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APPROVED

JAN 4 - 1975

Statement issued 1/4/75

ACTION

Last Day: January 4

THE WHITE HOUSE
WASHINGTON
January 2, 1975

*Revised 1/4/75
TSAR:CVES
1/6/75*

MEMORANDUM FOR THE PRESIDENT
FROM: KEN COLE
SUBJECT: Enrolled Bill S. 1017 - Indian Self-Determination and Educational Assistance Act

Attached for your consideration is H.R. 1017, sponsored by Senator Jackson, which:

- Directs the Secretaries of Interior and Health, Education and Welfare to contract with Indian tribes for tribal operation of programs and services now provided by the Bureau of Indian Affairs and the Indian Health Service;
- establishes guidelines and criteria for such contracts;
- provides more Indian control over Federal contracts with public schools educating Indian students; and
- authorizes Interior to fund construction of public schools on or near reservations.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf (Loen) and Phil Areeda both recommend approval. Paul Theis has approved the text of the proposed signing statement.

RECOMMENDATION

That you sign S. 1017 (Tab C)

Signing Statement (Tab B)

Approve *MC*

Disapprove _____



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 31 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1017 - "Indian Self-Determination
and Education Assistance Act"
Sponsor - Sen. Jackson (D) Washington and 15 others

Last Day for Action

January 4, 1975 - Saturday

Purpose

Directs the Secretaries of Interior and Health, Education and Welfare to contract with Indian tribes for tribal operation of programs and services now provided by the Bureau of Indian Affairs and the Indian Health Service; establishes guidelines and criteria for such contracts; provides more Indian control over Federal contracts with public schools educating Indian students; and authorizes Interior to fund construction of public schools on or near reservations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval (Signing statement attached)
Civil Service Commission	Approval
Department of Health, Education and Welfare	Defers to Interior
Department of Labor	No position (Inferentially)

Discussion

The concept that Indian tribes should govern themselves has been recognized in law since the earliest days of the Republic. But actions of the Congress and the Bureau of Indian Affairs over the years led to a situation in which



Federal officials rather than tribal governments administered programs on the reservations. It became clear in the 1920's that this policy was not effectively providing Indian people with the necessary skills to function in the non-Indian society. In response to the need to move away from paternalism toward eventual Indian self-government, Congress enacted legislation as early as 1934 which brought some measure of Indian control. But that legislation and the other statutes which the Bureau of Indian Affairs now uses to foster self-government fall far short of the legislative basis needed to give substance and credibility to the current Congressional and Administration policy of maximum self-determination consistent with the maintenance of the historic Federal trust responsibility.

The Executive's commitment to self-determination was demonstrated in President Nixon's special Indian message to the Congress in July 1970 recommending a number of proposals, several of which are embodied in the enrolled bill.

Provisions

Title I (the "Indian Self-Determination Act") would direct the Secretary of the Interior or the Secretary of HEW, upon the request of a tribe, to enter into contracts under which the tribe itself would operate programs now administered by the Bureau of Indian Affairs or the Indian Health Service. The appropriate Secretary could initially decline to contract by making a finding that tribal performance would not be satisfactory, but the bill stipulates that he must then provide assistance to the tribe to overcome his objections.

To assist in carrying out the contracts, Interior would be authorized to make grants from its annual Indian appropriations for the purpose of strengthening tribal government and for the acquisition of any necessary land within reservation boundaries. Likewise, HEW would be authorized to make grants from IHS funds for the construction and operation of health facilities and for the training of health personnel.

The enrolled bill contains provisions covering such matters as advance payments, auditing and reporting of accounts, criminal penalties for misuse of contract funds, tribal use of Federal buildings and property, and conditions under which the appropriate Secretary could rescind a contract and resume control of a program.



Under the bill, Federal employees now in Indian programs who transfer to tribal employment in connection with such contracts before December 31, 1985, could elect to continue receiving Civil Service insurance and retirement benefits, and the tribe would make the usual agency contributions to the appropriate funds. In addition, tribes would be considered local governments under the Intergovernmental Personnel Act for the purpose of making cross-assignments of personnel with Federal agencies, whether or not a tribe was operating a program under contract.

Title II (the "Indian Education Assistance Act") would amend the Johnson-O'Malley Act of 1934, under which States and localities contract for the education of Indian children, to:

- increase participation by Indian parents in decisions affecting the education of their children;
- require each contractor to have an education plan approved by the Secretary of the Interior; and,
- provide full reimbursement to school districts for the cost of educating out-of-State Indian children.

Further, the Secretary of Interior would be required to submit to the Congress by October 1, 1975:

- a comprehensive analysis of the Johnson-O'Malley Act;
- a specific program to meet the needs of Indian children attending public schools; and,
- a specific program to assist the development of Indian community colleges.

Title II would also authorize the Secretary of Interior to contract with State and local educational agencies for the purpose of building or acquiring schools on or near reservations. 75% of any funds appropriated would be used



for projects which would otherwise qualify for Federal "impact aid" monies, and would be spent on the basis of priorities determined by the Commissioner of Education under the "impact aid" Act. The remaining 25% of funds would be spent at the discretion of the Secretary of Interior, and would cover Indian-controlled contract and private schools. Title II would authorize the appropriation of \$35 million for fiscal year 1975 and each of the four succeeding fiscal years, and the enrolled bill requires that any assistance given under its provisions would be in addition to assistance under the Indian Education Act of 1972.

Finally, Interior would be directed to furnish the Congress with a comprehensive evaluation of the effectiveness of the school construction program and with recommendations regarding transferring responsibility for certain Indian school construction programs from HEW to Interior.

Administration Position

The Senate Interior Committee substantially incorporated the self-determination proposals growing out of the President's 1970 message, but added Title II, authorizing a number of new Indian education programs within the Department of the Interior. When the Senate-passed bill came before the House Interior Committee, Interior and HEW testified in favor of Title I but strongly opposed almost all of the Senate's Title II on the basis that the proposed programs would duplicate existing HEW programs. The House Committee deleted a substantial portion of Title II, but modified and strengthened the provisions regarding school construction, and the House version was enacted without change.

Agency views

In its enrolled bill letter, HEW finds Title I "acceptable," but points out that the school construction provisions of Title II substantially duplicate existing HEW authority for construction in Indian areas. The Department states:

"We see no need for additional appropriations authority with regard to such construction, and the existence of parallel programs . . . can only confuse potential grantees and increase the administrative cost of providing such

assistance. We would expect that . . . no funds will be requested for this part, and that school construction in Indian areas will remain a function of this Department"

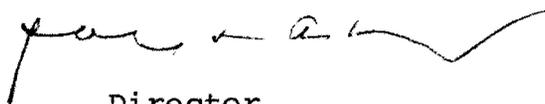
But "realiz[ing] that the importance of other features of S. 1017 undoubtedly outweigh the reservations we have . . . ,"
HEW defers to Interior with regard to enactment.

Strongly urging your approval, Interior states in its enrolled bill letter that "enactment of S. 1017 will be the fulfillment of a great portion of the Indian self-determination program supported by the Administration for the last several years."

OMB Comment

Despite the potential problems presented by the construction authorities in Title II, we agree with Interior that the enrolled bill merits your approval since the provisions strengthening Indian self-government make this proposal one of the most significant pieces of Indian legislation in the last 40 years. With regard to the school construction program, no funds have been proposed in the fiscal 1976 budget to fund these provisions, and we believe that the funds proposed under existing HEW authorities are sufficient for this purpose.

Attached for your consideration is a signing statement prepared by the Department of the Interior.



Director

Enclosures

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

JAN 7 1975

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

This is in response to your letter requesting comments on S. 1017, an enrolled enactment entitled the "Indian Self-Determination and Education Assistance Act."

This bill, which provides for maximum Indian participation in the Government and education of the Indian people, vests principal program authority and responsibility in the Department of Interior. Therefore, we defer to that Department regarding the self-determination and educational assistance provisions of the bill.

However, one labor-related concern requires comment. In general, the Department is opposed to the extension of Federal Employees Compensation Act coverage to Federal employees transferring to a non-Federal payroll as will occur under section 105(e) of the enactment. We would not want this extension of Federal Employees Compensation Act coverage to transferring Federal employees to become a precedent for other extensions of this type. We would not, however, recommend a veto on this basis.

We do recommend and expect that the Department will assist in the promulgation of Presidential regulations to implement section 105(e), particularly the procedures for billing the responsible party for the cost of this additional coverage.

Sincerely,



Secretary of Labor

THE WHITE HOUSE

WASHINGTON

1/2/75

Judy:

The attached is an OMB draft
which Mr. Theis has edited.

It is in connection with Log No. 942 --
EB S. 1017 - Indian Self-Determination
and Educational Assistance Act.

Judy Morton

THE WHITE HOUSE
WASHINGTON

004
CAB

TO: Paul

FROM: MIKE DUVAL

For your information _____

Comments:

This new OMB
draft looks
good.

Mike



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 27 1974

Dear Mr. Ash:

This responds to your request for our views on the enrolled bill S. 1017, "To promote maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right to Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes."

We recommend that the President approve the enrolled bill.

S. 1017 authorizes and directs the Secretary of the Interior and the Secretary of Health, Education and Welfare to contract with Indian tribes or tribal organizations for the operation of programs and services provided by the Bureau of Indian Affairs and the Indian Health Service under guidelines and criteria established by the bill; amends the Johnson-O'Malley Act with respect to providing more Indian control of contracts for assistance to public schools enrolling Indian students; and authorizes the Secretary of the Interior to provide assistance for construction to public schools enrolling Indian students.

I. Background

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 to assume administrative responsibility for a service program which is presently administered by a Federal agency.

Enrolled bill S. 1017 represents a major step in the continuing effort to strengthen the Federal commitment to Indian self-determination. The administration has articulated a policy of Indian control and self-determination consistent with the maintenance of the Federal trust responsibility and the unique Federal-Indian relationship.

To accomplish this the Administration relies on a combination of four basic Acts: through the use of the "Buy Indian" Act of 1910 (36 Stat. 861) competitive bidding of contracts with Indian tribes can be waived: where the contracts relate directly to educational services for Indian children in public schools, authority is found in the Johnson-O'Malley Act of 1934 (48 Stat. 596), as amended; while other services are contracted for through the Snyder Act of 1921 (42 Stat. 737) to authorize tribal supervision over the Federal employees. This curious mixture of broad interpretation and unrelated statutes represented an attempt by the Department to improve the quality of education and other services and to promote greater self-determination for Indian tribes. The difficulties in straining statutory language beyond its original intent creates numerous administrative and management problems which this legislation is designed to correct.

S. 1017 as enrolled substantially includes or meets the Indian Affairs policy objectives of five (5) Administration legislation proposals these proposals are: (1) the assumption of control proposals, first made in 1970; (2) the proposal to permit Johnson-O'Malley contracts with tribal governments, first made in 1970; (3) the Federal employee transfer to tribal employment proposal, first made in 1970; (4) the tribal government grants proposal, first made in 1973; and (5) portions of the proposal by the Civil Service Commission relating to tribal eligibility concerning employment and grants for certain purposes.

S. 1017 was passed by the Senate on April 1, 1974. The House Committee on Interior and Insular Affairs adopted several major amendments to the Senate-passed bill. Most of such amendments were recommended by this Department and the General Accounting Office.



The House Interior Committee adopted three new sections in the preliminary provisions of S. 1017. These sections tightened up the contracting requirements for contracts under the Act in the areas of auditing and reporting, criminal penalties for misuse of contract funds, applicability of the Davis-Bacon Act to contracts under the Act, and preferences for Indians and Indian subcontractors. Each were recommendations of the Interior Department and GAO.

In title I, the Committee expanded the grant provisions of section 104 pursuant to our recommendation in our report to the Committee dated May 17, 1974. These grants are made in order to facilitate contracting by tribes and tribal organizations under the terms of the Act. The specific purposes for which the grants are to be made are clarified and, to some extent, expanded and the authorization for appropriations for such grants are made under the so-called "Snyder Act" which is the general appropriation authorization for the Bureau of Indian Affairs. A later amendment struck the specific authorization provision contained in the Senate-passed bill.

Section 105 contains provisions relating to transfers of Civil Service employees of the Bureau of Indian Affairs and the Indian Health Service to tribal employment under contracts entered into pursuant to the provisions of the title. The Committee adopted amendments which (1) permit tribes and tribal contractors to be eligible for grants from the Civil Service Commission under the Intergovernmental Personnel Act to strengthen personnel administration of the contractors; (2) permit Federal employees transferring to tribal employment under such contracts to retain the various fringe benefits of Federal employment; and (3) exempt such transferring employees from the conflict-of-interest provisions of section 205 and 207 of title 18, U.S.C. which would be inappropriate to the circumstances of such contracts.

In title II the House Interior Committee deleted four parts authorizing new programs in the area of Indian education within the Department of the Interior. The Committee did so on the basis of this Department's recommendation that authority already existed for such programs and that in some cases, such programs were being implemented or would be duplicative of existing programs.

II. Provisions of the Bill

A. Preliminary Provisions

Section 1 cites the bill as the "Indian Self-Determination and Education Assistance Act."

Section 2 contains a statement of congressional findings and section 3 contains a declaration of congressional policy.

Section 4 contains the definitions of the terms included in the Act. "Indian" means a member of an Indian tribe. "Indian tribe" is defined to include the Alaska Native villages or Regional or Village Corporations under the Alaska Native Claims Settlement Act. "Tribal organization" includes the governing body of an Indian tribe and Indian organizations controlled, sanctioned, or chartered by such a governing body or which are democratically elected by the Indian community to be served. This latter definition includes a proviso giving each tribe to be served under a contract or grant the right to approve the organization receiving the contract or grant.

Section 5 contains record keeping requirements, provision for GAO and Interior Department audits, requirements for providing reports and information to the Indian people served, and for funds not used to be returned to the U.S. Treasury.

Section 6 provides criminal penalties for embezzlement, misapplication, etc., of funds received under the Act or under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.).

Section 7(a) makes the wage and labor standards of the Davis-Bacon Act applicable to contracts and subcontracts under the provisions of this bill. Section 7(b) provides that the contracts and grants under this bill, the Johnson-O'Malley Act, "or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians" shall require to the greatest extent feasible (1) Indian preference and opportunities for training and employment in the administration of such contracts or grants and (2) Indian preference in the award of subcontracts and subgrants. It should be noted that this provision extends to all "Indian programs" in the Federal government and not just those in the Bureau of Indian Affairs and the Indian Health Service.



Section 8 provides that funds appropriated under the Snyder Act remaining unused at fiscal year end may be carried over for use in the following year. This provision will apply to most of the funds appropriated to the BIA for other than construction purposes.

B. Title I

Section 101 provides that this title may be cited as the "Indian Self-Determination Act".

Section 102 is a basic contracting provision relating to the BIA and is in line with the basic policy in the Administration's assumption of control proposal and Johnson-O'Malley contracting with tribal governments proposal.

Section 102(a) directs the Secretary of the Interior to enter into contracts, upon the request of Indian tribes, with tribal organizations to perform the programs and services carried out by the Bureau of Indian Affairs on Indian reservations under its various authorities. The Secretary, under certain circumstances, may decline to do so.

Section 102(a) also provides that the Secretary "may initially decline" to enter into a request contract if he finds that - the services to the Indian beneficiaries will not be satisfactory; adequate protection of trust resources is not assured; or the project or function cannot be properly completed or maintained by the proposed contract. In arriving at such a finding, consideration is to be given as to whether the tribal organization would be deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program to be contracted, (4) community support for the contract, (5) adequately trained personnel, or (6) other necessary components of contract performance.

Subsection (b) of section 102 requires the Secretary to inform the tribe of his reason for declining to enter into a requested contract, assist the tribe or tribal organization in overcoming his stated reasons, and provide the tribe with a hearing on his objections with the right of appeal.

Subsection (c) authorizes the Secretary to require a tribe to secure appropriate liability insurance as a prerequisite to contracting under the bill, but the insurance company must waive any subrogated right it may have to set up as a defense on the insurance policy the tribe's sovereign immunity from suit, provided further, that such company may not waive the tribe's sovereign immunity beyond the limits of the policy.

Section 103 is similar to section 102 but relates to HEW and the Indian Health Service.

Section 104(a) authorizes the Secretary of the Interior to make grants to tribal organizations to facilitate their contracting under the terms of section 102. This granting authority in the BIA is comparable to that in the Indian Tribal Government Grant Act proposed by the Administration in 1973. Grants or contracts are authorized from the BIA's regular budget funds for:

"(1) The strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems, the improvement of tribally funded programs or activities, or the development, construction, improvement, maintenance, preservation or operation of tribal facilities or resources);

"(2) The planning, training, evaluation, or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

"(3) The acquisition of land in connection with items (1) and (2) above: Provided, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe, or

"(4) The planning, designing, monitoring, and evaluating of Federal programs serving the tribe."

Section 104(b) provides granting authority for the Indian Health Service and HEW.

Section 104(c) permits grants under subsection (a) and (b) to be used as matching shares for other Federal grant assistance which contribute to the purpose of facilitating tribal contracting under this Act.

Section 105 includes provisions relating to personnel. Subsection (a) and (d) are consistent with the Civil Service Commission's proposed Intergovernmental Personnel Act Amendments of 1974.

Section 105(a) amends the Intergovernmental Personnel Act (5 U.S.C. 3371 et seq.) to make Federally recognized Indian tribes and their tribal organization eligible for temporary (up to 2 years renewable for up to 2 more years) assignments of Federal employees to them and for temporary assignment of tribal employees to Federal agencies.

Section 105(b) relates to the assignment of Public Health Service commissioned officers to tribes.

Section 105(c) relates to HEW-Indian Health Service personnel.

Section 105(d) makes any Indian tribe, "which performs substantial governmental functions" eligible under the Intergovernmental Personnel Act (42 U.S.C. 4721, 4762) for Civil Service Commission grants to upgrade and improve tribal personnel systems or aid tribal personnel training programs. Tribal grant applications are not reviewable by the the Governor of the State.

Section 105(e) thru (i) incorporates substantially all of the proposal by the Administration concerning Federal employee transfer to tribal employment and civil service fringe benefit retention. A Federal employee "who leaves Federal employment to be employed by a tribal organization on or before December 31, 1984, in connection with governmental or other activities which are or have been performed by [Federal] employees in or for Indian communities is entitled, if the employee and the tribal organization so elect" to retain his civil service coverage for "Compensation for Work Injuries", "Retirement", "Health Insurance", and "Life Insurance". The usual employee deductions and agency contributions by the tribal organizations are required for continuation of these fringe benefits.

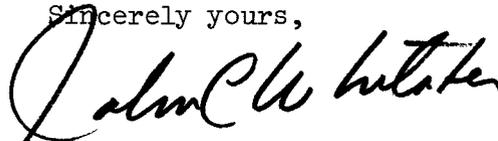
The provisions in subsection (e) thru (i) do not include a five year right for former Federal employees employed by a tribe to request and obtain reemployment by the Federal agency they left for tribal employment. Such a right had been included in the Administration's proposed bill but the provisions in section 105(a) provide an alternate method of providing a period of trial employment with tribal organizations.

Section 105(j) provides that Federal employees assigned to tribal organizations or former Federal employees employed by tribal organizations are not subject to the restrictions under the conflict of interest provisions in 18 U.S.C. 205 and 207 on their activities on behalf of such tribal organizations.

Section 106 includes a number of "Administrative Provisions."

Enactment of S. 1017 will be the fulfillment of a great portion of the Indian self-determination program supported by the Administration for the last several years. We strongly urge that the President approve the enrolled bill.

Sincerely yours,



~~Under~~

Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503



SIGNING STATEMENT FOR S. 1017

The Indian Self-Determination and Education Assistance Act is a major legislative achievement. It substantially includes or meets the Indian Affairs policy objectives of five Administration legislative proposals. As the title of the Act indicates, it will greatly facilitate the implementation of this Administration's policy of Indian self-determination.

This Act gives the permanence and stature of law to our policy of allowing Indian tribes to operate the programs serving them under contract with the Federal Government.

In addition to making this kind of contracting a right, the Act does much to make it feasible and practical.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to assist them to develop their capacity -- through training of personnel and other means-- for the operation of programs. It also allows Federal employees, at the request of the tribe, working in programs transferred to tribal operation to continue working without losing Federal fringe benefits -- making it possible for the tribe to begin operation with a nucleus of experienced employees.

The granting authority provided in the Act can also be used for strengthening tribal governments and tribally funded programs; for the development, maintenance and operation of tribal facilities or resources; for needed land acquisitions, and for tribal planning, designing, monitoring and evaluating Federal programs serving the tribe.

Title II, the Indian Education Assistance Act, amends the Johnson-O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of JOM funds for their children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

The enactment of this legislation is a milestone for Indian people. I think it will enable this Administration through the Department of the Interior and the Bureau of Indian Affairs to work more effectively with Indian tribes for the betterment of Indian people by assisting them in meeting goals they have set.



CHAIRMAN

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D. C. 20415

December 27, 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Attention: Mrs. Garziglia
Room 7201
New Executive Office Building

Dear Mr. Ash:

On December 26, 1974, you asked for our views and recommendations on enrolled bill S. 1017, the Indian Self-Determination and Assistance Act. The U.S. Civil Service Commission supports the objectives of S. 1017.

We note that Section 105(a) and (d) of the Act amends the IPA to make Indian tribes which perform substantial governmental functions eligible to participate in all of the IPA programs, and exempts Indian tribes from population and other requirements imposed on local governments for participation in the grant program. These provisions are substantially the same as those in the amendment to the Intergovernmental Personnel Act proposed by the Civil Service Commission (S. 4135 and H.R. 16075).

Section 105(j) of the Indian Self-Determination and Assistance Act exempts from the conflict of interest provisions of sections 205 and 207 of Title 18, United States Code, Federal employees on a mobility assignment to an Indian tribe. It would permit these Federal employees to act as an agent or attorney for the tribe "in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest" provided that proper notification is given. The Commission proposed a similar exception to the conflict of interest provisions for all Federal mobility assignees. However, the Commission provision would not have permitted a mobility assignee to act as an attorney or agent before his employing agency or an agency with which he was employed during the year prior to his assignment. We have no objection to the broader provision of S. 1017.



Section 105(e) of this enrolled bill provides for retention of coverage rights, and benefits under chapters 81 (Compensation for Work Injuries), 83 (Retirement), 87 (Life Insurance) and 98 (Health Insurance) of Title 5, United States Code, for Federal employees who transfer on or before December 31, 1985, to an Indian tribal organization under a transfer of function. We agree with this provision. In a report to OMB on an earlier version of S. 1017, the Commission recommended continuation of these benefits for employees so transferred.

Section 105(i) authorizes the President to carry out the benefit retention provisions and to protect and assure various employee rights and benefits, including "reemployment rights, and other similar civil service rights and benefits as he finds appropriate." We have no objection to this provision.

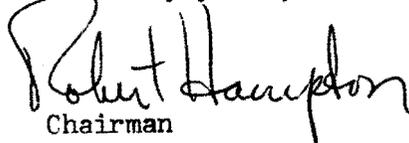
Section 104(a)(1) of this enrolled bill authorizes the Secretary of Interior to make grants to tribal organizations for, among other things, developing or improving tribal government "merit personnel systems." If this bill is approved, we will work closely with the Secretary of Interior to coordinate personnel assistance to tribal governments under this section with similar assistance provided under the amended IPA.

Section 7(b)(1) provides that any contract, subcontract, grant, or subgrant, under this Act or any Act "authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require to the greatest extent feasible -- (1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians(.)" As we understand this provision, there is no intent to expand Indian preference laws in employment in Federal agencies beyond their current applicability to the Bureau of Indian Affairs and the Indian Health Service.

We recommend that the President sign this enrolled bill into law.

By direction of the Commission:

Sincerely yours,


Chairman



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

DEC 27 1974

Dear Mr. Ash:

This is in response to Mr. Rommel's request for a report on S. 1017, an enrolled bill "To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes."

Title I of the enrolled bill, which provides authority for the Secretary of the Interior and the Secretary of Health, Education, and Welfare to contract with Indian tribal organizations to carry out programs currently administered by the Bureau of Indian Affairs and the Indian Health Service, is substantially consistent with a number of Administration proposals designed to promote self-determination for Indians.

Section 103 of S. 1017 would direct the Secretary of Health, Education, and Welfare, upon the request of any Indian tribe, to enter into a contract or contracts with a tribal organization to carry out any or all of his functions, authorities, and responsibilities with regard to the maintenance and operation of hospitals and health facilities for Indians. Those facilities are currently administered by the Public Health Service. The Secretary may decline to enter into such a contract if he determines that it would result in unsatisfactory services for Indians, that trust resources would not be adequately protected, or that the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract.



