



United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUL 29 1970

Dear Mr. Speaker:

Enclosed are four legislative proposals that are submitted as the final part of the legislative package that was discussed by President Nixon in his message to the Congress on Indians on July 8, 1970.

We recommend that each of the proposals be referred to the appropriate committee for consideration and that they be enacted.

These four proposals, plus the three submitted on July 11, 1970, are designed to fully implement the new Indian policy enunciated by the President in his message.

The Office of Management and Budget advises that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

Secretary of the Interior

Hon. John W. McCormack  
Speaker of the  
House of Representatives  
Washington, D.C. 20515

Enclosures

IDENTICAL LETTER SENT TO PRESIDENT OF THE SENATE ON JULY 29, 1970.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUL 2 1970

Dear Mr. Speaker:

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

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

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It also strikes the word "Territory" wherever it appears in the first section of the Act because of the fact that it is no longer applicable to the Act.

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

Section 3 of the proposal amends Paragraph (2) of section 6(a) of the Military Selective Service Act of 1967 by adding words that will allow the commissioned officers of the Public Health Service who are serving under a service agreement with the Public Health Service that exempts them from the provisions of the Selective Service Act to continue to be exempt from the provisions of the Selective Service Act while on detail to work with Indian tribes, bands, groups, or communities.

In the President's Indian message of July 8, 1970, he discusses the need to make certain that Johnson-O'Malley funds, which were designed to help Indian students, should come under the influence of the Indians as to the way that

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

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

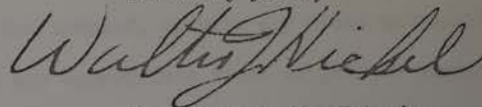
Basically the amendments give the Secretary of Health, Education, and Welfare the authority to make contracts with Indian tribes, bands, groups, or communities to carry out the Indian health function that has been placed in the Secretary of Health, Education, and Welfare. In connection with this contracting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



Section 3 of the proposal is a provision that is needed as a companion to the new section 9 added to Public Law 568, 83d Congress by section 2 of this proposal. The language in section 3 continues the draft-deferred status of those commissioned officers of the Public Health Service who are detailed by the Secretary of Health, Education, and Welfare to work with Indian tribes, bands, groups, or communities in connection with transfers made by the Secretary to carry out the Indian health function. Without this amendment to the Selective Service Act, the commissioned officers of the service who are detailed to work with Indian tribes, bands, groups, or communities would lose their draft-deferred status, making the detailing of the junior officers to this work virtually impossible.

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

Sincerely yours,



Secretary of the Interior

Hon. John W. McCormack  
Speaker, House of  
Representatives  
Washington, D.C. 20515

Enclosure

A B I L L

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

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

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

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

(a) by redesignating sections 4, 5, 6, and 7 as sections 5, 6, 7, and 8, respectively.

(b) by adding after section 3 the following:


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

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

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

SEC. 3. Paragraph (2) of section 6(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 456(a)(2)) is amended by inserting the words "or who are assigned to functions of the service in assisting Indian communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267)," after the words "Environmental Science Services Administration."





United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JU 1970

Dear Mr. Speaker:

Enclosed is a proposal "To provide for the creation of the Indian Trust Counsel Authority, and for other purposes."

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

The purpose of this proposal, as provided in section 1, is to establish an Indian Trust Counsel Authority to provide independent legal counsel and representation for the preservation and protection of the natural resource rights of the Indians in order to reaffirm the trust and treaty relationships between the United States and the American Indians and Alaska Natives.

Section 2 of the proposal establishes as an independent agency in the Executive Branch the Indian Trust Counsel Authority. The Authority will be governed by a three-man Board of Directors who will be appointed by the President by and with the advice and consent of the Senate. At least two of the members of the Board must be Indians. The term of members of the Board shall be 4 years except that the initial Board shall be appointed in a staggered manner. The President shall designate one of the members of the Board to serve as chairman. The members of the Board shall receive pay that is the daily equivalent to that of a GS-18 for each day they are engaged in the business of the Authority and shall be allowed necessary travel expenses.

Section 3 provides that the Board of Directors shall convene at the call of the chairman but must meet at least once each quarter to set policy for the Authority and to review its activities. This section requires the Board to report annually to the President and the Congress on the activities of the Authority.

Section 4 authorizes the Board, without regard to the civil service laws, to appoint and prescribe the duties of the chief legal officer for the Authority who shall be called the Indian Trust Counsel at level V of the Executive Schedule and a Deputy Indian Trust Counsel who shall be a grade GS-18.

Section 5 authorizes the Authority to appoint and fix the pay and prescribe the duties of attorneys it employs. It also authorizes the Authority to appoint and fix the compensation of needed special counsel.

and experts. Finally, it authorizes the attorneys or special counsel appointed by it to appear for and represent the Authority in any case before any court, commission or administrative proceeding pertaining to its responsibilities.

