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# INDIAN SELF-DETERMINATION

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## HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

**S. 3157**

A BILL ON THE "INDIAN SELF-DETERMINATION ACT OF 1972"

**S. 1573, S. 1574, and S. 2238,  
similar measures**

MAY 8, 1972



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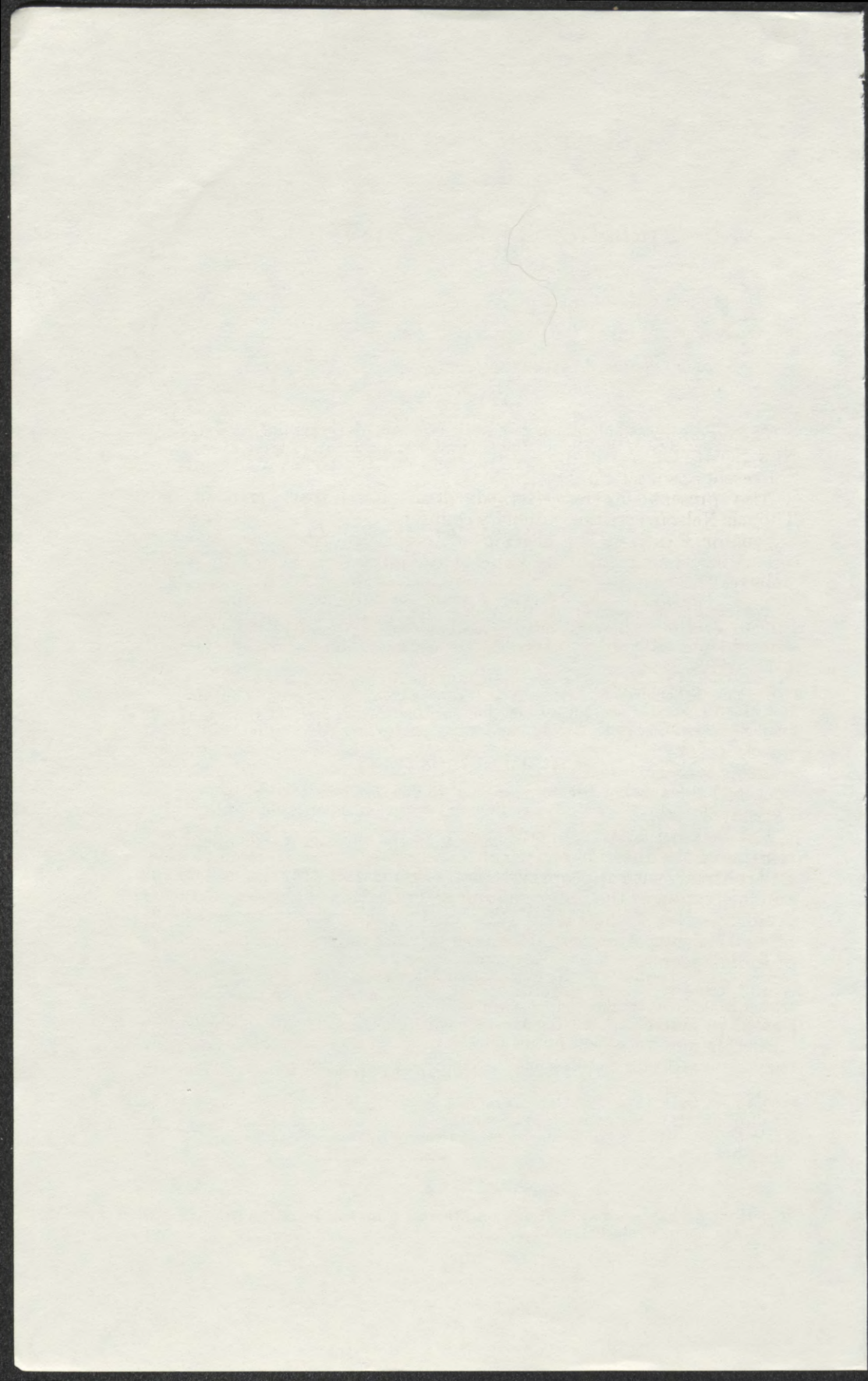
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## INDIAN SELF-DETERMINATION

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MONDAY, MAY 8, 1972

U.S. SENATE,  
SUBCOMMITTEE ON INDIAN AFFAIRS  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:30 a.m., in room 3110, New Senate Office Building, Hon. Paul J. Fannin presiding.

Present: Senator Fannin (presiding).

Also present: Forrest Gerard, professional staff member; and Thomas Nelson, assistant minority counsel.

Senator FANNIN. The hearing will come to order.

I will read a statement on Senator Metcalf's behalf; he will be here shortly. The hearings are on the Indian self-determination bill.

This is an open public hearing to take testimony from administration of Indian witnesses on S. 3157, the Indian Self-Determination Act of 1972, as well as three related administration bills, S. 1573, S. 1574, and S. 2238.

S. 3157 was introduced by the chairman of the full committee, Senator Henry M. Jackson, and the distinguished ranking minority member, Senator Gordon Allott, in response to the desire of the Indian people to exercise greater opportunities for self-determination and control over the various direct Federal Indian service programs operated for the benefit of Indians, but administered exclusively by Federal officials.

The Jackson-Allott proposal would clarify the authorities of the Secretaries of the Interior and Health, Education, and Welfare to enter into contracts with appropriate tribal organizations for the control and administration of the programs and activities of the Bureau of Indian Affairs and the Indian Health Services, respectively. Other provisions of S. 3157 would serve to facilitate the contracting process in favor of Indian people.

The committee is anxious to hear the views of the administration and Indian witnesses on this measure to determine if further changes should be made in the language of the bill to insure its effectiveness.

At this point I shall direct that a copy of the bill and the departmental reports be made a part of the hearing record.

(The bills and report follow:)



1 powers from the consent of the governed, maximum In-  
2 dian participation in the government of the Indian people  
3 shall be a national goal;

4 (2) maximum Indian participation in the govern-  
5 ment of Indian people would be enhanced by increased  
6 participation of Indians in the planning, conduct, and  
7 administration of programs and services of the Federal  
8 Government for the Indian people;

9 (3) the administration of such Federal programs  
10 and services is frequently not fully responsive to the  
11 needs and desires of the Indian people to whom such  
12 programs and services are provided; and

13 (4) increased participation of the Indian people in  
14 the planning, conduct, and administration of Federal  
15 programs and services designed to serve them will make  
16 such programs more responsive to the needs and desires  
17 of the Indian people, enhance the effectiveness of such  
18 programs, and encourage the development of essential  
19 administrative, managerial, business, and community  
20 leadership skills in the Indian people.

21 (b) The purpose of this Act is to promote maximum  
22 Indian participation in the government of the Indian people  
23 by—

24 (1) providing increased opportunities for effective  
25 and meaningful participation of the Indian people in the

1 planning, conduct, and administration of Federal pro-  
2 grams and services for Indians;

3 (2) authorizing technical and financial assistance to  
4 Indian tribes and tribal organizations to enable them to  
5 achieve such participation; and

6 (3) encouraging and assisting in the development  
7 of the administrative, managerial, business, and commu-  
8 nity leadership skills, and the formation of tribal or-  
9 ganizations necessary to assure effective participation  
10 of the Indian people in Federal programs and services.

11 DEFINITIONS

12 SEC. 2. For the purposes of this Act:

13 (a) "Indian tribe" means any Indian tribe, band,  
14 nation, or other organized group or community, in-  
15 cluding any Alaska Native community, for which the  
16 Federal Government provides special programs and serv-  
17 ices because of its Indian identity; and

18 (b) "tribal organization" includes the elected gov-  
19 erning body of any Indian tribe and any legally estab-  
20 lished organization of Indians which is controlled by one  
21 or more such bodies or which is controlled by a board  
22 of directors elected or selected by one or more such  
23 bodies (or elected by the Indian population to be served  
24 by such organization). Such an organization shall in-



## 1 GRANTS TO INDIAN TRIBAL ORGANIZATIONS

2 SEC. 5. The Secretaries of the Interior and of Health,  
3 Education, and Welfare are each authorized, upon the re-  
4 quest of any Indian tribe, to make a grant or grants to any  
5 tribal organization of any such Indian tribe for planning,  
6 training, evaluation, and other activities specifically designed  
7 to make it possible for such tribal organization to enter into  
8 contracts pursuant to sections 3 and 4 of this Act.

## 9 DETAIL OF PERSONNEL

10 SEC. 6. (a) The Secretaries of the Interior and of  
11 Health, Education, and Welfare are each authorized, upon  
12 the request of any tribal organization, to detail any civil  
13 service employee serving under a career or career-conditional  
14 appointment for a period of up to one hundred and eighty  
15 days to such tribal organization for the purpose of assisting  
16 such tribal organization in the planning, conduct, or admin-  
17 istration of programs under contracts or grants made pursuant  
18 to this Act. The appropriate Secretary may, upon a showing  
19 by a tribal organization of a need for an employee detailed  
20 pursuant to this section, extend such detail for a period not  
21 to exceed ninety days.

22 (b) The Act of August 5, 1954 (68 Stat. 674), as  
23 amended, is amended by adding a new section 8 after section  
24 7 of the Act, as follows:

25 "SEC. 8. In accordance with subsection (d) of section

1 214 of the Public Health Service Act (58 Stat. 690), as  
2 amended, upon the request of any Indian tribe, band, group,  
3 or community, personnel of the Service may be detailed by  
4 the Secretary for the purpose of assisting such Indian tribe,  
5 group, band, or community in carrying out the provisions of  
6 contracts with, or grants to, tribal organizations pursuant to  
7 the Indian Self-determination Act of 1972: *Provided*, That  
8 the cost of detailing such personnel is taken into account in  
9 determining the amount to be paid to such tribal organiza-  
10 tion under such contract or grant, and that the Secretary of  
11 Health, Education, and Welfare shall modify such contract  
12 or grant pursuant to subsection (c) of section 7 of such Act  
13 to effect the provisions of this section.”

14 (c) Paragraph (2) of subsection (a) of section 6 of  
15 the Military Selective Service Act of 1967 (81 Stat. 100),  
16 as amended, is amended by inserting after the words “Envi-  
17 ronmental Science Services Administration” the words “or  
18 who are assigned to assist Indian tribes, groups, bands, or  
19 communities pursuant to the Act of August 5, 1954 (68  
20 Stat. 674), as amended,”.

21 ADMINISTRATIVE PROVISIONS

22 SEC. 7. (a) Contracts with tribal organizations pursu-  
23 ant to this Act shall be in accordance with all Federal con-  
24 tracting laws and regulations except that, in the discretion  
25 of the appropriate Secretary, such contracts may be nego-

1 tiated without advertising and need not conform with the  
2 provisions of the Act of August 24, 1935 (49 Stat. 793), as  
3 amended.

4 (b) Payments of any grants or under any contracts pur-  
5 suant to this Act may be made in advance or by way of re-  
6 imbursement and in such installments and on such condi-  
7 tions as the appropriate Secretary deems necessary to carry  
8 out the purposes of this Act.

9 (c) Notwithstanding any provision of law to the con-  
10 trary, the appropriate Secretary may, at the request or  
11 consent of a tribal organization, revise or amend any con-  
12 tract or grant made by him under this Act with such or-  
13 ganization as he finds necessary to carry out the purposes  
14 of this Act.

15 (d) The appropriate Secretary may, in his discretion,  
16 enter into contracts for the construction or repair of build-  
17 ings, roads, sidewalks, sewers, mains, or similar items with  
18 tribal organizations by negotiation, without advertising.

19 (e) In connection with any contract or grant made pur-  
20 suant to this Act, the appropriate Secretary may permit a  
21 tribal organization to utilize, in carrying out such contract  
22 or grant, existing school buildings, hospitals, and other  
23 facilities and all equipment therein or appertaining thereto  
24 and other personal property owned by the Government

1 within his jurisdiction under such terms and conditions as  
2 may be agreed upon for their use and maintenance.

3       SEC. 8. The Secretaries of the Interior and of Health,  
4 Education, and Welfare are each authorized to perform any  
5 and all acts and to make such rules and regulations as may  
6 be necessary and proper for the purpose of carrying out the  
7 provisions of this Act.

8       SEC. 9. Nothing in this Act shall be construed as author-  
9 izing or requiring the termination of any existing trust re-  
10 sponsibility of the United States with respect to the Indian  
11 people.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

APR 21 1972

Dear Mr. Chairman:

This is in response to your request for the views of this Department on S. 3157, a bill "To promote maximum Indian participation in the government of the Indian people by providing for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and by encouraging the development of the human resources of the Indian people and for other purposes."

We recommend enactment of the Administration proposal, S. 1573, in lieu of S. 3157.

S. 3157 declares that its purpose is to promote maximum Indian participation in the government of the Indian people by (1) providing increased opportunities for effective and meaningful participation of the Indian people in the planning, conduct, and administration of Federal programs and services for Indians; (2) authorizing technical and financial assistance to Indian tribes and tribal organizations to enable them to achieve such participation; and (3) encouraging and assisting in the development of the administrative, managerial, business, and community leadership skills, and the formation of tribal organizations necessary to assure effective participation of the Indian people in Federal programs and services. The bill authorizes the Secretary of the Interior, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization to plan, conduct, and administer programs of education, agricultural assistance, and social welfare, including relief of distress, of Indians provided for in the Act of April 16, 1934 (48 Stat. 596), as amended, and for any other program which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto. Similarly, the bill authorizes the Secretary of Health, Education and Welfare to enter into such contracts to enable Indian tribes to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended. Both Secretaries are authorized, upon request of tribes, to make grants to tribes for planning, training, evaluation, and other activities specifically designed to make it possible for tribal organizations to enter into such contracts. Both Secretaries are also authorized upon request to detail for a limited time, civil service employees

to assist tribal organizations in the planning, conduct or administration of programs under contracts or grants made pursuant to the bill. Payment of any grants or under any contracts made pursuant to the bill could be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deemed necessary to carry out the purposes of the bill. The bill provides that "[n]othing in this Act shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people."

#### ANALYSIS

We believe that S. 3157 falls short of what Indians need and want in the way of legislation to enable them to assume control of their destinies. We believe that the comparable Administration bill, S. 1573, a bill "To provide for the assumption of control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes," does succeed in meeting Indians' desires and needs for self-determination.

S. 3157 is a contracting bill, designed to enable Indians to enter into contracts for the administration of Federal programs or portions thereof. S. 1573 is a bill for assumption of control of such programs by Indians. Under S. 3157 Indians would merely be parties to a contract to be negotiated between themselves and the appropriate Secretary: the terms of this contract would determine the amount of Indian involvement in a given program. Under S. 1573 Indians would obtain full control of any program for their benefit upon their request. Only this approach squarely meets the Administration goal of Indian self-determination.

The fundamental difference in approach between the two bills is also reflected in the manner in which they provide for the inception of program changes. Under S. 3157, the Secretaries of the Interior and Health, Education, and Welfare are authorized "in [their] discretion and upon the request of any Indian tribe" to enter into contracts to conduct Federal programs. This approach -- leaving the determination as to if and when a program should be turned over to Indians up to the Federal Government -- was commented upon by the President in his Indian message of July 8, 1970:

"For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of

the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

"This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency. To this end, I am proposing legislation which would empower a tribe or a group of tribes or any other Indian community to take over the control or operation of Federally-funded and administered programs in the Department of the Interior and the Department of Health, Education, and Welfare whenever the tribal council or comparable community governing group voted to do so.

"Under this legislation, it would not be necessary for the Federal agency administering the program to approve the transfer of responsibility. It is my hope and expectation that most such transfers of power would still take place consensually as a result of negotiations between the local community and the Federal government. But in those cases in which an impasse between the two parties developed, the final determination should rest with the community."

To this end, section 2(a) of S. 1573 provides that, "if an Indian tribe or community, after consultation with [either] Secretary, requests that it be given the control or operation of a program or service administered by the Secretary, the Secretary shall within one hundred and twenty days from such request, or such later date as may be agreed to by the Secretary and the organization, transfer such control or operation to the Indian tribal organization."

S. 1573 also contains certain safeguards not provided by S. 3157. First, section 2(d) of S. 1573 contains a retrocession provision, which would return operation of any program assumed by Indians to the appropriate Secretary if the tribe or community so requested. This provision embodies the President's recommendation in his Indian message that "Indian control of Indian programs . . . always be a wholly voluntary matter."

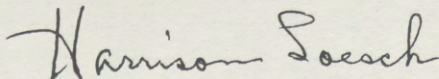
Second, section 2(f) of S. 1573 insures that programs transferred to Indians will be funded at the same levels as they would be if operated by the Government and precludes tribes which retrocede a program from suffering any financial or other disadvantage as a result. No such insurance is provided by S. 3157.

This is not to say that S. 3157 would not provide useful authority to this Department in involving Indians more fully in the conduct of Indian programs. However, we believe that S. 1573 would be of greater benefit to Indians and recommend that it be enacted in lieu of S. 3157.

We defer to the Department of Health, Education, and Welfare as to that provision of section 6 dealing with the Public Health Service.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 1573 would be in accord with the Administration's program.

Sincerely yours,



~~Assistant~~, Secretary of the Interior

Hon. Henry M. Jackson  
Chairman, Committee on Interior  
and Insular Affairs  
United States Senate  
Washington, D.C. 20510



## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SENATE INTERIOR COMMITTEE  
 RECEIVED  
 MAY 26 1972

MAY 22 1972

Honorable Henry M. Jackson  
 Chairman, Committee on Interior  
 and Insular Affairs  
 United States Senate  
 Washington, D. C. 20510

Dear Mr. Chairman:

This letter is in response to your request of February 15, 1972, for a report on S. 3157, a bill "To promote maximum Indian participation in the government of the Indian people by providing for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and by encouraging the development of the human resources of the Indian people, and for other purposes."

The Department's views on this bill and the Administration proposals, S. 1573, S. 1574, and S. 2238, were expressed in testimony presented by Dr. Laurence Lynn, Assistant Secretary for Planning and Evaluation on May 8, 1972, before the Subcommittee on Indian Affairs of your Committee. A copy of the testimony is enclosed for your convenience.

For the reasons stated in the testimony, we recommend that S. 3157 not be favorably considered, and that S. 1573, S. 1574, and S. 2238 be enacted instead.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program and that enactment of S. 1573, S. 1574, and S. 2238 would be in accord with the program of the President.

Sincerely,

/s/ Elliot L. Richardson  
 Secretary

Enclosure

92<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1573

---

## IN THE SENATE OF THE UNITED STATES

APRIL 19, 1971

MR. MONDALE (for Mr. JACKSON) (for himself and Mr. ALLOTT) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

---

## A BILL

To provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, 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. For the purposes of this Act:

4       (a) "Indian Tribe" and "Indian Community" means  
5       an Indian tribe, band, nation, or Alaska Native Community  
6       for which the Federal Government provides special pro-  
7       grams and services because of their Indian identity. The  
8       terms may also include the reservation or other land area

## 2

1 in which the tribe or community is located and tribally  
2 recognized communities within a reservation.

3 (b) "Indian tribal organization" includes the elected  
4 governing body of an Indian tribe or community. The term  
5 may also include legally established organizations which  
6 are controlled by one or more such bodies or which are  
7 controlled by a board of directors elected or selected by one  
8 or more such bodies.