Such a determination would be subject to notice and opportunity for a hearing.

Under section 104(b), the Secretary of Health, Education, and Welfare would be authorized to make grants to any tribal organization, from funds appropriated to the Indian Health Service, for the development, construction, operation, provision, or maintenance of adequate health facilities for Indians, including training of personnel. He would also be authorized to make grants to such organizations for the purpose of planning, training, evaluation, or other activities designed to improve the ability of such organizations to enter into a contract under section 103.

Section 105(a) of the enrolled bill would amend 5 U.S.C. 3371 to include Indian tribes and organizations within the definition of the term "local government" for the purpose of authorizing cross-assignments of personnel between such organizations and Federal departments and agencies. Section 105(b) would amend the Act of August 5, 1954, to authorize the Secretary of Health, Education, and Welfare to assign commissioned officers of the Public Health Service to assist Indian tribes and organizations to carry out contracts with, or grants to, tribal organizations under sections 102, 103, or 104.

Part A of title II of S. 1017 would amend the Johnson-O'Malley Act to provide greater accountability for the use of funds provided under that Act, to require greater participation by Indian parents in decisions affecting the education of their children, and to authorize the Secretary of the Interior fully to reimburse school districts for the cost of educating out-of-State Indian children. Part A also would require the Secretary of the Interior, in consultation with the Secretary of Health, Education, and Welfare, to submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives a comprehensive report on the Johnson-O'Malley program.

Part B of title II would authorize the Secretary of the Interior to contract with State and local educational agencies

for the purpose of constructing, renovating, or acquiring facilities for the education of Indian children residing on Indian reservations or lands. Seventy-five percent of any funds appropriated for this purpose would be used to fund projects which meet the requirements of subsections (a) and (b) of section 14 of P.L. 81-815. Such funds would be allocated on the basis of priorities determined by the Commissioner of Education under that section. Part B would authorize the appropriation of \$35,000,000 for fiscal year 1975 and each of the four succeeding fiscal years for the purposes of carrying out such construction.

The provisions of title I of S. 1017, which relate to this Department and which are described above, are consistent with the Department's proposals concerning self-determination for Indians. Those provisions are therefore acceptable to this Department.

Part A of title II relates to the Johnson-O'Malley program administered by the Department of the Interior, and we therefore defer to that Department with regard to the desirability of the enactment of that part.

The construction authority provided under part B of title II substantially duplicates the authority for school construction in Indian areas under section 14 of P.L. 81-815. We see no need for additional appropriations authority with regard to such construction, and the existence of parallel programs in this Department and the Department of the Interior can only confuse potential grantees and increase the administrative costs of providing such assistance. We would expect that, if S. 1017 is enacted, no funds will be requested for this part, and that school construction in Indian areas will remain a function of this Department under P.L. 81-815.

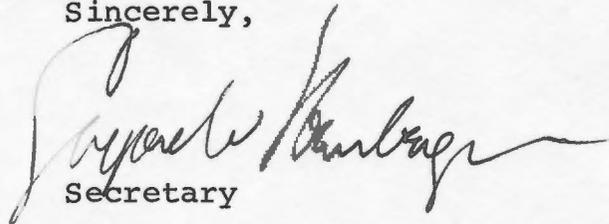
We realize that the importance of other features of S. 1017 undoubtedly outweigh the reservations we have concerning part B of title II. Because the enrolled bill relates largely to programs administered by the Department of the Interior,

Honorable Roy L. Ash

4

we defer to that agency on the question of the desirability of the enactment of the enrolled bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fayon C. Kambage". The signature is written in dark ink and is positioned above the typed name "Secretary".

Secretary

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 942

Date: January 1

Time: 11:00 a.m.

FOR ACTION: Mike Duval
Jim Cavanaugh
Phil Areeda *no obj.*
Max Friedersdorf *sign*
Paul Theis

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, January 2

Time: noon

SUBJECT:

Enrolled Bill S. 1017 - Indian Self-Determination and Educational Assistance Act

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 942

Date: January 1

Time: 11:00 a.m.

FOR ACTION: Mike Duval
Jim Cavanaugh
Phil Areeda ✓
Max Friedersdorf

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Thursday, January 2

Time: noon

SUBJECT:

Enrolled Bill S. 1017 - Indian Self-Determination and Educational Assistance Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection

P. Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendricks
For the President

THE WHITE HOUSE

WASHINGTON

January 2, 1975

MEMORANDUM FOR: WARREN HENDRIKS

FROM: MAX L. FRIEDERSDORF *VL*

SUBJECT: Action Memorandum - Log No. 942
Enrolled Bill S. 1017 - Indian Self-
Determination and Educational Assistance
Act.

The Office of Legislative Affairs concurs with the Agencies
that the enrolled bill should be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 942

Date: January 1

Time: 11:00 a.m.

FOR ACTION: Mike Duval
Jim Cavanaugh
Phil Areeda
Max Friedersdorf
Paul Theris

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Thursday, January 2

Time: noon

SUBJECT:

Enrolled Bill S. 1017 - Indian Self-Determination and Educational Assistance Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

OK

Mike Duval

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

Hold for re-visit
Working statement

STATEMENT BY THE PRESIDENT

I have today signed into law S. 1017, the Indian Self-Determination and Education Assistance Act. My Administration is committed to furthering the self-determination of Indian communities without terminating the special relationships between the Federal Government and the Indian people.

The Congress is to be congratulated for its passage of this legislation. It will enhance our efforts to implement this policy of Indian self-determination.

Title I of this act gives the permanence and stature of law to the objective of my Administration of allowing -- indeed encouraging -- Indian tribes to operate programs serving them under contract to the Federal Government. Furthermore, with the passage of this act, Indian communities and their leaders now share with the Federal Government the responsibility for the full realization of this objective. It will be through the initiatives of Indian communities that the authorities provided in this Act will be implemented. I urge these communities to make the fullest possible use of them and pledge the support of this Administration.

In addition to making this kind of contracting a right, the act does much to make it feasible and practical.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to help them develop the abilities of potential workers -- through training and other means -- to operate these programs. At the request of the tribe, it also allows Federal employees who work in programs transferred to tribal operation to continue working without losing Federal fringe benefits, thus making it possible for the tribe to begin operation with a nucleus of experienced employees.



The granting authority provided in this act can also be used to strengthen tribal governments and tribally funded programs.

Title II, the Indian Education Assistance Act, amends the Johnson-O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of funds for children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

The enactment of this legislation marks a milestone for Indian people. It will enable this Administration to work more closely and effectively with the tribes for the betterment of all the Indian people by assisting them in meeting goals they themselves have set.

Ronald R. Ford

OK ~~Duress~~

OK LD

January 2, 1975

Statement by The President

Signing Statement for S.1017

S.1017,

I have today signed into law the Indian Self-Determination and Education Assistance Act. My Administration is committed to furthering the ~~policy of~~ self-determination ^{of} Indian communities without ~~any~~ ^{ING} termination of the special relationships between the Federal Government and the Indian people.

The Congress is to be congratulated for its passage of this legislation. ~~which~~ will enhance our efforts to implement this policy of Indian Self-Determination.

Title I of this Act gives the permanence and stature of law to the objective of my Administration of allowing--indeed encouraging--Indian tribes to operate ~~the~~ programs serving them under contract to the Federal Government. Furthermore, with the passage of this Act, Indian communities and their leaders now share with the Federal Government the responsibility for the full realization of this objective. ~~and~~ It will be through the initiatives of Indian communities that the authorities provided in this Act will be implemented.

I urge ^{these} Indian communities to make the fullest possible use of ~~these authorities~~ ^{them} and pledge the support of this Administration. ~~to assisting Indian communities in this regard.~~

In addition to making this kind of contracting a right, the Act does much to make it feasible and practical.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to ~~assist~~ ^{help} them to develop their ~~capacity~~ ^{abilities of potential workers --} through training of ~~personnel~~ ^{personnel} and other means-- ~~for the operation of~~ ^{TO OPERATE These} programs. ~~It also allows Federal employees,~~ ^{It also allows Federal employees who} At the request of the tribe, ~~working~~ in programs transferred to tribal operation to continue working without losing Federal fringe benefits, ^{thus} making it possible for the tribe to begin operation with a nucleus of experienced employees.

The granting authority provided in ~~the~~ ^{This} Act can also be used ^{to} ~~for~~ strengthen ~~to~~ tribal governments and tribally funded programs.

Title II, the Indian Education Assistance Act, amends the Johnson-O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of funds for ~~their~~ children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

~~It is~~ ^T the enactment of this legislation ^{MARKS} as a milestone for Indian people. It will enable this Administration to work more ^{closely and} effectively with ~~Indian~~ ^{the} tribes for the betterment ^{of the} of Indian people by assisting them in meeting goals they themselves have set.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to ~~assist them to~~ ^{help} develop the ~~capacity~~ ^{abilities of potential workers --} through training of ~~personnel~~ and other means-- ~~for the operation of~~ ^{TO OPERATE These} programs. ~~It also allows Federal employees,~~ ^{It also allows Federal employees who} At the request of the tribe, ~~working in~~ programs transferred to tribal operation to continue working without losing Federal fringe benefits, ^{thus} making it possible for the tribe to begin operation with a nucleus of experienced employees.

The granting authority provided in ~~the~~ ^{This} Act can also be used ^{to} ~~for~~ strengthening tribal governments and tribally funded programs.

Title II, the Indian Education Assistance Act, amends the Johnson-O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of funds for ~~their~~ children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

~~and~~ ^T The enactment of this legislation ^{MARKS} as a milestone for Indian people. It will enable this Administration to work more ^{closely and} effectively with ^{the} ~~Indian~~ tribes for the betterment ^{all the} of Indian people by assisting them in meeting goals they themselves have set.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 31 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1017 - "Indian Self-Determination
and Education Assistance Act"
Sponsor - Sen. Jackson (D) Washington and 15 others

Last Day for Action

January 4, 1975 - Saturday

Purpose

Directs the Secretaries of Interior and Health, Education and Welfare to contract with Indian tribes for tribal operation of programs and services now provided by the Bureau of Indian Affairs and the Indian Health Service; establishes guidelines and criteria for such contracts; provides more Indian control over Federal contracts with public schools educating Indian students; and authorizes Interior to fund construction of public schools on or near reservations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval (Signing statement attached)
Civil Service Commission	Approval
Department of Health, Education and Welfare	Defers to Interior
Department of Labor	No position (Inferally)

Discussion

The concept that Indian tribes should govern themselves has been recognized in law since the earliest days of the Republic. But actions of the Congress and the Bureau of Indian Affairs over the years led to a situation in which



To: J. Hendricks
12-31-74
6:30 p.m.



THE WHITE HOUSE

LD

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 942

Date: January 1

Time: 11:00 a.m.

FOR ACTION: Mike Duval
Jim Cavanaugh
Phil Areeda
Max Friedersdorf

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

Paul Hein OK/MS

FROM THE STAFF SECRETARY

DUE: Date: Thursday, January 2

Time: noon

SUBJECT:

Enrolled Bill S. 1017 - Indian Self-Determination and Educational Assistance Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

1974 DEC 2 AM 8 28

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

OIC/LD

SIGNING STATEMENT FOR S. 1017

The Indian Self-Determination and Education Assistance Act is a major legislative achievement. It substantially includes or meets the Indian Affairs policy objectives of five Administration legislative proposals. As the title of the Act indicates, it will greatly facilitate the implementation of this Administration's policy of Indian self-determination.

This Act gives the permanence and stature of law to our policy of allowing Indian tribes to operate the programs serving them under contract with the Federal Government.

In addition to making this kind of contracting a right, the Act does much to make it feasible and practical.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to assist them ⁱⁿ to develop ^{ing} their ~~abilities~~ ^{abilities of potential workers} through training ~~of personnel~~ ^{programs} and other means-- ~~to~~

~~the operation~~ ^{of these} of programs. It also allows Federal employees ^{who work}

At the request of the tribe, ~~working~~ in programs transferred to tribal operation to continue working without losing Federal fringe benefits, ~~thus~~ ^{thereby} making it possible for the tribe to begin operation with a nucleus of experienced employees.

The granting authority provided in the ~~Act~~ can also be used for strengthening tribal governments and tribally funded programs; for the development, maintenance and operation of tribal facilities or resources; for needed land acquisitions, and for tribal planning, designing, monitoring and evaluating Federal programs serving the tribe.

Title II, the Indian Education Assistance Act, amends the Johnson-O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of ~~the~~ ^{under this act} funds for their children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

The enactment of this legislation is a milestone for Indian people.

I think it will enable this Administration through the Department of the Interior and the Bureau of Indian Affairs to work more closely and effectively with ~~Indian~~ ^{the} tribes for the betterment of ^{all the} Indian people by assisting them in meeting goals they have set.

INDIAN SELF-DETERMINATION AND
EDUCATION ASSISTANCE ACT

REPORT
OF THE
COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS
UNITED STATES SENATE
together with
ADDITIONAL VIEWS
TO ACCOMPANY
S. 1017



MARCH 28, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT

MARCH 23, 1974.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 1017]

The Committee on Interior and Insular Affairs to which was referred the bill (S. 1017) to promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill (as amended) do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

CONGRESSIONAL FINDINGS

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HENRY M. JACKSON, Washington, *Chairman*ALAN BIBLE, Nevada
FRANK CHURCH, Idaho
LEE METCALF, Montana
J. BENNETT JOHNSTON, Jr., Louisiana
JAMES ABOUREZK, South Dakota
FLOYD K. HASKELL, Colorado
GAYLORD NELSON, Wisconsin
HOWARD M. METZENBAUM, OhioPAUL J. FANNIN, Arizona
CLIFFORD P. HANSEN, Wyoming
MARK O. HATFIELD, Oregon
JAMES L. BUCKLEY, New York
JAMES A. MCCLURE, Idaho
DEWEY F. BARTLETT, OklahomaJERRY T. VERKLER, *Staff Director*
WILLIAM J. VAN NESS, *Chief Counsel*
FORREST J. GERRARD, *Professional Staff Member*
HARRISON LOESCH, *Minority Counsel*

(ii)

(2) The Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children, Indian adult education, and Indian skills training has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children and adults to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) "tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(e) "school district" means any political subdivision of a State which is responsible for the provision, administration, and control of public education through grade 12 as defined by the law of such State;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

TITLE I—THE INDIAN SELF-DETERMINATION ACT

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organiza-

tion of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, parts B and D of title II of this Act, any other program or portion thereof 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: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization is deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program to be contracted for, (4) community support for the contract, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section he shall (1) state his objections in writing to the tribe within sixty days, (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization will be deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program to be contracted for, (4) community support for the contract, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section he shall (1) state his objections in writing to the tribe within sixty days, (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise the defense of tribal immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized, upon the request of any Indian tribe, to make a grant or grants to any tribal organization of such Indian tribe for planning, training, evaluation, and other activities specifically designed to make it possible for such tribal organization to enter into a contract or contracts pursuant to sections 102 and 103 of this Act.

DETAIL OF PERSONNEL

SEC. 105. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

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

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended,".

ADMINISTRATIVE PROVISIONS

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amount of any such contract may be renegotiated annually to reflect factors, including but not limited to cost increases, beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary or agency head may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Federal Govern-

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

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts with tribal organizations and regulations adopted pursuant to this Act shall include provisions to assure the fair and uniform provision by such organizations of services and assistance to Indians in the conduct and administration of programs or activities under such contracts.

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this title.

(b) (1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall, to the extent practicable, consult with national and regional Indian organizations, to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall present the proposed rules and regulations to the Committee on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations the respective Secretary or Secretaries shall, to the extent practicable, consult with appropriate national or regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on conduct of the program or service involved, and such other information as the appropriate Secretary may request. The reports and records of the Indian tribal organization with respect to such contract or grant shall be subject to audit by the appropriate Secretary and the Comptroller General of the United States.

SEC. 109. There are hereby authorized to be appropriated for the purposes of section 104 of this title the amount of \$3,000,000 to the Department of the Interior and \$2,000,000 to the Department of Health, Education, and Welfare for each of three succeeding fiscal years following the date of enactment of this Act.

SEC. 110. Nothing in this Act shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by any Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act".

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections:

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by, the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contractor is capable of meeting such objectives.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have authority to approve or disapprove, programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation: *Provided, however,* That, whenever a local Indian committee or committees established pursuant to section 305(b) (2) (B) (ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

"SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

"SEC. 7. There are hereby authorized to be appropriated for the education of Indians pursuant to this Act \$65,000,000 for each of the fiscal years 1975 and 1976."

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare, and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1974, a report which shall include:

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) A plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—PREPARATION OF PROFESSIONALS IN INDIAN EDUCATION

SEC. 204. (a) The Secretary is authorized to establish and carry out a program of making grants to, and contracts with, institutions of higher education and other

public or private nonprofit organizations or agencies, or Indian tribes or tribal organizations with relevant experience and expertise in order to provide fellowships and carry out programs and projects to—

(1) prepare persons to serve Indians in public, private, or totally federally funded schools as educational administrators, teachers, teacher aides, and ancillary educational personnel, including, but not limited to, school social workers, guidance counselors, nurses, and librarians; and

(2) improve the qualifications of persons who are serving Indians in such capacities.

(b) In selecting participants in or recipients for fellowships to programs and projects under this section preference shall be given to Indians.

(c) The Secretary is authorized and directed to develop criteria pursuant to which he shall evaluate all grants and contracts authorized under this section.

SEC. 205. For the purpose of making grants or contracts pursuant to this part B there is authorized to be appropriated \$10,000,000 for the fiscal year after the enactment of this Act, and \$15,000,000 for each of the next two succeeding fiscal years.

PART C—SCHOOL CONSTRUCTION

SEC. 206. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part C on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, as established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part C on any school eligible to receive funds under Section 6 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) For the purpose of implementing the provisions of this section, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or carried out in whole or in part by funds made available pursuant to this section are not less than the prevailing local

wage rates for similar work as determined in accordance with the Act of March 3, 1921 (46 Stat. 1491), as amended.

(g) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children, residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

(h) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of \$35,000,000 for the fiscal year ending June 30, 1974; \$35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART D—YOUTH INTERN PROGRAM

Sec. 207. In order to provide meaningful and career-related work opportunities for Indian youth who are not enrolled in educational programs during the summer months, the Secretary is authorized to establish and carry out an Indian youth interim program for any Indian sixteen years of age or older who is regularly enrolled in secondary school, vocational school, or higher education program during usual school terms.

Sec. 208. (a) In establishing and administering the Indian youth intern program, the Secretary shall designate or recognize community service fields including those related to education, child development, recreation, law, health services, engineering, research, science, government, agriculture and forestry, business and commerce, and other appropriate pursuits, which can provide useful experience to Indian youth in exploring and participating in activities related to their future choices of possible careers.

(b) The Secretary shall determine the number of Indian youth in the community or reservation who are interested in employment during the summer months in the fields designated in subsection (a) of this section.

(c) The Secretary shall require negotiations with employers for the employment of each Indian youth participating in the Indian youth intern program, such negotiations to include a job description outlining specific duties, evaluation of the progress of the Indian youth intern, and consultation by the employer with the Indian youth intern periodically.

Sec. 209. In establishing and carrying out the Indian youth intern program, the Secretary shall take such action as may be necessary to assure that—

(1) each Indian youth intern shall be paid not less than the Federal minimum wage;

(2) each Indian youth intern shall engage in activities which are supplemental to those of the regular work force where he is employed and shall not replace any regular adult full-time employee, except as a temporary substitute during any normal vacation or other such leave of any such employee;

(3) the total wages paid each Indian youth intern employed by a nonprofit agency shall be paid out of funds provided in this part D;

(4) one-half the wages paid each Indian youth intern employed by other than a nonprofit agency shall be paid out of funds provided in this part D, and one-half by the employer;

(5) each Indian youth intern shall be covered by appropriate workmen's compensation laws;

(6) no Indian youth intern shall be entitled, by reason of his employment as an intern, to participate in any pension, retirement, or unemployment compensation programs;

(7) there shall be one supervisor for each twenty Indian youth interns during their period of employment; that such supervisor shall be compensated at a rate not in excess of the minimum rate for GS-9 of the General Schedule under section 5332 of title 5, United States Code; and that, with respect to the position of supervisor, preference shall be given to qualified Indians residing in the locality in which the interns are employed.

Sec. 210. For the purpose of carrying out the provisions of this part D, there is hereby authorized to be appropriated \$10,000,000 for the first fiscal year after the enactment of this Act, and \$15,000,000 for each of the next two succeeding fiscal years.

PART E—EDUCATIONAL RESEARCH AND DEVELOPMENT

Sec. 211. (a) The Secretary is authorized to make grants to and contracts with universities and colleges and other public and private nonprofit agencies, institutions, and organizations, and to and with individuals for research, surveys, and demonstrations in the field of Indian education and for the dissemination of information derived from such research, surveys, and demonstrations.

(b) No grant shall be made or contract entered into pursuant to this section until the Secretary has obtained the advice and recommendations of educational specialists who are competent to evaluate proposals as to the soundness of design, prospects of productive results, and adequacy of the resources of any applicant to conduct research, surveys, or demonstration projects. Wherever possible among the educational specialists consulted shall be Indians who are not employees of the Federal Government.

(c) No grant shall be made or contract entered into pursuant to this section until the Secretary is satisfied that the activities to be funded do not substantially duplicate research, surveys, or demonstrations the results of which are or will be accessible to the public.

Sec. 212. For the purposes of carrying out the provisions of this part E, there is hereby authorized to be appropriated \$2,000,000 for the first fiscal year after enactment of this Act, and \$3,000,000 for each of the next two succeeding fiscal years.

PART F—ADULT, VOCATIONAL, AND EARLY CHILDHOOD EDUCATION

Sec. 213. After consultation with persons competent in the appropriate field of education, which persons shall include Indians who are not employees of the Federal Government, the Secretary shall present to the Ninety-fourth Congress, within sixty days of the convening thereof—

(1) a proposed program of adult and continuing education designed to meet the needs of Indian people;

(2) a proposed program designed to meet the vocational and technical career education needs of Indian people;

(3) a proposed program designed to meet the early childhood education needs of the Indian people;

(4) a proposed program designed to meet the special education needs of gifted and handicapped Indians aged three to twenty-one years; and

(5) a review and analysis of existing programs in higher education for Indians administered by the Department of the Interior, and a proposed program of higher education designed to meet the needs of the Indian people; and

(6) an assessment of the capability of the Federal Government to measure effectively and accurately the educational progress and achievement of Indian people, such assessment to include a review of the ability of the Department of the Interior to measure the educational achievement and progress of Indian people. The Secretary is further directed in the preparation of such an assessment to consult with the Secretary of the Department of Health, Education, and Welfare, and such other agency heads as he deems appropriate, as to the capability of the Office of Education or the National Institute on Education to measure the educational progress and achievement of Indian people, and shall include the result of such consultations in such report.

SEC. 214. For the purpose of carrying out the provisions of this part F, there is hereby authorized to be appropriated \$750,000 for the first fiscal year after the enactment of this Act.

PART G—GENERAL PROVISIONS

SEC. 215. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

SEC. 216. No funds from any contract or grant pursuant to this title except as provided in part B shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

SEC. 217. (a) (1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experience in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

SEC. 218. The Secretary is authorized and directed to provide funds, pursuant to this Act; the Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school. The Secretary shall transmit annually to the Committees in Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section.

SEC. 219. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235).

Amend the title so as to read:

A bill to promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes.

I. PURPOSE

Tribal sovereignty, the power of self-government, was first recognized in concept by the United States Supreme Court in *Worcester*

v. *Georgia* (6 Pet. 515, 519 (1832)). In commenting on that decision a noted legal scholar has remarked:

From the earliest years of the Republic, the Indian tribes have been recognized as "distinct, independent, political communities" and as such, qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal government, but rather by reason of their original Tribal sovereignty. Thus treaties and statutes of Congress have been looked to by the Courts as limitations upon original tribal powers, or, at most, evidences of recognition of such powers, rather than as the direct source of tribal powers. (Cohen, *Federal Indian Law*, quoting from *Worcester v. Georgia*.)

The extent to which these semi-independent governmental entities are able to function depends upon the degree to which the constitutionally derived plenary power of Congress is exercised. Two recent congressional acts exemplify both the recognition of an inherent tribal sovereignty and the limitation upon it. The Indian Reorganization Act of June 18, 1934 (48 Stat. 984) provided a frame work for tribal self-government and development within the Federal system. Title II of the Indian Bill of Rights of 1968 (82 Stat. 77) acknowledged the existence of tribal self-governing power under the plenary power of Congress by establishing procedures for its exercise.