Section 6 authorizes the Authority to hire such other employees as it deems necessary.

Section 7 provides that the Authority shall be free of control by any Executive Department.

Section 8 authorizes the Authority, with the consent of any aggrieved Indian or Indian tribe, band, or other identifiable group of Indians, to render legal services in regard to rights or claims of the Indians in relationship to their natural resources. The extent of the Indians' rights in their natural resources to be protected by the Authority is set out in this section. This authority shall be exercised in combination with the authority exercised by the Department of the Interior in all of its trust responsibilities to the Indians and in relationship to the Department of Justice in the exercise of its responsibility to the Indians except that the Department of Justice no longer will exercise any responsibility to the Indians in the area of natural resources. This responsibility will be exercised under the provisions of the proposal by the Authority. This section also provides that the Authority may perform services pursuant to this section to include investigation and inventorying of Indians' land and water rights and the preparation, trial and appeal of cases involving the natural resources of the Indians in all courts and before Federal, State and local commissions and administrative bodies.

Section 9 authorizes the Authority, with the consent of any aggrieved Indian, Indian tribe, band or other identifiable group of Indians, acting in the name of the United States as trustee for the Indians, to initiate and prosecute to final judgment in all Federal and State courts against the United States or any of its departments, agencies, officers or employees or against any of the States, their subdivisions, departments or employees or against any persons or corporations, public or private, all actions in law and equity for the protection of the natural resource interests and rights of the Indians. The United States waives its sovereign immunity to suit in connection with litigation initiated by the Authority under this section.

Section 10 provides that the powers granted the Authority by this Act shall not extend to the filing or prosecution of any action, claim or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed before the



Indian Claims Commission or under any special statute authorizing a suit to be brought against the United States.

Section 11 enumerates the authorities of the Authority.

Section 12 authorizes the appropriation of funds necessary to carry out the provisions of the Act.

As the President stated in his message of July 8, 1970:

"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee.

"Every trustee has a legal obligation to advance the interests of beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

"In order to correct this situation, I am calling on the Congress to establish an Indian Trust Counsel Authority to assure independent legal representation for the Indians' natural resource rights."

This proposal will carry out the policy enunciated in the President's message by establishing the Indian Trust Counsel Authority. The Authority will be, as provided in section 7, free from control of any Executive Department. This independence will free the trust Authority of having to take into consideration any interest other than that directly affecting the Indians and will allow it to independently carry out its function of protecting the natural resource rights and interest of the Indians.

The Authority will be under the direction of a three-man Board of Directors, two of which must be Indians. This majority control of the Board of Directors by the Indians will assure the Indians that they will have a majority voice in the direction of the activities of the Authority. Further, the Board is given the authority in the proposal to hire necessary attorneys including the chief legal officer and his deputy and such other personnel as they deem necessary to carry out the functions given them by the proposal. The majority control will assure the Indians that the people hired by the Authority to carry out the responsibilities of the Authority will be those people that are acceptable to them. This assurance should, from the inception of the Authority, make the Authority a body that has the confidence and trust of the Indians.

The proposal provides that the Indian Trust Counsel, who is the chief legal officer for the Authority, shall be a level V in the Executive Schedule. We feel that this level is necessary in order for the Authority to be able to obtain the kind of person that it needs to direct the legal activities of the Authority and at the same time give him sufficient stature to be able to deal with cabinet and sub-cabinet members of the Executive Department. The Board of Directors is also authorized, in section 5 of the proposal, to hire, fix the pay and prescribe the duties of such attorneys, including special counsel, as it deems necessary. It is also given the authority to hire experts in connection with its work. These attorneys will be the working group that will carry out the responsibilities and functions of the Authority. It is the Administration's intention that the Authority will build up a cadre of well-trained and devoted attorneys whose energies will be turned to the protection and preservation of the Indians' natural resource rights and interests.

The authority to hire special counsel is needed in those instances when the Authority must go outside of its own attorney staff to hire an individual who is uniquely qualified to assist in the preparation of trial and appeal material regarding a special case. This also applies to its authority to hire outside experts.

Section 8 of the proposal authorizes the Authority to, upon the request of an aggrieved Indian or group of Indians, assist those Indians in the protection of their natural resource rights and interests in the courts and before administrative bodies. This authority will be used when a tribe has a justiciable claim and feels that it needs the assistance of the Authority for prosecuting



its claim. The Authority is authorized to lend its assistance in the area of natural resource rights and interests to such Indian or Indian group. The section, however, makes it clear that the assistance rendered by the Authority in this section in protecting the rights of the Indians in their justiciable claims to natural resources, and the rights attached thereto, is in addition to the responsibilities that the Department of the Interior has to protect the Indians, not only in their natural resource rights, but in all rights protected by the trust relationship between the United States and the American Indians. The section also provides that the Department of Justice will, after the enactment of the proposal, be relieved of any responsibility that it may have to the Indians in the area of natural resources but will continue to fulfill whatever responsibility it may have with regard to Indians generally.