9 (c) "Secretary" means the Secretary of the Interior  
10 or the Secretary of Health, Education, and Welfare, as  
11 appropriate.

12 (d) "Programs" and "services" include the local ac-  
13 tivities and undertakings of the Bureau of Indian Affairs of  
14 the Department of the Interior and the Indian health serv-  
15 ice program of the Public Health Service of the Depart-  
16 ment of Health, Education, and Welfare serving Indian com-  
17 munities and the related facilities, equipment, supplies, ma-  
18 terials, and budget. Such other programs as may be desig-  
19 nated by a Federal department or agency responsible for the  
20 administration thereof may also be transferred pursuant to  
21 this Act.

22 SEC. 2. (a) Notwithstanding any other provision of law,  
23 if an Indian tribe or community, after consultation with the  
24 Secretary, requests that it be given the control or operation of  
25 a program or service administered by the Secretary, the Sec-

1   retary shall within one hundred and twenty days from such  
2   request, or such later date as may be agreed to by the Secre-  
3   tary and the organization, transfer such control or operation to  
4   the Indian tribal organization. Any request made pursuant  
5   to this subsection must be accompanied by a plan for carry-  
6   ing out the program or service requested. A tribe or com-  
7   munity assuming such control may enter into agreements to  
8   carry out all or any part of such program or service. A  
9   transfer under this subsection shall stipulate the retrocession  
10  procedures provided for in subsections (d) and (e) of this  
11  section which are designed to safeguard the residual trust re-  
12  sponsibilities of the Federal Government. In the case where  
13  a requested program or service is serving the members of  
14  more than one Indian tribe or community, the requested  
15  transfer of such service or program must be approved by  
16  each tribe or community served by said program or service  
17  before any transfer shall be required under this Act.

18       (b) During the period preceding or immediately sub-  
19  sequent to any transfer required by this Act, the Secretary  
20  shall provide assistance, other than financial, on the request  
21  of the Indian tribal organization, to insure an orderly trans-  
22  fer of the control and operation of the program or service  
23  involved.

24       (c) For each fiscal year during which an Indian tribal  
25  organization engages in an activity pursuant to any program

1 or service transferred to it under this Act the Indian tribal  
2 organization shall submit a report to the Secretary including  
3 an accounting of the amounts and purposes for which Fed-  
4 eral funds were expended and information on conduct of  
5 the program or service involved. The reports and records  
6 of such Indian tribal organization with respect to such pro-  
7 gram or operation shall be subject to audit by the Secretary  
8 and the Comptroller General of the United States.

9 (d) Should an Indian tribe or community request retro-  
10 cession to the Secretary of any program or service which  
11 was assumed by the Indian tribal organization under this  
12 Act, such retrocession shall be effective upon a date speci-  
13 fied by the Secretary within one hundred and twenty days  
14 of such indication or such later date as may be agreed to by  
15 the Secretary and the organization. Such retrocession will  
16 not prejudice the tribe's or community's right to again as-  
17 sume control of a service or program at a later date.

18 (e) In any case where the Secretary determines that  
19 any program or service assumed by an Indian tribal orga-  
20 nization is being accomplished in a manner which involves  
21 (1) the violation of the rights or endangers the health,  
22 safety, or welfare of individuals served by such program or  
23 service, or (2) gross negligence or mismanagement in the  
24 handling or use of Federal funds provided to the organiza-  
25 tion pursuant to this Act, the Secretary may, under regula-

## 5

1 tions prescribed by him, after providing notice and hearing  
2 to such Indian tribal organization, reassume control or oper-  
3 ation of such program or service if he determines that the  
4 organization has not taken corrective action as prescribed by  
5 the Secretary. The Secretary may retain control of such pro-  
6 gram or service until such time as he is satisfied that the  
7 violations of rights, endangerment of health, safety, or wel-  
8 fare, or the gross negligence or mismanagement which neces-  
9 sitated the reassumption has been corrected as indicated by  
10 the plan accompanying a request by an Indian tribal orga-  
11 nization to again take control or operation of such program  
12 or service.

13 (f) In the allocation of available funds, Indian tribal  
14 organizations that assume control or operation of programs  
15 or services under the provisions of this Act, or retrocede  
16 control or operation to the Secretary, shall be treated in the  
17 same manner as they would be if the control or operation  
18 had been maintained continuously by the Federal Govern-  
19 ment.

20 SEC. 3. The Secretary is authorized, upon the request of  
21 any Indian tribe, band, group, or community, to detail any  
22 civil service employee serving under a career or career-condi-  
23 tional appointment for a period of up to one hundred and  
24 eighty days to such Indian tribe, band, group, or community  
25 for the purpose of assisting such Indian tribe, band, group,

**6.**

1 or community in its control or operation of a program or serv-  
2 ice transferred to it pursuant to this Act. The Secretary may,  
3 upon a showing by an Indian tribe, band, group, or com-  
4 munity of a need for an employee detailed pursuant to this  
5 section, extend such detail for a period not to exceed one  
6 hundred and eighty days.

7 SEC. 4. Nothing in this Act shall be interpreted as au-  
8 thorizing or requiring the termination of any existing trust  
9 responsibility of the United States with respect to Indians.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

APR 1 - 1971

Dear Mr. President:

Enclosed is a proposal "To provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government and for other purposes".

We recommend that the proposal be referred to the appropriate committee for its consideration and that it be enacted.

Section 1 of the proposal sets out definitions that are used in the proposal.

Section 2 provides that, notwithstanding any other provisions of law, if an Indian tribe or community requests that it be given the control or operation of a program or service administered by the Federal Government the Secretary shall turn over to that tribe or community, within 120 days after request or such other period as may be agreed to, the control and operation of such program or service. Section 2 requires that the request made by the Indian tribe or community must be accompanied by a plan for carrying out the service or program requested. It authorizes the tribe or community to enter into agreements to carry out all or any part of the transferred program or service. The transfer authorized in this section shall stipulate the retrocession provision provided for in later subsections of this section.

In subsection (b) of section 2, the Secretary is required to provide assistance, other than financial assistance, to any Indian tribal organization who requests it during the period preceding or immediately following a transfer made under this proposal.

Subsection (c) of section 2 requires that for each fiscal year during which an Indian tribal organization engages in the operation or control of a program or service transferred to it under the provisions of this proposal, it must report to the Secretary, such report to include an accounting of the amounts and purposes for which Federal funds were expended. Subsection (c) also opens reports and records of the Indian tribal organization maintained in connection with such program or operation for audit by the Secretary and Comptroller General.

Subsection (d) provides that should an Indian Tribe or community request a retrocession to the Secretary of any program or service which it assumed pursuant to this proposal, such retrocession shall be effective 120 days after such request for retrocession or such later period as may be agreed to by the Secretary and the Indian tribal organization. This subsection specifically provides that retrocession of any program or service will not prejudice the Indian tribe or community's right to again assume control of the service or program.

In subsection (e) of section 2, if the Secretary determines that any program or service assumed by an Indian tribe is being accomplished in a manner which would violate the rights or endanger the health, safety or welfare of individual Indians served by such program or service or that there has been gross negligence or mismanagement in the use of Federal funds provided pursuant to this proposal, the Secretary may reassume control of the program or service under such regulations as he may prescribe but only after providing notice and hearing to the Indian tribal organization involved that he plans to reassume the program or service. The Secretary is authorized to retain the service or program until he is satisfied the problems causing him to reassume the service or program have been corrected.

Subsection (f) of section 2 provides that in the allocation of funds for programs and services to Indians, those Indian tribal organizations which assume control or operation of programs or services pursuant to this proposal or retrocede control or operation to the Secretary, shall be treated in the same manner as they would have been if the control and operation of the program or service had been maintained continuously by the Federal government.

Section 3 authorizes the Secretary, upon the request of any Indian group, to detail any Civil Service employee for a period of up to 180 days to assist the Indian group in its control or operation of a program or service transferred pursuant to this proposal. This section also provides that the Secretary may, upon a showing of need by an Indian group for a continuing need for the services of the detailed employee, extend the detail of the employee for a period of not to exceed 180 days.

Section 4 provides that nothing in this proposal shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians.

As the President pointed out in his message of July 8, 1970, it is necessary that we reject the suffocating pattern of paternalism that so many of our programs of the Indians have assumed. This proposal is aimed at destroying this pattern of paternalism by turning over to the Indians the control and operation of programs and services that are now extended to them by the Federal government. As the President stated:

"For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

"This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency."

This proposal will give any Indian tribe, band or group or community the right to request and assume the control to any program or service now extended to it by the Bureau of Indian Affairs of the Department of the Interior or the Indian health service program of the Public Health Service of the Department of Health, Education, and Welfare. These two program areas are the ones that deal most directly with our Indian people.

If any Indian group decides it is willing and able to assume administrative responsibility for a service or program which is presently administered by the Bureau of Indian Affairs or Public Health Service it can request that such service or program be turned over to it. The turn will be made after the tribe has consulted with the Department that is to transfer the service or program and has worked out a plan for the operation and control of the program or service to be transferred and submits the plan with its formal request.

The program or service will be transferred to the Indians if they persist in their request even if, in the judgment of the Secretary of the appropriate Department, they are not adequately equipped to control or operate the program or service. The transfer will be made

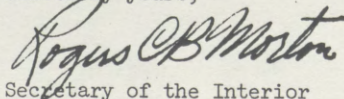
subject to the rights of retrocession or reassumption as provided in the proposal. In those instances where there is a question about the adequacy of the Indian group to control or operate the transferred service or program the Secretary will monitor the program or service to be certain that the rights, health, safety and welfare of the individual Indians is not endangered. The proposal empowers the Secretary to move to reassume the service or program at any point where he thinks the health, safety or welfare of an Indian is endangered. The proposal contemplates that the Secretary will make every effort to assist Indian groups in their efforts to assume the control and operation of the program or service. There is a provision in the proposal that will allow the Secretary to detail to the Indian group those civil servants that under a companion proposal to this bill will not transfer with the service or program to Indian control for periods up to 180 days with a right to extend the period for an additional 180 days in order to lend assistance on the transferred program or service.

The proposal makes it clear that there will be no discrimination against those tribes who assume control or operation of a service or program solely because of such assumption. This is an assurance to an Indian group that if it assumes control of a service or program that the service or program assumed by them will be given the same consideration in the allocation of budget funds as that program or service would have had if it had continued under the control of the Federal government. This assures the Indians they will not be penalized for assuming control or operation of a program or service.

The last section of the bill provides that nothing in this proposal shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians. This provision makes it clear that even though an Indian group assumes the control and operation of a program or service, the Federal government continues its responsibility for that service and program and will continue to meet this responsibility.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

  
Secretary of the Interior

Hon. Spiro T. Agnew  
President of the Senate  
Washington, D.C.

Enclosure

92D CONGRESS  
1ST SESSION

# S. 1574

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IN THE SENATE OF THE UNITED STATES

APRIL 19, 1971

Mr. MONDALE (for Mr. JACKSON) (for himself and Mr. ALLOTT) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

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## A BILL

To retain coverage under the laws providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits for employees of the Government of the United States who transfer to Indian tribal organizations to perform services in connection with governmental or other activities which are or have been performed by Government employees in or for Indian communities, 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        SEC. 1. This Act may be cited as the "Federal Em-  
4        ployees Indian Tribal Organization Transfer Act."

5        SEC. 2. (a) Notwithstanding other statutes, Executive  
6        orders, or regulations, an employee serving under an ap-

1 pointment not limited to one year or less who transfers on  
2 or before December 31, 1981, to an Indian tribal organiza-  
3 tion in connection with governmental or other activities  
4 which are or have been performed by employees in or for  
5 Indian communities is entitled, if he and the Indian tribal  
6 organization so elect, to the following:

7 (1) To retain coverage, rights, and benefits under sub-  
8 chapter I of chapter 81 ("Compensation for Work Injuries")  
9 of title 5, United States Code, and for this purpose his em-  
10 ployment with the Indian tribal organization is deemed em-  
11 ployment by the United States. However, if an injured em-  
12 ployee, or his dependents in case of his death, receives from  
13 the Indian tribal organization any payment (including an  
14 allowance, gratuity, payment under an insurance policy for  
15 which the premium is wholly paid by the Indian tribal or-  
16 ganization, or other benefit of any kind) on account of the  
17 same injury or death, the amount of that payment shall be  
18 credited against any benefits payable under subchapter I of  
19 chapter 81 of title 5, United States Code, as follows:

20 (A) payments on account of injury or disability  
21 shall be credited against disability compensation pay-  
22 able to the injured employee; and

23 (B) payments on account of death shall be credited  
24 against death compensation payable to dependents of  
25 the deceased employees.

1           (2) To retain coverage, rights, and benefits under chap-  
2 ter 83 ("Retirement") of title 5, United States Code, if  
3 necessary employee deductions and agency contributions in  
4 payment for coverage, rights, and benefits for the period of  
5 employment with the Indian tribal organization are cur-  
6 rently deposited in the Civil Service Retirement and Dis-  
7 ability Fund (section 8348 of title 5, United States Code) ;  
8 and the period during which coverage, rights, and benefits  
9 are retained under this paragraph is deemed creditable serv-  
10 ice under section 8332 of title 5, United States Code. Days  
11 of unused sick leave to the credit of an employee under a for-  
12 mal leave system at the time he transfers to an Indian tribal  
13 organization remain to his credit for retirement purposes dur-  
14 ing covered service with the Indian tribal organization.

15           (3) To retain coverage, rights, and benefits under  
16 chapter 87 ("Life Insurance") of title 5, United States  
17 Code, if necessary employee deductions and agency con-  
18 tributions in payment for the coverage, rights, and benefits  
19 for the period of employment with the Indian tribal or-  
20 ganization are currently deposited in the Employees' Life  
21 Insurance Fund (section 8714 of title 5, United States  
22 Code) ; and the period during which coverage, rights, and  
23 benefits are retained under this paragraph is deemed service  
24 as an employee under chapter 87 of title 5, United States  
25 Code.

1           (4) To retain coverage, rights, and benefits under chap-  
2 ter 89 ("Health Insurance") of title 5, United States Code,  
3 if necessary employee deductions and agency contributions  
4 in payment for the coverage, rights, and benefits for the  
5 period of employment with the Indian tribal organization  
6 are currently deposited in the Employees' Health Benefits  
7 Fund (section 8909 of title 5, United States Code); and  
8 the period during which coverage, rights, and benefits are  
9 retained under this paragraph is deemed service as an  
10 employee under chapter 89 of title 5, United States Code.

11           (5) To be reemployed within thirty days of his applica-  
12 tion for reemployment in his former position or a position of  
13 like seniority, status, and pay in the agency from which he  
14 transferred, if he transferred at the time such an activity was  
15 transferred to the Indian tribal organization or within ninety  
16 calendar days after such a transfer of activities and (A) he  
17 makes application for reemployment not later than five years  
18 after the date of his transfer to the Indian tribal organization,  
19 or (B) the activity is transferred back to the Government of  
20 the United States. On reemployment, he is entitled to the rate  
21 of basic pay to which he would be entitled had he remained  
22 in the agency from which he transferred. On reemployment,  
23 the agency shall restore his sick leave account, by credit or  
24 charge, to its status at the time of transfer. If, at the time of  
25 transfer to the Indian tribal organization the employee re-

1 ceived a lump-sum payment for annual leave and he is reem-  
2 ployed under this paragraph within one year from the date of  
3 transfer, he shall refund to the agency from which he trans-  
4 ferred the amount of the lump-sum payment, and the leave  
5 covered by the said lump-sum payment shall be restored to  
6 his account. If an employee is reemployed under this para-  
7 graph, the period of his service with an Indian tribal orga-  
8 nization and the period necessary to effect his reemployment  
9 are deemed creditable service for all appropriate civil service  
10 employment purposes.

11 (b) During a transferred employee's period of service  
12 with an Indian tribal organization, that organization shall  
13 deposit currently in the appropriate funds the employee  
14 deductions and agency contributions required by paragraphs  
15 (2), (3), and (4) of subsection (a) of this section.

16 SEC. 3. An employee who transfers to an Indian tribal  
17 organization under section 2 of this Act and the Indian tribal  
18 organization to which he transfers shall make the election to  
19 retain the coverages, rights, and benefits in paragraphs (1),  
20 (2), (3), and (4) of subsection (a) of section 2 of this  
21 Act before the date of his transfer to the Indian tribal or-  
22 ganization. An employee who transfers to an Indian tribal  
23 organization under section 2 of this Act shall continue to be  
24 entitled to the benefits of section 2 of this Act if he transfers to  
25 the employment of another Indian tribal organization to per-

1 form service in activities of the type described in section 2 of  
2 this Act.

3 SEC. 4. For the purposes of this Act—

4 (a) “employee” means an employee as defined in  
5 section 2105 of title 5, United States Code;

6 (b) “Indian tribal” includes, but is not limited to,  
7 Alaska Native; and

8 (c) “Indian tribal organization” includes, but is  
9 not limited to, Indian tribal governing bodies, their agen-  
10 cies and instrumentalities, and corporations and other  
11 organizations which are controlled by (1) one or more of  
12 the described Indian tribal governing bodies or their  
13 agencies or instrumentalities, or (2) by a board of di-  
14 rectors elected or selected by one or more of the described  
15 Indian tribal governing bodies or their agencies or in-  
16 strumentalities.

17 SEC. 5. The President may prescribe regulations neces-  
18 sary to carry out this Act and to protect and assure the com-  
19 pensation, retirement, insurance, leave, and reemployment  
20 rights and such other similar civil service employment rights  
21 as he finds appropriate.

22 SEC. 6. This Act shall be effective sixty days after the  
23 date of its enactment.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

APR 1 - 1971

Dear Mr. President:

Enclosed is our proposal "To retain coverage under the laws providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits for employees of the Government of the United States who transfer to Indian tribal organizations to perform services in connection with governmental or other activities which are or have been performed by Government employees in or for Indian communities, and for other purposes."

We recommend that the proposal be referred to the appropriate committee for its consideration, and that it be enacted.

Section 1 of the proposal cites the bill as the "Federal Employees Indian Tribal Organization Transfer Act."

Section 2(a) of the proposal provides that notwithstanding any other statute, executive orders, or regulations, civil service employees serving under an appointment not limited to one year or less who, before December 31, 1981, transfer to an Indian tribal organization in connection with governmental or other activities which are or have been performed by employees in or for Indian communities will be entitled, if agreed to by the employee and the Indian tribal organization to:

(1) Retain coverage, rights, and benefits under the provisions for compensation for work injuries and for the purposes of the proposal his employment with the Indian tribal organization is deemed employment by the United States. However, if an injured employee, or his dependents if he should die, receives any payment from the Indian tribal organization on account of the same injury or death, the amount of the tribal payment shall be credited against any benefits payable under the compensation for work injuries as provided in the proposal.

(2) To retain coverage, rights, and benefits under the retirement provisions of Government employment if necessary employee deductions and agency contributions in payment of the coverage, rights, and benefits for the period of employment with

the Indian tribal organization are currently deposited in the Civil Service Retirement and Disability Fund and the period during which coverage, rights, and benefits are retained under this provision is deemed creditable service under the provisions of section 8332 of "title 5", United States Code. Any unused sick leave credited to an employee under a formal leave system at the time of his transfer to an Indian tribal organization will remain to his credit for retirement purposes during the period of his service with the Indian tribal organization.