In addition, the Supreme Court of the State of Arizona has observed that:

The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possesses, in the first instance, all the powers of any sovereign state. (2) Congress renders the tribe subject to the legislative power of the United States and, in substance, terminates the external powers of sovereignty of the tribe, i.e., its powers of local self-government. (3) These powers are subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government. (*Begay v. Miller*, 70 Ariz. 380, 222 P. 2d 624, 627 (1950) quoting from Cohen *Federal Indian Law*, p. 123.)

S. 1017 is in essence an effort to provide tribes with the means to implement tribal self-governing power by providing finances and procedures to achieve progressive development of tribal resources and institutions.

The purpose of S. 1017 is to implement a policy of self-determination whereby Indian tribes are given a greater measure of control over the programs and services provided to them by the Federal government. The legislation also proposes a major reform in Federal financial aid to public school districts which educate Indian children, and authorizes new programs and resources designed to improve educational opportunities for Indian youth and adults.

II. NEED

In recent years there has been a dramatic shift in Federal Indian policy with respect to the delivery of programs and services formerly administered by the Bureau of Indian Affairs and the Indian Health Service.

To accomplish this the Administration relies on a combination of four basic Acts: through the use of the "Buy Indian" Act of 1910 (36 Stat. 861) competitive bidding of contracts with Indian tribes can be waived; where the contracts relate directly to educational services for Indian children in public schools, authority is found in the Johnson-O'Malley Act of 1934 (48 Stat. 596), as amended; while other services are contracted for through the Snyder Act of 1921 (42 Stat. 208). Where Federal employees are involved in the operation of contracts, the Department of the Interior resurrected an 1834 Act (4 Stat. 737) to authorize tribal supervision over the Federal employees. This curious mixture of broad interpretation and unrelated statutes represented an attempt by the Department to improve the quality of education and other services and to promote greater self-determination for Indian tribes. The difficulties in straining statutory language beyond its original intent creates numerous administrative and management problems which this legislation is designed to correct.

Illustrative of these problems is the inability of the Federal government to exempt tribal contracts from Federal Procurement Regulations and to authorize payments in advance of tribal performance on such contracts. While the aforementioned statutes have provided some necessary tools to permit Federal agencies to contract with tribal groups, a more flexible authority is needed in order to give substance and credibility to the concept of Indian self-determination.

S. 1017 is designed to alleviate these problems by providing direct statutory authority for contracting of Federal programs by Indian tribes. In addition, the bill proposes a response to widespread discontent with the administration of the Johnson-O'Malley Act (48 Stat. 596), as amended, which has been the basic legislation providing financial assistance to local public schools with enrolled Indian students since 1934. The changing character of public school finance in the past 40 years and the difficulty the Bureau of Indian Affairs has had in promulgating regulations which are fair to all states have presented severe problems. In addition, the desires of the Indian people to have more involvement in, and control of, Indian education must be considered.

III. MAJOR PROVISIONS

Congressional findings

This states that the Congress, after a careful review of the United States' historical and legal responsibility to the Indian people found that the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and it has denied to the Indian people an effective voice in the planning and implementing of programs for the benefit of Indians which are responsive to the needs of the Indian community. Indian people will never surrender their desire to control their rela-

tionships both among themselves and with non-Indian governments, organizations and persons.

The Congress also found that true self-determination is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles and that present Federal education programs have not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide.

Declaration of policy

As a result of these findings the Declaration of Policy states a commitment to the maintenance of the Federal government's unique and continuing relationship with and responsibility to the Indian people through establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to an effective and meaningful participation of the Indian people in the planning, conduct and administration of these services. To accomplish this the Congress declares that a major national goal of the United States shall be to provide the quantity and quality of educational services and opportunities which will permit Indian children and adults to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

TITLE I—THE INDIAN SELF-DETERMINATION ACT

Sections 102 and 103 provide the basic authority for the Secretaries of the Interior and Health, Education and Welfare to enter into contracts with tribal organizations. As originally drafted, the bill authorized the two Secretaries to enter into such contracts in their discretion. However, the language has been revised to direct the appropriate Secretary to enter into a contract or contracts upon the request of a tribe or tribal organization. The section provides a procedure by which the Secretary may decline to enter into a contract. This change would facilitate tribal contracting while, at the same time, establishing a rational procedure whereby the Secretary may decline to enter into proposed contracts when approval would not be in the public interest.

Finally, sections 102 and 103 contain a provision (subsection (c)) which requires any tribe requesting a contract to obtain adequate liability insurance to protect the public against torts committed by tribal employees. These subsections provide further that the insurance carrier may not raise a tribe's immunity from suit as a defense to any claim which is within the limits of the policy.

Section 104 authorizes the Secretaries of the Interior and Health, Education and Welfare to make grants to tribal organizations to facilitate and implement contracting under Sections 102 and 103. Specifically, the Committee envisions that such grants would be used (1) to undertake orderly planning for the takeover of the more complex Federally-operated programs; (2) to train Indians to assume managerial and technical positions once the tribe has assumed control and management of Federal programs, and (3) to finance a thorough evaluation of performance following a reasonable period of time in

which a former Federally-controlled program has been administered by a tribe under contract.

An amendment to the Intergovernmental Personnel Act of 1970 (84 Stat. 1909) is proposed in section 105 which would bring "tribal governments" within the definition of "local governments" for purposes of that Act. Civil service personnel could be assigned to tribal organizations, pursuant to the Intergovernmental Personnel Act, in the fulfillment of self-determination contracts. These assignments could be made for a period of two years and may be extended for an additional two years with no loss of benefits to the Federal personnel. In addition, tribal government employees could be assigned to Federal agencies to acquire management experience necessary for the contracts.

Section 106 would exempt tribal contracts from Federal Procurement regulations which have served as obstacles to such contracting in the past; provide for advance payments to tribal contractors for startup purposes; permit the appropriate Secretary to amend or revise a contract upon the request of a tribal contractor; provide an Indian tribe the right to request retrocession of the Secretary for any contract entered into pursuant to this Act; permit tribal contractors to use appropriate Federal facilities and equipment in the fulfillment of such contracts; and, finally, provides that tribal contracts may include a provision for personal services so long as the trust responsibility of the Federal government is not impaired.

Section 108 requires the contracting tribal group to maintain adequate records, and subjects such records to audit by the appropriate Secretary and Comptroller General of the United States. The Committee considers this provision essential to the self-determination process if participating tribes are to be held accountable for their actions.

Section 110 preserves the tribes' existing immunity from suit.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

Indian children, depending on circumstances beyond their control, are enrolled in a variety of institutions. For example, more than 87,000 Indian students attend public schools on or near Indian lands, while 53,700 attend Federal schools operated by the Bureau of Indian Affairs or by Indian school boards who contract directly with the Bureau of Indian Affairs for the operation of former Federal schools.

This bill affects primarily only those Indian children who are enrolled in public schools and whose educational needs are currently supported in part through contracts, entered into pursuant to the Act of April 16, 1934 (48 Stat. 596), as amended, (known as the Johnson-O'Malley Act) between tribal organizations or state departments of education and the Bureau of Indian Affairs. The Committee emphasizes that Part A is intended neither to enlarge nor restrict the current Indian population now eligible for services under that Act. This bill does not concern Federal or Federally-contracted schools.

The purpose of Title II, Part A is to strengthen policy and administrative provisions in the Johnson-O'Malley Act, and to provide for a Congressionally-mandated study of that Act by the Secretary of the Interior. Such study is to be transmitted to the appropriate committees of Congress not later than October 1, 1974, and shall include

specific legislative recommendations designed to further improve the programs authorized under the Johnson-O'Malley Act.

Specifically, the Johnson-O'Malley Act is further amended to provide for the following:

- criteria governing the contracts entered into between the Secretary of the Interior and prospective contractors to assure that the educational needs of the Indian students who are to be beneficiaries of such contract are met;
- criteria for establishment of parental committees to insure that funds expended in public school districts are in accordance with programs and plans which have been developed by the Indian community;
- financial support to public school districts for enrolled Indian children, who reside in Bureau of Indian Affairs boarding facilities; and
- a specific authorization for appropriation of \$65 million for each of the fiscal years 1975 and 1976. Such funds to be utilized for the education of Indians pursuant to the Johnson-O'Malley Act.

Consistent with the Committee's desire to develop more rational and equitable policies and procedures to govern the Johnson-O'Malley program, section 203 authorizes a Congressionally-mandated study of that program by the Secretary of the Interior. The Secretary is directed to submit a report of the study to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

In this connection, the Committee fully expects, and S. 1017 requires, the Secretary to undertake a thorough analysis of the factors which will determine the future allocation of Federal funds for the special or supplemental educational programs of Indian students and current operating expenditures. Additionally, the Secretary is required to discuss the Johnson-O'Malley Act in relation to four other statutes which provide Federal financial resources for the educational support of Indian children enrolled in public schools.

The Secretary's report is to include detailed legislative recommendations for the reform of the Johnson-O'Malley program and for a program to assist the development and administration of Indian-controlled community colleges.

Part C authorizes Federal assistance in the construction of school facilities which serve Federally-recognized Indian children on or near reservations or lands held in trust. The bill provides for the expenditure of \$35 million on an annual basis. Seventy-five percent of the amount appropriated will be spent on those public schools whose construction needs have been approved under P.L. 815. The allocation of funds will be based on the priorities established by the Commissioner of Education. In terms of procedure, the Secretary of HEW will make available to the Department of the Interior, on a periodic basis, the priority listing of approved projects under Sections 14 (a) and (b) of P.L. 815 from which the Secretary of the Interior shall disburse funds made available under this Act. The remaining 25 percent shall be spent, at the discretion of the Secretary of the Interior for other school construction projects which he deems worthy. Among such schools could be former mission schools now administered by Indian tribes.

A final major provision (section 218) authorizes the Secretary to provide financial support to former private schools which are operated by Indian tribes.

IV. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs unanimously recommends that S. 1017, as amended, be enacted by the Senate.

V. LEGISLATIVE HISTORY

Indian self-determination, in concept, as official policy was proposed through President Nixon's Message to Congress on American Indians on July 8, 1970. The message contained a central theme of "self-determination without termination." This new policy was offered as an alternative to the philosophy embodied in H. Con. Res. 108 of 1953, which stated that Federal policy was to terminate Federal responsibilities and services to Indian tribes as promptly as possible.

Under this newly proposed policy, Indians were to be afforded broad latitude in control and operation of programs administered by the Bureau of Indian Affairs and the Indian Health Service. Three proposals in the President's legislative package were specifically designed to implement the Indian self-determination policy, as follows:

(1) Require the Secretaries of the Interior and Health, Education and Welfare to transfer to Indian tribes, at their request, control and operation of Bureau of Indian Affairs and Indian Health Service programs and services;

(2) Permit Indians to contract with the Bureau of Indian Affairs for the administration of Johnson-O'Malley (JOM) education funds, and to authorize the detail of commissioned personnel of the Public Health Service to Indian tribal organizations which assume the control and management of Indian Health Service programs; and

(3) Provide for continued fringe benefits (such as compensation for injury, retirement, life insurance and health benefits) to Federal civil service employees who transfer to Indian tribal organizations to perform the services they formerly performed as government employees.

During the latter part of 1970 and early 1971, Administration officials met with tribal leaders at ten regional conferences. While the Indian leaders did not reject the concept of self-determination at these conferences, they raised pertinent questions and concerns with respect to the three bills designed to implement the proposed self-determination policy. Basically, apprehension centered on the bill which authorized tribal groups to unilaterally take over the programs and functions presently administered by the Bureau of Indian Affairs and the Indian Health Service.

No action was taken in the 91st Congress with respect to these three measures.

Similar legislation was transmitted to the 92nd Congress. In response to the Indian community's rejection of the Administration's proposals to implement the concept of self-determination, Senator Jackson and Senator Gordon Allot introduced S. 3157 as an alternative.

S. 3157 authorized the Secretaries of the Interior and Health, Education and Welfare, upon the requests of Indian tribes, to enter into

contracts with tribal organizations to permit such organizations to plan, conduct, and administer projects under a number of Federal Indian service programs which are within the jurisdiction of the respective Departments. In addition, the proposed measure authorized financial grants to Indian tribal organizations for planning, training, evaluation and other activities designed to enable such organizations to enter into self-determination contracts.

S. 3157 also permitted the assignment of personnel—including commissioned officers of the Public Health Service—from the two Departments to assist tribal organizations with the contracts or grants. Finally, certain Federal contracting requirements, which have in the past, proven to be particularly onerous to Indians could be waived by the respective Secretaries.

During hearings on S. 3157 and the Administration proposals, spokesmen for the major Indian organizations expressed a preference for S. 3157.

S. 3157 was approved by the Senate on August 2, 1973. The House failed to consider S. 3157.

Senator Jackson and Senator Abourezk introduced S. 1017, the "Indian Self-Determination and Education Reform Act" this Congress on February 26, 1973. Title I of this measure contains the essence of S. 3157. Title II is aimed at up-grading educational opportunities for Indian children enrolled in public school districts by providing financial assistance to such districts. Title II also establishes several new programs to serve Indian children and adults.

During the hearings on June 1 and 4, 1973, on S. 1017 and similar proposals, the Indian witnesses generally supported S. 1017. Several constructive suggestions were made by the Indian witnesses and those were incorporated in the bill approved by the Committee.

On January 28, 1974, the bill was unanimously ordered reported to the floor of the Senate (Report No. 93-682, February 7, 1974) where it was passed February 8, 1974 on the consent calendar. On February 18, the passage was vacated and the bill was returned to the Senate calendar. On March 7, 1974, the bill was sent back to Committee at the request of Senator Jackson, Chairman of the Committee. On March 20 the Committee considered the bill and unanimously ordered it reported back to the Senate with an amendment in the nature of a substitute. This amendment contains a major redraft of title II, Part A (for a discussion of Part A as originally reported by the committee see pages 23 through 26 in Report No. 93-682) and a number of technical amendments.

VI. SECTION-BY-SECTION-ANALYSIS

SECTION 1—SHORT TITLE

This section states the official citation of the Act as the "Indian Self-Determination and Education Assistance Act."

SECTION 2—FINDINGS

Contains a statement of congressional findings relative to Indian self-determination and education.

Specifically there is a recognition that the Federal domination of Indian service programs has denied an effective voice to the Indian people in the design and operation of programs for their benefit. This has retarded the development of leadership skills by Indians and has adversely affected the degree to which these programs are truly responsive to the needs of the Indian people.

A further finding recognizes that true self-determination requires an effective educational process and that the Federal efforts to date have not been sufficient and that parental and community control of the educational process is of crucial importance to the Indian people.

SECTION 3—POLICY

Contains the congressional declaration of policy. First, a Federal obligation to be responsive to the principle of self-determination through Indian involvement, participation, and direction of educational and service programs. Second, a Federal commitment, based on the unique Federal-Indian relationship to foster and encourage Indian self-determination through Indian participation in those programs and services which affect them. Third, a major national goal to provide educational services and opportunities which will enable Indians to compete and excel in the life areas of their choice.

SECTION 4—DEFINITIONS

Section 4 defines certain terms for purposes of this Act.

(a) "Indian" is defined as any member of an Indian tribe.

(b) "Indian tribe" is defined as federally recognized bodies, including Alaska Native villages for which Federal services are provided because of their Indian identity.

(c) "tribal organization" is defined as the governing body of an Indian tribe or any organization created by or controlled, directly or indirectly, by such governing body.

(d) "Secretary" means the Secretary of the Interior unless otherwise specified.

(e) "school district" means the State public school districts through grade 12.

(f) "State education agency" means the statewide agency or officials responsible for State public school education.

TITLE I—THE INDIAN SELF-DETERMINATION ACT

SECTION 101

Short Title

This section provides that title I may be cited as the "Indian Self-Determination Act."

SECTION 102

Contracts by the Secretary of the Interior

Directs the Secretary of the Interior, at the request of a tribe, to contract with any tribal organization to carry out the services and

programs the Federal government provides to Indians under authority of (1) the Johnson-O'Malley Act, as amended, (2) parts B and D of title II of this Act, and (3) the Snyder Act of 1921, and any subsequent Acts. The section further provides a procedure for the determination of the advisability of a particular contract and details the procedure by which the Secretary may decline to enter into a proposed contract. Subsection (c) provides that the Secretary may require any tribe requesting a contract to obtain adequate liability insurance coverage, and further provides that the insurance carrier may not raise as a defense to any claim which is within the limits of the policy, the tribe's immunity from suit. This amendment clarifies further that the carrier of liability insurance for the tribal contractors waives any right it may have to raise a defense to any claim which is within the limits of the policy, the tribe's sovereign immunity from suit. The Committee wishes to emphasize that this section and section 103 represent the feeling that while personal liability rights are to be guaranteed, the sovereign immunity of a tribe shall not be impaired by operation of this legislation. This particular approach was used because of an opinion of the Solicitor of the Department of the Interior in the absence of any language to the contrary. See X. Executive Communications.

SECTION 103

Contracts by the Secretary of Health, Education, and Welfare

Authorizes the Secretary of HEW to contract out the functions of the Indian Health Services to tribal organizations in a similar manner which he provides under authority of the Act of August 5, 1954 which transferred health responsibilities from BIA to PHS. An identical procedure to that of section 102 is provided where the Secretary initially determines that the contract is not advisable. The purpose of these sections is to require the respective Secretaries to justify any decision not to enter into a contract and to limit Secretarial discretion and insure a full record for review. Subsection (c) is identical to subsection (c) of section 102c.

SECTION 104

Grants to Indian Tribal Organizations

Authorizes the Secretaries of Interior and Health, Education, and Welfare to make grants to tribal organizations to facilitate and implement contracting under sections 102 and 103.

SECTION 105

Detail of Personnel

Amends three statutes to provide for assignment of personnel from throughout the Federal government to the contracting Indian tribes without any interruption in their civil service or military benefits or status. Section (a) amends the Inter-governmental Personnel Act of 1970 (84 Stat. 1909) by adding "tribal governments" to the definition of "local government" for the purposes of that Act. In so doing Civil

Service personnel could be assigned to tribal organizations for a period of two years and may be extended for an additional two years with no loss of benefits to the Federal personnel. Section (b) permits, by amending the Act of August 5, 1954 (68 Stat. 674) the Secretary of HEW to assign commissioned officers of the Public Health Service to a contracting tribal organization. Section (c) amends the Military Selective Service Act of 1967 (81 Stat. 100) to permit the assigning of commissioned personnel to such tribal contractors.

SECTION 106

Administrative Provisions

(a) Provides that contracts made under this title with any tribal organization must comply with general Federal contracting laws and regulations except that they may be negotiated without advertising and they need not comply with the provisions of the Act of August 24, 1935 (49 Stat. 793) which relates mainly to bonding requirements.

(b) Provides that payments under any such contract or grant can be made in advance of performance or on a reimbursement basis and that they can be made in installments and under such conditions as the Secretary deems necessary.

(c) Authorizes the appropriate Secretary to enter into contracts for a period of up to three years provided there are available appropriations. These contracts may be renegotiated annually to reflect such factors as cost increases beyond the control of a tribe or tribal organization.

(d) Provides that the appropriate Secretary can, with the consent of or upon the request of the tribal organization, revise or amend such contract or grant. The appropriate Secretary, however, is directed to grant retrocession upon the request of the tribe which originally requested the contract.

(e) Authorizes the appropriate Secretary to permit a tribal organization, contracting under authority of this title, to use Federal buildings, equipment, and personal property such as hospitals, school buildings, vehicles, office equipment, etc.

(f) Provides that the contracts or grants authorized by this title may include provision for the continuation of personal service contracts so long as the trust responsibility of the Federal Government is not impaired.

(g) Provides that the Indian contractor must apply the same standards in the implementation of the contract as would the Federal Government.

SECTION 107

Rules and Regulations

Authorizes the two Secretaries to do whatever else is necessary and to make such rules and regulations as are necessary to carry out the provisions of the title and provides for notice of the proposed promulgation of such rules and regulations.

SECTION 108

Filing of Report and Audit

Provides for the filing of a report with the Secretary by any tribe which requests a contract or grant pursuant to this title. The section further provides that the records of any contracting organization shall be subject to audit.

SECTION 109

Authorization

Authorizes \$3,000,000 to Department of the Interior and \$2,000,000 to the Department of HEW for each of the next three years.

SECTION 110

Tribal Immunity and Trust Responsibility

Clause (1) of this section preserves the existing sovereign immunity of any Indian tribe. The Committee emphasizes that this legislation does not in any way affect the existence of tribal sovereign immunity. This clause was added at the request of the tribes to allay any concern in this regard.

Clause (2) of this section provides that the provisions of this title shall have no effect upon the trust responsibility of the United States toward Indian people. Because of the deep, widespread fear of the policy of termination of Federal services to Indian tribes, this clause makes clear that this bill does not in any way authorize the termination of the trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SECTION 201

This section provides that title II may be cited as "The Indian Education Assistance Act."

Part A—Education of Indians in Public Schools

Part A is an amendment to the Johnson-O'Malley Act of 1934 (48 Stat. 596), as amended. It creates an authorization for Johnson-O'Malley of \$65 million for fiscal years 1975 and 1976; provides that the prospective contractor must submit an educational plan to the Secretary of and that, before, entering into the contract, the Secretary of the Interior must be satisfied that the plan contains educational objectives which adequately address the educational needs of the Indian students who are to benefit under the contract, and that the contractor is capable of meeting those objectives; provides funds for those Indian students who attend dormitory schools; provides for the establishment of local parent committees; and directs the Secretary of the Interior after consulting with the Secretary of Health, Education and Welfare and others competent in the field of Indian education to pre-

pare and submit to Congress no later than October 1, 1974, a study of the Johnson-O'Malley Act with detailed legislative recommendations for improving its provisions for the distribution of funds to school districts which educate Indian students.

SECTION 202

Amendment to Johnson-O'Malley Authority

Amends the Johnson-O'Malley Act (the Act of April 16, 1934; 48 Stat. 596), as amended, by adding four new sections.

(a) The new section 4 to the Johnson-O'Malley Act provides that before the Secretary of the Interior enters into a contract for the education of Indians, the contractor must submit an education plan to the Secretary which, in the Secretary's determination:

(1) contains educational objectives which adequately address the educational needs of the Indian students who would benefit from the contract; and

(2) assures that the contractor is capable of meeting such objectives.

(b) Subsection (a) of the new section 5 to the Johnson-O'Malley Act provides for the establishment of community education committees where the local school board is not composed of a majority of Indians each committee would be elected by the parents of Indian children in the school. Each committee is to fully participate in the development of, and approve, programs to be conducted under the contracts negotiated under the new section 4. The Secretary of the Interior is to prescribe by regulations the other duties and structure of the local committees. Should there be a committee established under the Indian Education Act of 1972 (86 Stat. 235), or the Johnson-O'Malley Act (48 Stat. 596) before the date of enactment of S. 1017, then the affected tribal governing body or bodies are to determine which committee will be utilized.

Subsection (b) of the new section 5 provides that the Secretary may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties.

(c) The new section 6 to the Johnson-O'Malley Act provides that any school district enrolling Indian students, who reside in Federal dormitories within the district but whose family residence is not within the affected State, may, in the discretion of the Secretary of the Interior, be reimbursed for the full per capita costs of educating those Indian students.

(d) The new section 7 to the Johnson-O'Malley Act authorizes the appropriation of a sum of \$65 million for each of the next two fiscal years (1975 and 1976) for the purpose of educating Indians under the Johnson-O'Malley Act, including financial support for the local committees to be established pursuant to the new section 5 of that Act, as amended by this section 202 of S. 1017.

SECTION 203

Johnson-O'Malley Study and Report

Directs the Secretary of the Interior, after consultation with the Secretary of Health, Education and Welfare, and others competent

in the field of Indian education to prepare and submit a report to the Committees on Interior and Insular Affairs of the Senate and House of Representatives no later than October 1, 1974. The report is to include:

(a) a comprehensive analysis of the Johnson-O'Malley Act, as amended by S. 1017, including:

(1) factors determining allocation of funds for special, supplemental programs and for current operating expenditures; and

(2) the relationship of Johnson-O'Malley to four other statutes providing financial assistance for the education of Indians:

(A) Title I of Public Law 874 (64 Stat. 1100); and

(B) Elementary and Secondary Education Act (79 Stat. 27); and

(C) Indian Education Act (86 Stat. 235); and

(D) Public Law 815 (72 Stat. 548), as amended.

(b) a specific program to meet the special educational needs of Indian children who attend public schools, including:

(1) a plan for the equitable distribution of funds to meet these special needs and where necessary to provide current operating expenditures to schools and school districts educating Indian children; and

(2) an estimate of the cost of such program.

(c) detailed legislative recommendations to implement the program required in subsection (b).

(d) a specific program with legislative proposals to assist in the development and administration of Indian controlled community colleges.

