance of water facilities serving Native communities.

4 (2) AUTHORIZATION OF APPROPRIATIONS.—In
5 addition to amounts otherwise available, there is au-
6 thorized to be appropriated to the Secretary
7 \$100,000,000 for each of fiscal years 2024 through
8 2028, to remain available until expended, for the op-
9 eration and maintenance of water facilities serving
10 Native communities under paragraph (1).

11 (3) PRIORITY FOR FUNDING.—In awarding
12 funding for the operation and maintenance of water
13 facilities under paragraph (1), the Secretary shall
14 prioritize water facilities that the Secretary deter-
15 mines to be the most in need of assistance.

16 (4) FUTURE FUNDING.—For not less than 5
17 fiscal years after the date on which an operation and
18 maintenance of water facilities project described in
19 paragraph (1) is completed, to the extent to which
20 annual appropriations are available, the Secretary
21 shall include the completed water facilities project as
22 eligible for sustained funding support and guidance
23 to ensure that—

24 (A) the investments in the water facilities
25 are adequately maintained and operated for the

1 health and welfare of Native communities
2 served;

3 (B) the infrastructure investment is pro-
4 tected; and

5 (C) the intended economic benefit is real-
6 ized.

7 **SEC. 6. FUNDING FOR NATIVE AMERICAN AFFAIRS TECH-**
8 **NICAL ASSISTANCE PROGRAM OF THE BU-**
9 **REAU OF RECLAMATION.**

10 In addition to amounts otherwise available, there is
11 authorized to be appropriated to the Secretary of the Inte-
12 rior \$18,000,000 for use, in accordance with section 201
13 of the Energy and Water Development Appropriations
14 Act, 2003 (43 U.S.C. 373d), for the Native American Af-
15 fairs Technical Assistance Program of the Bureau of Rec-
16 lamation for each of fiscal years 2024 through 2028, to
17 remain available until expended.

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