(3) Retain coverage, rights, and benefits under the life insurance protection granted Federal employees if necessary employee deductions and agency contributions in payment for the coverage rights and benefits for the period of employment with the Indian tribal organization are currently deposited in the Employees' Life Insurance Fund, and the period during which life insurance rights and benefits are retained under this provision is deemed service as an employee for the life insurance program.

(4) Retain coverage, rights, and benefits under the Health Insurance Program provided Federal employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the Indian tribal organization are currently deposited in the Employees' Health Benefits Funds in the period during which the health insurance coverage, rights, and benefits are retained under this provision is deemed service as an employee for the Health Insurance Program.

(5) Be reemployed within 30 days of his application for reemployment in his former position or in a position of like seniority, status, and pay in the agency from which he transferred, if he transferred at the time such activity was transferred to an Indian tribal organization or within 90 calendar days after such transfer to an Indian tribal organization, if he makes the application for reemployment not later than 5 years after the date of his transfer to the Indian tribal organization or if the activity that was transferred to the Indian tribal organization is transferred back to the United States. On reemployment under this provision, the employee is entitled to the rate of basic pay to which he would be entitled had he

remained in the agency from which he transferred. Upon reemployment, the agency will restore employees sick leave account by credit or charge to its status at the time of transfer. If at the time of transfer to the Indian tribal organization, the employee received a lump-sum payment for annual leave, if he is reemployed within one year of the date of his transfer under the provisions of this proposal, he will refund to the agency from which he transferred the amount of the lump-sum payment and the leave covered by said lump-sum payment will be restored to his account. Any employee reemployed under this provision will be able to count the period of his service with an Indian tribal organization as well as the period necessary to affect his reemployment as creditable service for all appropriate Civil Service employment purposes.

Section 2(b) provides that during an employee's period of service with the Indian tribal organization, that Indian tribal organization shall deposit currently in the appropriate funds the employee deductions and agency contributions for the retirement, life insurance, and health programs.

Section 3 provides that an employee who transfers to an Indian tribal organization pursuant to section 2 of this Proposal, such transfer being agreed to by the Indian tribal organization, must make the election to retain compensation for work injuries benefits, retirement benefits, life insurance benefits, and health insurance benefits, as provided in section 2 of this proposal prior to the date of his transfer.

Section 3 also provides that an employee who elects to retain benefit coverage under a transfer to one Indian tribal organization, may retain that coverage if he transfers to another Indian tribal organization to perform service activities of the type covered by section 2 of the proposal.

Section 4 of the proposal contains definitions used in the proposal.

Section 5 authorizes the President to prescribe regulations necessary to carry out the proposal and to protect and assure the compensation, retirement, insurance, leave, and reemployment rights and such other similar civil service rights as he finds appropriate.

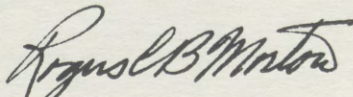
Section 6 provides that this proposal will be effective 60 days after the date of its enactment.

This proposal is a companion to our proposal that authorizes Indian tribes to assume control and operation of programs and services now rendered for them by the Federal Government. In most instances, when these programs or services are transferred to an Indian tribal organization, the Indian tribal organization will request that certain employees who are operating the program or service be transferred with the program or service. Any effort to take over programs or services by any Indian tribal organization without a program for the continuity of manning that this proposal would provide, would be doomed to failure. This proposal allows civil service employees to transfer with the program or service and retain coverage that they now enjoy as civil servants and also give them for a period of 5 years, preferential reemployment rights.

The right of reemployment for a five-year period assures the civil service employee that he can transfer with the program or service that he is working with and continue his work without the danger of losing any of his rights. We believe this provision will be an important factor in getting civil service employees to make a transfer to an Indian tribal organization to lend continuity to the programs and services transferred to Indian tribal organization.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,



Secretary of the Interior

Hon. Spiro T. Agnew  
President of the Senate  
Washington, D.C. 20510

92<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 2238

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## IN THE SENATE OF THE UNITED STATES

JULY 12, 1971

Mr. JACKSON (for himself and Mr. ALLOTT) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

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## A BILL

To amend Acts entitled "An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", and "To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes" 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     That section 1 of the Act of April 16, 1934 (48 Stat. 596),  
4     as amended by the Act of June 4, 1936 (49 Stat. 1458), be  
5     amended to read as follows:

1        "That the Secretary of the Interior be, and hereby is,  
2 authorized, in his discretion, to enter into a contract or con-  
3 tracts with any State or political subdivision thereof, or with  
4 any State university, college, or school, or with any appro-  
5 priate State or private corporation, agency, or institution, or  
6 with any Indian tribe, band, group, or community, recognized  
7 by the Secretary, for education, medical attention, agricultural  
8 assistance, and social welfare, including relief of distress, of  
9 Indians, through the agencies of the State, tribe, band, group,  
10 or community, or of the corporations and organizations here-  
11 inbefore named, and to expend under such contract or  
12 contracts, moneys appropriated by Congress for the educa-  
13 tion, medical attention, agricultural assistance, and social  
14 welfare, including relief of distress, of Indians in such State."

15        SEC. 2. The Act of August 5, 1954 (68 Stat. 674), as  
16 amended by the Act of July 31, 1959 (73 Stat. 267) is  
17 amended:

18            (a) by redesignating sections 4, 5, 6, and 7 as sec-  
19 tions 5, 6, 7, and 8, respectively.

20            (b) by adding after section 3 the following:

21        "SEC. 4. That the Secretary of Health, Education, and  
22 Welfare is authorized to contract with any Indian tribe, band,  
23 group, or community to carry out all functions, authorities,  
24 and responsibilities conferred upon him by this Act, in accord-  
25 ance with the Act of June 4, 1936 (49 Stat. 1458)."

1           (c) by adding a new section 9 at the end of the  
2           Act of August 5, 1954 (68 Stat. 674), as amended, as  
3           follows:

4           “SEC. 9. In accordance with section 214(d) of the  
5           Public Health Service Act (42 U.S.C. 215(d)), upon the  
6           request of any Indian tribe, band, group, or community,  
7           personnel of the service may be detailed by the Secretary  
8           for the purpose of assisting such Indian tribe, band, group,  
9           or community, in work related to the functions of the  
10          service.”

11          SEC. 3. Paragraph (2) of section 6(a) of the Military  
12          Selective Service Act of 1967 (50 U.S.C. App. 456(a)(2))  
13          is amended by inserting the words “or who are assigned to  
14          functions of the service in assisting Indian communities pur-  
15          suant to the Act of August 5, 1954 (68 Stat. 674),  
16          as amended by the Act of July 31, 1959 (73 Stat.  
17          267),” after the words “Environmental Science Services  
18          Administration”.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

MAY 26 1971

Dear Mr. President:

Enclosed is a proposal "To amend Acts entitled 'An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes', and 'To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes' and for other purposes."

We recommend that the proposal be referred to the appropriate committee and that it be enacted.

Section 1 of the proposal amends the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458), known as the Johnson-O'Malley Act by inserting in the Act the phrase "or with any Indian tribe, band, group, or community recognized by the Secretary,". It also strikes the word "Territory" wherever it appears in the first section of the Act because of the fact that it is no longer applicable to the Act.

Section 2 of the proposal amends the Act of August 5, 1954 (Public Law 568, 68 Stat. 674), by adding two new sections to the Act and re-numbering the other sections so that they conform to the Act with the new sections. The first new section added is a new section 4 that authorizes the Secretary of Health, Education, and Welfare to contract with "any Indian tribe, band, group, or community" to carry out his health responsibility to the Indians. The second new section added by the proposal is a new section 9 that gives the Secretary of Health, Education, and Welfare the authority to detail Public Health Service personnel for the purpose of assisting an Indian tribe, band, group, or community in carrying out Indian health functions.

Section 3 of the proposal amends Paragraph (2) of section 6(a) of the Military Selective Service Act of 1967 by adding words that will allow the commissioned officers of the Public Health Service who are serving under a service agreement with the Public Health Service that credits their Public Health Service service against their military obligation under the provisions of the Selective Service Act to continue to have such credit apply against their military obligation under the provisions of the Selective Service Act while on detail to work with Indian tribes, bands, groups, or communities.

In the President's Indian message of July 8, 1970, he discusses the need to make certain that Johnson-O'Malley funds, which were designed to help Indian students, should come under the influence of the Indians as to the way that the money is spent. He therefore proposed that the Congress amend the Johnson-O'Malley Act to authorize this Department to channel funds appropriated under the Johnson-O'Malley Act directly to Indian tribes and communities. The amendment proposed in section 1 of our proposal will carry out this Presidential request. This amendment will give the Secretary of the Interior authority to contract directly with not only State and local institutions but with Indian tribes, bands, groups, or communities who run their own educational institutions. The Secretary will then be able to contract directly with these Indian tribes, bands, groups, or communities to carry out his responsibility in Indian education, agricultural assistance, and social welfare to the Indians. This will be in connection with the direction the Department has been given by the President to make every effort to ensure that Johnson-O'Malley funds which are presently directed to public school districts are actually spent to improve education of Indian children in those districts.

The amendments made by section 2 of the proposal will give the Secretary of Health, Education, and Welfare the same authority to deal with Indian tribes, bands, groups, or communities in carrying out the health functions that were transferred to the Secretary of Health, Education, and Welfare by Public Law 568 of the 83d Congress that the amendment made by section 1 of the proposal gives to the Secretary of the Interior in the areas of education, agricultural assistance, and social welfare.

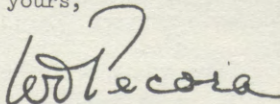
Basically the amendments give the Secretary of Health, Education, and Welfare the authority to make contracts with Indian tribes, bands, groups, or communities to carry out the Indian health function that has been placed in the Secretary of Health, Education, and Welfare. In connection with this contracting authority, the Secretary is given the authority to detail personnel of the Public Health Service to work with Indian tribes, bands, groups, or communities in relation with the contracts made by them to carry out the health function.

Section 3 of the proposal is a provision that is needed as a companion to the new section 9 added to Public Law 568, 83d Congress by section 2 of this proposal. The language in

section 3 continues the draft-deferred status of those commissioned officers of the Public Health Service who are detailed by the Secretary of Health, Education, and Welfare to work with Indian tribes, bands, groups, or communities in connection with transfers made by the Secretary to carry out the Indian health function. Without this amendment to the Selective Service Act, the commissioned officers of the service who are detailed to work with Indian tribes, bands, groups, or communities would lose their draft-deferred status, making the detailing of the junior officers to this work virtually impossible.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "W. D. Peoria". The signature is written in dark ink and is positioned to the right of the typed name.

Acting Secretary of the Interior

Hon. Spiro T. Agnew  
President of the Senate  
Washington, D.C. 20510

Enclosure

A B I L L

"To amend Acts entitled 'An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes', and 'To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes' and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458), be amended to read as follows:

"That the Secretary of the Interior be, and hereby is, authorized, in his discretion, to enter into a contract or contracts with any State or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, or with any Indian tribe, band, group, or community, recognized by the Secretary, for education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians, through the agencies of the State, tribe, band, group, or community, or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State."

Senator FANNIN. Chairman Jackson and Senator McGee will have statements for the record and will be made a part of the record.

(The statements of Chairman Jackson, Senators McGee, and Gravel follow:)

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON AND CHAIRMAN, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. Chairman, I am pleased to submit this statement in support of S. 3157, the "Indian Self-determination Act of 1972" sponsored by myself and the distinguished ranking minority member of the Interior and Insular Affairs Committee, Senator Gordon Allott and several others in the Senate.

This measure is designed to give substance to the rhetoric of self-determination that has been echoed to Indian people through the years by scores of well-meaning public officials. My own commitment to the philosophy of Indian self-determination is contained in S. Con. Res. 26, a resolution on National American Indian Policy that I moved through the Committee and the Senate during the first session of this Congress. S. 3157 translates my commitment to that philosophy into an alternative method for implementing a realistic policy of Indian self-determination. I am hopeful that the Administration and Indian witnesses who will be testifying on this measure today will give the Committee the benefit of their views on ways in which S. 3157 might be improved to best serve the Indian people.

S. 3157 establishes the contracting process as the self-determination vehicle that will allow the Indian people to achieve a greater degree of control over various federal efforts conducted for their social and economic well-being. The bill vests an up-dated and more flexible contract authority in the hands of the Secretaries of the Interior and Health, Education and Welfare to permit them to enter into contracts with appropriate tribal organizations for the control and administration of the programs and activities of the Bureau of Indian Affairs and the Indian Health Service of these two departments respectively.

Other provisions of S. 3157 hold promise for the Indian people to facilitate the contracting process with the Federal Government in a more orderly and effective manner. I want to underscore specifically Section 5 of the bill that authorizes the two secretaries to make financial grants to tribal organizations for planning, training and evaluation and other activities designed to facilitate the contracting process of such organizations. These functions are critical to Indians if they are to perform satisfactorily in their control and administration of programs that historically have been under complete federal direction.

Because of the prolonged federal dominance over the programs operated for the exclusive benefit of the Indian people, the numerous government officials involved have accumulated decades of experience, while Indians have become the passive users of such programs. It is folly to assume that all Indian tribal groups are prepared to assume control of federal programs in light of such circumstances. Moreover, we would be perpetrating a cruel hoax on the Indian people if they assumed such responsibilities without adequate preparation and many groups would be rewarded with failure for their efforts. While a few tribes may possess the managerial and professional capacities to undertake these responsibilities, the remainder are deficient in such skills. Through S. 3157, tribal organizations would be authorized to exercise their prerogatives and utilize the planning grants referred to in Section 5, of the bill to determine their needs and capacities on the question of their assuming control and administration of various federal programs. The training and evaluation grants also would serve to enhance a tribal organization's effectiveness in the contracting process with the federal government for various program activities.

In considering the use of the contract as the vehicle for an Indian self-determination policy, it is important to examine the potential contracts that might be negotiated between tribal organizations and the Federal Government. Those contracts calling for the Indians to deliver specific goods or products to the Federal Government lend themselves to specific terms and conditions. On the other hand some contracts will involve intangible services that may require an entirely different set of terms and conditions to govern them. For example, how does one quantify the terms and conditions in a contract between a tribal organization and the Federal Government for education or health services as opposed to one for the general maintenance of a federal facility? These are factors that the concerned federal agencies must be prepared to consider if S. 3157 is enacted into law.

An equally important consideration is the question of funding levels of the programs that would be subject to a contract between tribal organizations and the Federal Government through the authority of this bill. The tribal contractor would be faced with the same financial limitations as the former federal administrative agency and could not be expected to perform beyond such limitations.

Indian self-determination by its very definition carries with it implicit responsibilities for the Indian people. And even though many of these responsibilities pose a serious challenge to the Indians' capacities today, I am convinced that if given the proper tools and resources that the majority of Indian people desire to exercise self-determination for their own advancement. I view S. 3157 as an appropriate tool within this context. This measure can assist the Indian people to use self-determination as the vehicle to achieve a life of self-sufficiency and decency; this measure can assist the Indian people in reducing excessive federal control over their daily lives without sacrificing their unique relationship with Federal Government; this measure can assist the Indian people in strengthening their own institutions that are vital to a viable Indian community; and this measure can assist the Indian people to be the true masters of their individual, family and community destinies.

In conclusion, I urge the Subcommittee's approval of S. 3157 and request their permission to include in the record at this point several expressions of support of this measure communicated to me by Indian and Alaska Native leaders.

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KEWEENAW BAY INDIAN COMMUNITY TRIBAL COUNCIL,  
*L'Anse, Mich., February 24, 1972.*

Senator HENRY M. JACKSON,  
*Chairman, Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.*

DEAR SENATOR JACKSON: We have recently received a copy of the text of Senate Bill 3157, also known as the Indian Self-Determination Act of 1972.

I have reviewed the proposed bill and it is my feeling that its enactment would be beneficial to the Keweenaw Bay Indian Community and other Indian communities throughout the United States.

I would, however, propose one change, more a change of emphasis than of content. A recurring problem which presents itself often under currently operable legislation authorizing contracts between Indian tribes and various agencies of the Federal Government is that payments to the Indian communities, pursuant to such contracts, are made strictly on a reimbursement basis. This method of payment often results in serious problems for those Indian communities which do not have the requisite funds to initiate the project covered by the contract. It would seem that if Section 7(b) of the proposed Act were modified in order to emphasize that monies due, or at least a portion thereof, should be paid in advance rather than by reimbursement, this problem would be substantially alleviated. I would very much appreciate being kept informed as to the progress of this Bill, both while in committee and thereafter.

Very truly yours,

FREDERICK DAKOTA,  
*Chairman, Keweenaw Bay Indian Community.*

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TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS,  
*Belcourt, N. Dak., April 13, 1972.*

Senator QUENTIN N. BURDICK,  
*U.S. Senate,  
Washington, D.C.*

DEAR SENATOR BURDICK: This letter is in regards to Bill S. 3157, or otherwise referred to as the "Indian Self-Determination Bill". We feel that this bill is very important to the Indian people and urge you in every way to support it. Thank you very much.

Sincerely,

GREGORY LAVALLIE, *Chairman.*

Washington, D.C., May 2, 1972.

HON. HENRY M. JACKSON,  
*Chairman, Senate Committee on Interior and Insular Affairs,  
 U.S. Senate,  
 Washington, D.C.*

DEAR SENATOR JACKSON: The Shoshone and Arapahoe Joint Business Council of the Wind River Reservation, Wyoming, have advised me by telegram that the Tribes strongly support S. 3157 and urge that it be favorably considered and reported to the Senate.

Kind personal regards,  
 Sincerely,

MARVIN J. SONOSKY.

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ALASKA FEDERATION OF NATIVES, INC.,  
*Anchorage, Alaska, April 13, 1972.*

HON. HENRY M. JACKSON,  
*Senate Office Building,  
 Washington, D.C.*

DEAR SENATOR JACKSON: Please be informed that the Alaska Federation of Natives is in total support of Senate Bill #3157, "Indian Self-Determination Act of 1972" as introduced by Senator Allott, Senator Mansfield and yourself.

Sincerely yours,

DONALD R. WRIGHT,  
*President, Alaska Federation of Natives.*

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COOK INLET NATIVE ASSOCIATION,  
*Anchorage, Alaska, April 5, 1972.*

HON. HENRY M. JACKSON,  
*Senate Office Building,  
 Washington, D.C.*

DEAR SENATOR JACKSON: Cook Inlet Native Association, Inc. fully endorses this Bill and we hope that this Bill will be passed by Congress. It is a Bill that guarantees success rather than failure and maximizes Indian involvement and training. We have always favored Indian Self Determination.

Your support for S. 3157 will be greatly appreciated.

Sincerely,

ROBERT W. RUDE, *President.*

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SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL,  
*Scottsdale, Ariz., March 3, 1972.*

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs,  
 U.S. Senate,  
 Washington, D.C.*

DEAR SENATOR JACKSON: Thank you for your transmission under date of February 18, 1972, of S. 3157.

We commend you on the action and your statements. This clarification of responsibility and authority have been missing elements as far as some administrators, auditors, and legislators are concerned.