Part B—Preparation of Professionals in Indian Education

Part B is directed toward preparing better qualified personnel, professional, and subprofessional, to serve Indian children in public, private, and Federal schools and to increase the qualifications of existing personnel. It authorizes grants or contracts for institutions of higher education and public and private nonprofit organizations for such training purposes. Indians are given a preference for such training; \$10 million is authorized for the first fiscal year and \$15 million for each of the next 2 fiscal years.

SECTION 204

Grant of Authority: Provide Grants for the Preparation of Indian Professionals

(a) Authorizes the Secretary to contract with or make grants to universities, colleges and other public or private nonprofit organizations or Indian tribes or tribal organizations with relevant experience and expertise in order to provide fellowships and carry out programs and projects to train and improve qualifications of education personnel serving Indians in public, private and totally Federally funded schools.

(b) gives preference to Indians for fellowship programs.

(c) provides for program evaluation pursuant to Secretarial criteria.

SECTION 205

Authorization

SEC. 208. Authorizes an appropriation for part B of \$10,000,000 for the first fiscal year and \$15,000,000 for each of the next two fiscal years.

Part C—School Construction

Part C authorizes Federal assistance in the construction, acquisition, and renovation of school facilities in public school systems which serve Indians on or near Indian reservations. Certain standards are set in this regard, including a requirement that the Indian tribe or tribes affected will be consulted by the Secretary. The authorized appropriation for part C is \$35 million for each of the first 5 fiscal years and such sums as necessary for each fiscal year thereafter.

SECTION 206

Grant of Authority: Funds for Construction, Renovation, Acquisition

(a) Authorizes Federal assistance to public schools on or near Indian reservations with Indian students enrolled for construction, acquisition or renovation of facilities.

(b) requires the Secretary to expend not less than 75% of the funds allocated under this part on projects eligible for funding under the school construction provisions of Sections 14(a) and (b) of Impact Aid. Public Law 815 (72 Stat. 548). It requires specifically that the U.S. Commissioner of Education submit a list of those projects eligible for funds under that Act.

(c) requires that the Secretary of the Interior expend not more than 25 percent of the funds allocated under this Part on any school eligible to receive funds under Section 218 of this Act which provides funds for the operation of private schools which Indian tribes have taken, or will take, over.

(d) provides that contracts entered into pursuant to this Part contain provisions which (1) insure educational standards compatible with those in similar non-Indian school districts and (2) guarantee compliance with local building codes.

(e) requires consultation with the local committees designated under section 202 of S. 1017 and the governing body of any tribe or tribes before entering into any contract authorized pursuant to this Part.

(f) requires that prevailing local wage rates be guaranteed for any construction project entered into pursuant to a contract authorized under this Part.

(g) requires an evaluation and report by the Secretary of the Interior within 90 days of the end of the three year period following the date of the enactment of this Act. Among the factors to be evaluated are:

- (1) Analysis of construction costs including the cost of labor.
- (2) A description of the relationship between the Department

of the Interior and Health, Education and Welfare with respect to data received pursuant to subsection (b) of this section.

(3) Projections for future construction needs of Indian children.

(4) Description of relationship between the Federal and State governments with respect to construction contracts.

(5) Recommendations on transferring the responsibility for administering the school construction provisions of Impact Aid (Public Law 815) from Health, Education, and Welfare to Interior.

(h) authorizes \$35 million for the fiscal year ending June 30, 1974, and \$35 million for each of the four succeeding years. All of these funds are to remain available until expended.

Part D—Youth Intern Program

Part D establishes an Indian youth intern program for summer employment in order to enhance the education opportunities of Indian youth and to assist them in exploring and participating in activities related to their future choices of possible careers. The authority sets certain criteria for both the employer and the intern. Part D authorizes \$10,000,000 for the first fiscal year and \$15,000,000 for each of the next 2 fiscal years.

SECTION 207

Summer Youth Intern Program

Provides for the establishment of a summer youth intern program for Indian students 16 years or older who are enrolled in secondary, vocational or higher education programs.

SECTION 208

Community Service Fields

(a) Requires that the Secretary recognize community service fields which can provide opportunities for career related activities for Indian youth.

(b) Provides that the Secretary determines the number of eligible Indian youth for summer employment under (a).

(c) Provides for negotiations between the Secretary and the employer which shall include job description, evaluation of progress and formal consultation.

SECTION 209

Procedural Requirements

Provides that in administering the youth intern program, the Secretary shall assure that:

- (1) each intern is paid at least the Federal minimum wage.
- (2) each intern shall be supplemental to the work force and shall not replace any full time employee except on a temporary basis.
- (3) if the employer is a nonprofit agency, total wages will be paid out of funds provided in this title.

(4) if the employer is other than a nonprofit agency one half of the wages shall be provided by the employer and one half by the funds under this title.

(5) each intern shall be covered by appropriate workmen's compensation laws.

(6) no intern will participate in any pension, retirement or unemployment compensation programs.

(7) there will be one supervisor for every 20 interns.

SECTION 210

Authorization

Authorizes an appropriation for Part D of \$10,000,000 for the first fiscal year and \$15,000,000 for each of the next two succeeding fiscal years.

PART E—EDUCATIONAL RESEARCH AND DEVELOPMENT

Part E provides funds to the Secretary of the Interior for grants and contracts with appropriate nonprofit institutions and agencies for research and development in the field of Indian education. The authorization for part E is \$2,000,000 for the first fiscal year and \$3,000,000 for each of the next 2 fiscal years.

SECTION 211

Grant of Authority: Research and Development Grants

(a) Authorizes educational research and development grants and contracts with universities, colleges, and other public and non-profit organizations.

(b) Requires that before such contracts or grants are entered into the Secretary shall obtain the advice of educational specialists, particularly Indian educational specialists.

(c) Requires that such grants and contracts shall not duplicate substantially other such similar efforts.

SECTION 212

Authorization

Authorizes \$2,000,000 for the first fiscal year and \$3,000,000 for each of the next two succeeding fiscal years.

Part F—Adult, Vocational, Early Childhood, Special and Higher Education

Part F directs the Secretary of the Interior to present to the 94th Congress proposed programs for improving the general field of Federal responsibilities for Indian education and which are to span the spectrum of that field, including adult and continuing education; vocational and technical career education; early childhood development; and special and higher education, \$750,000 is authorized for part F.

SECTION 213

Adult Education Program

(a) Requires the Secretary, after proper consultation including Indian consultation, to submit to the 94th Congress sixty days after the convening thereof—

(1) a proposed program of adult and continuing education designed to meet the needs of Indians.

(2) a proposed program on vocational and technical education career for Indians,

(3) a proposed program for early childhood development for Indian children,

(4) a proposed program for gifted and handicapped Indians aged 3 to 21.

(5) a review and analysis of existing higher education programs of the Interior Department for Indians and a proposed program in this area.

(6) an assessment of the capability of the Federal government to measure effectively and accurately the educational programs of the Indian people, in connection with appropriate agencies of HEW.

SECTION 214

Authorization

Authorizes \$750,000 for Part F.

Part G—General Provisions

Part G provides general standards and requirements related to title II.

SECTION 215

Educational Quality

Requires that the quality of educational services provided for Indian students by an affected district be comparable to those for non-Indian students before Federal funds under this title are available.

SECTION 216

Funding Limits

Limits funding to public agencies and tribal organizations except these bodies are permitted to subcontract with either individuals, organizations, and corporations.

SECTION 217

Regulations

Provides for Secretarial promulgation of regulations for this title.

SECTION 218

Former Private Schools

Authorizes the Secretary to provide funds for the operation of former private schools over which the tribes assume authority. At present there are less than a handful of such schools. However, this program is expected to expand in future years. Therefore, the Secretary of the Interior is required to submit annual reports to the two Interior Committees on this program. The Committee expects that these reports will contain a discussion of any problems which may develop and specific legislative recommendations to remedy these problems or to make any other changes in the program which the Secretary determines to be warranted.

SECTION 219

Relationship of S. 1017 to Title IV of the Act of June 23, 1972

A final provision stipulates that financial assistance provided to public schools for the education of Indians is in addition and supplemental to the assistance provided under Title IV of the Act of June 23, 1972 (86 Stat. 235).

VII. TABULATION OF VOTES CAST IN COMMITTEE

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee during consideration of S. 1017.

S. 1017 was ordered reported favorably to the Senate by a unanimous vote in mark-up session of the full Committee on March 20, 1974.

VIII. COST

Pursuant to section 252(a) of the Legislative Reorganization Act of 1970, the Committee provides the following estimate of the cost of S. 1017 if enacted:

S. 1017 COST ANALYSIS—AUTHORIZED APPROPRIATIONS

[In millions of dollars]

Sec. 109 planning grants	Fiscal year—				
	1974	1975	1976	1977	1978
Title I—The Indian Self-Determination Act:					
Interior.....	3	3	3		
HEW.....	2	2	2		
Subtotal.....	5	5	5		
Title II—Indian Education Reform Act:					
Part A.....		65	65		
Part B.....		10	15	15	
Part C.....	35	35	35	35	35
Part D.....		10	15	15	
Part E.....		2	3	3	
Part F.....		.75			
Subtotal.....	35	122.75	133	68	35
Total cost.....	40	127.75	138	68	35

IX. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF MR. FANNIN

S. 1017: AN OVERVIEW

S. 1017 represents a major step in the continuing effort to strengthen the Federal commitment to Indian education. In addition, it represents another step in the implementation of the recommendations of the Special Subcommittee on Indian Education as contained in its final report; *Indian Education: A National Tragedy—A National Challenge*. This report, after surveying in depth the status of Indian education programs, made some 60 recommendations to strengthen Indian education endeavors and to urge new approaches. This vital report and its recommendations were virtually ignored, however, for almost two years until the Congress considered, in 1971, the Indian Education Act. This measure was adopted as Title IV of the Education Amendments of 1972 which became Public Law 92-318. This was the first step in realizing the objectives of the Special Subcommittee. Now, two years later, the Congress is ready to consider legislation which will further implement the goals and objectives of the final report of the Special Subcommittee.

What is taking place through these legislative efforts is the development of a comprehensive Indian education policy. By identifying deficiencies and omissions in current policies, the Congress and the Executive Branch are developing a program to meet the contemporary needs of Indian education. Certainly there is still much to do, but these initial efforts are building a new foundation on which hopefully will rest a program which will assure a quality Indian education program.

S. 1017: SOME COMMENTS AND OBSERVATIONS

Financing Indian education

As originally reported S. 1017 provided a formula whereby funds under the Johnson-O'Malley education program would be allocated on a fair and equitable basis. This formula required that "all taxable property in the Indian affected district be taxed at the same rate as the average rate applied to five districts within the same state with comparable sized enrollment. For purposes of this Act, funds derived from P.L. 81-874 (Impact Aid) were to be counted as local revenue. It further required that the State aid for the Indian affected district be equal to the average of the same five comparable districts. When these conditions had been met, the Secretary would provide funds to the contractor to bring the total per pupil cost in the Indian affected district to the level of that provided in the five comparable districts. In addition, the Secretary would provide funds which would make possible special supplementary programs for Indian children as outlined in Sec. 203(f) of the bill. These would have been negotiated by the Secretary and the contractor."

Financing Indian Education

This formula, however, was considered by many, in and out of Congress, to be unworkable if not unpredictable in its implementation. This criticism resulted in the Committee's reconsideration of the Part

A formula and concluded that additional analysis as to the allocation of JOM funds would be required. To keep faith with its intentions to seek legislative reform of the Johnson O'Malley Educational program, the Committee directed that the Secretary of Interior prepare and submit a study no later than October 1, 1974 which would analyze the JOM Program and the relationship of several other Federal programs including JOM which provide educational assistance to Indian children. This seems to me to be a step in the right direction. While it can be argued that what the Committee has done amounts to no reform at all, its actions affirm its basic commitment to *find* answers to a very difficult and complex issue, the financing of Indian education under the Johnson O'Malley Program and to legislate an acceptable solution within an immediate future.

An Old Issue: Operational Costs vs. Supplementary Programs

During its reconsideration of S. 1017, the Chairman of the Committee argued very forcefully and very eloquently on behalf of the proposition that Johnson O'Malley funds should be used in their entirety for meeting the special educational needs of Indian children. In short, for supplementary programs.

The Chairman, however, wisely recognized that in a few instances Johnson O'Malley funds could be used to meet operational expenditures. This understanding of the basic economic realities which many public schools confront in operating their program on large tax-exempt reservations, like those in Arizona, represents a realistic conception of the uses of Johnson O'Malley funds. It is unrealistic to view Johnson O'Malley support of operational costs as something inherently wrong if that support provides the margin of difference in maintaining an educational program to meet the needs of reservation Indian children.

Kayenta School District, consisting of 25,000 square miles and located in the northeastern corner of the Navajo reservation in Arizona is an example of a school which needs additional operational funds. With an Indian enrollment of well over 80%, and located in an isolated area, Kayenta must pay high salaries to attract qualified teachers and then must often provide housing as well. In addition, the cost of equipment and supplies is even greater, bus routes are longer, requiring more buses, drivers, and maintenance. Kayenta's operational costs are greater, and to put it quite simply, needs the additional funds which it receives from the Johnson O'Malley Program. Kayenta has come to rely on the Johnson O'Malley Program for operational support because it found that local, state, and other Federal program funds, including P.L. 874, were plainly insufficient to meet the operational needs of Kayenta. In this context, then, JOM serves an important role in sustaining Kayenta and making it possible for the delivery of educational services to our Indian citizens in this remote area of our nation.

I am fully aware of the arguments against the use of Johnson O'Malley funds for general support, but I am convinced that through a fair and equitable formula Johnson O'Malley can serve the special needs of Indian children through a program of supplementary funds *and* operational support. That is my objective and one which I believe is realistic.

School construction

Funds for the construction or renovation of public schools located on or near Indian reservations are either obtained through local tax resources or Sections 14(a) and 14(b) of Public Law 81-815. In most cases, however, public schools find that local funds for capital outlay projects are limited due to the presence of large blocs of nontaxable reservation lands. The result is that these schools must then rely on Public Law 81-815 to supply the necessary funds. The problem, however, is that funds provided under Public Law 81-815 to such schools have been insufficient to meet current needs.

For example, under the 1974 budget, \$19 million was appropriated to support P.L. 815, of which \$9.5 million, or 50 percent of the total would be allocated to Sections 14(a) and 14(b). This \$9.5 million allocation would cover the construction needs of perhaps five schools. Yet, there were 39 eligible applications approved for funding with a total cost of \$37,347,202. Clearly the 1974 budget was inadequate to meet the needs of those schools serving reservation Indian children. And the budget offers little hope that the existing backlog will be cleared up. The 1975 budget is requesting only \$10.5 million to meet a need of \$45 million.

This situation is critical because of the continuing pressure of increased Indian enrollment. The enrollment in the public schools educating reservation based Indian children has increased over the past five years by a total of 23,502 students. In addition, these same schools are estimating an additional 19,428 students to educate within the next five years. Obviously, the lag time between the recognition of need and delivery of funds makes the problem even more difficult.

To meet these critical needs Part C of Title II authorizes Federal assistance in the construction of school facilities which serve reservation Indian children by providing a \$35 million annual authorization to the Secretary of Interior. When S. 1017 was originally introduced, however, guidelines as to how these funds would be allocated were conspicuously absent. It was my view that without such guidelines there would be little chance that the physical plant needs of reservation schools would be met in a reasonable and rational manner. It was therefore proposed that the allocation of construction funds be tied to the P.L. 815 program. This program represents the basic commitment of the Federal Government to supply funds to public schools serving Indian children. As approved by the Committee, S. 1017 provides that of the amount appropriated 75 percent will be spent on those public schools whose construction needs have been approved under P.L. 815. The allocation of funds will be based on the priorities established by the Commissioner of Education. In terms of procedure, the Secretary of HEW will make available to the Department of Interior, on a periodic basis, the priority listing of approved projects under Sections 14(a) and 14(b) of P.L. 815 from which the Secretary shall disburse funds made available under this Act. The remaining 25 percent shall be spent, at the discretion of the Secretary for other school construction projects which he deems worthy. Among such schools could be former mission schools now administered by Indian tribes.

This particular approach to an old problem is an innovative one. It was chosen for the following reasons:

1. By allocating funds on the basis of the PL 815 priorities, additional bureaucracy in the Department of Interior is avoided and the role of the Office of Education is retained.

2. By allocating funds on the basis of PL 815, an existing formula is utilized, one based on need, thus relieving the Department of Interior for having to establish one.

3. By assigning new budgetary authority to Interior there is a greater chance for increased appropriations to meet the increasing need for school facilities.

THE QUALITY OF INDIAN EDUCATION STATISTICS

When the Special Subcommittee on Indian Education completed its study of Indian education, its final report contained an indictment of the education of the American Indian. As evidence, the report cited as proof the following statistics as confirming that indictment:

1. The dropout rates for Indian students enrolled in public schools is high compared to other population groups.

2. Forty thousand Navajo Indians, nearly a third of the entire tribe, are functional illiterates in English.

3. The average educational level of all Indians under Federal supervision is 5 school years.

4. Dropout rates for Indians are twice the national average.

5. Only 18 percent of the students in Federal Indian Schools go to college; the national average is 50 percent.

6. Only three percent of the Indian students who enroll in college graduate; the national average is 32 percent.

Today, some four years later it has become rather fashionable to cite, with computerlike regularity, these same statistics as proof that Indian education programs are failing those they were designed to serve. The United States Civil Rights Commission, for example, in its report on Indians in the Southwest, recited some of the same statistics; statistics which were then used as evidence to support the Commission's indictment of Indian Education in the Southwest.

And even more recently, the National Advisory Council on Vocational Education, which ought to know better, released a Special Report on Indian Education and cited many of the same statistics without even acknowledging how old they were.

What troubles me the most about the use of these statistics by such groups as the United States Civil Rights Commission and the National Advisory Council on Vocational Education is the implied assumption that human development is somehow static: that is, what might be true in 1969 is still true today. When asked if some of these statistics were still valid, the Bureau of Indian Affairs either could not answer because information was unavailable or proved that the statistic was no longer valid. Yet, those who find it advantageous to use such statistics go right on doing so without even questioning their basic validity or whether or not they have changed.

Perhaps things have remained the same, or even gotten worse, which I doubt, based on recent BIA testimony, but what if things have gotten better? Is it then fair to our Indian education program to perpetuate myths with the result that we continue to design policies which are no longer relevant?

It is difficult to measure progress, especially in education, if we must rely on measurements which no longer conform to reality. What is worse, of course, is legislating on the basis of faulty or inaccurate characterizations of reality.

What I am concerned about then is the reliability of those statistics or data which we must deal with in evaluating the progress of lack of progress in the education of Indian citizens.

We are constantly confronted by statistics concerning Indian education and I think it is time we determined the degree to which we can rely on such statistics. What is needed is a set of statistics which is up-to-date, accurate, and can be easily up-dated periodically so that policies can be adjusted or dropped to meet changing needs. At this point, I do not have complete confidence in our ability to accurately reflect progress in Indian education. Therefore, to determine the capacity of the Federal Government to measure Indian education, S. 1017 directs the Secretary of Interior to report to Congress assessing the capability of the Federal Government to measure effectively and accurately the educational progress and achievement of Indian people. The ability of the Department of Interior to measure such progress must also be reported. The Secretary is further directed to consult with such agency heads as he deems necessary to assess the capability of the Office of Education or the National Institute on Education to measure the educational progress and achievement of Indian people.

In my view, this study is a very essential one for it is my hope that the Federal Government will be forced to examine very closely, the capacity and reliability of its current methods in measuring Indian education progress. Perhaps, we will, as a result, develop a set of statistics and a reporting system which will enable the Congress and the Executive Branch to design, with confidence, a Federal program to meet the contemporary education needs of our Indian citizens based on appropriate data.

In conclusion, S. 1017 is a major legislative effort in the development of a strong Indian education program, and it is the hope of S. 1017 that our commitment to assuring a quality Indian education program will soon be realized.

PAUL J. FANNIN.

X. EXECUTIVE COMMUNICATIONS

The reports of the Department of the Interior and the Office of Management and Budget on, and communications from these and other Federal agencies concerning, S. 1017 are set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., May 31, 1973.

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

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 1017, "To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to

encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes.”

While recognizing the close relationship between Title I of this bill, the Indian Self-Determination Act and, Title II the Indian Educational Reform Act of 1973, we believe that our advice to the Congress will be more helpful if we consider and discuss the titles in two discrete sections of this letter.

I. THE INDIAN SELF-DETERMINATION ACT

We would prefer enactment of S. 1343, the Administration self-determination proposal, which would provide more complete Indian control over programs devoted to their betterment and would place the decision to assume such control with Indians themselves. However, we recommend enactment of this title, if amended as suggested *infra*, as an interim measure to provide increased Indian direction of Federal Indian programs. Certainly the enhanced ability to contract with Indian tribes which Title I would afford could be a very useful authority for the Department to have.

Title I adopts a contractual approach to endowing American Indians with increased self-determination. The title authorizes the Secretary of the Interior to contract with Indian tribes to plan, conduct, and administer programs or portions of programs carried out under the Act of April 16, 1934 (48 Stat. 596), as amended, commonly known as the Johnson-O'Malley Act; the Act of November 2, 1921 (42 Stat. 208), commonly known as the Snyder Act; and all acts subsequent thereto. The Snyder Act provides basic authority for virtually every Indian program carried out by the Department of the Interior. The Johnson-O'Malley Act permits the Department to contract for the performance of certain educational and other responsibilities with state and local institutions. Thus, enactment of this title would provide the Secretary of the Interior with the authority to contract out the full panoply of the Department's Indian programs to Indian tribes. (This Department has submitted legislation—S. 1342—which would enable Indians to become contracting parties under the Johnson-O'Malley Act, albeit by a somewhat different technique, that of amending the Act itself. Should S. 1017 be enacted, the purposes of S. 1342 would be fulfilled, and we would consider it moot.)

A parallel provision of the title would authorize the Secretary of Health, Education, and Welfare to contract with Indian tribes to carry out all his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended. These functions center on the maintenance of Indian health.

One of the most important aids in carrying out the goal of transferring programs to Indian control by way of contract appears in section 104, which authorizes both Secretaries to make grants to Indian tribes to allow them to make necessary preparation for entering into contracts authorized by the bill. We consider such grant authority to be a most useful means of removing one of the major obstacles to contracting with tribes—their inability to meet general Federal stand-

ards for contractors. The Federal contracting rules are predicated on arms-length transactions; however, many tribes lack the needed sophistication to deal at arms-length with the United States. More specifically, before a Federal contract can be effectuated, the contracting officer must make a finding that the proposed contractor is capable of performing his part of the bargain. Vis-a-vis many Indian tribes or tribal organizations, such a finding would be impossible to make, and the Department's efforts to contract with them would be stymied. The grants authorized by Title I would fund preparatory training and other activities necessary to raise Indians to the level where they can meet Federal contracting standards.

Section 105 of the bill authorizes the two Secretaries, upon the request of an Indian tribe, to detail Civil Service personnel needed by the tribes in connection with programs contracted, for a period of 180 days. The period of detail can be extended for a period not to exceed an additional 90 days if the tribe can show a need therefor. The bill specifically amends the Act of August 5, 1954, to allow the detailing of Health Service personnel and allows the Secretary of Health, Education, and Welfare to consider the expense of such details in determining payments made by him pursuant to the contract or grants to which the details are attached.

In addition, Section 105 would amend paragraph (2) of section 6(a) of the Military Selective Service Act of 1967. The amendment would allow commissioned officers of the Public Health Service serving under an agreement which credits their Public Health Service service against their military obligation under the provisions of the Selective Service Act to continue to enjoy such credit while on detail to Indian tribes.

Section 106 establishes certain administrative procedures to be followed by the two Secretaries in contracting with Indian tribes. First, although requiring compliance generally with all Federal contracting laws and regulations, the section permits certain exceptions, the most important of which would enable construction contracts to be negotiated without compliance with the bonding requirements of the Act of August 24, 1935 (49 Stat. 793), commonly known as the Miller Act.

Second, the section would permit advance payments on contracts with tribes and tribal organizations on such conditions as the Secretary deems necessary. (Contracts are now restricted by the requirements of the Act of June 30, 1949 (63 Stat. 396), and the applicable provisions of the Federal Procurement Regulations.)

Third, the section would empower the appropriate Secretary, with the consent of the tribal organization, to revise or amend any contract or grant made by him under the authority of this bill. This provision would provide the flexibility needed to insure that beneficiaries of Indian programs do not suffer, particularly during the incipience of tribal administration of such programs.

Fourth, the section would authorize the appropriate Secretary to permit a tribal organization to utilize real and personal property under his jurisdiction in connection with any contract or grant made pursuant to the bill. The existing authority for such use under the Johnson-O'Malley Act would thus be extended to Indian tribes, and broadened to include all contracts under this bill.

Section 107 gives the Secretaries needed authority to carry out the provisions of the bill and to make rules and regulations.

Section 108 of the bill appears to be a restriction on the authority granted in section 107 since it sets the terms and conditions that will be followed by the Secretary of the Interior (not both Secretaries) in the preparation and publication of the rules and regulations made to carry out the provisions of the bill. First, we see no reason to treat the two Secretaries differently and therefore recommend that both be guided by these procedures. Second, we recommend that the procedures be incorporated into a single, revised rules section, by deleting section 108 and rewriting section 107 as follows:

"Section 107. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this title. The Secretaries shall (a) no later than six months from the date of the enactment of this Act, promulgate said regulations, (b) no later than sixty days prior to the promulgation of said regulations, publish them in the Federal Register, and (c) no later than thirty days prior to the promulgation of said regulations, make provision, with adequate public notice, for the opportunity for hearings on the proposed regulations, once published, to all interested parties."

Finally, Title I disavows any imputation of terminating the United States' Indian trust responsibilities.

II. INDIAN EDUCATIONAL REFORM ACT OF 1973

Title II of S. 1017, the Indian Educational Reform Act of 1973, contains many new programs and would endow the Secretary of the Interior with a good deal of new authority. We have been hard-put to arrive at a recommendation concerning this Title because of the difficulty of fitting its provisions into the existing statutory scheme. More specifically, there is overlapping among Title II of this bill and Title IV of Public Law 92-318, a recent and major addition to Indian education law, and the Snyder Act as well.

At the outset of our discussion of Title A, we recommend the following clarification of the terms "Indian" and "Indian tribe". In section 4 of the bill, delete subsections (a) and (b) and insert in lieu thereof the following:

"(a) 'Indian' means a person who is a member of an Indian tribe;"

"(b) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native community as defined in the Alaska Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Part A of Title II, Education of Indians in Public Schools, authorizes the Secretary of the Interior to enter into contracts with States, their political subdivisions, or Indian tribes and organizations for the purpose of educating Indians in public schools. Any contract which the Secretary enters into must be predicated on a plan which assures, essentially, that public schools educating Indian students are funded at the same levels as comparable schools which do not have substantial Indian enrollment. Funds provided under contract would be used for certain specified purposes, including counseling, teacher training, production of bilingual teaching materials, and supplemental meal

programs. Indian advisory education committees would be formed and utilized by the Secretary whenever a majority of the members of a local school board affected by such a contract was not Indian. If the contracting party were a State educational agency, prior to entering into such a contract the Secretary would require that the agency have established, and considered the recommendations of, an Indian Advisory Council on Education which is representative of all the tribes in the State. Contracts entered into under this title would replace existing Indian education programs, and on June 30, 1975, Indian education would be phased out of the Act of April 16, 1934. Part A would authorize the appropriation of such sums as might be necessary to carry out its provisions.

The provisions of Part A are similar to those of the Administration's proposal to amend the Johnson-O'Malley Act, S. 1342. The requirements imposed by Part A upon States in their education of Indian children—and on the Secretary in entering into such contracts—do not appear in S. 1342. Certainly, however, there is no inconsistency between the two bills, and we have no objection to the safeguards which Part A would afford public school Indian students.

We recommend expanding the scope of Federal education activities included under section 203(a)(2) to include all Federal education funds as local tax income under this section. This will provide a more realistic funding picture, in regard to both basic support and supplementary services of the contractor and would result in a more equitable funding pattern.

Part B of Title II authorizes the Secretary to make grants to and enter into contracts with various institutions to train educators who will work in schools serving Indians and to improve the qualifications of persons presently so engaged. Preference to Indians would be given in determining grant recipients. This part authorizes \$10,000,000 to be appropriated for the fiscal year after enactment and \$15,000,000 for each of the next two fiscal years. We view Part B as duplicative of existing authority under the Snyder Act and therefore recommend against its enactment.

Part C authorizes the Secretary to enter into contracts with State education agencies or school districts involving the construction, renovation, or acquisition of facilities for Indian education in school districts on or near Indian reservations. Authority for construction of public schools which educate Indian children is contained within the authority of the Department of Health, Education, and Welfare to render impact aid to public school districts (Act of September 30, 1950 (64 Stat. 1100), as amended). We defer for the views of the Department of Health, Education, and Welfare on this Part.

Part D establishes an Indian youth intern program for summer employment. Since there is comparable authority under existing law, we recommend against enactment of this Part.

Part E provides funds to the Secretary of the Interior for grants and contracts with appropriate nonprofit institutions and agencies for research and development in the fields of Indian education. The authorization for Part E is \$2,000,000 for the first fiscal year and \$3,000,000 for each of the next two fiscal years. We recommend that this Part not be enacted because it would duplicate authority provided by the Snyder Act.

Part F of S. 1017 directs the Secretary to prevent to the 94th Congress several programs which would show how to meet the educational needs of the following Indian groups; adults, persons desirous of technical education, young children, gifted and handicapped Indians aged 3 to 21 years, and those desirous of higher education. This Part would appropriate \$750,000 to carry out its purposes. We recommend that Part F not be enacted because the development and evolution of these programs is the continuing responsibility of the Interior Department and is currently authorized.

Part G provides general standards and requirements related to Title II. We recommend deletion of section 219 to make this part consistent with the above recommendations.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 3, 1973.

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

DEAR MR. CHAIRMAN: This is in response to your request of April 25, 1973 for the views of the Office of Management and Budget on S. 1017, the "Indian Self-Determination and Educational Reform Act of 1973."

The Department of the Interior in its report to your Committee on S. 1017 and the Department of Health, Education, and Welfare in its testimony on the bill state their preference for enactment of the Administration's proposals, S. 1342 and S. 1343 which would enable Indian tribes and communities to either contract for or assume control and operation of those programs and services provided by the Departments for Indians. However, both Departments recommend subject to certain amendments enactment of certain provisions of S. 1017—Title I, the Indian Self-Determination Act, and Part A of Title II, the Indian Educational Reform Act of 1973—as substantially consistent with the policy of self-determination for Indians as recommended by the President in his Indian Message of July 8, 1970 to the Congress. The Departments recommend against enactment of Parts B, C, D, E, and F as duplicative of existing authorities.

We concur in the views expressed by both Departments, and while preferring the enactment of S. 1342 and S. 1343, would have no objection to enactment of certain provisions of S. 1017 as cited above.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

The report of the Department of Health, Education, and Welfare on S. 1017, as contained in the statement of Hon. Frank Carlucci, Under Secretary of HEW, at the hearing before the Subcommittee on Indian Affairs on June 1 and 4, 1973, is set forth as follows:

STATEMENT BY HON. FRANK CARLUCCI, UNDER SECRETARY OF THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman, members of the Subcommittee, it is a pleasure to appear to testify on S. 1017, S. 1340, S. 1342 and S. 1343, which seek to assure to Indian people the right of self-determination.

1. GENERAL POLICY

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 to assume administrative responsibility for a service program which is presently administered by a Federal agency.

The Department is vitally interested in the enactment of legislation which would promote and encourage further self-determination for the Indian people to attain the ultimate goal of "Indian solutions to Indian problems."

As we advance the priority of self-determination, however, we must also be sensitive to the need for maintaining Federal support and concern for the Indian people. As we strengthen the Indian's sense of autonomy, we must be sure not to threaten his sense of community and tribal life. That means making it clear to Indians that they 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 represents a reinforcement rather than a termination of this unique relationship.

2. ADMINISTRATIVE ACTIONS

Before I discuss the four bills under consideration I would like to quickly highlight a few of the things being done under existing mandates to advance Indian self-determination. These actions include:

Over the years, Office of Education assistance benefiting Indian children and adults has been substantial. In FY 1973 it is estimated that \$87.3 million in OE obligated funds will benefit Indians. Included in this amount is \$24.4 million under Title I

of the Elementary and Secondary Education Act for the special needs of educationally deprived children; \$32.5 million in payments to local school districts under the impact aid legislation, P.L. 874; \$4.8 million for school construction under section 14 of P.L. 815; \$6.1 million in student financial aid; \$713,000 in special projects for adult education; and \$2.7 million in teacher training projects.

The Indian Health Service has made notable progress in improving the delivery of health services to American Indians and Alaskan Natives since 1955 through the growing participation of the Indians and Alaskan Natives in the planning, implementation and evaluation of health service programs. Some examples of tribally managed health efforts include the operation of community health services activities such as alcoholism projects, family planning programs, maternal and child health programs, and health screening and nutrition programs. 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 health services in their communities by employing workers trained by the Indian Health Service. The Indian tribes are now a major employer of health service workers formerly in the Indian Health Service. These tribal employees now number about one-fifth of the health workers on reservations.

Another indication of the progress toward Indian self-determination in the Department is the emergence of local, areawide, and national Indian health boards. These groups, formed at the Indians' initiative, advise the Indian Health Service on every aspect of health program management.

3. PROPOSED LEGISLATION

A. The Administration's Legislative Program for Indians

To advance the President's policy of Indian self-determination, the Administration on March 15 sent to Congress several bills which together make up a comprehensive legislative program. Three, S. 1343, S. 1342, and S. 1340, of these are being considered by the Subcommittee this morning, and I would like to describe them briefly now.

S. 1343 would accomplish the goals of the self-determination by requiring the Secretaries of the Interior and HEW to transfer to an Indian tribe, at its request, control and operation of programs and services now 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. 1342 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 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.

S. 1340 would provide for continued fringe benefits (such as compensation for injury, retirement, life insurance, and health benefits) for Federal employees who transfer to Indian tribal organizations to perform services they formerly performed as Government employees.

We view the contract authority contained in S. 1342 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. 1343, which would provide that authority, as a necessary complement to the contract authority provided in S. 1342.

In summary, these three bills would give the Indian people three levels of choice: One: contract with HEW to carry out the IHS programs; Two: request the complete transfer of the programs to Indian control; Three: allow those Civil Servants that the Indians wish to employ (in transferred programs) to retain certain benefits they had as Federal employees.

This three option 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 entirely with the Indian tribe.

I should caution that we would not want the transfer authority we seek to be interpreted as a way for the Federal Government to terminate 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 that it is not yet ready to assume the responsibilities which would accompany transfer, it could contract under S. 1342 to assume whatever responsibilities it felt ready to assume. However, if a tribe wants to remain at status quo with the Federal Government being fully responsible for carrying out the programs, that too would be its option. In addition, S. 1343 contains a provision to assure continuing Federal concern after program transfers occur.

S. 1343 also gives the Secretary authority, 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: (1) a violation of the rights or endangering the health, safety and welfare of the individual Indians, or (2) gross negligence or mismanagement of Federal funds. We do not view this safeguard as a punitive mechanism. We see it as a necessary protection for Indian people. The 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. 1343 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 are more likely to opt for assuming control of their programs with this specific legislative provision to assure them that they will not get less funding by assuming control.

While the conditions for assuming operating responsibility of the various Indian programs should be made as easy and as flexible as possible, the Federal Government nevertheless has a responsibility to assure that programs are being operated and administered in keeping with requirements of Federal law. S. 1343 assures this 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. 1342 provides contract authority, and therefore does not specifically refer to the safeguards contained in S. 1343, we would provide similar safeguards in the contract whenever the situation warranted.

B. S. 1017, The Indian Self-Determination and Educational Reform Act of 1973

I would now like to turn to S. 1017 which you, Mr. Chairman, and Senator Jackson have introduced.

While we prefer enactment of S. 1342 and S. 1343, we believe that enactment of certain provisions of S. 1017 as cited would be substantially consistent with the Administration's policy of self-determination for Indians.

For example, as I noted earlier, S. 1343 provides that, when an impasse develops between HEW and an Indian tribe over transfer of a program, the final decision on whether or not programs would shift to tribal control would rest with the Indian people. This option is not available under Title I of S. 1017 since it contains no authority to transfer Federal programs to the Indian people upon their request. Under S. 1017, the Secretary of HEW or Interior may, in his discretion, refuse to enter into a contract with Indian tribes.

However, we have serious problems with portions of Title II of S. 1017. This title would give to the Secretary of the Interior authority to:

Enter into contracts with States and their political subdivisions of Indian tribes and organizations for the purpose of educating Indians in public schools;

Make grants and contracts to train education professions to work with Indians;

Enter into contracts with State and local education agencies for construction, acquisition or renovation of facilities in school districts on or near Indian reservations;

Establish a summer employment program for Indian youth;

Make grants and contracts for research, surveys and demonstrations in the field of Indian Education; and

Provide a report to Congress in March 1975 proposing programs to meet the needs of Indian people in areas of adult, vocational, early childhood, gifted and handicapped, career and higher education.

Our figures also show that nearly three-fourths (75%) of the children of Native Americans residing on Federally recognized reservations attend public schools operated by State and local agencies. Thus, the education needs of Native Americans are being met substantially by our public school system.

Basically, Part A accepts the Administration's recommendation, as proposed in S. 1342, to expand the contracting authority of the Department of the Interior to include Indian tribes and organizations for educational services and fills in the present broad provisions of the Johnson-O'Malley Act with more detailed legislative specifications. We defer to the Department of the Interior for discussion on the merits of Part A of Title II.

However, duplication of existing programs benefitting public schools that educate Indian children is encountered in Part C of Title II. P.L. 815, 81st Congress, now authorizes a program of construction for school districts educating Indian children who reside on Federal property. The Administration budget calls for an increase in the P.L. 81-815 program and under which construction of facilities to meet the needs of Indian children is a priority. Approximately \$4.8 million will be obligated for this purpose in FY '73.

With regard to Parts B, D, E, and F our position is that there is sufficient existing authority under the Snyder Act (42 Stat. 208, Act of November 2, 1971) to allow for the activities listed under these parts.

In conclusion, we believe that enactment of Title I and Part A of Title II of S. 1017 would provide useful authority for the development of Indian self-determination as proposed by the Administration.

Regardless of which bills are adopted, however, the manner in which its provisions would be carried out by the Federal agencies involved is critical. The development of implementing regulations and guidelines will determine 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 developing 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.

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., June 18, 1973.

HON. KENT FRIZZELL,
Solicitor, Department of the Interior,
Washington, D.C.

DEAR MR. FRIZZELL: During testimony at our recent hearings on S. 1017, the "Indian Self-Determination and Educational Reform Act of 1973", the question was raised as to whether a tribe's sovereign immunity would be lost should it contract with the Bureau of Indian Affairs or the Indian Health Service to administer Indian programs. This query was raised in relation to the recent Federal court decision, in which the court, in ruling that the 1968 Civil Rights Acts suspended tribal sovereign immunity in cases brought under it, made the statement that the tribe had also waived immunity when it contracted with the BIA for operation of the law and order services on the reserva-

tion (*Loncassion v. Leekity*, Vol. 334 of the Federal Supplemental Reporter, page 370, New Mexico District Court 1971 Case).

Could the Committee please have the benefit of your opinion as to the question of whether a tribe, when contracting for services on its reservation, under S. 1017, is liable to have waived its sovereign immunity with respect to the scope of that contract.

During the 92d Congress, the "Indian Self-Determination Act" appeared as S. 3157. In a letter dated June 13, 1972, I raised similar questions to your predecessor, Mr. Mitchell Melich. Our records fail to disclose any response to that inquiry. We would appreciate an immediate response to this letter concerning this matter.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., August 1, 1973.

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

DEAR SENATOR JACKSON: This is in response to your June 18, 1973, letter requesting our views on whether tribal immunity from suit would be lost should a tribe contract with the Bureau of Indian Affairs or the Indian Health Service to administer federal Indian programs pursuant to pending legislation such as S. 1017.

An Indian tribe is immune from suit in any court. *Turner v. United States*, et al., 248 U.S. 354, 358 (1919). While an Indian tribe cannot waive its immunity without the consent of Congress [*United States v. United States Fidelity and Guaranty Co.*, et al., 309 U.S. 506 (1940); *Adams, et al. v. Murphy*, 165 Fed. 304, 308-9 (8th Cir., 1908); *Thebo v. Choctaw Tribe*, et al., 66 Fed. 372, 376 (8th Cir., 1895)], Congress can waive a tribe's immunity without the tribe's agreement. See *Fontenelle v. Omaha Tribe of Nebraska*, 430 F.2d 143 (8th Cir., 1970).

Tribal immunity from suit extends to cases sounding in contract [*United States v. United States Fidelity and Guaranty Co.*, et al., 309 U.S. 506 (1940)], cases in tort [*Turner v. United States*, et al., 248 U.S. 354 (1919)] and in cases involving title to lands (25 U.S.C. § 177). A tribe is also immune from suits based on the torts of its agents since a sovereign is not bound by, or responsible for, the wrongful acts of its agents unless the sovereign legislatively assumes such responsibility. 54 Am. Jur., *United States*, § 136.

The tribes' immunity does not prevent the United States from suing a tribe. Cf., *Principality of Monaco v. Mississippi*, 292 U.S. 313 (1934). A state, however, cannot sue a tribe. *Employment Security Dept. v. Cheyenne River Sioux Tribe*, 119 N.W. 2d 285 (S.D., 1963).

Congress can waive tribal immunity from suit and has done so in the past. Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, authorizes the Secretary of the Interior to issue corporate charters to Indian tribes conveying to the incorporated tribe "such * * * powers as may be incidental to the conduct of corporate business, not inconsistent with law * * *." The fact that Congress has authorized

the use of a corporation in itself warrants the conclusion that the corporation has the power to sue and be sued. *Lattin, The Law of Corporations* 83 (Foundation Press, 1959). Some tribal corporate charters, while explicitly authorizing the corporation to sue and be sued, limit the corporation's liability to chattels especially pledged or assigned. These restrictions are respected by some courts and ignored by others. Compare *Maryland Casualty Co. v. Citizens National Bank, et al.*, 361 F. 2d 517 (5th Cir., 1966) with *Fontenelle, et al. v. Omaha Tribe of Nebraska, et al.*, 430 F. 2d 143 (8th Cir., 1970).

Courts have held that a section 17 corporation can be sued in quiet title actions (*Fontenelle v. Omaha Tribe*), in actions arising from a contract (*Maryland Casualty Co. v. Citizens National Bank*), and in actions funded in tort [*Martinez v. Southern Ute Tribe*, 374 P. 2d 691 (Colo., 1962)]; but see *Martinez v. Southern Ute Tribe of the Southern Ute Reservation, et al.*, 249 F. 2d 915 (10th Cir., 1957), cert. denied, 356 U.S. 960 (1958)].

A section 17 tribal corporation is, of course, distinct from the tribal government organized under section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, theoretically, tribal assets could not be called on to satisfy judgments against the corporation, nor should the corporation be liable for acts done by the tribe in a governmental capacity.

The Indian Civil Rights Act of 1968, 25 U.S.C. § 1301-1303, represents a second Congressional waiver of tribal immunity. Unlike section 17 of the Indian Reorganization Act, the Civil Rights Act permits a court to review tribal governmental actions. Although the Civil Rights Act specifically grants only *habeas corpus* jurisdiction to the federal courts, it appears settled that the courts feel free to fashion any appropriate remedy. See *Dodge v. Nakai*, 298 F. Supp. 17 (D. Ariz., 1968).

The case of *Loncassion v. Leekity*, 334 F. Supp. 370 (D. N. Mex., 1971) holds that the Civil Rights Act of 1968 authorizes courts to enter money judgments against Indian tribes for tortious actions. The court found that the tribe had, by contract, assumed responsibility for the torts of its agents and that the Civil Rights Act of 1968 had waived the tribe's immunity from suit sufficiently to permit a court to enforce the responsibility which the tribe had assumed.

The Civil Rights Act of 1968, not the tribal contract, is the only possible basis for finding a waiver of immunity. The contract itself could not waive immunity since it was not Congressional action, but apparently the *Loncassion* court felt the tribe had sufficient authority to accept responsibility for the tortious acts of its agents. This interpretation of the 1968 act—that it imposes tort liability on a tribe—may or may not be sound. This office does not concur with it. It is, however, an understandable decision if it is realized that if the action had been committed by a federal agent, the victim could take advantage of a number of federal statutes waiving the Federal Government's immunity.

Whether other courts will follow *Loncassion* is, of course, a matter of conjecture. The obvious method to avoid the effects *Loncassion* would be to delete any contractual provision which could be construed as an acceptance of tribal liability for the acts of its agents. The more important problem, however, is assuring that contracts with Indian tribes do not result in a loss of rights to others and, at the same time,

that the tribe is protected against wholesale depletion of its assets through lawsuits. In response to this dual need, the Administration's proposed bill, S. 1343, provides that each tribe must carry liability insurance to protect third parties and that the tribe's immunity from suit is waived, but only up to the amount set out in the face of the insurance policy.

We regret that we did not respond to your earlier letter. Apparently the matter of a specific response was overlooked by our legislative counsel in the course of preparing language for S. 1343 in response to the problems raised by your letter and that office neglected to advise you that the language was drafted in response to your earlier letter.

Sincerely yours,

KENT FRIZZEL,
Solicitor.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 3, 1973.

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

DEAR MR. CHAIRMAN: This responds to the request of Senator Abourezk, during the June 1 Indian Affairs Subcommittee hearings on S. 1017, S. 1340, S. 1342, and S. 1343, for a legal memorandum outlining the respective responsibilities of the Federal Government and the States for Indian education. No one entity—either the Federal Government or the States considered collectively—is solely responsible for the education of Indians. Rather, the responsibility is lodged with and exercised by both entities in certain complicated ways.

I. THE STATES' RESPONSIBILITY

The responsibility of the States with regard to the education of Indians is to provide, in so far as possible, the opportunity for such education, on the same terms under which public education is made available to citizens generally. In *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), the United States Supreme Court held that the opportunity for public education, "where the State has undertaken to provide it, is a right which must be made available to all on equal terms." Moreover, the courts have long held that the availability of Federal Indian schools does not justify turning away Indians from the public schools. *United States v. Dewey County*, 14 F. 2d 784 (D.C. S.Dak. 1926), *aff'd sub. nom. Dewey County v. U.S.* 26 Fd. 2d 434 (Eighth Circuit 1938), *cert. den.* 278 U.S. 649 (1928); *Piper v. Big Pine School Dist.*, 193 Cal. 664, 226, Pac. 926 (1924). It can be fairly stated, then, that in so far as possible, the States have the basic responsibility to educate Indians as they do all of their citizens. Indeed, each of the States has bound itself by statute to provide this "universal" education to all eligible students.

II. THE FEDERAL RESPONSIBILITY

It is important to note, however, that two factors render State education of Indians on reservations a difficult task. First, reservation land

is held in trust for Indians by the United States and therefore is not subject to local taxation, the nearly universal source of funding for American public education. Thus, the public education of Indians is often a cost which the States must look elsewhere than the Indian community to meet. (In many cases, the States look to the Federal Government, which contracts with local educational agencies for the education of Indians under the Johnson-O'Malley Act, 48 Stat. 596, as amended by 49 Stat. 1458.)

Second, many Indians live in remote areas of large reservations, very far from public school facilities. The combination of these factors results in public education of some Indians being a herculean task.

Because of the tax exempt status of the trust land and frequent absence of organized public school districts, the Bureau of Indian Affairs has assumed responsibility for providing schools. This Federal responsibility for educating Indians, however, is not tied to any specific, primordial statutory or constitutional mandate. (Not even those treaties which provide for the education of Indians specifically impart this duty to the Federal Government.) This is not to say that the Federal Government has any intention of shirking its responsibilities in Indian education. Indeed, it is submitted that the United States has a strong moral call to meet these responsibilities. Rather, the point to be made is simply that the Government's activities in educating Indians should be considered as being exercised in lieu of the basic State responsibilities. This analysis is borne out in practice in that more than two-thirds of Indian children from reservation areas are currently enrolled in the public schools.

In addition to considerations which flow from Indian trust land status, another major factor has resulted in the Federal Government's assuming some responsibility for Indian education: in some cases the basic education programs offered by the States to all their citizens are not fully responsive to the special needs of Indian students. In such instances, the Federal Government has often contracted with State educational agencies to provide special programs tailored to meet Indians' needs. Such contracting is generally carried out under authority of the Johnson-O'Malley Act, *supra*.

The Federal Government discharges its responsibilities for educating Indian children in the following ways:

- (1) 87,080 Indian students are enrolled in public schools which receive financial assistance from the Federal government through Johnson-O'Malley funding.
- (2) 53,763 Indian students are enrolled in day and boarding schools conducted by the Bureau of Indian Affairs.
- (3) 4,025 Indian students live in Federal dormitories and attend public schools.
- (4) 2,222 Indian students attend Indian-controlled schools in Indian communities.
- (5) 61,000 Indian students (most of whom are also counted in group 1, *supra*) attending public schools are the beneficiaries of Federal "impact aid" provided to their schools by the Office of Education; additional resources for Indian education will be provided through the Department of Health, Education, and Welfare by the newly-funded Title IV of P.L. 92-318.