While our major concerns with contracting have been in the areas controlled by Public Health and the Bureau of Indian Affairs, we are becoming more involved with other departments. Whether these other departments have granting and contracting authority we do not know; it would be helpful in maintaining the viability of the local economy, if contracting and granting authority were granted to all departments so that we might be allowed to compete for the contracts for construction and operation.

We have encountered our greatest difficulty in attempted contracting with Public Health and the Bureau of Indian Affairs in interpretation of the employer-employee relationship. In instances where we and our attorney felt that we were the employer, the opposite view was taken by the Agency.

We trust that when your bill states portions of programs that the bill will fully define that a portion may mean as little as the function of one person as long as there is a commitment to taking over the total program when and as it is practical.

So that the transition to local government is not disrupted by local politics, it is advisable that recognition be taken of the fact that many civil servants are local residents and many are members of local and neighboring tribes. We would suggest that civil servants which the local government desires to retain be allowed to continue all pay and fringe benefits at the level provided presently by the U.S. Government while maintaining the status of an employee of the local government.

We have had some good and some bad experiences with contracting, and therefore offer detailed testimony if such is desired by your committee.

Sincerely,

PAUL J. SMITH, *President.*

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LAC COURTE OREILLES TRIBAL GOVERNING BOARD,  
*Stone Lake, Wis., March 22, 1972.*

Senator HENRY M. JACKSON,  
*Chairman, Senate Committee on Interior and Insular Affairs,*  
*Washington, D.C.*

This is Rick Baker writing in reference to Senate Bill No. 3157. "To promote maximum Indian participation in the government of the Indian people by providing for the full participation of Indian tribes in certain programs and by encouraging the development of the human resources of the Indian people and for other purposes."

I have reviewed this bill submitted February 2, 1972, and wish to advise that I am in full support of this bill. The intent and purpose of this bill is a positive response to the critical needs of tribal governments. It is necessary that Indian people be involved in their own destinies and it is necessary that a national focus on tribal ability be encouraged.

I herewith urge you and your committee to best efforts. I am looking forward to the success and implementation of the ideas contained in Senate Bill No. 3157.

Thanking you very much for your positive commitment, attitude and your intent in Indian Americans, I am,

RICK BAKER, *Chairman.*

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THE PUEBLO OF ZUNI,  
ZUNI TRIBAL COUNCIL,  
*Zuni, N. Mex., March 10, 1972.*

HON. HENRY M. JACKSON,  
*Chairman, Senate Interior and Insular Affairs Committee, New Senate Office*  
*Building, Washington, D.C.*

DEAR SENATOR JACKSON: Thank you very much for your letter of February 18, 1972. We were very pleased and grateful when we read the enclosed Congressional Record reprint of February 9, 1972, regarding S. 3157, the "Indian Self-determination Act of 1972."

This is an excellent bill and is what we have been writing to a number of Congressmen about for several years now. There is only one suggestion or recommendation we would like to make. This is in regard to section 6(a) Detail of Personnel. We feel that a total of 270 days is not long enough.

As you know, we executed a "Program Agreement" with the Bureau of Indian Affairs under the provisions of R. S. Section 2072, 25 U. S. C. 48. This allowed us to assume supervision and administration of all BIA personnel and programs at Zuni effective July 1, 1970. This has been working very well but we still feel the need of keeping certain BIA employees for some years yet until my own people graduate from college and gain the experience necessary to administer some of the technical aspects of the program. The need for a longer period of time for detail of a civil service employee is particularly critical in the medical profession if a Tribe were to contract for the operation of an Indian Health Service Clinic or hospital.

We are proud of the progress we have made in the last few years and do not, for one minute, doubt the ability of our younger Tribal members, who are presently in college or those who plan to go to college. On the other hand, it may take many years to develop skilled technicians in the many fields now made available to us by Interior and Health, Education, and Welfare.

Another important aspect to remember is the limited ability of individual Indian Tribes to recruit, screen, select, and hire competent technicians. We fear that the wages an Indian tribe might have to offer to get a competent technician would far exceed what the government pays civil servants and this would increase the cost of the program to the government.

On the other hand, if skilled civil servants, capable of providing qualified technical assistance and advice, could be detailed for an indefinite period until the position could be filled with a qualified Tribal member, we believe the intent and purpose of S. 3157 would be fully carried out.

No amendment would be needed to S. 3157 if the "Federal Employees Indian Tribal Organization Transfer Act" (S. 4163) is passed. We have written many letters to different Congressmen urging support and passage of this bill and the House counterpart, H.R. 18735. In order to truly carry out self-determination of Indians, and particularly for Zuni, both bills should be passed.

Thank you very much for allowing us the opportunity to comment on S. 3157. We congratulate you on an excellent bill which will have far reaching benefits for all Indians.

Sincerely,

ROBERT E. LEWIS,  
*Governor, Pueblo of Zuni.*

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TELEGRAM

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,  
Washington, D.C.*

Blackfeet Tribal Business Council in receipt of your communication dated February 18, 1972, which include copy of S. 3157, the Indian Self-Determination Act of 1972. We have reviewed the proposed legislation and are in complete accord with its objectives. Strongly recommend that the Committee on Interior and Insular Affairs approve this important measure as soon as possible. Recommend further that you work toward this passage in the Senate.

EARL OLD PERSON,  
*Chairman, Blackfeet Tribal Business Council,  
Blackfeet Tribe, Browning, Mont.*

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STATEMENT OF HON. GALE W. MCGEE, A U.S. SENATOR FROM THE STATE OF  
WYOMING

Mr. Chairman, I appreciate this opportunity to present my statement today in support of S. 3157, a measure which I have joined in sponsoring.

In expressing my support for this bill, I think it is important to refer to the February 9, 1972 statement of Senator Jackson, Chairman of your Committee, because I believe he strikes at the heart of the many problems confronting the Indian people when he urges favorable consideration of this bill.

Senator Jackson stated at that time:

"Despite the increasing Federal domination of Indian affairs, the Indian people have never surrendered their desire to control their relationships both amongst themselves and with outside forces. This desire has been as eloquently stated by spokesmen for numerous Indian tribes and organizations as it was once expressed in our Declaration of Independence. In short, the Indian people want to become involved in a meaningful manner in the forces, decisions, and activities which affect their individual, family and community well-being.

"I believe it is timely for the Congress to respond to such desires by restoring certain rights and prerogatives to the Indian people which will afford them greater opportunities for meaningful self-determination. The federal government shall not surrender its responsibilities to the Indian people; but it can and must invite them to share with it the task of directing how those responsibilities shall be fulfilled."

The past history of the Federal relationship with the Indian has been one which has inhibited their development as a unique cultural unit in our society. It has been one that has discouraged personal initiative and community development in all aspects of their society. It has been one that has had a denigrating effect on the Indian, rather than fostering a cultural identity which is so important in the development of any society.

I firmly believe that this piece of legislation holds one of the keys to the future development of the Indian people in this country. It would provide them with the opportunity and assistance to control their own destiny in a manner truly responsive to the real needs of their communities.

The desire for self-determination on the part of the Indian people is strong and continues to increase. This is quite poignantly illustrated by the fact that increasing numbers of the older generation are participating in educational, cultural, and economic development programs within their communities—a generation which had been subjected, all their lives, to a relationship with the Federal government which could only breed resignation and apathy.

The Indian people are only demanding what should have been rightfully theirs, and what they have been denied for so long—a voice in their own affairs and development. And all the Indian people are asking is for Congress to trust them and to have faith in their abilities to control their own destiny. This legislation represents the faith and trust on the part of Congress.

The paternalistic relationship of the Federal government with the Indian people has been an utter disaster. All one has to do is point to the low level of economic development, the school drop-out rate, the suicide rate, the high rate of alcoholism, and the widespread poverty which has become a way of life for the American Indian since his relationship with the Federal government was established; and one can readily see how disastrous this relationship has been. We have exploited him and denied his right to advance as a culture. This pattern must be reversed and this bill is a step in that direction.

We have neglected the American Indian and his problems for far too long. We have a moral burden to shoulder and I can think of no better way to begin shouldering that burden than with S. 3157.

In conclusion, I would like for this Subcommittee to consider the support of the Shoshone and Arapahoe Joint Business Council of the Wind River Indian Reservation in Wyoming for S. 3157. Their views were communicated to me after they had analyzed the measure. Again, Mr. Chairman, I appreciate this opportunity to testify in support of S. 3157 and I urge favorable consideration of this legislation.

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STATEMENT OF HON. MIKE GRAVEL, A U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, my testimony regarding the Indian Self Determination Act will not be to argue its merits or demerits. I support the concept of self determination for all Americans and the fact that this bill is before us at all does not speak well for this Nation's past policies toward many of our Native Americans.

The past federal attitude of paternalism in the management of land, resources, funds, and welfare, have directly contributed to the lack of development of people—people who have a great deal to offer this Nation if they would be allowed to do so.

By contrast, I would like to point to the Natives in my home State of Alaska. They are involved in running the affairs of their community, Borough, and State governments. There are eight prominent Natives from all parts of Alaska in the State Legislature. This year, a record number of Natives will file for office in the coming elections. There are numerous Native Mayors of major communities. Almost every major city in Alaska has elected Natives to the city councils and school boards.

In Administration, Governor Egan has appointed Natives to high positions in the State Government. Many Natives have served on and headed special commissions. Native people have competed for and won positions in a wide variety of fields in State and local administrations.

These accomplishments deserve to be noted and commended, not only for the Natives who are demonstrating their capabilities, but for all the people of Alaska. In the final analysis, it is the people who recognize competence and demonstrate their respect for it by electing or appointing people to important positions. This attitude is part of the character that makes up the people of Alaska and I think the nation would do well to take note.

In treating this bill, I am supporting the concept of self determination because many of the Native groups who have demonstrated their abilities in Alaska are being frustrated by an over protective federal attitude toward *all* Native Americans. Too often a Legislator's lone visit to a remote reservation has shaped his opinion for all legislation on behalf of Indians. And far too often an administrator will rely on the opinions of entrenched bureaucrats to determine what

Indian policy should be. I believe what the Alaskan people have long recognized, and apparently what American Indians in the lower 48 have been saying, that Indians are in the best position to determine what their goals should be. This is basic and it is a sad commentary that this bill should be necessary.

Two years ago, I was instrumental in getting a settlement on behalf of the Tlingit and Haida Indians of Alaska. I have known these people for many years, going back to my service in the Alaska State Legislature. I was impressed then as I am now, that they are capable of managing their affairs. During the disposition of the settlement award, I fought to allow them to manage the funds themselves. I was overruled in favor of Secretarial oversight of the funds. I then requested that the Government Accounting Office investigate the Bureau of Indian Affairs management of Indian Trust Monies. That study was completed and released April 28, 1972.

I posed two questions to the GAO to answer:

1. Should there always be Secretarial supervision in Tribal management of Indian monies?

2. How good is BIA as a financial manager and an investment counselor?

On the subject of Secretarial oversight, the finding was "GAO's review has produced no evidence that a departure from the policy of Secretarial supervision could not be made—in the case in which particular tribes have demonstrated clearly that they are able to manage their own affairs."

Considering BIA as a financial manager, it was found that a daily average of 14% of the funds were available for investments. This is too high. A good investor would have had much less available on a daily average. It was also found that 89% of the funds available for investment were invested at 4% interest. The remaining 11% was not invested and earned no interest. I think these statistics speak for themselves. The overall finding of the GAO was that "increased income could be earned on Indian monies administered by the BIA." I would call that an understatement.

Self determination has supposedly been a policy of the Administration since the President's message of July 8, 1970. Now we find almost two years later that very little has been done by the Administration to implement that policy. The passage of this bill hopefully will correct that situation.

Senator FANNIN. The first witness this morning will be Hon. Harrison Loesch, Assistant Secretary of the Interior for Public Land Management.

#### STATEMENT OF HON. HARRISON LOESCH, ASSISTANT SECRETARY OF THE INTERIOR FOR PUBLIC LAND MANAGEMENT

Mr. LOESCH. Thank you, Mr. Chairman.

Senator FANNIN. It is good to have you with us this morning, Mr. Secretary.

Mr. LOESCH. I am glad to be here, Mr. Chairman. My statement is rather brief but unless the committee prefers, I don't see too much to be gained by reading it. Suffice it to say, I will offer it for the record.

Senator FANNIN. The complete statement will be made a part of the record and you can comment as you like on the statement.

Mr. LOESCH. Basically, all it says is that the administration prefers S. 1573 and S. 1574, the administration bills, to S. 3157 simply for reasons that the administration believes the final control of Indian programs should be in the hands of the tribes rather than in the hands of the Secretary, and that is the gist of the matter.

The statement also comments on S. 2238, which is a companion bill on the Johnson-O'Malley program.

With that, Mr. Chairman, I am open for any questions concerning either the statement or the entire matter.

Senator FANNIN. Mr. Secretary, the committee understands that for many years the Bureau of Indian Affairs has conducted a program of contracting with Indian tribes and organizations to provide goods and services which in the past have been provided by the

Bureau. Under this so-called Indian involvement program, contracts have been awarded on a negotiated, rather than a competitive basis. Under what authority has the Bureau been conducting this program?

Mr. LOESCH. Under the Snyder Act, Mr. Chairman.

Senator FANNIN. Mr. Secretary, how about the Buy Indian Act?

Mr. LOESCH. And the Buy Indian Act, right.

Senator FANNIN. Does the Bureau really believe that the so-called Buy Indian Act was intended to conduct such a broad contracting program?

Mr. LOESCH. Yes, we think so. Of course, you have to look at any statute in the light of the historical situation at the time. Certainly, it will appear to give the the necessary authority. There is, however, a considerable body of conservative opinion which questions, raises the question you have asked, whether these statutes do in fact give the necessary authority. Of course, it is for that reason that the administration proposed a so-called contracting out bill. And, of course, I assume that is the reason Senators Allott and Jackson presented 3157.

Senator FANNIN. Has the Bureau obtained the opinion of any other legal authority, such as the Justice Department, as to the applicability of the Buy Indian Act? If so, what was the opinion?

Mr. LOESCH. The opinion, like a good many legal opinions, kind of wavers around. The opinion says we do have such authority but that in view of the advance in the ways of dealing with the tribes that we are now undertaking, we should have more specific authority.

Senator FANNIN. What can be done under S. 3157, if anything, that can't be done under the administration bill. S. 1573 and S. 2238.

Mr. LOESCH. I may have to request a little help on that, but to the best of my knowledge and recollection S. 3157 provides grant authority which S. 1573 does not.

May I have Mr. Brice of the Bureau with me, please?

Senator FANNIN. Yes, state his name and position for the record, is he going to testify?

Mr. LOESCH. I am going to testify with Mr. Brice's assistance, Mr. Chairman.

S. 3157 provides contracting as the major tool for putting programs into the hands of the tribes. It does have grant authority to some limited degree. The administration bill, S. 1573 is really a program take-over bill. It allows the tribes, upon application to administer any program now funded or administered by the Bureau of Indian Affairs in relation to that tribe and provides that it will be funded subject to availability of funds at the same level as the Bureau is now funding such a program.

Senator FANNIN. Mr. Secretary, if you want to elaborate on that in writing, we would appreciate it if you would do so, should you find it advisable.

Mr. LOESCH. I am at the service of the committee, of course. If the committee would like a comparison of what the two bills will do in practice, we can certainly provide it.

Senator FANNIN. We will see if we can cover it in some of the questions, if not we will ask you to do that. Maybe we can cover it by the questions.

The next question is, has the Bureau obtained the opinion of any other legal authority, as to the capability of the Buy Act?

Mr. LOESCH. No, I don't think we have, Mr. Chairman.

Senator FANNIN. Would it not be in order to have a Justice Department opinion?

Mr. LOESCH. Maybe it would. I am convinced in my own mind that we need pretty specific legislative authority to do what we want to do. I have the feeling, I have practiced law myself a good many years, that if we get a legal opinion from the Justice Department on the Buy Indian Act and the Snyder Act, we will get the same kind of opinion that the Solicitor's Office gave us, which leaves all kinds of escape hatches in case they happen to be wrong.

Senator FANNIN. You are satisfied then, that it is advisable to go forward without having an opinion from the Justice Department?

Mr. LOESCH. Yes. I am convinced, Mr. Chairman, that we need a specific contracting act authority. As my statement says, we prefer the administration bills, but we consider that S. 3157 would certainly serve the purpose.

Senator FANNIN. If the Bureau believes it has the authority to conduct such a contracting program, why did the Bureau request legislation authorizing a broad contracting program? In other words, 1573?

Mr. LOESCH. Well, it arose from our own uncertainty. There has always been argument in the Congress and even in the Department about the extent of the authority under the Buy Indian Act. For instance, it was questioned whether the Buy Indian Act allows us to contract for such things as education or law and order or service things or whether it only allows us to contract for products or for labor or on the highways, the roads, and things like that. The social programs of a tribe are considered by many not to come under the Buy Indian Act, and I don't care what the lawyers' opinions are, it is my view that we should have specific authority to contract any kind of program with the appropriate Indian authority.

Senator FANNIN. The committee understands the Department of Interior's Office of Survey and Review has issued two reports on the Bureau's Indian contracting program. These reports cited several examples of noncompliance with the Federal procurement regulations and other contracting policies and procedures. Under what authority is the Bureau not required to follow Federal procurement regulations?

Mr. LOESCH. The Bureau is required to follow the regulations, of course. It is a sensitive issue to be criticizing my own Department, but my own feeling is that in any contracting procedures, the Office of Survey and Review, just like the GAO, is going to be extremely conservative in giving approval to any procedures that aren't just absolutely 100 percent top or bottom.

Now, in the Indian business it seems to me we need to have a certain amount of flexibility that we don't have. For example, in the first place, you are very rarely in competitive bidding systems on these programs. The tribe itself or a tribal housing authority or a Tribal Institution of some sort is going to be your only contracting parties from the Bureau. So you are always going to be in a negotiating position on this sort of thing. It is the negotiation and the lack of competition, it seems to me, that gives shudders to the Office of Survey and Review and GAO, but so far as the actual contracting procedures are concerned, I think we are required to go by the usual rules.

Senator FANNIN. Thank you, Mr. Secretary. Why have some Bureau offices used purchase orders to contract with Indian tribes and organizations for goods and services over \$2,500, when the Federal procurement regulations provide that contracts shall be used for goods and services over \$2,500?

Mr. LOESCH. Well, I will tell you—when this administration came in and both before and after the President's Indian message of July 1970, the Bureau, the new personnel in the Bureau were very anxious to get fast off the mark on new directions in Indian affairs and I must admit that there was certain informality in getting the contracting aspects of Bureau participation off the ground.

I think it was for that reason more than any other that we ran into such a hiatus as occurred in the Miccosukee matter, which you will hear more about later on. We were required, early last year, to back up and take a whole new look at our contracting procedures in the Bureau. Mr. Brice, who is with me at the table, was greatly involved in that and I don't want to—I don't know exactly what specifically you are referring to in this question, but I am aware that we did some things we probably shouldn't have done. Mr. Brice advises me that it was on programs already in operation, contracts already have been issued and continuations of these programs that were envisioned where these purchase orders were most likely used.

Senator FANNIN. Thank you, Secretary Loesch.

Under what circumstances would the Bureau develop, or assist in developing, a proposal for a tribe to take over a Bureau program?