(6) Indian children in public schools throughout the country whose parents live at the poverty level are provided special educational opportunities through resources provided by the Office of Education pursuant to the Elementary and Secondary Education Act of 1965.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 1, 1974.

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 the request from Mr. Forrest Gerard of the staff of your committee on a possible amendment to be offered on the floor of the Senate to S. 1017, the Indian Self-Determination and Education Reform Act, which would strike all of Part A of Title II in the bill and substitute a new Part A.

The new Part A that would be added to S. 1017 by the proposed amendment would leave the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458), as it now exists and amend it further by adding six new sections.

The amendment continues existing authority granted this Department to enter into contracts with States, their political subdivisions, and others named to provide for, among other things, the education of Indians. It would also give the Department authority it needs to contract with Indian tribes and tribal organizations to provide education for Indians in public schools, while also giving guidance not now present in the existing contracting authority as to the kinds of programs to be contracted, percentages of funds that can be used for general and special education purposes, administrative procedures that should be followed, to name a few, as well as providing for the first time an authorization of a specific amount of funds which may be appropriated for this exclusive purpose.

We believe that the amendment will be of assistance to the Department and the Bureau of Indian Affairs in carrying out our responsibility of providing the best possible education to Indians in the public schools. We were asked to specifically comment on the question of whether the amendment would result in a reduction in the amount of funds received by each state that we now contract with to provide education for Indians in public schools. The amendment would not lessen the amount of money now received by each of the states.

Sincerely yours,

JOHN KYL,
Assistant Secretary for Legislative and Congressional Affairs.

XI. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1017,

as amended, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

SECTION 3371 (2) OF CHAPTER 33 OF TITLE 5, UNITED STATES CODE

DEFINITIONS

For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality; and

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1); **[and]**

(B) any general or special purpose agency of such a political subdivision, instrumentality, or **[authority]** *authority*; and

(C) *any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.*

* * * * *

ACT OF AUGUST 5, 1954 (68 STAT. 674), AS AMENDED

* * * * *

Sec. 7. (a) In carrying out his functions under this chapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized—

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

TRANSFER AND REVERSION OF LANDS

(b) The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under the jurisdiction of the Department of the Interior, and in Indian-owned lands that either are held by the United States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: *Provided*, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such beneficial owner to any such transfer or disposition shall first be obtained: *Provided further*, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

PROJECT CONSULTATION AND PARTICIPATION

(c) The Surgeon General shall consult with, and encourage the participation of, the Indians concerned, States and political subdivisions thereof, in carrying out the provisions of this section.

Sec. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act.

MILITARY SELECTIVE SERVICE ACT OF 1967 (81 STAT. 100) AS AMENDED

* * * * * SEC. 6 (a) (1) * * *

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service while on active duty and assigned to staff the various offices and bureaus of the Public Health Service, including the National Institutes of Health, or assigned to the Coast Guard, the Bureau of Prisons, Department of Justice, or the Environmental Science Services Administration, or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended, not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4. Notwithstanding the preceding sentence, commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who, prior to the enactment of this paragraph, had been detailed or assigned to duty other than that specified in the preceding sentence shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4.

THE ACT OF APRIL 16, 1934 (48 STAT. 596)

(The Act of April 16, 1934 (48 Stat. 596) is amended by adding four new sections. The sections are:

"Sec. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by, the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contractor is capable of meeting such objectives.

*"Sec. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove, programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulations provide: *Provided, however, That, whenever a local Indian committee or committees established pursuant to section 305 (b) (2) (B) (ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected body or bodies, be utilized for the purposes of this section.**

(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

"Sec. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

"Sec. 7. There are hereby authorized to be appropriated for the education of Indians pursuant to this Act \$65,000,000 for each of the fiscal years 1975 and 1976."

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93D CONGRESS
2d Session

} HOUSE OF REPRESENTATIVES {

REPORT
No. 93-1600

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

DECEMBER 16, 1974.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 1017]

The Committee on Interior and Insular Affairs to whom was referred the bill (S. 1017) To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 1, beginning on line 3, strike out the present text through Page 15, line 24 and insert in lieu thereof the following:

That this Act may be cited as the Indian Self-Determination and Education Assistance Act.

CONGRESSIONAL FINDINGS

Sec. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons,

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(e) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

SEC. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid, shall be repaid to the Treasury of the United States.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$100 or imprisoned not more than one year, or both.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1921 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c).

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

CARRY OVER OF FUNDS

SEC. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208) for any fiscal year which are not obligated and expended prior to the beginning of

the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

TITLE I—INDIAN SELF-DETERMINATION ACT

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof 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: *Provided, however,* That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further,* That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however,* That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however,* That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further,* That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to

overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however,* That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

GRANTS TO TRIBAL ORGANIZATIONS

SEC. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above; *Provided,* That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of federal programs serving the tribe.

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) the planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

SEC. 105. (a) Section 3371 (2) of chapter 33 of Title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

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

"Sec. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

(1) by deleting the word "and" after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and";

(3) by adding at the end thereof the following new paragraph:

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also means the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of section 203(c) and 303(d) of this Act, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments."

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of Title 5, United States Code, and for this purpose, his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of Title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of Title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of

Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of Title 5, United States Code.

(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of Title 5, United States Code.

(f) During the period an employee is entitled to the coverage rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraph (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

(h) For the purposes of subsection (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of Title 5, United States Code.

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as the finds appropriate.

(j) Anything in sections 205 and 207 of Title 18, United States Code of the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of Title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATION PROVISIONS

Sec. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installations and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement therefore by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amount of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract.

PROMULGATION OF RULES AND REGULATIONS

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b) (1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

REPORTS

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract of grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

REASSUMPTION OF PROGRAMS

SEC. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within 10 days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

EFFECT ON EXISTING RIGHTS

SEC. 110. Nothing in this Act shall be construed as—

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people."

Page 16, line 17, strike out "objectives," and insert in lieu thereof:

"objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students."

Page 17, strike all of line 24 and on page 18, strike all of lines 1 and 2.

Page 18, line 8, strike out "1974," and insert in lieu thereof "1975,"

Page 19, line 17 through Page 20, line 19, strike out all of Section 204 and renumber the succeeding sections accordingly.

Page 20, line 20, strike "Part C" and insert in lieu thereof "Part B".

Page 20, line 21, renumber section 206 as section 204.

Page 21, line, strike "part C" and insert in lieu thereof "part B".

Page 21, line 23, strike "part C" and insert "part B".

Page 21, line 24, strike, "218" and insert "208".

Page 23, line 3 through line 10, strike all of subsection (f) and reletter succeeding subsections accordingly.

Page 24, line 21 through page 30, line 3, strike all of Parts D, E and F and renumber "Part G" as "Part C".

Page 30, line 4, strike "Part G" and insert in lieu thereof "Part C".

Page 30, line 5, strike "215.", insert in lieu thereof "205.", and renumber succeeding sections accordingly.

Page 30, line 14, strike "except as provided in Part B".

Amend the title so as to read:

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

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 3371(2) OF CHAPTER 33 OF TITLE 5, UNITED STATES CODE

DEFINITIONS

For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States; and

(B) any general or special purpose agency of such a political subdivision as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality; and

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1); [and]

(B) any general or special purpose agency of such a political subdivision, instrumentality, or [authority] *authority*; and

(C) *any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.*

* * * * *

ACT OF AUGUST 5, 1954 (68 STAT. 674), AS AMENDED

* * * * *

SEC. 7. (a) In carrying out his functions under this chapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized—

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

TRANSFER AND REVERSION OF LANDS

(b) The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under the jurisdiction of the Department of the Interior, and in Indian-owned lands that either are held by the United States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: *Provided*, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such

beneficial owner to any such transfer or disposition shall first be obtained: *Provided further*, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

PROJECT CONSULTATION AND PARTICIPATION

(c) The Surgeon General shall consult with, and encourage the participation of, the Indians concerned, States and political subdivisions thereof, in carrying out the provisions of this section.

Sec. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act.

* * * * *
MILITARY SELECTIVE SERVICE ACT OF 1967 (81 STAT. 100)
AS AMENDED
* * * * *

SEC. 6 a (1) ***

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service while on active duty and assigned to staff the various offices and bureaus of the Public Health Service, including the National Institutes of Health, or assigned to the Coast Guard, the Bureau of Prisons, Department of Justice, or the Environmental Science Services Administration, or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended, not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4. Notwithstanding the preceding sentence, commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who, prior to the enactment of this paragraph, had been detailed or assigned to duty other than that specified in the preceding sentence shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4.

(Section 502, Act of January 5, 1971, 84 Stat. 1925; 42 U.S.C. 4762)

"SEC. 502. For the purposes of this chapter

* * * * *

(3) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States, and includes interstate and Federal-interstate agencies but does not include the governments of the political subdivisions of a State; [and]

(4) "local government" means a city, town, county, or other subdivision or district of a State, including agencies, instrumentalities,

and authorities of any of the foregoing and any combination of such units or combinations of such units and a State. A "general local government" means a city, town, county, or comparable general-purpose political subdivision of a State [.]]; and

(5) *Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a "local government" and a "general local government" also means the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of section 203(c) and 303(d) of this Act, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments.*

Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452-454)

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 Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory 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 or Territory.

SEC. 2. That the Secretary of the Interior, in making any contract herein authorized, may permit such contracting party to utilize, for the purposes of this Act, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

SEC. 3. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of this Act into effect: *Provided*, That such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective.

SEC. 4. *The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: Provided, That, where students other than Indian students par-*

participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: Provided, however, That whenever a local Indian committee or committees established pursuant to section 305(b)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

PURPOSE

S. 1017, as amended by the Committee, authorizes and directs the Secretary of the Interior and the Secretary of Health, Education, and Welfare to contract with Indian tribes or tribal organizations for the operation of programs and services provided by the Bureau of Indian Affairs and the Indian Health Service under guidelines and criteria established by the bill; amends the Johnson-O'Malley Act with respect to providing more Indian control of contracts for assistance to public schools enrolling Indian students; and authorizes the Secretary of the Interior to provide assistance for construction to public schools enrolling Indian students.

SECTION-BY-SECTION ANALYSIS

A section-by-section analysis of S. 1017, as amended, is as follows: Section 1 cites the Act as the "Indian Self-Determination and Education Assistance Act".

Section 2 contains a statement of congressional findings.

Section 3 contains a declaration of congressional policy.

Section 4 contains definitions for the purposes of the Act. The Subcommittee amended the definition of "Indian tribe" to include regional and village corporations established by the Alaska Native Claims Settlement Act. The Subcommittee amended the definition of "tribal or-

ganization" to provide for cases where the contract of a BIA or IHS service which has, under Federal operation, served more than one Indian tribe.

Section 5 is a new section adopted by the Subcommittee pursuant to the recommendations of the Department of the Interior and the General Accounting Office. The section provides more detailed requirements for reporting on the part of contractors under the Act and requirements for Federal audits.

Section 6 is a new section adopted by the Subcommittee pursuant to recommendations of the Department of the Interior. The section provides for criminal penalties for embezzlement, fraud, etc., in connection with contracts under the Act.

Section 7 is a new section adopted by the Subcommittee pursuant to the recommendations of the Interior Department. Subsection (a) makes the wage and labor standards of the Davis-Bacon Act applicable to contracts and subcontracts under provisions of the Act.

Subsection (b) gives a preference to Indians in training and employment in the administration of contracts and grants under the Act and to Indian organizations and Indian-owned economic enterprises in subgrants and subcontracts.

Section 8 authorizes the carry-over of funds from one fiscal year to the next.

TITLE I

Section 101 cites the title as the "Indian Self-Determination Act".

Section 102(a) directs the Secretary of the Interior to enter into contracts, upon the request of Indian tribes, with tribal organizations to perform the programs and services carried out by the Bureau of Indian Affairs on Indian reservations under its various authorities. The Secretary, under certain circumstances, may decline to do so.

Subsection (b) requires the Secretary to inform the tribe of his reason for declining to enter into a requested contract, assist the tribe or tribal organization in overcoming his stated reasons, and provide the tribe with a hearing on his objections with the right of appeal.

Subsection (c) authorizes the Secretary to require a tribe to secure appropriate liability insurance as a prerequisite to contracting under the Act, but the insurance company must waive any subrogated right it may have to set up as a defense on the insurance policy the tribe's sovereign immunity from suit, provided further, that such company may not waive the tribe's sovereign immunity beyond the limits of the policy.

Section 103(a) directs the Secretary of Health, Education, and Welfare to enter into contracts, upon the request of an Indian tribe, with tribal organizations to carry out its programs and services for Indians in the area of Indian health. The Secretary may decline to do so under certain circumstances.

Subsection (b) provides that the Secretary of HEW must inform the tribe of the reasons for declining to enter into such contracts, assist the proposed contractor in overcoming his objections, and provide the tribe with a right of hearing on his objections with the right of appeal.

Subsection (c) authorizes the Secretary to require the tribal contractor to secure appropriate liability insurance, but the insurance

company must waive any subrogated right it may have to set up as a defense the tribe's sovereign immunity from suit, provided further that such company may not waive the tribe's sovereign immunity beyond the limits of the insurance policy.

Section 104(a) authorizes the Secretary of the Interior to make grants to tribal organizations in several areas to facilitate their contracting under the terms of section 102.

Subsection (b) gives a similar authority to the Secretary of HEW to facilitate contracting under the terms of section 103.

Subsection (c) permits grants under subsections (a) and (b) to be used as matching shares for other Federal grant assistance which contribute to the purpose of facilitating tribal contracting under this Act.

Section 105(a) amends the Intergovernmental Personnel Act to permit assignment of Civil Service personnel to Indian tribes in furtherance of contracting under this Act.

Subsection (b) amends the Act of August 5, 1954, transferring Indian health programs from the BIA to the Public Health Service, to permit assignment of commissioned personnel from the Indian Health Service to the tribal contractor.

Subsection (c) amends the Military Selective Service Act of 1967 to further facilitate assignment of commissioned personnel of the Indian Health Service to the tribal contractor.

Subsection (d) amends the Intergovernmental Personnel Act to authorize Indian tribes to be the recipients of grants made by the Civil Service Commission for the purpose of training the tribes in personnel management. The Subcommittee adopted this amendment at the recommendation of the Interior Department.

Subsection (e) was adopted by the Subcommittee upon the recommendation of the Interior Department. It provides that Civil Service personnel who leave Federal employment to accept a position with a tribe or tribal contractor under this Act shall retain, upon the election of the employee and the contractor, the various employee benefits and rights; e.g. workmen's compensation, retirement, health insurance, and life insurance.

Subsection (f), an Interior recommendation, requires that the tribal contractor must make appropriate deductions and deposits in appropriate funds for the employee to retain such benefits.

Subsection (g), an Interior recommendation, requires the employee and the contractor to make such an election prior to his employment by the tribal contractor. It also permits the employee to transfer from one tribal contractor to another and still retain such benefits.

Subsection (h) provides that for the purposes of subsections (e), (f), and (g), the term employee means an employee in the Federal service.

Subsection (i) authorizes the President to prescribe regulations to carry out the provisions of the foregoing subsections and to protect and assure these rights.

Subsection (j) provides that Civil Service personnel transferring to tribal employment in furtherance of contracting under this Act, shall not be subject to the various Federal laws against conflicts of interests which are applicable to such employees leaving Federal service for private employment preventing them from representing their

new employer before the Federal government on matters which they worked on as Federal employees.

Section 106(a) provides that contracts under the title will be in accordance with Federal laws except that such contracts may, in the discretion of the respective Secretary, be negotiated and that the bonding requirements of the Act of August 24, 1935 may be waived. In addition, authority is conferred upon the appropriate Secretary to waive contracting laws and regulations where inappropriate or inconsistent with the purposes of the Act.

Subsection (b) authorizes the appropriate Secretary to make payments on contracts or grants under the title in advance, by way of reimbursement or in installments. However, it provides that the time between advance payments and tribal disbursement must be minimized to the extent possible. This provision was suggested by GAO to minimize loss of interest to the United States. Any interest earned by the tribal contractor during the time between advancement and disbursement need not be accounted for.

Subsection (c) permits contracts for periods up to three years pending availability of appropriations and that the contracts may be renegotiated to reflect cost factors beyond the control of the tribal contractor, i.e. inflation.

Subsection (d) permits the appropriate Secretary, upon the request of the tribe, to revise or amend the contract. A proviso permits the tribal contractor to retrocede to the Secretary the services being performed under the contract.

Subsection (e) permits a tribal contractor to utilize various kinds of Federal property and equipment in carrying out the contract.

Subsection (f) permits the Secretaries to contract with the tribal contractor for the performance of personal services except that they may not enter into such contracts which would impair their trust responsibilities to Indian tribes or individuals.

Subsection (g) requires a tribal contractor to assure the fair and uniform provision of services to individuals under the contract.

Subsection (h) provides that the amount of any funds provided to a contractor under a contract shall not be less than the amount the Secretary would have expended had the United States performed the service itself. It also provides that savings, if any, realized by the tribal contractor would be available for additional services and benefits.

Section 107 establishes criteria for the secretarial promulgation of rules and regulations implementing the provisions of the Act.

Section 108 requires a tribal contractor to provide certain reports and other information to the appropriate Secretary.

Section 109 provides that any contract entered into pursuant to this title must contain provisions allowing the Secretaries to reassume operation of the program or service if he determines that performance by the contractor is violating rights or endangering health, safety, or welfare of any person or that there is gross negligence in mismanagement. He must provide notice and a hearing. He may immediately rescind the contract if there is an immediate threat to health, safety, or welfare. Further, he may decline to enter into a new contract or grant until he is satisfied that such violation or endangerment no longer exists.

Section 110 protects the sovereign immunity of Indian tribes from suit and provides that there shall be, because of this Act, no termination of the trust responsibility.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

Section 201 cites title as "Indian Education Assistance Act."

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

Section 202 amends the Johnson-O'Malley Act of 1934 by adding three new sections. The amendments (1) require that a prospective contractor for education of Indians must submit a plan with the Secretary which meets certain minimum conditions and that where students other than Indian students participate in programs, money must be prorated to cover only the Indian students; (2) require a school district affected by a Johnson-O'Malley contract, where the school board is not composed of a majority of Indians, to cooperate and consult with an Indian Parents Committee elected from among their own numbers. Existing parent committees may be utilized for the purposes of the section; and (3) authorize Johnson-O'Malley funding for school districts attended by Indian students in Federal dormitories.

Section 203 requires the Secretary of the Interior, after consulting with the Secretary of HEW and others competent in Indian education, to prepare and submit to the Congress no later than October 1, 1974, a report on the Johnson-O'Malley program, including an analysis of the allocation of funds among eligible school districts and the relationship of the program to other Federal programs providing Federal assistance to public school educating Indian students.

PART B—SCHOOL CONSTRUCTION

Section 204(a) authorizes Federal assistance for public school construction, acquisition or renovation to school districts on or near Indian reservation with Indian enrollment.

(b) directs the Secretary of the Interior to expend not less than 75% of such funds on projects which would be eligible for assistance under the impact aid provisions of P.L. 815. The Commissioner of Education is required to submit a list of such projects.

(c) requires Secretary to expend not more than 25% of such funds on former private schools which have been, or will be, taken over by Indian tribes.

(d) provides that contracts entered into for such assistance contain provisions which (1) insure educational standards compatible with those in similar non-Indian school districts and (2) guarantee compliance with local building codes.

(e) requires consultation with local Indian parent committees and tribal governing bodies prior to entering into such contracts.

(f) authorizes the Secretary of the Interior to make an evaluation and report within 90 days of the end of the three year period following enactment on the operation and implementation of the program.

PART C—GENERAL PROVISIONS

Section 205 requires that the quality of educational services provided for Indian students by affected districts be comparable to those for non-Indian students before Federal funding under this title is available.

Section 206 limits funding to public agencies and tribal organizations except these bodies are permitted to subcontract with their individuals, organizations, or corporations.

Section 207 provides for Secretarial promulgation of regulation for this title.

Section 208 authorizes the Secretary to provide funds for the operation of former private schools over which the tribes assume authority. The Secretary is required to submit annual reports to the House and Senate Interior Committees on this program.

Section 209 provides that financial assistance to public schools for the education of Indians under this title shall be in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972.

BACKGROUND ON S. 1017

Tribal sovereignty, the power of self-government, was first recognized in concept by the United States Supreme Court in *Worcester v. Georgia* (6 Pet. 515 (1832)). In commenting on that decision a noted legal scholar has remarked:

From the earliest years of the Republic, the Indian tribes have been recognized as 'distinct, independent, political communities' and as such, qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal government, but rather by reason of their original Tribal sovereignty. Thus treaties and statutes of Congress have been looked to by the Courts as limitations upon original tribal powers, or, at most, evidences of recognition of such powers, rather than as the direct source of tribal powers. (*Cohen, Federal Indian Law*)

While it was clearly recognized that the power to abolish, limit, or modify the original tribal sovereignty was the sole prerogative of the Congress and, indeed, while the Congress has steadily eroded that original sovereignty, extra-legal administrative action had all but destroyed that right by the early 1920s.

The growth of the administrative power of the Bureau of Indian Affairs, first under the Department of War and later under the Department of the Interior, on Indian reservations had effectively destroyed existing tribal forms of government. Officials of the BIA assumed the role of colonial administrators on the reservations and administered programs and services on the reservations under a policy which later became known as "paternalism".

It became clear in the 1920s that this policy was not effectively providing Indian tribes and people with the necessary skills to function in the non-Indian society. The Meriam Report of 1928 reinforced this conclusion and made recommendation for administrative and legislative action to move away from paternalism to eventual Indian self-determination and self-government.

In response to these findings, the Congress enacted the Indian Reorganization Act of 1934. Some have viewed this legislation as conferring powers of self-government on the tribes and imposing an outside form of government to implement these "new" powers. The legal effect of the Act, however, was to restrict the extra legal administrative curtailment of tribal sovereignty and to facilitate tribal government forms to implement those sovereign powers which had not been specifically limited by the Congress and, in some areas, to define these powers.

While the Indian "new deal" legislation of the 1930s brought some measure of Indian control and self-government, it fell far short of the current Administration policy of "Indian Self-Determination without Termination." The Bureau of Indian Affairs continued to administer and operate federally-funded programs and services on the reservation and the tribes were given little opportunity to set priorities and to become involved in the policy and decision-making functions of the BIA.

After a brief, though disastrous experiment with the so-called "termination" policy in the 1950s which sought to totally terminate the Federal-Indian relationship, both the Congress and the Executive began to articulate a policy of Indian control and self-determination consistent with the maintenance of the Federal trust responsibility and the unique Federal-Indian relationship.

To accomplish this the Administration relies on a combination of four basic Acts: through the use of the "Buy Indian" Act of 1910 (36 Stat. 861) competitive bidding of contracts with Indian tribes can be waived; where the contracts relate directly to educational services for Indian children in public schools, authority is found in the Johnson-O'Malley Act of 1934 (48 Stat. 596), as amended; while other services are contracted for through the Snyder Act of 1921 (42 Stat. 208). Where Federal employees are involved in the operation of contracts, the Department of the Interior resurrected an 1834 Act (4 Stat. 737) to authorize tribal supervision over the Federal employees. This curious mixture of broad interpretation and unrelated statutes represented an attempt by the Department to improve the quality of education and other services and to promote greater self-determination for Indian tribes. The difficulties in straining statutory language beyond its original intent creates numerous administrative and management problems which this legislation is designed to correct.

Illustrative of these problems is the inability of the Federal government to exempt tribal contracts from Federal Procurement Regulations and to authorize payments in advance of tribal performance on such contracts. While the aforementioned statutes have provided some necessary tools to permit Federal agencies to contract with tribal groups, a more flexible authority is needed in order to give substance and credibility to the concept of Indian self-determination.

Title I of S. 1017 provides this flexible authority to efficiently and realistically permit contracting of Bureau of Indian Affairs and Indian Health Service programs to the Indian tribes while maintaining the integrity of the programs and services funded by Federal appropriations.

The authority of the Secretary of the Interior and the Secretary of HEW are expanded in the area of entering into negotiated con-

tracts with Indian tribes and tribal organizations under clear guidelines and contract requirements. Should either decline to agree on a contract requested by a tribe, he must inform the tribe of the reasons therefore and assist the tribe or tribal contractor in meeting the objections he raises.

The rigid procurement and contracting laws and regulations of the Federal government are either made inapplicable to such contracting or can be waived in the discretion of the respective Secretary.

Definitive auditing and reporting requirements by tribal contractors are provided and grants from both Secretaries to prospective contractors are authorized to enable such contractors to meet the requirements of the Act for contracts.

Title II of the Act amends the Johnson-O'Malley Act in order to provide for more Indian control of programs contracted to local educational agencies to assist in the education of Indian children in public schools. In addition, the Secretary of the Interior is authorized to provide construction assistance to public schools providing education to Indian children.

COMMITTEE EXPLANATION

The Committee adopted several major amendments to S. 1017 as passed by the Senate. Most of such amendments were recommended by the Department of the Interior and the General Accounting Office.

The Committee adopted three new sections in the preliminary provisions of S. 1017. These sections tightened up the contracting requirements for contracts under the Act in the areas of auditing and reporting, criminal penalties for misuse of contract funds, applicability of the Davis-Bacon Act to contracts under the Act, and preferences for Indians and Indian subcontractors. Each were recommendations of the Interior Department and GOA.

In title I, the Committee expanded the grant provisions of section 104 at the suggestion of the Interior Department in its report. These grants are made in order to facilitate contracting by tribes and tribal organizations under the terms of the Act. The specific purposes for which the grants are to be made are clarified and, to some extent, expanded and the authorization for appropriations for such grants are made under the so-called "Snyder Act" which is the general appropriation authorization for the Bureau of Indian Affairs. A later amendment struck the specific authorization provision contained in the Senate-passed bill.

Section 105 contains provisions relating to transfers of Civil Service employees of the Bureau of Indian Affairs and the Indian Health Service to tribal employment under contracts entered into pursuant to the provisions of the title. The Committee adopted amendments which (1) permit tribes and tribal contractors to be eligible for grants from the Civil Service Commission under the Intergovernmental Personnel Act to strengthen personnel administration of the contractors; (2) permit Federal employees transferring to tribal employment under such contracts to retain the various fringe benefits of Federal employment; and (3) exempt such transferring employees from the conflict-of-interest provisions of section 205 and 207 of title 18, U.S.C. which would be inappropriate to the circumstances of such contracts.

The Committee rejected an amendment proposed by the Subcommittee on Indian Affairs providing certain early retirement benefits for non-Indian employees of the BIA and IHS who are adversely affected by the Indian preference laws (upheld by the Supreme Court in the recent case of *Morton et al. v. Mancari et al.* (July 17, 1974) and the prospect of contracting of Federal positions to tribes or tribal contractors. The Committee did so not because of the lack of merit for remedial action in this area, but because it felt more information and deliberation on the problem were necessary. The Committee expects to either take action in this area in the 94th Congress or to support such action on the part of the appropriate committee having jurisdiction. In the interim, the Committee fully expects the Secretary of the Interior to take whatever administrative action is available, in concert with the Civil Service Commission, to aid such employees who have been adversely impacted in this area.

In title II, the Committee deleted four parts authorizing new programs in the area of Indian education within the Interior Department. It did so upon the recommendation of the Department on the basis that authority already existed for such programs and that, in some cases, such programs were being implemented or would be duplicative of existing programs. The Committee believes that the programs authorized by parts B, D, E, and F of S. 1017 as passed by the Senate are meritorious and necessary if the United States' obligations for Indians education are to be adequately met. Therefore, it directs the Secretary to provide the Committee on Interior and Insular Affairs of the House of Representatives and the Senate with a timely report on activity underway or to be begun in these areas.

COST

The bill authorizes appropriations for part B, title II in the amount of \$35 million for the fiscal year ending June 30, 1975, and \$35 million for the next four succeeding years for a total five-year authorization of \$175 million.

REPORTS OF THE DEPARTMENTS

Two reports from the Department of the Interior on Title I and Title II, and the report of the General Accounting Office, follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 17, 1974.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is our initial response to your request for the views of this Department on S. 1017, as passed by the Senate on April 1, 1974, "To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right

of Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes." Section 1 provides that the Act may be cited as the "Indian Self-Determination and Education Assistance Act." We shall transmit our views on Title II (the "Indian Education Assistance Act") in a separate letter.

TITLE I—INDIAN SELF-DETERMINATION ACT

We recommend enactment of Title I, subject to the comments and suggestions set out below.

Title I is apparently aimed at meeting the objectives of three Administration proposals:

H.R. 6372 ("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 includes authority for the detail of Federal employees to tribes).

H.R. 6376 (Amending the Johnson-O'Malley Act, 48 Stat. 596, 25 USC 452-454, to include Indian tribes as eligible contractors for the contracts authorized by that Act for the education, medical attention, agricultural assistance and social welfare of Indians).

H.R. 6853 (The "Federal Employee Indian Tribal Organization Transfer Act" which would provide that a Federal employee who transfers to tribal employment may, if the employee and the tribe so agree, retain certain civil service fringe benefits and to have certain rights to reemployment by the Federal agency he left when he transferred to tribal employment).

Section 102(a) of S. 1017 directs the Secretary of Interior "upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the [Johnson-O'Malley Act], any other program or portion thereof which the Secretary of Interior is authorized to administer for the benefit of Indians under the [Snyder Act, 25 USC 13], and any Act subsequent thereto * * *." This portion of section 102(a) achieves the objectives of our proposal in H.R. 6376 as described above. It also substantially achieves our basic objective in H.R. 6372 which is to give tribes the right to administer programs and services provided for them by the Federal Government as expressed by the President in his July 8, 1970 Indian message and most recently reaffirmed in his January 30, 1974, State of the Union message.

Section 102(a) continues with a provision authorizing the Secretary of Interior to—"initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization is deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program

to be contracted for, (4) community support for the contract, (5) adequately trained personnel, or (6) other necessary components of contract performance."

In contrast to the above language from section 102(a) of S. 1017 which gives the Secretary some limited discretion to refuse to contract, our proposal in H.R. 6372 would give the tribe the right to determine, after consultation with the Secretary, whether and when they are ready to assume control and operation of a program or activity. However, we endorse the S. 1017 provision as a reasonable and significant step forward.

To reflect the fact that a tribe may be able to remedy deficiencies found by the Secretary, we suggest that the words "is deficient" in the last proviso of section 102(a) be changed to "would be deficient in performance under the contract". The financing made available by the contract in some cases will enable the tribe or tribal organization to obtain the necessary equipment and personnel to operate the project or function contracted.

Section 102(b) requires that if the Secretary declines to contract, he must state his objections in writing to the Tribe, assist the tribe "to the extent practicable" in overcoming the objections, and provide the tribe with a hearing and appeal on the objections. We approve of the provision.

Section 102(c), which is comparable to a provision in section 2 of H.R. 6372, authorizes the Secretary to require a contracting tribe to obtain adequate liability insurance and provides that such insurance policy shall preclude the insurance carrier from using the tribe's sovereign immunity from suit as a defense against claims within the coverage and limits of the policy. For purposes of clarification and to correct an apparent inadvertent omission of language, we suggest that the provision be rewritten as follows:

"(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain such general public liability, motor vehicle, and other appropriate liability insurance coverage as he shall determine: *Provided, however,* That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity to suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance."

Section 103 of S. 1017 provides the Secretary of Health, Education, and Welfare with direction and authority comparable to that given the Secretary of Interior in section 102. Section 103(c) should read the same (except for the title of the Secretary) as section 102(c) discussed above.

We are aware of the concerns of some Indian leaders (see April 1, 1974, Congressional Record, pages S. 4818 and S. 4819) that contracts under sections 102 and 103 could be entered into with Indian organizations not approved by the tribal government or governments whose members would be served under the contract. It should be noted that under these sections, the Secretaries are directed "upon the request of any Indian tribe to enter into a contract or contracts with any tribal

organization of any such *Indian tribe*" (underscoring supplied). The request of an "Indian tribe", as defined in section 4(b), for a contract must be made by the governing body of the tribe and the contract must be with a "tribal organization [which term is defined in section 4(c)] of any such Indian tribe * * *." We believe that the present language of sections 102 and 103 avoids the problem of contracting with organizations not approved by the tribal government where a contract would only involve a single tribe. However, where a contract could involve programs or activities serving several tribes (such as in the case of western Washington, Nevada, the New Mexico Pueblos, and other places where a Bureau of Indian Affairs Agency serves more than one tribe), the present language of the sections could result in one or more of the tribal governments requesting that a contract be entered into with a "tribal organization" when such contract or organization may be objectionable to other tribal governments whose members would be served under the contract. To remedy this possible problem, we suggest that language such as the following be added at the end of the section 4(c) definition of "tribal organization": "*Provided, That,* for the purposes of each specific request for a contract under sections 102, 103 or 104 of this Act, the term includes only an organization which each Indian tribe to be served under such contract or grant either (1) has approved (or specified in their request) for such contract or grant, or (2) has not objected to within thirty days of notice from the appropriate Secretary of his receipt of the request for such contract or grant."

The above addition to section 4(c) is consistent with section 2(a) of H.R. 6372 which would require approval by each tribe involved of program or activity transfers.

It is inherent due to the previous relationship of Indian tribes and the BIA that a close working relationship will continue to exist in some cases where tribal contracts are approved under sections 102(a) and 103(a) of S. 1017. It should be recognized that such a relationship is unusual in Government contracting.

Sections 104 and 109 of S. 1017 provide (upon request of an Indian tribe) for grants to tribal organizations for planning, training, evaluation, and other activities specifically designed to make it possible for such organizations to enter into contracts under sections 102 and 103. We believe that this grant authority will be of great assistance in enabling tribes to prepare for contracting by, among other things, hiring or contracting for legal, technical, and other required skills. However, we believe that the phrase "and other activities specifically designed to make it possible for such tribal organization to enter into a contract or contracts" may unduly restrict our ability to provide assistance to those tribal governing bodies which need the most assistance in improving and developing their current tribal operations so that they would be able to assume new responsibilities under the contracts authorized in sections 102 and 103. For example, the section 104 authorization apparently would not permit us to grant funds to a tribe for the development of a basic tribal budgeting and accounting system unless the tribe could relate the system to a specific contract it wanted to enter into. Therefore, we believe that it is essential to the achievement of the purposes of Title I that the grant authority be broadened to include grants to strengthen or improve tribal government. This could be

accomplished by combining and rewriting sections 104 and 109 in a manner such as follows:

"Sec. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe, (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for:

(1) The strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems, the improvement of tribally funded programs or activities, or the development, construction, improvement, maintenance, preservation or operation of tribal facilities or resources);

(2) The planning, training, evaluation, or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 or 103 of this Act; or

(3) The acquisition of land in connection with items (1) and (2) above; *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides land held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe.

(b) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which such grants were made."

Our proposed section 104(b) is in line with section 7(c) of H.R. 9011 and would permit where necessary a tribal organization to undertake programs or activities with funding from more than one Federal grant program. Such a provision is especially needed because of the inability of many tribes to meet the local matching or non-Federal share requirements of some Federal grant programs.

Our proposed section 104 omits any reference to the Department of Health, Education, and Welfare as we understand that they will propose a separate provision relating to grants.

Section 105(a) of S. 1017 amends Title IV ("Mobility of Federal, State, and Local Employees") of the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371 *et seq.*) to include Indian tribes as local governments eligible for intergovernmental personnel assignments under that Act. This provision is very desirable because it treats Indian tribes the same as other local governments by permitting the assignment for up to two years (renewable for up to two additional years) of employees from any Federal agency to a tribe and similar assignments of tribal employees to any Federal agency. Such authority can be of great assistance in strengthening ongoing tribal government operations, preparing a tribe for contracting, and in operating under contracts, particularly in the early years of such contracts. In addition, in the case of those Bureau of Indian Affairs employees assigned to a program or activity prior to its being contracted to a tribe, such intergovernmental personnel assignments could provide continuity in the operation of

contracted programs and activities and could give the Bureau and the employees a substantial opportunity to find other employment for any of such employees who are not likely to become tribal employees.

Consistent with the fact that sections 102, 103, and 104 of S. 1017 provide for contracts or grants to "tribal organizations", a term which is defined in section 4(c) to include more than just tribal governing bodies, we suggest that the amendment proposed in section 105(a) be expanded by changing the period to a comma and adding "and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

The provision in Section 105(a) more than satisfies the objective of section 3 of H.R. 6372 which would authorize the detail to tribes of Interior or HEW civil service employees for up to one year. It also substantially eliminates the need for the provision in section 2(5) of H.R. 6853 (the "Federal Employee Indian Tribal Organization Transfer Act") which under certain circumstances would give Bureau of Indian Affairs employees who transfer to tribal employment the right to reemployment by the Bureau within five years of such transfer if they chose to not remain employed by the tribe. However, section 105(a) of S. 1017 is seriously deficient in not permitting Bureau employees who functions are contracted by a Tribe to transfer to tribal employment (if they and the tribe are agreeable) and still retain their civil service fringe benefits.

Many of the Bureau of Indian Affairs employees who are employed at the Bureau's agencies and schools are members of the tribes served by such agencies and schools. These employees are not likely to want to relocate to another Bureau installation or to another Federal agency away from their reservations. They also generally are not likely to want to give up their civil service benefits (i.e., retirement, compensation for injury, life insurance, and health benefits) by transferring to tribal employment. The fact that such Bureau employees would be so "harmed" by a tribe's contracting for the conduct of a program or activity is a serious impediment to tribes undertaking such contracting. We feel that it is essential to the achievement of the purposes of Title I that provision be made to alleviate this serious problem. Therefore, we recommend that section 105 be amended by adding the following new subsections:

"(d) Other statutes, Executive orders, or regulations, notwithstanding, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1984, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

"(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of Title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that

payment shall be credited against any benefit payable under subchapter I of chapter 81 of Title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

"(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of Title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

"(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefits Fund (section 8909 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of Title 5, United States Code.

"(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employees' Life Insurance Fund (section 8714 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of Title 5, United States Code.

"(e) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such subsection.

"(f) An employee who is employed by a tribal organization under subsection (d) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (d) before the date of his employment by such tribal organization. An employee who is employed by a tribal organization under subsection (d) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

"(g) For the purposes of subsections (d), (e), and (f) of this section, the term "employee" means an employee as defined in section 2105 of Title 5, United States Code.

"(h) The President may prescribe regulations necessary to carry out the provisions of subsections (d), (e), (f) and (g) of this section and to protect and assure the compensation retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate."

Not only would the above addition to section 105 aid in overcoming a serious constraint to contracting by tribal organization, it would also better enable the tribal organization to recruit those Federal employees it wishes to hire in connection with its programs and activities under Title I of S. 1017.

Section 106(a) requires that contracts under the Act be in accordance with "all Federal contracting laws and regulations" except those requiring advertising, competitive bidding and bonding. These exceptions are reasonable and necessary to the accomplishment of the purpose of the Act. In line with our proposed revision of section 104, the reference to "sections 102 and 103" should be changed to "sections 102, 103, and 104".

Section 106(b) authorizes payments with regard to any grants or contracts under sections 102, (103, and 104 to be "made in advance or by way of reimbursement and in such installments and on such conditions" as deemed necessary. Such advance payment authority is essential because many tribes do not have sufficient funds of their own to operate contracted programs or activities on a reimbursable basis. However, we shall administer this authority so as to minimize the time elapsing between the date of each payment to a tribal organization and the necessary disbursement of such payment by the organization.

Section 106(c) authorizes contracts to be for terms of up to three years but stipulates that contracts with terms over one year are to be "subject to the availability of appropriations". It also authorizes annual renegotiation of contracts "to reflect factors, including but not limited to cost increases, beyond the control of a tribal organization." This discretionary authority provides for contracts over a year in length but, as to years after the first year, the contract is more of a declaration of intent until sufficient appropriated funds have become available for the future years.

Section 106(c) also provides desirable limited authority to increase federal costs annually without an increase in benefit to the Federal Government where the cost increases are due to factors beyond the control of the tribal organization (such as an unanticipated increase in the cost of fuel).

Consistent with our proposed change in section 104, the reference in section 106(c) to "sections 102 and 103" should be to "sections 102, 103, and 104". The provisions of section 106(c) will aid in the accomplishment of the purposes of the Act.

Section 106(d) authorizes the revision or amendment of any grant or contract "as necessary to carry out the purposes of this title" and requires the appropriate Secretary to accept a tribal organization's request for retrocession (i.e., rescission of a contract and return of the operation) of any contracted program or activity. The provision is consistent with section 2(d) of H.R. 6372 which we proposed.

Section 106(e) authorizes the appropriate Secretary to permit a tribal organization to utilize existing "school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property" under the Secretary's jurisdiction. The phrase "or agency head" may be deleted as unnecessary and inconsistent with other provisions of the Act which only refer to the "Secretary" or "Secretaries".

The provision in section 106(e) is appropriate and is consistent with sections 1(d) and 2(a) of H.R. 6372.

Section 106(f) specifies that the contracts and grants under sections 102, 103, and 104 "may include provisions for the performance of personal services which would otherwise be performed by Federal employees" but prohibits "any contract which would impair [the Secretary's] ability to discharge his trust responsibilities to any Indian tribe or individuals." This self-explanatory provision is a desirable clarification of what functions can be contracted to a tribal organization. Clearly, we should not contract the function of approving transactions involving lands or funds held in trust by the Secretary since nothing in S. 1017 would alter the fact that these responsibilities remain with the United States. We are currently working with our Solicitor's Office to more completely and precisely define the functions which should not be contracted so that our regulations will be clear and specific on this point. It is generally intended that federal function and certain trust related activities may be contracted to Indian tribes after this legislation is passed, although trust responsibilities will not be contracted out.

Consistent with our suggested revision of section 104, the portion of section 106(f) reading "The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104" should be revised to read "The grants and contracts pursuant to sections 102, 103 and 104 of this Act".

For purposes of clarification, we suggest that section 106(g) be rewritten in a manner such as follows: "(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants."

Section 107 provides for the adoption of the initial rules and regulations to implement Title I within certain time frames and requires consultation in their development with "national and regional Indian organizations", presentation of the proposed rules and regulations to the Congressional Committees on Interior and Insular Affairs, and their publication in the Federal Register for comment before final publication within ten months of enactment of S. 1017. We believe that we will be able to meet the specified time frames.

For purposes of clarification and to be consistent with section 107(a), we suggest that the word "each" be inserted after "shall" in each of paragraphs (1), (2), (3), and (4) of section 107(b) and after the word "are" in section 107(c).

Section 108 is similar to section 2(c) of H.R. 6372, which we proposed. The term "Indian tribal organization" should be changed to "tribal organization" to be consistent with the remainder of the title.

We are aware of the Comptroller General's recommendation concerning section 108 in his March 20, 1974 letter (see April 1, 1974 Congressional Record, pages S4819-S4821). A requirement similar to that proposed by the Comptroller General is set out in 41 U.S.C. 254(c) and we believe that it would be applicable to the contracts authorized in Title I of S. 1017 by virtue of the provision set out in 41 U.S.C. 260 and 41 U.S.C. 252(c)(15). However, we have no objection to including such a provision in S. 1017 and making it applicable to both titles in line with the Comptroller General's recommendation. We also believe that the Act should require that reports made by the organizations receiving grants or contracts under the Act should be made available to the Indian people served under such grants or contracts and that any funds advanced but not utilized in connection with a grant or contract should be returned to the Treasury. These recommendations could be incorporated by deleting the last sentence in section 108 and inserting a new section 5 before Title I as follows:

"Sec. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit."

"(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

"(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

"(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States."

In place of the section 109 which we recommended be combined with section 104, we suggest the inclusion of the following new section 109 based on section 2(e) of H.R. 6372 and a similar provision recommended by the Comptroller General's March 20, 1974 letter:

"Sec. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or mismanagement in

the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to health or safety and, in such cases, he shall hold a hearing on such action within 10 days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights, endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590) as amended (29 U.S.C. 651)."

Section 110 provides desirable assurance that nothing in the Act alters tribal sovereign immunity from suit or authorizes the termination of any trust responsibility to Indian people.

We have been asked whether the phrase "elected governing body of any Indian tribe" in the section 4(c) definition of "tribal organization" would exclude those Pueblos which select their leaders by their traditional method and not by what is commonly considered an election. We would not so construe the provision but to avoid any misunderstanding, we suggest that the word "elected" be replaced by "elected or otherwise recognized". This would enable us to determine the body which is authorized to act as the "governing body" for each specific tribal situation.

We recommend that the Act include provision for criminal penalties for embezzlement, willful misapplication, or fraud in connection with grants and contracts pursuant to Titles I and II. We suggest the addition of a new paragraph 6 before Title I as follows:

"Sec. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a grant, subgrant, contract, or subcontract pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

Construction activity is possible under S. 1017 and provision should be made for the payment of prevailing wage rates. Such a provision (with an incorrect citation) is included in section 206(f) but is applicable only to school construction under Part C of title II. We recommend that a new section (7) (based on section 14 of H.R. 9011) applicable to all of S. 1017 be inserted before title I as follows:

"Sec. 7. All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including paint-

ing or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1931, is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.S. 276c)."

We wish to reiterate our recommendation that Title I of S. 1017 be enacted, subject to the above comments and suggestions, because of its critical importance to achieving Indian Self-Determination, strengthening tribal governments, and improving the general welfare of Indian people.

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

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 17, 1974.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This further responds to your request for the views of this Department on S. 1017 (the "Indian Self-Determination and Education Assistance Act"). In a separate letter we provided you our views on Title I (the "Indian Self-Determination Act") of S. 1017.

Title II—INDIAN EDUCATION ASSISTANCE ACT

Title II of S. 1017 as passed by the Senate on April 1, 1974, contains a number of new programs and authorities for the Secretary of the Interior organized as follows:

- Part A—Education of Indians in Public Schools
- Part B—Preparation of Professionals in Indian Education
- Part C—[Public and Tribal] School construction
- Part D—Youth Intern Program
- Part E—Educational Research and Development
- Part F—Adult, Vocational, and Early Childhood Education
- Part G—General Provisions

For the reasons set out below:

We recommend enactment of portions of Parts A and G subject to certain comments and suggestions.

We recommend against enactment of Parts B, C, D, E and F.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

This part includes amendments to the Johnson-O'Malley Act (25 U.S.C. 452-454) and calls for a report to the Congress. We recommend enactment, subject to the comments and suggestions below, of section 202 except for the proposed new section 7 of the Johnson-O'Malley Act (JOM Act) which we recommend not be enacted. We also recommend against enactment of section 203.

Section 202 of S. 1017 would add three sections designed to improve the education activities assisted under the JOM Act by strengthening and clarifying our authority and requiring Indian involvement in the development of programs assisted under the Act. A fourth section would provide an unnecessary substitute JOM appropriation authorization authority or limitation for two years. Section 202 would make no change in the JOM Act with respect to contracts for "medical attention, agricultural assistance, and social welfare" which are also authorized by that Act.

It should be noted that the proposed new sections 4 and 7 would apply to JOM contracts involving private as well as public schools although the title of Part A refers only to public schools. The new section 4 of the JOM Act would require each prospective education contractor to submit an education plan which (1) contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and (2) assures that the contractor is capable of meeting such objectives. We note an apparent typographical error in that the word "contractor" should be used in place of "contract" the last time it appears in section 4. The Senate Report (No. 93-762) on S. 1017 indicates on page 22 that the "contractor" was the term intended.

The new section 5(a) of the JOM Act provides for the establishment of a "local committee" elected by the parents of Indian children enrolled in the schools of any school district affected by a JOM education contract if the membership of the school district's board does not include an Indian majority. Such committee is to "fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under the JOM contract and shall have such other duties, and be so structured, as the Secretary of Interior shall by regulation provide." The section also provides for the tribal governing body to determine which local committee shall be utilized in the event that such a committee has been established pursuant to a provision of the Indian Education Act (20 U.S.C. 241aa, dd) or for purposes of JOM contracts prior to enactment of S. 1017.

For purposes of clarification and technical accuracy we propose two amendments to the new section 5(a). In the first sentence the phrase "not composed of a majority of Indians" should be changed to "whose membership does not include an Indian majority". In the proviso in the second sentence insert "the Act of September 30, 1950 (64 Stat. 1100, Public Law 81-874) as amended by section 411 of" after "section 305(b) (2) (B) (ii) of" and change "(86 Stat. 235)" to "(86 Stat. 235, 334-337, Public Law 92-318)".

The new section 5(b) of the JOM Act would authorize this Department to revoke any contract if the contractor fails to permit a local committee to perform its duties as provided in section 5(a).

The new section 6 of the JOM Act would provide specific discretionary authority for education contracts to include the "full per capita cost" of educating Indian students who are residing in Federal boarding facilities for the purpose of attending public schools not located in the State in which they normally reside. The Secretary would define "full per capita cost" under the authority provided in section 3 (25 U.S.C. 454) of the JOM Act.