Mr. LOESCH. Well, in the first place, it has generally been the policy since I have been appointed, with the Bureau of Indian Affairs, that a tribe would initiate such a proposal. The Bureau, at least in theory, is not supposed to try to persuade a tribe to take over a particular program or make a particular contract. But if the tribe initiates or requests this function, then the Bureau would provide technical help to plan how the takeover would occur, the contents of the program after the takeover, and so forth, and eventually the contract would be signed implementing the takeover by the tribe.

Senator FANNIN. Under such circumstances would the contract price be based on the Bureau's historical costs to manage the program or would the price be independently developed by the contractor?

Mr. LOESCH. It covers a combination of both. I am acquainted with a number of contracts which are generally based on the Bureau's historical costs with that particular tribe, but many in which the cost was modified to meet the specifications of the tribal program. Which, in some cases, might be an expansion, to a degree, to the Bureau program. Others, based on the fact that the pay, for instance, of Federal workers needed in the program would be higher than the salaries of the tribal people, may have been somewhat less. I might mention that our primary question as to the authority of the Bureau has been in circumstances like the Miccosukee matter, where the proposal would replace civil service employees of the Bureau by tribal employees. And the questions that arose as to our authority, were to the effect that appropriations are made for the payment of salaries of Federal employees and that the Bureau was going outside of its authority in effect diverting such appropriations from the payment of salaries to civil service people to, in effect, a grant program which would itself pay tribal employees. On that outer limits, you might say, of traditional

or historical contracting authority we have had the major questions and this is the reason, when we were required to back up and look at our contracting procedures that we ran into substantial delays in 1971 in implementing the Miccosukee matters, a couple of Alaskan matters and various others which did contemplate the replacement of Bureau personnel by tribal personnel.

Senator FANNIN. Does the Bureau believe that contract proposals and prices developed by the Bureau for a tribe offend the spirit of the Federal Procurement Regulations which insist that contracts should be written as the result of an arm's-length transaction?

Mr. LOESCH. Well, I don't know the answer to that question, really. To my mind, my personal feeling is that if it does offend it, it should not. I don't believe that any view of the trust responsibility that the Federal Government has with regard to Indian resources and the tribal organizations which are in effect the Government of the reservations that are contracting, should in any way be sensitive.

Senator FANNIN. You don't believe there is a conflict involved?

Mr. LOESCH. No, I don't.

Senator FANNIN. We have just a few more questions, Mr. Secretary. The committee understands that the bill under consideration, S. 3157 will enable the Bureau to provide a broader Indian contracting program. In what way will this bill improve the Indian involvement program?

Mr. LOESCH. Well, in a number of ways. As I say, on the outer limits of our historical contracting authority is the question of whether it is a proper use of appropriated funds to substitute tribal employees or Indian organization employees for Federal employees. This bill would lay that question entirely to rest. It is the policy of this administration to allow any tribe which desires to do so to take over any program which it desires and which it can demonstrate at this point an ability to administer. Of course, we do not believe that Indians should be the only people in the country insulated against failure. In other words, I don't know any non-Indian situation in which a business or program must be guaranteed against all possible failures. So it is our philosophy, at least, that where a reasonable plan as a reasonable prospectus for operation by a tribe or other Indian organization is before us, we should be responsive. At the same time, I said earlier, we don't want misunderstandings that we are trying to make Indians take over things they don't want to take over. S. 3157 would fulfill those philosophies and policies.

Senator FANNIN. Are the exemptions from the Federal Procurement Regulations provided in the bill sufficient?

Mr. LOESCH. I think they are entirely sufficient, Mr. Chairman.

Senator FANNIN. Does the Bureau believe it can have a successful Indian involvement program and at the same time meet the requirements of the Federal Procurement Regulations, particularly the contractor and financial technical ability requirements?

Mr. LOESCH. Essentially the answer to your question is affirmative, Mr. Chairman. S. 3157 provides granting mechanisms whereby if the technical expertise and ability is not present to start with, it can be financed, that is to say, so that the expertise can be developed and then the contracting carried out.

Senator FANNIN. Mr. Secretary, are you familiar with Senator Steven's amendment No. 420 to S. 1574? If you are not familiar with the amendment, I can refer to it.

Mr. LOESCH. I don't think I am.

(The amendment referred to follows:)

[S. 1574, 92d Cong., first sess.]

#### AMENDMENT

Intended to be proposed by Mr. STEVENS to S. 1574, a bill to retain coverage under the law providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits for employees of the Government of the United States who transfer to governmental or other activities which are or have been performed by Government employees in or for Indian communities, and for other purposes, viz:

On page 6, line 16, immediately before the period, insert a semicolon and the following: "and further includes any State or local government, or any agency thereof".

Senator FANNIN. Perhaps it is not fair without you having a chance to see it, but if you can comment on that for the record we would appreciate it.

Mr. LOESCH. I haven't commented nor have any questions been asked me, Mr. Chairman, on 1574, but I am sure the committee is well aware it is our strong feeling that the passage of either 1573 or 3157 without 1574 or a very similar provision would be very difficult to administer.

Senator FANNIN. Yes, we are aware of that.

Mr. Secretary, we have other questions on contracting matters that we will submit to you for a written response for the record. One of the questions is rather complex and complicated, and I think it would be desirable for you to review it first.

Mr. LOESCH. Very well. I will be glad to do that, Mr. Chairman.

(The questions submitted by the Committee to the Department and the answers follow.)

#### QUESTIONS SUBMITTED BY SENATOR JACKSON TO THE DEPARTMENT

Question No. 1. The Bureau of Indian Affairs entered into a contract on October 21, 1970, with the Native American Embassy, Inc., of Washington, D.C. That contract was the subject of an interim audit by the Department of the Interior with the audit report submitted to the Commissioner of Indian Affairs on June 21, 1971.

(a) Are you aware of that contract and the subsequent audit report?

(b) Are you aware that Exhibit III of that report reveals that three officials of the B.I.A. were members of the Board of Directors of the Native American Embassy, Inc., at the time the contract was negotiated?

(c) That audit report reveals that the Executive Director of the Native American Embassy became an employee of the B.I.A. on April 5, 1971, but continued to act as Executive Director and signed the checks, four of which were payable to his wife, as "Executive Director, an unpaid Native American Embassy position".

Article VI of the contract states, "In accordance with the provisions of 18 U.S.C. Sec. 203, no officer or employee of the United States shall directly or indirectly receive any compensation for services rendered or to be rendered either by himself or another in the performance of this contract."

This contract, questionable on many counts as pointed out by Interior's auditors, was abandoned by the contractor.

(a) What steps have been taken or are being taken to assure that contracts negotiated for the benefit of Indian people are properly negotiated, entered into and administered?

(b) Have the contracting practices reflected in this contract been eliminated?

One of the problems in contracting under the Buy Indian Act (Act of June 25, 1910, 35 Stat. 71, 25 U.S.C. 47) has been that the Contractor has had difficulty in demonstrating his capability for performance, yet if the Contracting Officers of the B.I.A. raise this question they run the risk of being accused of "not being with the program". The beforementioned Interior audit report spotlights this problem and arrived at the conclusion that in many instances the contracting officers have all but ceased to function.

(a) Would not Section 5 of S. 3157 allow the B.I.A. the latitude necessary to assist the Indian tribe to prepare itself to properly render performance under such contracts and thereby allow B.I.A. contracting officers to properly perform their functions?

(b) Existing law requires security for advance payments made. Do these requirements, which would be removed by S. 3157, presently retard Indian contracting?

Question No. 2. The Committee understands that in 1964 and 1968 the Bureau issued memorandums to its field offices encouraging greater use of contracts with Indian tribes and organizations under the "Buy Indian Act." The stated objective of the use of the "Buy Indian Act" was principally to help the tribes develop their self-management capabilities.

(a) In initiating this program, what steps did the Bureau take to provide the tribes with the technical know-how to develop their self-management capabilities? Please give specific examples.

(b) By participating in this program, how many tribes have definitely developed self-management capabilities? Name some specific tribes and their achievements.

(c) How much freedom does the Bureau allow a tribe in administering various programs? Does the Bureau allow a tribe a great deal of freedom and only provide assistance when requested, or does the Bureau in fact administer the program and in effect only use the tribe as a conduit for funds?

(d) What approach did the Bureau take in encouraging tribes to assume control of the Bureau's program? Were the tribes merely encouraged to take over the programs or were they subjected to great pressure?

(e) If the tribes were not subjected to great pressure to take over the Bureau's program, why did the Commissioner issue a memorandum in 1970 forbidding Bureau employees from soliciting the tribes to enter into such contracts?

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 26, 1972.

HON. HENRY M. JACKSON,  
Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 9, 1972, which had attached questions that arose as a result of the hearings before the Indian Affairs Subcommittee of our Committee on S. 3157, S. 1573, S. 1574, and S. 2238.

The two questions presented by your letter will be answered in order without repeating the question.

QUESTION NO. 1

1-a. We are aware of Contract No. K51C14200395 with the Native American Embassy, Inc., and the subsequent audit report.

1-b. Exhibit 3 of Interior's interim audit reflects the presence of three Bureau of Indian Affairs officials on the contractor's board of directors. Some of the directors were elected without their knowledge and consent. Those who did accept resigned, further these individuals received no compensation, directly or indirectly for their service, and served briefly on the board of the nonprofit organization as a community service. We believe that the Bureau of Indian Affairs is making a good faith effort to comply with 41 CFR 1-1.302-3 regarding contracts between the Government and organizations which are substantially controlled by Government employees.

1-c. It is true that the Executive Director of the Native American Embassy did work as a consultant prior to the contract and became a temporary employee of this Bureau on April 5, 1971. He represented to the Bureau that he had severed

relations with the contractor and it was only after the subject audit was made that it was learned that he was still acting as an unpaid executive director. His employment with the Bureau of Indian Affairs has been terminated.

1-a(2) The following listing is what has been done and is being done to assure that contracts negotiated for the benefit of Indian people are properly negotiated, entered into, and administered:

(1) New Bureau of Indian Affairs regulations have been promulgated covering contracting.

(2) The Commissioner, with the approval of the Department of the Interior, has established a committee of contracting personnel from various agencies of the Department to advise the Bureau.

(3) Training programs and schooling have been conducted for Bureau contracting personnel.

(4) A separate Division of Contracting under capable leadership has been established within the Central Office of the Bureau.

(5) Bureau contracts are more thoroughly reviewed by the Office of the Solicitor.

(6) Efforts have been made through a series of meetings, both in the Central Office and the field, to communicate to the program people regarding their proper role in the governmental contracting process.

(7) Greater efforts have been made to advise tribal groups of the opportunities and limitations of Indian involvement contracting.

1-b(2) We believe that most of the contracting problems described in the Native American Embassy contract have been corrected. We are working to further improve our contracting procedures in order to better serve the needs of Indian people and fully comply with applicable law.

1-a(3) Section 5 of S. 3157 would be extremely helpful in assisting tribes and Indian organizations to better prepare themselves to perform services for their members under contract. As we stated before the Committee, S. 3157 would give the Department useful authority to involve Indians more fully in the conduct of Indian programs.

1-b(3) Bonding requirements have worked a hardship on Indian tribes undertaking construction projects under contract with the Bureau of Indian Affairs and Section 7(a) of S. 3157 offers a solution to this problem.

#### QUESTION NO. 2

We assume that the memoranda referred to are those of April 22, 1964, and August 22, 1968. The development of self-management capabilities was one, among others, of the objectives of the Buy Indian programs.

2-a. The contracting program has varied as extensively as the Indian communities it was designed to assist. It has usually resulted from a close working relationship between the Indians and Bureau personnel. The contracts have been developed in close liaison with the tribe and this liaison has continued during the performance period of the contract. Thus, the entire contracting program has resulted in various degrees of management training. More problems have occurred when the contract has been developed and administered at offices more remote from the Indian community, and for this reason the Bureau is attempting to strengthen field contracting offices and to conduct more negotiations and administer contracts at the local level.

One of the problems we encountered in connection with our contracting program was the fact that many of the tribes did not have any experience with contracting. This meant that they did not have any idea as to how to start the process and in many instances just didn't participate in the contracting program. To meet this problem, the Bureau sent out teams to work with the tribes to help them prepare their proposals and followed up by helping them with the negotiations for the contract. The Bureau has also begun a Tribal Affairs Management Program to assist tribes in the development of managerial skills. We are also seeking funds in our 1973 fiscal budget for a program to assist tribal governments to assist in the development of skilled tribal leadership. This trained leadership will then be able to lead the tribe in a full discussion of the contracting process and act as its manager in negotiating contracts.

2-b. We believe that the program is developing self-management capabilities on the part of tribes. Each new contract is a step for the tribe negotiating it. We have two tribes that have been particularly active in the contracting area, those two being the Zuni Pueblo, now in the second year of its program for all the

services extended them on their Pueblo under a combination of a contract and 1884 Act authority and the Miccosukee Tribe, well into its first year of an all services contract.

2-c. The Bureau must draft contracts in compliance with the applicable law and the Federal Procurement Regulations and as a result the tribe is somewhat restricted in its options under the contract. It is our intent to allow as much freedom to the tribe as the procurement laws allow. It is true, as our own audit reports point out, that some contracts have resulted in Bureau administration of the programs and the tribe being essentially a conduit for the funds. We have substantially eliminated this type of contract.

2-d. The Commissioner established a contracting committee in the Central Office to encourage Indian communities to assume greater responsibilities for their programs via contracting. Field personnel were also urged to encourage such initiative by the tribes. As a result the amount of Buy Indian contracting, including construction contracts, increased from approximately \$6 million in FY 1968 to over \$32 million in FY 1971.

2-e. Some tribes complained that certain Bureau employees were over zealous in encouraging contracts. The Commissioner's memorandum emphasized that the option was with the Indian community and that Indian tribes were encouraged to undertake contracts but were not to be pressured in any manner, nor would tribes electing not to contract be penalized in funding.

Sincerely yours,

HARRISON LOESCH,  
*Assistant Secretary of the Interior.*

Senator FANNIN. Are there any proposals in terms of financing, for integration of State and local governments of lease programs with present Federal programs?

Mr. LOESCH. I don't know of any, Mr. Chairman, at all. I may say that, of course, one of the advocacy roles of the Bureau of Indian Affairs with regard to Indian matters is to try to make the States more responsive to the State and local community government. Make them more responsive to the responsibilities they have to Indians as citizens. The mere fact of having a Bureau of Indian Affairs in existence, has historically caused not only other agencies of the Federal Government but State and local agencies to sort of wash their hands of Indians and direct them towards BIA programs. We are making quite an effort across the Federal Government, and with the States and local governments, to correct this situation by persuasion and education. But so far as the State and local governments having any involvement in the contracting propositions, no.

Senator FANNIN. Mr. Secretary, I thank you for your very helpful suggestions and the answers you have given to these questions and your very commendable testimony.

Mr. LOESCH. Thank you very much, Mr. Chairman.

(The prepared statement of Mr. Loesch follows:)

STATEMENT OF HON. HARRISON LOESCH, ASSISTANT SECRETARY OF THE INTERIOR  
FOR PUBLIC LAND MANAGEMENT

Mr. Chairman and members of the committee: It is a pleasure to appear this morning and strongly recommend the enactment of S. 1573, a bill "To provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes," S. 1574, a companion bill "To retain coverage under the laws providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits for employees of the Government of the United States

who transfer to Indian organizations to perform services in connection with governmental or other activities which are or have been performed by Government employees in or for Indian communities, and for other purposes," and S. 2238, a bill "To amend 'An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes,' and 'To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes' and for other purposes." These three bills are a part of the legislative package that President Nixon submitted to the Congress shortly after his July 8, 1970, message on Indians. The bills were again re-submitted shortly after the beginning of the 92nd Congress.

These bills and the four others that constitute the legislative package proposed by the President will provide the Administration with the tools it needs to make a reality of the policy of self determination for the Indians. Two of the bills, S. 1573 and S. 2238 would provide the mechanism needed for giving those Indians who wish to assume, it full control of the program and services now provided them by the Bureau of Indian Affairs and the Public Health Service. The third bill, S. 1574, is needed to provide a way of allowing those Civil servants that the Indians wish to retain in their employ to retain certain rights that they enjoy as Federal employees. If these rights were not extended, it is felt that many of the employees would not transfer when the services or programs were assumed by the Indians. The loss of necessary personnel would cripple the service or program.

Also being considered by the Committee is S. 3157, a bill "To promote maximum participation in the government of the Indian people by providing for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and by encouraging the development of the human resources of the Indian people, and for other purposes."

Although S. 1573 and S. 3157 have some similarities, they are quite different in their approach to Indian self-determination. S. 3157 is a contracting bill, designed to enable Indians to enter into contracts for the administration of Federal programs or portions thereof. S. 1573, on the other hand, is a bill for assumption of control of programs and services by Indians. S. 3157 makes Indians nothing more than parties to a contract which they negotiate between themselves and the Secretary of the Interior or the Secretary of Health, Education, and Welfare. In the last analysis it would be the appropriate Secretary, not Indians, who would determine the extent of Indian involvement in the program or service.

A major difference in the two bills is the approach made by them in the manner provided for the change in control of programs and services. S. 3157 authorizes the Secretaries of the Interior and Health, Education, and Welfare, in their discretion, to enter into contracts with Indians to conduct Federal programs. President Nixon commented on this approach in his Indian message of July 8, 1970:

"For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

"This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service or program which is presently administered by a Federal agency. To this end, I am proposing legislation which would empower a tribe or a group of tribes or any other Indian community to take over the control or operation of Federally-funded and administered programs in the Department of the Interior and the Department of Health, Education, and Welfare whenever the tribal council or comparable community governing group voted to do so.

"Under this legislation, it would not be necessary for the Federal agency administering the program to approve the transfer of responsibility. It is my hope and expectation that most such transfers of power would still take place consensually as a result of negotiations between the local community and the Federal Government. But in those cases in which an impasse between the two parties developed, the final determination should rest with the community."

To carry out this Presidential view, section 2(a) of S. 1573 provides that, "if an Indian tribe or community, after consultation with [either] Secretary, requests that it be given the control or operation of a program or service administered by the Secretary, the Secretary shall within one hundred and twenty

days from such request, or such later date as may be agreed to by the Secretary and the organization, transfer such control or operation to the Indian tribal organization."

S. 1573 also contains certain safeguards for the Indians not provided by S. 3157. First, section 2(d) of S. 1573 contains a retrocession provision, which would return operation of any program assumed by Indians to the appropriate Secretary if the tribe or community so requested. This provision embodies the President's recommendation in his Indian message that "Indian control of Indian programs . . . always be a wholly voluntary matter."

Second, section 2(f) of S. 1573 insures that programs transferred to Indians will be funded at the same levels as they would be if operated by the Government and precludes tribes which retrocede a program from suffering any financial or other disadvantage as a result. No such insurance is provided by S. 3157.

This is not to say that S. 3157 does not provide useful authority to this Department in involving Indians more fully in the conduct of Indian programs. However, we believe that S. 1573 would be of greater benefit to Indians and recommend that it be enacted in lieu of S. 3157.

This concludes my statement. I stand ready to answer any questions you might have.

Senator FANNIN. Dr. Laurence E. Lynn, Jr., as Assistant Secretary of Health, Education, and Welfare for Planning and Evaluation, accompanied by Richard E. Verville. Dr. Lynn, we are pleased to have you with us here this morning. You will identify the members of your staff with you this morning for the record, please.

**STATEMENT OF DR. LAURENCE E. LYNN, JR., ASSISTANT SECRETARY OF HEALTH, EDUCATION, AND WELFARE FOR PLANNING AND EVALUATION, ACCOMPANIED BY DR. EMERY JOHNSON, DIRECTOR OF INDIAN HEALTH SERVICE; SIDNEY EDELMAN, ASSISTANT GENERAL COUNSEL FOR PUBLIC HEALTH; AND RICHARD E. VERVILLE, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION**

Dr. LYNN. Accompanying me this morning, Mr. Chairman, are Dr. Emery Johnson, Director of Indian Health Services; Sidney Edelman, Assistant General Counsel for Public Health; and Richard E. Verville, Deputy Assistant Secretary for Legislation. I would like to read my statement and all of us will be prepared to respond to your questions.

Senator FANNIN. Thank you, you may proceed.

Dr. LYNN. Mr. Chairman, members of the subcommittee, it is a pleasure to appear to testify on S. 3157, S. 2238, and S. 1573, which seek to assure to Indian people the right of self-determination.

As you know, the administration is deeply committed to Indian self-determination. The President stated in his message to Congress, on July 8, 1970, transmitting his "Recommendations for Indian Policy":

For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency.

The Department of HEW is vitally interested in the enactment of legislation which would promote and encourage further self-determi-

nation for the Indian people to attain the ultimate goal of "Indian solutions to Indian problems."

However, as we focus on the goal of self-determination, we must be acutely sensitive to the need for continuing Federal concern for and support of the Indian people. We must assure that as we strengthen the Indian's sense of autonomy we do not threaten his sense of community and tribal life. We must make it clear that Indians can become independent without losing their unique relationship with the Federal Government and that self-determination and the assumption of control of HEW programs and services by Indian tribes does not mean termination of this unique relationship.

Consistent with our commitment to Indian self-determination HEW has undertaken by administrative action a number of initiatives:

The Headstart program in our Office of Child Development has established a National Indian Advisory Group, which has had a central role in determining Headstart program policy and in providing new directions for preschool programs. On the local level, parent advisory councils have involved Indian parents as major participants in determining the operation of their Headstart programs.

The Office of Education has also provided considerable support to three of the best known Indian-controlled schools: the Rough Rock Demonstration School in Arizona; the Rocky Boy School District in Montana; and the Ramah Secondary School in New Mexico. In addition, we have provided funds for the Navajo Community College in Arizona, an Indian-controlled school. All of these programs are examples for other Indian communities and the Federal Government of the determination and capability of Indian people to improve the lives of their own people.

The Office of Education has asked the Special Education Subcommittee of the National Council on Indian Opportunity to advise the Office of Education with regard to its policies and programs in Indian education. We are pleased to relate that the subcommittee has expressed its willingness to assist the Office of Education in this capacity. By its membership and responsibilities, the subcommittee is in a position to provide invaluable guidance to the Commissioner of Education and his policy officers. As Indian educators closely attuned to the needs of the communities, and as a group charged with providing technical assistance to Indian communities wishing to establish school boards, the subcommittee is well equipped to offer direction to OE in improving the quality of Indian education.

The Social and Rehabilitation Service has encouraged the creation of an independent Indian-controlled organization to determine where specified HEW R. & D. funds for rehabilitation and social services can have the greatest impact on the lives of the Indian people.

The Indian Health Service has made marked progress in improving the delivery of health services to American Indians and Alaskan Natives since 1955 through the growing participation of the Indians and Alaska Natives in all phases of the planning, implementation, and evaluation of healthy service programs. This progress is evidenced by the emergence of the California Rural Indian Health Board and the United Southeastern Tribes as active forces in managing a broad spectrum of preventive and curative health services for their multiracial membership. Progress is illustrated, also, by the development of the community health aid program in Alaska, and the community health

representative program in other States which enable tribal groups to directly provide a variety of essential health services in their communities by employing workers trained by the Indian Health Service. A further indication of the emergence of Indian self-determination in the Department is the Indians' development of local, area-wide, and national Indian health boards. These groups, formed at the Indians' initiative, advise the Indian Health Service on all aspects of health program management.

In addition to administrative actions, the Department has also attempted to provide for greater Indian participation in its programs through changes in its legislative authorities. The Department has recently transmitted to Congress bills to extend and revise the Older Americans Act, S. 3391, and the Youth Development and Delinquency Prevention Act, S. 3555. In each of these bills, the Department has created a preference for the use of units of general purpose local government, which we have defined to include Indian tribes, as the agencies responsible for planning and managing the delivery of services under these programs at the local level.

This principle of including Indian tribes within the definition of general purpose local government and favoring such governments in terms of local program administration has become firm departmental policy. This policy can do much to increase the influence of Indian tribes over the administration of programs that affect them.

In furtherance of the President's stated policy in favor of Indian self-determination, the administration last year transmitted to Congress two companion bills, S. 1573 and S. 2238.

S. 1573 would accomplish the goals of the President by requiring the Secretaries of the Interior and Health, Education, and Welfare to transfer, at the request of an Indian tribe, the control and operation of programs and services under the Bureau of Indian Affairs of the Department of the Interior and the Indian Health Service in the Department of Health, Education, and Welfare.

S. 2238 would amend the Johnson-O'Malley Act and the act of August 5, 1954, which transferred responsibility for Indian hospitals and health facilities to the Public Health Service. It would provide the Secretary of the Interior and the Secretary of HEW with the much needed authority to contract with any Indian tribe, band, group, or community to carry out any of the programs under those acts. The general approach embodied in S. 2238 is similar to that of S. 3157, the bill proposed by Senator Jackson this past February.

The administration approach would provide the Indian people with the option of (1) contracting with HEW to carry out the IHS programs; or (2) requesting the complete transfer of the program. This approach would assure that if an impasse were reached in negotiations between HEW and an Indian tribe, the final determination of whether program control would shift to the Indians would rest with the Indian people themselves.

This option is not available under S. 3157 since there is no authority in S. 3157 for the transfer of Federal programs to the Indian people on request. Under S. 3157, the Secretary of HEW may, in his discretion, refuse to enter into a contract with an Indian tribe, which desires to assume control of the IHS program which serves its people.

We view the contract authority contained in S. 2238 as an interim measure, allowing us to contract out to an Indian tribe or organization responsibility for those functions the tribe feels itself sufficiently experienced to handle. On the other hand, as a tribal organization determines that it is capable of assuming complete control over one or more of its programs, we want to be able to guarantee to that organization that, by law, it would be able to do so. For this reason, we urge the enactment of S. 1573, which would provide that authority, as a necessary complement to the contract authority provided in S. 2238.

I should caution that we would not want the transfer authority which we seek to be interpreted as a mechanism by which the Federal Government could relieve itself of its proper responsibilities to the Indian people. To begin with, the transfer could only occur at the request of an Indian tribe or community. If the tribe believes itself not yet prepared to assume the broader responsibilities which would accompany transfer, it could contract for the assumption of the responsibilities it felt ready to assume under S. 2238. Furthermore, if a tribe determines that it would rather maintain the situation as it is currently, with the Federal Government being fully responsible for carrying out the programs, that, too, would be its option.

Secondly, S. 1573 contains statutory safeguards which are necessary protections for the Indian people and are intended to assure continuing Federal concern after program transfers occur.

S. 1573 contains a retrocession provision which permits the Secretary, under such regulations as he may prescribe and after providing notice and hearing to the tribes, to reassume control or operation of the program if he determines that the tribal organization is operating or conducting the program in a manner involving: one, a violation of the rights or endangering the health, safety, and welfare of individual Indians, or two, gross negligence or mismanagement of Federal funds. We do not view retrocession as a punitive mechanism. Rather, we see it as a necessary protection of Indian people, and, the administration bill provides that tribes may resume their operations as soon as the Secretary is satisfied that the deficiencies in tribal operations have been corrected.

S. 1573 assures that the funding of the programs transferred to the tribe would be at the level stipulated in section 2(f) "as if the control or operation has been maintained continuously by the Federal Government." This assures the tribe a continuity of financial support. The tribes would be more likely to assume control of their program when there is a specific legislative mandate which would assure them that funding would not be lessened by their assumption of control.

While the conditions for the assumption of the operating responsibility of the various Indian programs should be made as easy and as flexible as possible, the Federal Government nevertheless has a responsibility for assuring that programs are being operated and administered in keeping with requirements of Federal law. S. 1573 assures that this Federal interest is fulfilled by requiring the tribes to submit annual reports to the Secretary, including an accounting of the amounts and purposes for which Federal funds are expended.

Although S. 2238 provides contract authority, and therefore does not specifically refer to the safeguards contained in S. 1573, we would, where applicable to the situation, provide similar safeguards in the contract.

In conclusion, we believe, that S. 2238 and S. 1573 would more effectively accomplish the goals of self-determination for Indians than S. 3157 and therefore urge their enactment; although, as I have already noted, S. 3157 contains useful authority for the development of Indian self-determination. Regardless of which bills are adopted, however, the manner in which its provisions would be carried out remain with the Federal agencies involved.

Clearly, the development of regulations and guidelines for implementation will be a critical factor in the success or failure of any measure. We believe that it is the right of the Indian people to be involved in the programs that affect their lives, and we intend to consult with Indian tribal representatives in the development of such regulations and guidelines to assure that the methods developed for carrying out the provisions of the bill are consistent with the desires and needs of the tribes affected.

Mr. Chairman, we believe that it is important as we work toward our common objective, Indian self-determination, to bear in mind the following statement from the President's message to Congress of July 8, 1970:

\* \* \* Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

Mr. Chairman, that concludes my statement.

Senator FANNIN. Thank you, Dr. Lynn for a very comprehensive and informative statement on the legislation. I have heard there may be some Indian opposition of S. 1573, particularly in regard to a belief that it will be an abrogation of a responsibility which the United States has. Would you want to comment on that?

Dr. LYNN. Yes, Mr. Chairman. We have conducted extensive hearings on Indian views on our bill and understand some of their concerns in this regard. And that is why I stress in my statement, and would like to reiterate, that far from regarding 1573 as a termination type proposal, we regard it more as a protection for Indians by affording them ultimate access to programs which the Federal Government now administers on their behalf, and provides them with a safeguard that could enable them to protect their interests. Should a conflict with Federal agencies arise, they have the final decision over whether or not they wish to assume control of their program. We believe this protection, when provided as a supplement to the expanded contracting authority we are seeking, is ultimately going to be fundamentally important to the whole concept of Indian self-determination.

Senator FANNIN. Do you detect any Indian consensus on S. 1573, S. 1574, and S. 2238?

Dr. LYNN. Mr. Chairman, we believe that Indian people will be quite satisfied with the package of proposals we are providing. I can understand their concern if any one, or the other of them are enacted alone. That is why we see them as companion measures, providing flexible contracting arrangements whereby they can negotiate these portions of their programs they feel ready and able to undertake and whereby the personnel support they would need from the Federal Government can be available to them.

Senator FANNIN. Dr. Lynn, in some States the public schools are assuming more responsibility for the education of those Indian students who formerly attended the BIA schools. Inasmuch as the education of these students is lower in cost, should not the Federal Government cover these costs? Here is what I am talking about. We have students in BIA schools that transfer to public schools. Some of our Federal Indian programs cover a certain portion of a student's cost, but not the full portion, so some schools are complaining. In many instances they need additional training at additional cost. My question to you is, when a student transfers from a BIA school to a public school should not the Federal Government still continue to pay the full cost as they had been paying into the BIA school?

Dr. LYNN. Mr. Chairman, quite honestly, I have not considered that question before, and if I may, I would like to submit a complete answer for the record. I do know that the Department has not undertaken to provide the full cost of that education; we regard it as local responsibility. But as to the question of full education costs to Indians, I would like to submit an answer for the record.

(The information referred to follows:)

In general the Indian students attending public schools can be classified in the following two categories: (1) those whose parents still have ties to Indian lands and immediate geographic areas; and (2) those whose families have moved to urban areas or locations otherwise widely separated from Indian lands.

The Congress has authorized three pieces of legislation providing assistance to school districts for the education of Indian children residing on or near an Indian reservation or Federally operated boarding school. The Johnson-O'Malley Act of 1934 is administered by the Department of the Interior to provide money to the States to enable them to educate Indian children in the public school systems. The program contracts directly with the States to provide payment for students from Federal boarding schools.

The Office of Education administers the Impact Aid legislation, Public Law 874 (School Assistance for Federally Affected Areas) and Public Law 815 (School Construction Assistance in Areas Affected by Federal Activities). P.L. 874 provides money to local educational agencies on the basis of the number of children whose parents live and/or work on Indian reservations. Section 14 of P.L. 815 provides money to LEA's for school construction in areas where there are significant numbers of Indian children.

However, Federal assistance administered by the Office of Education does not follow Indians as a racial group outside the impacted school districts. Even in the impacted districts the assistance is tied to the land and not to parents and students because they happen to be Indian. Office of Education programs for the educationally disadvantaged (Title I of the Elementary and Secondary Education Act, for example) allocate funds on the basis of financial and educational need, not on racial or ethnic identification. We feel that the proper role of the Office of Education is to administer programs for students of all racial and ethnic backgrounds. From this perspective we oppose any program of Federal assistance to Indian students per se to be administered by OE because this agency is not the agency with primary responsibility for the Federal responsibility to Indians.

In effect, it is our premise that as an Indian family moves from the reservation areas, it becomes a responsibility of the State as any other family does when it comes to a State for use of services, payment of taxes etc., even though full and immediate citizenship is not possible or desired by the persons involved. The extension of Federal services for Indians to areas away from reservations raises legal, financial and administrative questions which merit close study and consideration. Until such questions have been completely explored, we cannot support a concept of Federal payment of the full cost of education when a student transfers from the Federal schools to the public schools.

Senator FANNIN. Dr. Lynn, I am referring to students who live on the reservation and attend public schools, or who live off the reservation and attend schools off the reservation.

How many of the 51 Indian Health Service hospitals have been fully accredited by the Joint Commission on Accreditation of Hospitals?

Dr. JOHNSON. Mr. Chairman, the number is 22 of the 51.

Senator FANNIN. Why have so many of these facilities been denied accreditation by this Commission.

Dr. JOHNSON. There are two basic reasons that the Joint Commission has refused to give accreditation. No. 1 has to do with the physical facility, various deficiencies in either space, design or construction, and No. 2, in the level of staffing that is provided in the hospital to provide care.

Senator FANNIN. I certainly agree with you that the facilities are not sufficient nor do they have sufficient personnel, which I base upon my observation of some of the hospitals in Arizona.

Do you believe it is in the best interests of the Indian people, the Federal Government and the general public to permit Indian tribal organizations to take over these facilities that are deficient in so many respects?

Dr. LYNN. I think, Mr. Chairman, we are completely cognizant of the problem you are raising. We believe that it is extremely unlikely that Indian people would seek to take over and run those facilities which were demonstrably substandards. We also believe that we are obligated to see to it that substandard facilities are, consistent with budgetary means, brought up to standard. These are questions that are being worked on right now; namely, to develop plans which will provide necessary funding for, over the next few years, improving substandard facilities and to develop the details of the kinds of Federal standards that would apply. Certainly, if transfer took place, if some kind of contract were arranged between the tribe and the Federal Government, I believe adequate Federal standards could be contained in the provisions of the contract. I might also add that in the fiscal 1973 budget of the President, we do have over \$7 million programed for the construction of a hospital at Tuba City, and we also have planning money included in that budget for the planning and renovation of five additional substandard facilities. We will be developing plans that will contemplate the raising of standards at remaining facilities in the ensuing years.

Mr. Chairman, for the record, the funds are for the planning for five new facilities, and they are in the 1972 budget, not in the 1973 budget.

Senator FANNIN. Thank you. If any of these bills do become law, and the Indian people do want to take over one of these hospitals that does not come up to standard, would that be approved?

Dr. LYNN. Under the provisions of the bill, Mr. Chairman, that would be approved.

Senator FANNIN. Of the five hospitals you named that are scheduled for renovation, I want to know if the hospital at Winslow, Ariz., is included in that group.

Dr. JOHNSON. Mr. Chairman, it is not included in that five.

Senator FANNIN. Do you have any knowledge of what is planned for that particular hospital, both from the standpoint of construction itself as well as the facilities, and personnel?

Dr. JOHNSON. There are about 21 hospitals in the Indian Health Service that our studies indicated must be replaced. There are another 15 hospitals that require major renovation before they would be

brought up to what we and the Nation would consider adequate standards. Now the Winslow facility is among that group, it requires replacement or renovation to bring it up to standard.

Senator FANNIN. Fine. The committee would appreciate a list of the hospitals involved. Could that be furnished?

Dr. JOHNSON. Yes; we would be glad to provide that for the record, Mr. Chairman.

(The information referred to follows:)

The following is a list of hospitals to be modernized or replaced:

#### REPLACEMENT

##### Location and Status:

1. Zuni, New Mexico—Planning underway.
2. Claremore, Oklahoma—Planning funds apportioned.
3. Philadelphia, Miss.—Planning funds apportioned.
4. Owyhee, Nevada—Planning funds apportioned.
5. Santa Fe, New Mexico—Planning funds apportioned.
6. Bethel, Alaska.
7. Harlem, Montana—Planning funds appropriated but not apportioned.
8. Crownpoint, New Mexico.
9. Sacaton, Arizona.
10. Tahlequah, Oklahoma.
11. Cherokee, North Carolina.
12. Parker, Arizona.
13. Schurz, Nevada.
14. Pawnee, Oklahoma.
15. Anchorage, Alaska.
16. Winslow, Arizona.
17. St. Paul, Alaska.
18. Tanana, Alaska.
19. Kakanak, Alaska.
20. Talihina, Oklahoma.
21. Winnebago, Nebraska.

NOTE.—Tuba City Hospital also scheduled for replacement but not listed here because planning already underway and construction funds included in the President's fiscal year 1973 budget now before Congress.

#### MODERNIZATION

##### Location and Status:

1. Shiprock, New Mexico—Master planning underway.
2. Whiteriver, Arizona—Master planning funds appropriated but not apportioned.
3. Pine Ridge, South Dakota.
4. Redlake, Minnesota.
5. Browning, Montana—Master planning funds appropriated but not apportioned.
6. Rosebud, South Dakota—Master planning funds appropriated but not apportioned.
7. Clinton, Oklahoma.
8. Crow, Montana.
9. San Carlos, Arizona.
10. Eagle Butte, South Dakota.
11. Fort Yates, North Dakota.
12. Sisseton, South Dakota.
13. Rapid City, South Dakota.
14. Fort Defiance, Arizona.
15. Cass Lake, Minnesota.

##### Included above:

5 Hospitals with planning funds apportioned: Claremore; Owyhee; Philadelphia; Santa Fe; Acoma-Laguna.

2 Hospitals—planning actually underway (A/E contracts): Tuba City, Zuni; Since these two had already been identified to the Congress as being planned, they were not included in our testimony of the hospitals to be planned this year.

Replacement Hospitals: The number given in testimony was 21 which did not include Tuba City since that project has been planned and construction funds were requested for FY 1973 in the President's Budget.

New Hospital: Since this is a new hospital in a location not presently served, the Acoma-Laguna Hospital is not included in either the "replacement" or "modernization" list but is included in the "Five hospitals to be planned this year".