The new section 7 would authorize the appropriation of \$65 million for each of fiscal years 1975 and 1976 for the education of Indians pursuant to the JOM Act whether in public or private schools. The Senate Report (p. 22) states that the authorization would include financial support for the local committees established by the new section 5 of the JOM Act. The proposed appropriation authorization is not necessary as appropriations are authorized by the Snyder Act (25 U.S.C. 13). The proposed authorization would in effect be a \$65 million limitation for only fiscal years 1975 and 1976 on a program which is budgeted for less than \$26 million for fiscal year 1975. We recommend that this proposed section 7 not be added to the JOM Act.

We recommend against enactment of section 203 of S. 1017 because it is unnecessary.

Section 203 would require this Department (after consultation with the Department of Health, Education, and Welfare and others "competent" in the field of Indian education) to prepare and submit a report to the Congressional Committees on Interior and Insular Affairs by October 1, 1974 which is to include—

(a) a comprehensive analysis of the JOM Act as amended by S. 1017 including:

(1) factors determining the allocation of funds for special or supplemental education programs and for current operating expenses of the contractors;

(2) the relationship of the JOM Act to four other statutes providing financial assistance for the education of Indians:

(A) Title I of P.L. 81-874 as amended (20 U.S.C. Chapter 13, "Financial Assistance to Local Educational Agencies");

(B) P.L. 89-10, the Elementary and Secondary Education Act, as amended (20 U.S.C. Chapter 24, Subchapter I; Chapter 13, Subchapter II, Chapter 15; etc.);

(C) P.L. 92-318, the Indian Education Act (20 U.S.C. 241aa, etc.); and

(D) P.L. 81-815, as amended (20 U.S.C. Chapter 19, "School Construction in areas affected by Federal activities").

(b) a specific program to meet the special educational needs of Indian children who attend public schools, including at least:

(1) a plan for the equitable distribution of funds to meet such needs and, where necessary, to meet current operating expenses; and

(2) an estimate of the cost of the program.

(c) detailed legislative recommendations to implement the programs called for in (b).

(d) a specific program with legislative proposals to assist in the development and administration of Indian controlled community colleges.

The provisions of section 203 do not need to be enacted into law as we have sufficient authority to prepare such reports and we would do so whenever requested by your Committee or its Senate counterpart. We have already begun the work necessary to produce the report described in section 203 by October 1, 1974 and will provide it to both Committees.

PART B—PREPARATION OF PROFESSIONALS IN INDIAN EDUCATION

Part B would authorize financial assistance to universities and other organizations to provide fellowships and carry out programs and projects to train and improve qualifications of education personnel serving "Indians in public, private and totally federally funded schools."

We recommend that Part B not be enacted because it duplicates existing authority the Interior Department has under the Snyder Act (25 U.S.C. 13) for such activities as our scholarship program which assists Indian students in education and other fields. We defer to the Department of Health, Education, and Welfare as to the apparent duplication of Part B and the specific authority provided that Department such as in section 810(a) (3) and (d) of Public Law 89-10 (the "Elementary and Secondary Education") as amended (20 U.S.C. 887c(a) (3) and (d)) by section 421(a) of the Indian Education Act.

PART C—[PUBLIC AND TRIBAL] SCHOOL CONSTRUCTION

We recommend against enactment of Part C because we do not believe that the Department of Interior should undertake a public school construction assistance program which would duplicate the program administered by the Department of Health, Education, and Welfare under Public Law 81-815.

We defer to the Department of Health, Education, and Welfare as to the operation, funding, or other aspects of the Public Law 81-815 program and its relation to Part C.

PART D—YOUTH INTERN PROGRAM

Part D would authorize the Secretary of Interior to establish an Indian youth intern program "to provide meaningful and career-related work opportunities" for Indian youth who are not enrolled in educational programs during the summer months.

We recommend against enactment of Part D because there is authority for such a program under the Snyder Act (25 U.S.C. 13) or for those 18 years or older, under the Public Law 84-959, as amended (25 U.S.C. 309) vocational and on-the-job training programs administered by this Department.

PART E—EDUCATIONAL RESEARCH AND DEVELOPMENT

Part E would authorize grants to or contracts with universities, colleges, nonprofit organizations, or individuals "for research, surveys, and demonstrations in the field of Indian education" and for the dissemination of the information derived.

We recommend that Part E not be enacted because it duplicates authority we have under the Snyder Act (25 U.S.C. 13) to accomplish the same purposes by contract.

PART F—ADULT, VOCATIONAL, AND EARLY CHILDHOOD EDUCATION

Section 213 would require the Secretary of Interior to present a report to the 94th Congress by March 1975 which is to include a number of education and training program proposals and an assessment of the capability of the Federal Government to measure effectively and accurately the educational progress and achievement of Indian people.

We recommend against enactment of Part F because the development and evolution of such programs is a continuing responsibility of ours and is currently authorized under the Snyder Act (25 U.S.C. 13).

PART G—GENERAL PROVISIONS

Section 215 would prohibit any Title II funds going to any school district unless this Department is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in such district's schools are at least equal to that provided all other students from resources other than Title II of S. 1017. A similar provision applicable only to Part C (School Construction) is included in section 206(d). We have no objection to section 215 which is consistent with section 3 (25 U.S.C. 454) of the Johnson O'Malley Act.

Section 216 would require any funds made available under Title II of S. 1017 (other than under Part B, "Preparation of Professionals in Indian Education") be made available directly to "public agencies and Indian tribes, institutions, and organizations" but specifically permits those recipients to "contract for necessary services with any appropriate individual, organization, or corporation." We have no objection to this section but for clarification and consistence in terminology we suggest that the phrase "public agencies and Indian tribes, institutions, and organizations" be changed to "public agencies and tribal organizations" since section 4(c) defines "tribal organization" to include tribal governing bodies and certain other organizations. If the reference to "Indian *** institutions" is intended to mean institutions not included in the definition of "tribal organization", that fact should be clarified and such institutions more precisely identified.

Section 217 provides for the development of rules and regulations to implement Title II in a manner similar to that specified for Title I in section 107 and discussed in our report on Title I. We have no objection to the provision, however the Committee may wish to consider avoiding unnecessary repetition by combining sections 107 and 217 into a single section applicable to both titles.

We do not recommend enactment of section 218 as passed by the Senate.

Section 218 provides that the "Secretary is authorized and directed to provide funds, pursuant to [S. 1017; the Johnson O'Malley Act;] or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school" and requires an annual report to the Congress on such assistance. We are

already contracting to provide financial assistance for the operation of such schools. However, we do not now have authority such as proposed in section 206(c) to assist the construction, alteration, or the improvement of tribal or other non-Federal facilities.

As written, section 218 apparently seeks to prohibit any discretion on this Department's part as to the provision of the financial assistance authorized. We consider such a requirement seriously wrong because it could require Federal assistance to the operation and, in connection with section 206(c), even the construction of schools or related facilities which could divert students from existing adequate public or Bureau of Indian Affairs (BIA) schools. In addition, the lack of any standards as to the amount of assistance that the Department would be "directed" to furnish could lead to disputes and litigation.

However, there are cases where Indian children are now being educated in sectarian or tribal schools. In some of these cases adequate public or BIA school facilities are not available in the locality, and the closing of the sectarian or tribal schools would not only be distressful to the parents and children involved but could result in the children being sent to a BIA boarding school. Therefore, to avoid such circumstances, this Department should have discretionary authority to provide financial assistance to tribal schools which were formerly private schools. In line with the provisions set out in 25 U.S.C. 278 and the constitutional problems that would be involved, we do not believe that assistance can be extended to sectarian schools.

In the case of assistance for construction, alteration, or improvement, we would limit our assistance to temporary measures necessary to remedy unsafe or unhealthy conditions where existing public or BIA school facilities in the locality need to be improved or enlarged to accommodate the transfer of such students. Where existing public or BIA school facilities are adequate to accommodate the students in a tribal school we would provide no assistance for construction, alteration, improvement or for any operational costs which would not be costs borne by the Federal government if the students attended public or BIA schools in the locality.

We also believe that tribal schools aided by Federal funds should be owned by such tribes rather than only controlled and managed by them as provided in section 218.

We recommend that section 218 be enacted if it is rewritten in a manner such as follows:

"Sec. 218. The Secretary is authorized to enter into contracts to provide assistance from funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208) or the Act of April 16, 1934 (48 Stat. 596), as amended, to any tribal organization which owns, controls, and manages a previously private school and related facilities to assist in the operation, alteration, or improvement of such school and related facilities: *Provided*, That such assistance shall be in such amounts and subject to such terms and conditions as the Secretary shall determine in consultation with the tribal organization involved."

It should be noted that under section 102 of S. 1017, a tribe may contract for the operation of Bureau schools serving their children and that section 202 assures Indian involvement in the public school activities assisted under the Johnson-O'Malley Act.

Section 219 declares that assistance provided under S. 1017 for the education of Indian children in public schools is in addition and supplemental to assistance provided under the Indian Education Act. We recommend against enactment of this section because we believe that such assistance could be duplicative.

The Office of Management and Budget has advised that there is no objection to the presentations of this report from the standpoint of the Administration's programs.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 20, 1974.

HON. JAMES A. HALEY,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives.*

DEAR MR. CHAIRMAN: We are providing you with our comments on S. 1017, 93d Congress, which, if enacted, would be cited as the "Indian Self-Determination and Education Reform Act," as reported by the Senate Committee on Interior and Insular Affairs on February 7, 1974. Your Committee has scheduled hearings on this and similar bills for later this month. We are enclosing for your information a copy of our report of May 28, 1970, to the Congress entitled "Administration of Program for Aid to Public School Education of Indian Children Being Improved," B-161468.

Section 102 directs the Secretary of the Interior, upon request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, which the Secretary is authorized to administer for the benefit of Indians. The section provides that the Secretary may initially decline to enter into any contract requested by an Indian tribe under certain circumstances. Section 103 contains a similar contracting provision for programs administered by the Secretary of Health, Education, and Welfare.

We noted that sections 102 and 103 do not provide for reassumption of the administration of programs by the respective Secretaries if it is determined that the programs assumed by an Indian tribal organization are being administered in a manner which involves the violation of the rights or endangers the health, safety, or welfare of individuals served by such programs, or of the general public, or that there is gross negligence or mismanagement in tribal organizations' handling of Federal funds or the operations of the programs. We suggest, therefore, that language similar to the following be included in a new section of the bill.

"In any case when the appropriate Secretary subsequently determines that a program or service assumed by an Indian tribal organization is being accomplished in a manner which involved (1) the violation of the rights or endangers the health, safety, or welfare of individuals served by such program or service, or (2) gross negligence or mismanagement in the handling or use of Federal funds provided to the organization pursuant to this Act, the appropriate Secretary

may, under regulations prescribed by him and after providing notice and hearing to such Indian tribal organization, reassume control or operation of such program or service if he determines that the organization has not taken corrective action as prescribed by the appropriate Secretary. The appropriate Secretary may retain control of such program or service until such time as he is satisfied that the violations of rights, endangerment of health, safety, or welfare, or the gross negligence or mismanagement which necessitated the reassumption has been corrected."

Section 106(b) would provide that payments of any grants or under any contracts pursuant to sections 102, 103, or 104 may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of the bill. We suggest that the Committee consider revising section 106(b) to provide that such payments be made consistently with applicable Treasury regulations so as to minimize the time elapsing between the date of payment and the disbursement thereof by the State in order to save the Government interest costs. See section 203 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577, 82 Stat. 1101, and Treasury Department Circular No. 175. (Third Revision) 1973, 31 CFR 205.

Section 106(f) provides that contracts authorized under sections 102 and 103 and grants pursuant to section 104 include provisions for the performance of personal services which would otherwise be performed by Federal employees; *Provided, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individual.* (Italic added.) Also, sec. 111 provides that nothing in title I shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people. We believe that the ramifications of these sections are very broad and might result in serious misunderstandings and problems in the future.

In our audits of Indian affairs activities, we noted that the Federal Government's specific trust responsibilities were not defined clearly in legislation or in administrative regulations and that Bureau of Indian Affairs officials often had difficulty in determining where the trust responsibilities end and the concept of Indian self-determination begins. This situation has led to disagreements between the Bureau and the tribes as to the duties and responsibilities of each party and has resulted in charges that the Bureau has abrogated its trust responsibilities. We noted also that, in the past, Indian tribes that had planned, conducted, and administered Federal Indian programs under existing statutory authority had sometimes made decisions which proved to be unsatisfactory. In several cases, the tribes retroceded the administration of the programs to the Bureau and brought suit against the Secretary for abrogation of the trust responsibility.

The Committee may wish to consider the need for revising section 106(f) to clarify the Federal Government's trust responsibilities to the Indian people and to define the duties and responsibilities of Indian tribes under the self-determination program. The Committee may also wish to consider amending section 111 of the bill to provide that Indian tribes shall bear the responsibility for their actions and decisions in administering Federal Indian programs and to clarify the conditions

when, if at all, the Secretary shall be held accountable for such actions and decisions under the trust responsibility concept.

Section 107(a) provides, among other things, that prior to the issuance of rules and regulations, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall consult with national and regional Indian organizations; present the proposed rules and regulations to the Interior and Insular Affairs Committees of the Senate and House of Representatives; and publish the proposals in the Federal Register for the purpose of receiving comments from interested parties. Section 107(b) provides that prior to revision or amendment of any rules or regulations promulgated pursuant to subsection (a), the respective Secretary or Secretaries shall consult with national and regional Indian organizations and publish proposed revisions in the Federal Register not less than sixty days prior to the effective date of the proposed amendments or revisions in order to receive comments from interested parties. The Committee may wish to consider if proposed revisions or amendments should also be submitted to the respective Interior and Insular Affairs Committees.

The first sentence of section 108 provides that an Indian tribal organization receiving or expending funds pursuant to a contract or grant under this title shall submit a report to the appropriate Secretary. The second sentence provides that the reports and records of the organization with respect to such contract or grant shall be subject to audit by the appropriate Secretary and the Comptroller General. To assure that the goals of the second sentence are achieved and that the appropriate Secretary and the Comptroller General have sufficient authority to review the activities carried out pursuant to this title, we suggest that the second sentence be deleted and that the following new subsections to section 108 be inserted:

"Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, loans or other arrangements referred to in the preceding subsection."

Part A of title II of the bill, Education of Indians in Public Schools, would replace the educational programs authorized in the Johnson-O'Malley Act of 1934 (48 Stat. 596), as amended. Section 203(a) provides a formula for the distribution of Federal funds for the education of federally recognized Indian children in the public schools of the

States. Section 203(a) also provides that additional funds in an amount not less than 20 percent of the amount determined by the formula shall be provided to the affected school districts for a variety of special programs designed to meet the special needs of Indian pupils in public schools.

In our May 28, 1970, report to the Congress, we pointed out that the Johnson-O'Malley program was based on the concept that education is a responsibility of the State and that Indian children from a reservation are citizens of the State where the reservation is situated and are entitled to the same public education as is provided to other children in that State. We pointed out also that the Johnson-O'Malley program was considered to be a supplemental program in that funds were to be limited to school districts which, after exhausting all other sources of revenue including other Federal aid, are unable to operate schools at adequate State standards.

In our report we stated that we had found that (1) funds had been provided to counties and school districts where needs may not have existed and the funds may not have benefited Indian children from reservations; (2) the Federal government had paid the full cost of educating Indian children living in Federal dormitories while attending public schools, even though most of the children attending the schools were residents of the State; (3) no reduction had been made for the State aid received by the school districts for educating Indian children participating in the dormitory program; and (4) the distribution of Federal funds to the school districts appeared to have been improper or there was no assurance that the funds had been used for their intended purpose. We recommended that the Secretary of the Interior require the Bureau of Indian Affairs to furnish program funds on the basis of demonstrated financial need, encourage State and local participation in the cost of educating Indian children who live in Federal dormitories, and implement additional methods of supervision and control over the distribution and use of funds by the school districts.

We believe that the formula provided for in section 203(e) of the bill will assist in correcting some of the problems set forth in our report and result in a more equitable distribution of Federal Indian education funds to those States and school districts with the greatest needs. In our opinion, however, section 203(a) will not insure that additional funds provided for special programs designed to meet the special needs of Indian pupils are used for the purposes intended. Therefore, the Committee may wish to consider revising section 203(a) to provide that States and school districts receiving funds for special education programs under this section shall report annually to the Secretary of the Interior on the uses made of such funds and on how the actual use of the funds compares with the planned use of the funds set forth in the education plan approved by the Secretary. This report will assist the Secretary in implementing our recommendation, *infra.*, that he be required to perform periodic program evaluations.

Sec. 203(c) would require the Secretary to enter into a contract with the State education agency of any State the public education of which is affected by a contract or contracts pursuant to section 202, regardless of who the contractor or contractors may be, to provide the professional and support staff and administrative services necessary to

assist local school districts affected by such contract or contracts in implementing the purposes of title II. We suggest that the Committee consider revising this provision so as to authorize rather than require such contracts because some contracts under this title may be competent and qualified and, therefore, would not need technical assistance from the State education agencies.

Sec. 212(7) would provide that, in establishing and carrying out the Indian youth intern program, the Secretary shall take such action as may be necessary to assure that there shall be one supervisor for each twenty Indian youth interns during their period of employment. The section does not, however, set forth the purpose or duties of a supervisor or indicate by whom the supervisor is to be employed. The Committee may wish to consider revising section 212(7) to clarify these matters.

We noted that title II of the bill contains no provisions to require the recipients of Federal funds to maintain adequate records or to authorize the Secretary of the Interior and the Comptroller General, or their duly authorized representatives, to have access for the purposes of audit and examination to any relevant books, documents, papers, and records of the recipients of Federal funds. We suggest, therefore, that language similar to that suggested with respect to section 108 be included in title II.

We noted also that the bill does not specifically provide for an evaluation of the program by the Secretaries of the Interior and Health, Education, and Welfare. It is our view that program evaluation is a fundamental part of effective program administration and that the responsibility for evaluations should rest initially upon the responsible agencies. In line with this concept, we believe the Congress should attempt to specify the kinds of information and tests which will enable it to better assess how well programs are working and whether alternative approaches may offer greater promise. We will be happy to work with the Committee in developing specific language if you wish.

We are also providing our comments on the bill to the Chairman of the Senate Interior and Insular Affairs Committee.

Sincerely yours,

R. F. KELLER,

Deputy Comptroller General of the United States.

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Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

CONGRESSIONAL FINDINGS

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and

excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

SEC. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors of subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c).

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

CARRYOVER OF FUNDS

SEC. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

S. 1017—4

TITLE I—INDIAN SELF-DETERMINATION ACT

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof 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: *Provided, however,* That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further,* That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however,* That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however,* That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or main-

tained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

SEC. 105. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

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

"Sec. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

(1) by deleting the word "and" after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the

Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments.”

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 (“Compensation for Work Injuries”) of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 (“Retirement”) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

(3) To retain coverage, rights, and benefits under chapter 89 (“Health Insurance”) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee’s Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

(4) To retain coverage, rights, and benefits under chapter 87 (“Life Insurance”) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee’s Life Insurance Fund (section 8714 of title 5, United

States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code.

(f) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

(h) For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5, United States Code.

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATIVE PROVISIONS

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to

minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract.

PROMULGATION OF RULES AND REGULATIONS

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b) (1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

REPORTS

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

REASSUMPTION OF PROGRAMS

SEC. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may,

under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within ten days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

EFFECT ON EXISTING RIGHTS

SEC. 110. Nothing in this Act shall be construed as—

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the “Indian Education Assistance Act”.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections:

“SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

“SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305 (b) (2) (B) (ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district,

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such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

“(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).”

“SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.”

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—SCHOOL CONSTRUCTION

SEC. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

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(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

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(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

(g) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of \$35,000,000 for the fiscal year ending June 30, 1974; \$35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART C—GENERAL PROVISIONS

SEC. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

SEC. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

SEC. 207. (a) (1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

SEC. 208. The Secretary is authorized and directed to provide funds, pursuant to this Act; the the Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private

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school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section.

SEC. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235).

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have signed into law S. 1017, the Indian Self-Determination and Education Assistance Act. My Administration is committed to furthering the self-determination of Indian communities without terminating the special relationships between the Federal Government and the Indian people.

The Congress is to be congratulated for its passage of this legislation. It will enhance our efforts to implement this policy of Indian self-determination.

Title I of this act gives the permanence and stature of law to the objective of my Administration of allowing -- indeed encouraging -- Indian tribes to operate programs serving them under contract to the Federal Government. Furthermore, with the passage of this act, Indian communities and their leaders now share with the Federal Government the responsibility for the full realization of this objective. It will be through the initiatives of Indian communities that the authorities provided in this Act will be implemented. I urge these communities to make the fullest possible use of them and pledge the support of this Administration.

In addition to making this kind of contracting a right, the act does much to make it feasible and practical.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to help them develop the abilities of potential workers -- through training and other means -- to operate these programs. At the request of the tribe, it also allows Federal employees who work in programs transferred to tribal operation to continue working without losing Federal fringe benefits, thus making it possible for the tribe to begin operation with a nucleus of experienced employees.

The granting authority provided in this act can also be used to strengthen tribal governments and tribally funded programs.

Title II, the Indian Education Assistance Act, amends the Johnson O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of funds for children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

The enactment of this legislation marks a milestone for Indian people. It will enable this Administration to work more closely and effectively with the tribes for the betterment of all the Indian people by assisting them in meeting goals they themselves have set.

December 24, 1974

Dear Mr. Director:

The following bills were received at the White House on December 24th:

- | | | | |
|-----------------|------------------|--------------|--------------|
| S.J. Res. 40 ✓ | S. 3481 ✓ | H.R. 8958 ✓ | H.R. 14600 ✓ |
| S.J. Res. 133 ✓ | S. 3548 ✓ | H.R. 8981 ✓ | H.R. 14689 ✓ |
| S.J. Res. 262 ✓ | S. 3934 ✓ | H.R. 9182 ✓ | H.R. 14718 ✓ |
| S. 251 ✓ | S. 3943 ✓ | H.R. 9199 ✓ | H.R. 15173 ✓ |
| S. 356 ✓ | S. 3976 ✓ | H.R. 9588 ✓ | H.R. 15223 ✓ |
| S. 521 ✓ | S. 4073 ✓ | H.R. 9654 ✓ | H.R. 15229 ✓ |
| S. 544 ✓ | S. 4206 ✓ | H.R. 10212 ✓ | H.R. 15322 ✓ |
| S. 663 ✓ | H.J. Res. 1178 ✓ | H.R. 10701 ✓ | H.R. 15977 ✓ |
| S. 754 ✓ | H.J. Res. 1180 ✓ | H.R. 10710 ✓ | H.R. 16045 ✓ |
| S. 1017 ✓ | H.R. 421 ✓ | H.R. 10827 ✓ | H.R. 16215 ✓ |
| S. 1083 ✓ | H.R. 1715 ✓ | H.R. 11144 ✓ | H.R. 16596 ✓ |
| S. 1296 ✓ | H.R. 1820 ✓ | H.R. 11273 ✓ | H.R. 16925 ✓ |
| S. 1418 ✓ | H.R. 2208 ✓ | H.R. 11796 ✓ | H.R. 17010 ✓ |
| S. 2149 ✓ | H.R. 2933 ✓ | H.R. 11802 ✓ | H.R. 17045 ✓ |
| S. 2446 ✓ | H.R. 3203 ✓ | H.R. 11847 ✓ | H.R. 17085 ✓ |
| S. 2807 ✓ | H.R. 3339 ✓ | H.R. 11897 ✓ | H.R. 17468 ✓ |
| S. 2854 ✓ | H.R. 5264 ✓ | H.R. 12044 ✓ | H.R. 17558 ✓ |
| S. 2888 ✓ | H.R. 5463 ✓ | H.R. 12113 ✓ | H.R. 17597 ✓ |
| S. 2994 ✓ | H.R. 5773 ✓ | H.R. 12427 ✓ | H.R. 17628 ✓ |
| S. 3022 ✓ | H.R. 7599 ✓ | H.R. 12884 ✓ | H.R. 17655 ✓ |
| S. 3289 ✓ | H.R. 7684 ✓ | H.R. 13022 ✓ | |
| S. 3358 ✓ | H.R. 7767 ✓ | H.R. 13296 ✓ | |
| S. 3359 ✓ | H.R. 8214 ✓ | H.R. 13869 ✓ | |
| S. 3394 ✓ | H.R. 8322 ✓ | H.R. 14449 ✓ | |
| S. 3433 ✓ | H.R. 8591 ✓ | H.R. 14461 ✓ | |

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.