Senator FANNIN. How long will it take for the remainder of the Indian Health Service facilities to meet the standards necessary to enjoy full accreditation by the Joint Commission on Hospital Accreditation?

Dr. LYNN. Mr. Chairman, we have no final answer on that question right now. We will be developing these plans over the next several months and will be discussing them with the Office of Management and Budget. I cannot tell you right now precisely what schedule will be approved for the raising of these substandard facilities.

Senator FANNIN. How soon do you think you could advise the committee?

Dr. LYNN. A matter of several months, Mr. Chairman.

Senator FANNIN. Are the exemptions from the Federal Procurement Regulations provided in the bill sufficient to permit the Indian Health Service to have a successful program? If not, what other exemptions are needed?

Mr. EDELMAN. Mr. Chairman, my name is Sidney Edelman, we have been examining the provisions of this bill in this regard and we have come to the conclusion that additional technical amendments to S. 3157 are required in order to achieve one of the administration's major purposes—to facilitate contracting with Indian contractors. Under the current proposals, we have serious doubts as to the inapplicability of the procurement regulations, under the Federal Property and Administrative Services Act to such contracts. We consider these to be in the area of technical amendments which we would like to bring up at the time the committee goes over the bill.

Senator FANNIN. Will you please submit those.

Mr. EDELMAN. We will submit them.

Senator FANNIN. Could those be submitted within the next 10 days?

Mr. EDELMAN. Yes. One of the primary concerns is the question of whether the Buy Indian Act makes unnecessary competition in its utilization. We feel this is in effect mandated by the Federal Procurement Regulations. We will submit a list for the record.

(The material referred to was not received in time for inclusion in the record.)

Senator FANNIN. In what way would S. 3157 help the Indian Health Service to improve involvement in its various programs?

Dr. LYNN. There are several provisions of S. 3157 we found to be important to self-determination. One is the provision which provides that the Secretary may make grants to tribal organizations for planning, training, evaluation, and other activities relating to preparing the tribe to contract for or take over IHS services and programs. And the fact also that this grant authority would include advance payment on grants or contracts. A second provision within S. 3157 has to do with exceptions to Federal contract laws, which we will provide for the record.

Senator FANNIN. I have no further questions. Thank you very much for your cooperation.

The next witness will be William Youpee, president of the National Tribal Chairmen's Association. President Youpee it is a pleasure to have you with us again. Thank you for your cooperation, and if you will, proceed in any way you desire. Do you want to read your full statement or do you want to comment on your statement?

**STATEMENT OF WILLIAM YOUPEE, PRESIDENT, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION**

Mr. YOUPEE. Thank you, Mr. Chairman. I do have a statement here I would like to read.

Senator FANNIN. Fine, thank you, you may proceed.

Mr. YOUPEE. Mr. Chairman and members of the subcommittee:

My name is Bill Youpee. I am the president of the National Tribal Chairmen's Association. I want to thank you for inviting our organization to express its views on S. 3157, a bill called the Indian Self-Determination Act of 1972.

National Indian policy has had many changes since the Government declared jurisdiction over Indian affairs. The reservation system which developed at the end of the 19th century introduced a "wardship" approach. In the 1950's, the Congress intended to end the reservation approach by ending the trust responsibility of Government for Indians. This policy of termination would have dismantled tribes and tribal members would have been assimilated into the dominant society. As you know, the termination approach was a failure. To the Indian, assimilation means loss of identity as an Indian, loss of culture heritage and most important the loss of his land, the mother earth, which was guaranteed to him by treaties and other agreements with the Federal Government. This trust responsibility for Indian lands is the link that holds Indians and the Federal Government in a special and unique relationship. To destroy this special relationship would be to break all the promises and agreements with the Federal Government.

Each administration has had its own way of dealing with Indians and this lack of continuity has caused a great deal of suspicion and distress among our tribes.

The plight of our Indian people has received unprecedented publicity in recent years. There is, fortunately, an awakening of the national conscience for the Indians. For the first time in history, two American Presidents presented messages to Congress on national Indian policy. The present administration called for a "New Era in which the Indian future is determined by Indian acts and Indian decisions." Among other proposals is the policy reverse on termination. I am most pleased to see that the Senate has recently voted to repeal the termination policy of Resolution 108 and replace it with a new policy making self determination a major goal.

Integrity of tribal sovereignty is a great concern of the National Tribal Chairmen's Association. Federal actions, we believe, should recognize and support tribal governments to the fullest extent. It is because of these feelings that we give a warm greeting to the introduction of S. 3157, the Indian Self-Determination Act of 1972. We thank Senators Jackson and Allott for the bill. We thank their staffs and the people who have drafted this bill.

S. 3157 declares its purpose is to promote maximum Indian participation in the government of Indian people by providing increased opportunities for effective participation of Indian people in the planning, conduct, and administration of Federal programs and services for Indians. Both Secretaries of Interior and Health, Education, and Welfare are authorized, upon request of tribes, to make grants to tribes for planning, training, and evaluation to make it possible for tribal organizations to enter into such contracts.

Additionally, the Secretaries are authorized, upon tribal request, to detail personnel, civil service employees to tribes, to assist them in such planning, conduct, or administration of program under contracts or grants made pursuant to the bill. We believe these are strong points in favor of this legislation which points were never clearly explained under the so-called takeover bill which was introduced. This bill, it appears, would also provide for payment of any grants or under any contracts made under the bill in advance or by way of reimbursement and in installments as the Secretaries deemed necessary to carry out the purposes of the bill.

A very important provision that I see in this bill is the express language which states that nothing in the act shall authorize termination of any existing trust responsibility of the United States to the Indian people.

In looking at the positive provisions of the bill, several points become obvious. One, this bill has language clearly indicating the intent of Congress to contract with tribes to run their own show or any part of it.

Two, the contract would put the money into the hands of the tribal organization directly—and this is good.

Three, the Secretaries involved would be able to make planning or training grants available so that any tribe could participate eventually in the contracting part of the bill, and also technical assistance would be available to any tribe for planning and administering the contract under this bill. This is so important to the eventual success of the program contracted for and the Indian people to be serviced.

Section 6, on detail of personnel should be amended to lengthen the periods that technical assistance would be available to the tribes—we all know too well the time element that confronts us—the hurdles we run into—the months go by all too fast—so let's give this thing a reasonable chance to work by making civil service persons available for 1 year with an 180 day extension.

Four, under section 7 of this bill, we are glad to see that any payments may be made in advance, because all too often our experience has been bad when the program is caught halfway without funds to continue and to meet its goals—to many circumstances are unforeseen in these matters.

Also good is the right to revise and amend the contract to meet the circumstances which frequently arise during the performance of the contract.

We do feel, however, that under section 7(a) wherein the contracts are to be in accord with all Federal contracting laws and regulations, that may prohibit or delay the granting of a vitally needed contract for a program—there should be some procedure at this point expressly allowing for the Department to waive these laws or regulations in certain urgent situations. We do not want to pass a good contracting

law only to find that it cannot be carried out because some other Federal law or regulation on contracting stands in the way of progress.

Finally, we certainly welcome the inclusion of contracts for construction and repairs and allowing the Secretary to permit tribes to use facilities and equipment in the effort to make the contract a success.

In conclusion, we want this committee to know that we support this bill. We hope it will be given immediate attention and passage. We believe this bill would make self-determination a fact instead of a mere promise.

Thank you.

Senator FANNIN. Thank you, Mr. Youpee. A very fine statement and very helpful.

President Youpee, do you feel there is any Indian consensus on S. 1573, S. 1574, and S. 2238? Is there agreement or disagreement on these bills, on this legislation, or what would you want to say about one as compared to the other?

Mr. YOUPEE. The only thing I would like to say, Mr. Chairman, is on the takeover bill, I think that perhaps this bill here, S. 3157 would probably be more receptive to the Indian people. Because I think the takeover bill is—most of the reservations kind of feel this would maybe eventually lead to termination. But in this, S. 3157, where they can contract any part of it and, more or less, are guaranteed additional funding.

Senator FANNIN. Thank you very much, President Youpee, you have been very helpful.

Franklin Ducheneaux will be the next witness; a legislative consultant of the National Congress of American Indians. We are pleased to have you with us today, a very special visitor, and also a very helpful one.

#### STATEMENT OF FRANKLIN DUCHENEAX, LEGISLATIVE CONSULTANT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. DUCHENEAX. Thank you. My statement is very brief.

Mr. Chairman, my name is Franklin Ducheneaux, legislative consultant with the National Congress of American Indians. I am appearing on behalf of Mr. Leo Vocu, executive director of NCAI.

We appreciate this opportunity to present NCAI views on S. 3157 and the related bills. My comments will be very brief.

S. 1573 and S. 1574 are companion bills providing for assumption of control by Indian tribes over BIA and IHS programs. While this approach may be the wave of the future, the bills are very complex and complicated and have not received substantial support from the Indian people.

S. 2238 amends the Johnson-O'Malley Act and similar laws respecting IHS programs by providing that Indian tribes shall be eligible to contract under them. Similar provisions are included in S. 3157.

Therefore, our testimony will be directed to S. 3157.

This is a fairly straight-forward bill. It authorizes the Secretary of Interior and HEW to contract with Indian tribes for the services the BIA and IHS carry out on Indian reservations. We favor enactment of the bill.

The BIA and IHS have attempted to contract with tribes for these services though what is known as the Buy Indian Act and through an 1834 law permitting Indian tribes to supervise Federal employees in the Indian services. This policy has come under fire from the Congress and from other agencies in the executive. It is charged that these old laws have been stretched beyond the original intent and that the legality of some of the contracts are questionable.

I would like to add here that we don't feel that these laws are all that vague and ambiguous, but since other people do, we feel something should be done about them.

Those Indian tribes which wish to run the programs in their reservations should have the opportunity to do so. This bill would permit this and we support it.

We have only one concern that we wish to raise. This relates to the sovereign immunity from suit which Indian tribes enjoy. In a recent Federal district court decision, an Indian brought suit against his tribe based on a complaint of police brutality as a violation of his rights under the Indian Bill of Rights of the 1968 Civil Rights Act. I would like to mention the case for the committee's benefit. *Lancassir v. Leekity*. It can be found in Vol. 334 of the Federal Supplement Reporter, on p. 370, New Mexico District Court, 1971 case.

In denying the tribe's defense of sovereign immunity, the court ruled that the Civil Rights Act suspended the immunity in cases brought under it. More dangerous and threatening to the tribes, however, was the court's statement that the tribe had also waived sovereign immunity when it had contracted with the BIA for operation of the law and order services on the reservation.

It never fails. Every time the Indian people win an opportunity to take control of their own destinies and to truly govern themselves, the promise turns out to have a hook in it which can destroy the tribe.

If the law becomes settled that a tribe, when contracting for services on its reservation waives its sovereign immunity with respect to the scope of that contract, the tribes will refuse to avail themselves of this opportunity.

We offer no amendment regarding this concern, but merely note for the committee's information. We support enactment of S. 3157.

Thank you, Mr. Chairman.

Senator FANNIN. Thank you, Mr. Ducheneaux.

On these matters you have objected to, we will have the committee counsel review them, and ask for comments from the solicitor's office in the Department of the Interior.

Mr. DUCHENEUX. Thank you, sir.

Senator FANNIN. No further questions. Thank you very much.

Mr. DUCHENEUX. Thank you, Mr. Chairman.

Senator FANNIN. The next witness is Buffalo Tiger, chairman, Miccosukee Business Committee, and Bobo Dean, counsel for the Association on American Indian Affairs.

Gentlemen, we are pleased to have you with us here this morning.

STATEMENT OF BUFFALO TIGER, CHAIRMAN, MICCOSUKEE BUSINESS COMMITTEE, ACCOMPANIED BY BOBO DEAN, COUNSEL FOR ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Mr. BUFFALO TIGER. Mr. Chairman, thank you. I would like to introduce my friend here, Mr. Bobo Dean, our attorney. He has been working with us the last several years.

Senator FANNIN. I understand you will both be making statements.

Mr. BUFFALO TIGER. Yes. I would like to start and I was going to ask him to read the rest of it. There is a lot of reading here, if you don't mind.

Senator FANNIN. Do you want to read your entire statement or do you want to make it a part of the record, or comment on it.

Mr. BUFFALO TIGER. We could leave the statement here with you and maybe part of it we can discuss.

Senator FANNIN. You can proceed. The full statement will be made a part of the record and any comment you desire to make you may.

My name is Buffalo Tiger. I am chairman of the Miccosukee Tribal Business Council and president of the Miccosukee Corp., which is currently operating an educational and social welfare program for the Miccosukee Indians in Florida under a contract with the Bureau of Indian Affairs.

I am here today to express the support of the Miccosukee Tribe for S. 3157. Based on my experience in negotiating with the Bureau of Indian Affairs I am convinced of the value of S. 3157 to Indian people. I also believe that there are a number of improvements which can be made in this bill so that it will provide the Bureau with even greater flexibility in developing a contract program which will meet the just demands of Indian people for greater control over the educational and other governmental programs which the Federal Government provides for their benefit.

First, I would like to review my own experience in negotiating with the Bureau and explain how this bill would have helped us if it had been on the books last year.

In November 1970, our tribe presented to the Commissioner of Indian Affairs a detailed proposal for tribal operation of the Miccosukee Indian Day School and certain other programs which were being provided for us by the Bureau. On January 13, 1971, the Bureau gave us a written reply agreeing to our proposal in principle on the condition that we would agree to certain specific contract provisions. We agreed to the Bureau's requirements and submitted a proposed contract which met the Bureau's specifications early in February. The Bureau reviewed our contract and asked for new provisions which we accepted.

We were then told that the Solicitor's Office at Interior had decided that the existing laws did not authorize such an agreement to be made with an Indian tribe. This surprised us and made me feel as if we had been misled. However, we were told that the contract could go forward if we would charter a private corporation to be the contractor. We did this but only because this seemed to be the only way we could achieve self determination. Under S. 3157 we would have been able to go right ahead with our contract without having to go through the paperwork of setting up this separate corporation.

Then, in the middle of March, we were told by the Bureau that the provision for advance payments in our contract had to come out. This provision was essential to us. As a relatively poor Indian tribe we just weren't in a position to operate a substantial program of this kind and be reimbursed for our expenditures after they were made. Then the lawyers from the Association on American Indian Affairs who had been assisting us met with the lawyers at Interior and figured out a way that advance payments could be authorized. The Bureau agreed to keep the provision for advance payments in, but we understand that this provision was again questioned even after our contract went into effect. Our first advance for fiscal year 1972 was due on July 1, but because of these questions and the additional paperwork that the Bureau had to do we didn't receive our first advance until well into August. We were fortunate that our school doesn't have many expenses during the summer months.

This is a second point on which S. 3157 could be helpful. It specifically authorizes a provision for advance payments in contracts like ours.

After the question of advances was worked out we thought we were prepared to sign the contract. Then, however, we were told by the Bureau that our contract still had to be reviewed by the Assistant Secretary for Administration in the Interior Department, even though it had been cleared by the Bureau and approved in writing by the Associate Solicitor for Indian Affairs and the Associate Solicitor for Procurement and Patents.

By this time, the Miccosukee people were beginning to think that I had been wasting time and money in trying to negotiate a contract with the Bureau.

Again our lawyers called and informed us of additional problems. On April 1, the Assistant Secretary for Administration had sent a letter to the Commissioner disapproving our contract and advising that the Bureau should wait to contract with us until either new legislation was passed or specific approval was obtained from the Congressional Appropriation Committees. While we knew that President Nixon had sent some bills to the Congress designed to make contracting easier, we certainly did not understand that congressional action was needed to authorize our contract. We understood the President's policy statement of July 1970 to say that the Bureau would continue its previous contracting policy under existing laws. Otherwise, we don't see why the President cited with approval the "take-over" contracts which had already been executed in his policy statement.

This is another matter in which S. 3157 would have helped us and other tribes interested in the contract take-over program. The Assistant Secretary's letter stated: ". . . we do not believe, as a matter of policy, that the Department and the Bureau are on secure ground that present authorities are adequate to execute contracts of this nature." In other words, the question really was whether the Congress stands behind the President in his offer to contract with Indian tribes for the operation of Bureau programs.

This bill declares that "inasmuch as all government derives its just powers from the consent of the governed, maximum Indian participation in the government of Indian people shall be a national goal" and would put the Congress on record as backing up the President in

supporting Indian administration of educational and other governmental programs for Indian people.

We are advised by our lawyers and the lawyers at Interior that the Johnson O'Malley Act, which has been on the books since 1934, authorizes what we are trying to do. But even now, after our contract has been in effect for nearly a year, we still hear rumors that what we are doing is on the outer edges of what's legal. We are confident, however, in our contract with the Bureau, and in our program operations.

In April 1971 I made a special trip to Washington to check into this matter. At that time, I met with the Assistant Secretary of the Interior (copy of appeal statement attached). We were happy to learn that the Secretary decided to go ahead and approve our contract despite the doubts of his Assistant Secretary for Administration. Nonetheless, there was additional delay in order to obtain the specific approval of the House and Senate Appropriation Committees before our contract was finally signed in May 1971.

Let me say now that our contract has worked out fine. I am submitting to you a letter which was recently written about our school by the Director of the Bureau's Indian Training Center. It speaks for itself. We don't hold any hard feelings about what we went through to get our contract. But we had a lot of assistance which may not be available to every tribe.

For tribes which lack resources or outside help S. 3157 would help by making grants available for planning, training, and other technical assistance. We don't think it should be as hard for every tribe to contract for the operation of BIA programs as it was for us. That is why I wanted to speak with you today. Let me just add a few words on some changes I would like to see in S. 3157.

I am told that present law does not allow a contract like ours to run for longer than 1 year. We think that the Bureau should be able, once it has decided that a tribe can run a school, to let them have it for a reasonable period, say 3 years, without having to put in a new contract proposal every year. We had to start preparing our contract proposal for fiscal year 1972 last fall. We submitted it to the Bureau in January and have recently received word of a meeting to be held around May 18 to complete the negotiations for fiscal year 1973. Renegotiation of the contract every year takes a lot of time which could be saved for concentrating on program operations. Of course, we may well want to change the program ourselves and, if so, we can propose an amendment.

Second, while the bill relieves self-determination contracts from some of the requirements which are applicable to Government contracting in general, it still provides that we will be subject to all other Federal contracting laws and regulations. The regulations which have been developed to protect the Federal Government in its procurement of supplies and services in the marketplace are very detailed and complicated. They require the inclusion of a lot of boilerplate language which really has nothing to do with the kind of inter-governmental agreement which we have negotiated. Sometimes this boilerplate language is really detrimental to us. For example, there is a standard "changes" clause which gives the Government the right to amend the contract without our consent. An option should be included in such contracts for either party to terminate with a notice period—not less than 90 days in case of termination by the Government—

and the law should require that contracts include a provision allowing Indian tribes to terminate a contract for the purpose of retroceding an educational or other governmental program to the Bureau. We think it would also be desirable to provide for arbitration in case of a dispute between ourselves and the Bureau.

Finally, there are a lot of reporting requirements which are imposed by the regulations. I want to make it absolutely clear that we fully recognize the importance of fiscal accountability in these contracts. We have agreed to operate under a budget and to be subject to audit, but we question whether all the requirements set out in the Procurement Regulations developed for business contractors are really appropriate for our small tribe. Our administrative staff consists of myself and two or three other people. We really have a lot to do, and I would like to keep the paper work on the contract to the minimum that is necessary to insure fiscal accountability and that the Bureau has the information about our activities which it needs.

My feelings are strong on the belief that Indians are like other people and deserve the same basic rights. Flexibility should be exercised in individual self-determination contracts. Mismanagement on the part of some tribes should not reflect to the detriment of other contracting tribes.

Thank you for your consideration to Indian needs. I appreciate being invited to testify and urge you to assist Indian people to achieve control over their own destiny by enacting S. 3157 with the modifications which I have suggested.

(The complete statement of Mr. Tiger follows:)

STATEMENT OF BUFFALO TIGER, CHAIRMAN, MICCOSUKEE TRIBE OF FLORIDA TO THE SECRETARY OF THE INTERIOR ON THE PROPOSED CONTRACT BETWEEN THE BUREAU OF INDIAN AFFAIRS AND THE MICCOSUKEE CORP.

Mr. Secretary, I am addressing this appeal to you on behalf of the Miccosukee Indian people of Florida, because I am told that you are the only person within the Department of the Interior who can now reverse the decision of your Assistant Secretary for Administration, Mr. Richard R. Heidt, and direct that the Bureau of Indian Affairs shall now proceed to sign the agreement which we Miccosukees have negotiated with the Bureau during the past six months.

Our attorneys have submitted to the Department a point-by-point statement on the memorandum to Commissioner Bruce from the Assistant Secretary, dated April 1, 1971, which sets forth the reasons for the veto of our agreement. I only wish at this time to tell you how this situation now looks to us.

First, we were told in writing on January 15 by the Commissioner of Indian Affairs that our proposal for operating BIA programs for the Miccosukees was a sound one and that the Bureau would contract with us if we presented an agreement which met certain conditions. We presented a contract meeting those conditions at the beginning of February and were told by the Bureau that there were some additional requirements. We included those requirements in a new version of the contract.

Certain people in the Bureau then questioned legal aspects of the agreement. We then took it to the office of the Associate Solicitor for Indian Affairs. We had understood that this office renders legal advice on matters affecting Indian tribes to your Department. The Solicitor's office asked for several additional modifications so that it would be crystal clear that the agreement is within the Bureau's existing authority. We accepted these modifications, and we understand that the Solicitor's office then cleared our proposal in writing from a legal standpoint.

We were then told that before the agreement could be signed an entirely new office within your Department, the Office of Survey and Review, would have to look at it. We understand that this office has not reviewed the many similar agreements which the Bureau has made with other tribes. We are not aware of why our Tribe was singled out for this special scrutiny, but we are advised by our attorneys that it is not because of any distrust or animosity toward us as Miccosukees, but because there is a continuing struggle within the Department as

to whether the policy of contracting with Indian tribes endorsed by the President on July 18, 1970, is a wise one and that we have simply been caught in the middle of that struggle.

We do not know for sure why Commissioner Bruce was told to drop our contract last week by your Assistant Secretary for Administration. We do know that it cannot be for the reasons given in his April 1 memorandum. The reasons advanced are either based on a misstatement of facts or are legally inaccurate.

We presented a concrete plan to the Bureau in November indicating the changes in the existing BIA program which we proposed to make. We cannot believe that our acceptance of the existing Fiscal Year 1971 budget so that the agreement could go into effect in the current fiscal year is a valid ground for vetoing our proposal. We are perfectly willing to submit reports at reasonable periods if the Bureau will tell us what kind of reports it wants. We are not seeking a profit from the agreement, and the termination provision objected to by the Assistant Secretary was included on the Bureau's insistence, not at our suggestion. We have already agreed to grant to the Government a lien on the account into which contract funds would be paid.

Finally, we simply cannot believe that the Assistant Secretary's recommendation that the Bureau should either wait for new legislation or submit our \$23,000 proposal to "the pertinent Congressional committees" for approval is to be taken seriously. This must be the Assistant Secretary's idea of "April Fool." While he admits that present statutory authority can be interpreted to authorize the program of contracting with tribes, he argues that "... the Administration has chosen to take the legislative route for authorization of the program..." This is simply not what the President said on July 8, 1970.

While the President presented legislative proposals which were intended to make the program easier and to give a tribe the right to require tribal control, he endorsed the existing policy, stating on page 3 "... It is my hope and expectation that most such transfers of power would still take place consensually as a result of negotiations between the local community and the Federal Government..." and again on page 4 "... Two Indian tribes—the Salt River Tribe and the Zuni Tribe—have recently extended this principle of local control to virtually all the programs which the Bureau of Indian Affairs has traditionally administered for them. Many Federal officials, including the Agency Superintendent, have been replaced by elected tribal officers or tribal employees."

As I say, we do not know why our contract has been singled out for rejection. We are advised that it is because there are those within the Department who simply don't believe that Indian tribes can "hack it." These trumped up technicalities are being used not only to defeat our proposal but to sabotage the Indian policy of the President of the United States. It may be that some of these bureaucrats feel that we are a small tribe, without the numbers and political influence of our brothers in the West, that we have a low level of formal education, that we are unsophisticated in the ways of the white man, and that we can be hoodwinked and pushed around with impunity.

If so, they are wrong. Our numbers may be small and our average level of formal education may be the second grade, but we have dealt with the white man for two centuries and we know his ways. In 1799 under King Harjo our people prevented the surveying through our country of the alleged boundary between the United States and the domains of the King of Spain. In 1835 and 1836 our people, together with our Semole allies, drove the U.S. Army from our lands along the Withlacoochee River. From 1836 to 1843 we held the Armed Forces of the United States at bay and won on the field of battle the right to a homeland in Florida.

Despite the past, we have been willing to work with your Department to meet the educational and economic needs of our people. We believed the promises held out in the President's July statement. We have devoted months and months of the time of our small tribal staff to the preparation and clearance of this proposal.

For myself, let me say that I cannot believe that our efforts have been wasted. I cannot conceive that you and the President and Commissioner Bruce have really lost control of your bureaucracy. I have told my people that this is just one more of the trials by which we must be tested before we can assume the responsibility for our own educational program. I have done so in the belief that, now that this matter has been brought to your personal attention, you will act promptly to direct Commissioner Bruce to proceed to redeem the pledge made to us in the Bureau's letter of January 15.

NATIONAL INDIAN TRAINING CENTER,  
April 7, 1972.

Mr. S. BOBO DEAN,  
*Association on American Indian Affairs, Inc.,*  
*Washington, D.C.*

DEAR MR. DEAN: I have been out of the office, and just now have been able to respond to your request of March 31, 1972. Let me say that I was not at the Miccosukee Indian Day School for the basic task of evaluation, but to attend a planning session to outline certain staff training needs. I was at the school the better part of two days the first week in March for this purpose. With this background in mind, anything I say should be considered as a reaction, rather than a formal evaluation.

In describing what I observed I would like to respond in terms of a five point nature:

1. The building was very adequate for the most modern programs of learning. It was neat, well lighted, clean and orderly, and there was evidence everywhere of children's work up on the walls and throughout the facility. I liked the flexibility of the building. If I were to make any recommendation in the facility category perhaps floor coverings would provide greater acoustical control of the learning environment.

2. The staff was superb. There are few Indian schools that have greater staff competence, or that work any better as a team. The aides, Billy, Louise, and teachers Nancy and Patti, seemed to respond to the needs of each and every student on an individual basis, and the children appeared to be very happy in this school setting. The aides were able to speak to the children in their primary language, and because of their security and communication and good feelings toward the professional teachers they were able to support the student in a very rich learning environment.

3. The curriculum was very adequate and modern in both scope and sequence, and presented in a manner I have not seen equaled in any Bureau of Indian Affairs school. The staff was using the latest teaching tools and materials, and, in addition, had modified some curriculum modules to suit the needs of the children. Evidence was observed of cultural elements in the curriculum to help to strengthen ties between the home and the school and to assist in preserving the rich Indian heritage of these boys and girls. I took several of the young children aside and had them read to me. They were poised and secure in their own ability and did remarkably well. While I did not collect research statistics on reading, speech and comprehension, from my experience, I would say the children I observed would certainly be reading as well as or better than other children of the same age in any school in the country. Other elements of the curriculum which I observed were equally well presented and student performance was of a very high calibre.

4. Organizational characteristics dealing with methods of instruction were of the most modern variety. The school was non-graded for all practical purposes, and focus was placed on student performance, rather than having students just cover materials and "be in class." It was thrilling to see the self-motivation and excitement for learning exhibited by these children.

5. Educational leadership and perception demonstrated by the school administrator were of the highest. Staff were aware of the latest trends and innovations in education and were provided the opportunity and were implementing many of these practices. I observed team teaching where each member of the team assumed the responsibility for success of the student and thereby the success of the school program. The school is a community school and many adult learning activities are carried on here under the direction of John Adams. Concepts like differentiated staffing, performance curriculum, modular and flexible learning patterns, and individualized instruction are a continuous reality in this school.

In conclusion, let me say that I found the school learning atmosphere to be of the highest order. I have not been to all of the B.I.A. Indian schools, but I would say this school would certainly be one of the leading schools in the United States. It is a school I would be proud to have my own children attend.

I hope this information and few subjective comments will be of assistance to you in perpetuating this excellent educational enterprise.

Sincerely,

PAUL C. FAWSON,  
*Acting Director.*

Senator FANNIN. Thank you, Chairman Tiger and Counsel Dean.

Mr. Dean, would you care to distinguish for the committee the potential contracts that might be negotiated under S. 3157 and the different requirements to cover such contracts.

Mr. DEAN. The way I would like to respond to that is to say this. S. 3157 is directed toward assisting Indian communities to govern themselves, it is directed toward educational programs, primarily toward educational programs and other forms of social welfare and governmental programs. In addition, it covers, for example, road construction projects. I think there is an important distinction to be made between a program which is assisting an Indian community in essential Government operations and assistance in which, or a contract in which, the Government is buying a product. The procurement regulations did the contract laws which are on the books and applicable to the Government in its dealings, for example, with Boeing and some other large Government contractor, might very well be appropriate for buying a road construction contract from an Indian tribe, where what we need for Indian communities is either a grant program or contracting program which is as nearly like a grant program as possible, which has the flexibility to enable certain requirements to be developed for Mr. Tiger's tribe which is very small, and perhaps other contracts imposed on other tribes which are larger and have a more complex operation.

Senator FANNIN. Thank you for that clarification, Mr. Dean. Do you consider the exemptions from the Federal procurement regulations provided for in section 35 of the bill sufficient to enable the Federal Government to provide a successful contracting program?

Mr. DEAN. I think there are a number of other specific provisions which should be included in the bill. With respect to the procurement regulations, I would like to use an example and I feel that maybe further study will show other general contracting requirements which should be omitted. Mr. Tiger has mentioned the matter of the changes clause. It is a standard Government contracting procedure to insist that the United States has the right to amend a Government contract during its term. In our, or in the Miccosukee contract that provision has been deleted. We have been informed by the Bureau, in negotiating for the renewal of the Miccosukee contract, the Bureau will insist on the standard clause. The Office of Education in the Bureau has submitted to us they can see no reason why the Bureau could not agree for a particular year to a particular curriculum without reserving the right to delete a course and adding a course during the contract without the consent of the tribe.

Mr. Tiger feels, and other Indian organizations feel, that it should be possible for the Federal Government and an Indian School Board to agree on a fixed program. But the contract people in the Bureau have told us that is not sound contracting policy and the Bureau must retain the right, for example, to add a new course or reorganize the curriculum during the period of the contract, that would be one example where I think a general applicable contracting requirement should be modified.

Senator FANNIN. Thank you. Do you have any further comments?

Mr. DEAN. No, sir.

Mr. BUFFALO TIGER. No, sir.

(The full statement of Mr. Dean follows:)

STATEMENT OF S. BOBO DEAN, ON BEHALF OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, THE NAVAJO TRIBE, THE OGLALA SIOUX TRIBE, THE METLAKATLA INDIAN COMMUNITY, THE SAN CARLOS APACHE TRIBE, THE SALT RIVER PIMA-MARICOPA TRIBE AND THE HUALAPAI TRIBE

My name is S. Bobo Dean. I am associated with the law firm of Fried, Frank, Harris, Shriver & Kampelman, legal counsel for the Association of American Indian Affairs and Washington counsel for the Navajo Tribe, the Oglala Sioux Tribe of the Pine Ridge Reservation, the Metlakatla Indian Community in Alaska, the San Carlos Apache Tribe, the Salt River Pima-Maricopa Tribe and the Hualapai Tribe of Arizona.

On behalf of the Association and of several of our clients I have assisted a number of tribal organizations in connection with negotiating contracts for the operation of schools with the Bureau of Indian Affairs.

Based on the experience of the Miccosukee Tribe, the Ramah Navajo School Board, the Busby School Board on the Northern Cheyenne Reservation and the Loneman School Corporation, all of which are seeking to implement the policy of Indian participation in the administration of educational programs for Indians, the Association on American Indian Affairs, as well as the Indian tribes identified above, support the views expressed by Mr. Buffalo Tiger, the Miccosukee Tribal Chairman, and urge the enactment of S. 3157 with the modifications as he has requested.

Let me give you a concrete example of how this bill would help tribes like the Miccosukees in contracting with the Bureau. At present a provision for payments in advance must be specifically approved by the Assistant Secretary for Management and Budget in the Interior Department. Because of the necessity to secure this approval, funds for operation of the Miccosukee program due on July 1 did not arrive until late August. I understand that for many months the Bureau has had pending with the Department a request for an approval of advance payments in all school contracts like the Miccosukee contract but no such approval has been given. This bill would give statutory authorization for advance payments in the types of contracts covered by the bill. Obviously a provision for advances is a key tool in contracting with Indian tribes with meager resources.

Enactment of this bill should also make it crystal clear that the Congress stands behind the President in his willingness to allow Indian tribes to manage their own affairs, especially in the field of education. The following specific amendments are requested in order to deal with the problems in the present language of the bill which Mr. Tiger has mentioned.

AMENDMENT NO. 1

After "amended" in line 3 on page 7 of S. 3157, add:

"and except that the appropriate Secretary may waive any such Federal contracting law or regulation whenever its application would be inconsistent with the goals and purposes declared in this Act."

AMENDMENT NO. 2

After line 2 on page 8, add the following:

"(f) Contracts with tribal organizations pursuant to this Act may be for any term not exceeding three years, subject to the availability of appropriations."

AMENDMENT NO. 3

After Amendment No. 2 above add the following:

"(g) Contracts with tribal organizations pursuant to this Act may contain a provision for arbitration of disputes arising thereunder subject to the provisions of the United States Arbitration Act."

AMENDMENT NO. 4

After Amendment No. 3 above add the following:

"(h) Contracts with tribal organizations pursuant to this Act shall contain a provision authorizing the Contractor to terminate the contract upon reasonable notice (which shall be not more than 90 days) for the purpose of retroceding to the appropriate Secretary the control of and responsibility for any educational, health or social welfare program operated thereunder."

In addition, the Committee should give serious consideration to expanding the grant authority in the bill to the operation of programs by trival organizations, as well as for planning, training and such incidental activities.

Grants-in-aid are now widely used by the Federal agencies in assisting local communities in operating educational and other governmental programs. The contract device may be suitable for a road construction project or other projects where the Government is really buying a tribe's commercial product, but if the principal purpose is to assist the tribe to educate its children, maintain law and order on its reservation, or conduct other governmental programs for the benefit of its members, it may well be that the flexibility of a grant program is better suited to the purpose.

Let me illustrate one of the ways in which usual contracting procedures are inappropriate for an arrangement under which an Indian tribe or school board is assisted by the Bureau to conduct an educational program for Indian children.

The Miccosukees, and other tribal groups with which I have discussed the matter, would prefer an arrangement under which the Bureau and the school board agree before the beginning of a school year on the type of educational program to be conducted and any change in the program during the year must be approved by both sides.

I understand that the Bureau's education office has no objection to this arrangement, but the Bureau is still insisting that the standard changes clause, which allows the Bureau to amend the contract unilaterally in the middle of the school year be included in all future education contracts. I have been told by the Bureau that this provision is not required by law but is a requirement of "sound contracting policy."

Whether through a grant program or through a special waiver of contract requirements I think it should be possible for the Bureau to agree with an Indian school board to a definite educational program ahead of time without reserving the right to add "trigonometry" to the curriculum or to delete "Indian culture" in midstream.

Subject to the qualifications which I have noted, the Association on American Indian Affairs, the Navajo Tribe, the Oglala Sioux Tribe, the Metlakatla Indian Community, the San Carlos Apache Tribe, the Salt River Pima-Maricopa Tribe and the Hualapai Tribe give their full support to S. 3157 and urge its enactment.

Thank you.

Senator FANNIN. Thank you for your appearance before this committee today, and your valuable testimony.

The hearing will now stand adjourned and the record will be held open for 10 days.

(Whereupon, at 12:55 p.m., the hearing was adjourned, subject to the call of the chair.)

The first and second series of tests were conducted in the laboratory of the U. S. Bureau of Biological Services, Washington, D. C. The third series of tests were conducted in the laboratory of the U. S. Bureau of Biological Services, Fort Collins, Colorado.

The first and second series of tests were conducted in the laboratory of the U. S. Bureau of Biological Services, Washington, D. C. The third series of tests were conducted in the laboratory of the U. S. Bureau of Biological Services, Fort Collins, Colorado.

## APPENDIX

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(Under authority previously granted, the following statements and communications were ordered printed:)

STATEMENT OF HON. ARTHUR A. LINK, A U.S. REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF NORTH DAKOTA

Mr. Chairman. Thank you for the opportunity to express my support of S. 3157, the Indian Self-determination Act of 1972.

I come from a state, North Dakota, which has more than 14,000 Indians residing on or near four reservations: Standing Rock, Fort Berthold, Fort Totten and Turtle Mountain.

We surely need continued federal programs to help Indians. But a weakness of past programs has been that Indians have played second fiddle in developing and administering them.

It seems reasonable that federal programs would be more successful if Indians were granted greater participation and involvement.

S. 3157 would grant maximum Indian participation in federal programs with local Indian people in management positions.

The four reservations in my state have been participating in federal programs since their creation, but not until recent years have they had the opportunity for local management control.

In the past, very few Indians in the nation have been able to plan, develop, and then administer programs responsive to the needs of their people. A major reason has been a lack of training and education. S. 3157 would assist in the training at the local level with the detailing of federal personnel to a tribal organization upon request.

The Indian people are very proud of their heritage and endeavors. Two of the reservations in North Dakota—Standing Rock and Fort Berthold—have been selected by the Bureau of Indian Affairs as two of the initial twenty-eight tribes to participate in the Reservation Acceleration Program (RAP).

The Standing Rock and Fort Berthold Indians have already taken promising initiatives. The Standing Rock Sioux have developed a master plan calling for projects and programs projected forward to the year 2000. The Three Affiliated Tribes of Fort Berthold have undertaken the development, construction and management of a motel-recreation complex on their reservation, to open for business this month.

These two projects represent a solid beginning for the full development of Indian potential. The approval of the Indian Self-determination Act of 1972 would help develop this potential on a broad front, by giving Indians a greater voice in planning, developing and administering programs for their people.

I urge your Committee to give S. 3157 favorable consideration.