Section 9 authorizes the Authority to initiate suits, when requested by an aggrieved Indian or group of Indians, acting in the name of the United States as trustee for the Indians, to protect the rights of the Indians in their natural resources from the United States or any of its departments, agencies, officers or employees as well as against the States, their subdivisions, departments and agencies or against any private or public person or corporation. This section also provides for the waiver of sovereign immunity of the United States in connection with litigation initiated by the Authority pursuant to this section. The Authority will use the power granted it by this section in those cases where the Indians' rights or claims are of such a nature that they are precluded from bringing suit against the United States because of bars that the United States has as a sovereign to suits generally. These bars will be removed by the provision waiving United States' sovereign immunity as it relates to actions brought by the Authority. The proposal clearly limits the waiver of sovereign immunity to the narrow area of litigation initiated by the Authority.

Section 10 of the proposal will bar the Authority from relitigating any claims that have been filed or should have been filed before the Indian Claims Commission. It will bar their reopening any claims settled by the Indian Claims Commission as well as any claims settled by the Court of Claims or any other competent court of the United States pursuant to special legislation authorizing an Indian tribe to bring suit against the United States for settlement of its claims.

Section 11 authorizes the Authority to make rules and regulations, to request assistance from any department, agency, or independent instrumentality of the Federal government to carry out its function under this proposal and such assistance may be given to the Authority



on a reimbursable or non-reimbursable basis. The Authority is authorized to receive and use funds authorized or donated to it by others. It is also authorized to make expenditures or grants, either directly or by contract, as may be necessary to carry out its responsibilities.

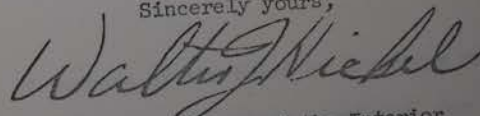
The Authority is authorized to charge a fee for services rendered by it based upon an Indian's or Indian group's ability to pay for such services. The fee shall be charged only in those cases handled by the Authority under section 8. This provision is included so that the Authority may lend its assistance and expert help to those tribes that are able to afford their own private counsel but make the choice to seek the services of the Authority in connection with its claim. The fee charged by the counsel will vary from tribe to tribe depending upon the tribe's resources. In some instances, the cases will be on a contingent basis with a fee to be collected from any award won by the Authority for the Indian or Indian group. The receipts collected pursuant to this subsection shall be paid into the miscellaneous receipts in the Treasury.

Finally, section 12 of this proposal authorizes the appropriation of funds necessary to carry out the provisions of the proposal.

The Indians of our country have for years felt that the Federal government, because of the inherent conflict of interests that the President discussed in his message, has not given their rights adequate legal protection. We believe that this bill will restore the confidence of the American Indian in the ability of our government to give their natural resource rights legal protection to which they are entitled. This will make it clear to the American Indian that the United States is meeting the legal obligation it has as trustee to advance the interest of the beneficiaries of the trust without reservation and to the highest degree of its ability and skill.

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

Sincerely yours,



Secretary of the Interior

Hon. John W. McCormack  
Speaker of the  
House of Representatives  
Washington, D.C. 20515

Enclosures

A B I L L

To provide for the creation of the Indian Trust Counsel Authority, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in reaffirming the trust and treaty relationships between the United States of America and the American Indians, and between the United States and the Alaska Natives, which Indians and Natives are hereinafter referred to as "Indians", the purpose of this Act is to establish an Indian Trust Counsel Authority to provide independent legal counsel and representation for the preservation and protection of the natural resource rights of the Indians.

SEC. 2. (a) The Indian Trust Counsel Authority, hereinafter referred to as the Authority, is established as an independent agency in the Executive Branch.

(b) The Authority shall be governed by a Board of Directors composed of three members to be appointed by the President by and with the advice and consent of the Senate.

(c) At least two of the members of the Board of Directors shall be Indians.

(d) The terms of office of members of the Board of Directors shall be four years, except that of the first three members appointed, one shall be appointed for a two year term, one shall be appointed for a

three year term, and one shall be appointed for a four year term. A member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of his term of office, a member shall serve until his successor has been appointed and qualified.

(e) The President shall designate one of the Directors to serve as Chairman at his pleasure.

(f) The members of the Board of Directors shall receive pay at the daily equivalent of the rate provided for grade GS-18 in section 5332 of title 5, United States Code, for each day they are engaged in the business of the Authority, and shall be allowed travel expenses, including a per diem allowance as authorized by section 5703 of title 5, United States Code, in connection with their services for the Authority.

SEC. 3. The Board of Directors shall convene at the call of the Chairman, but must convene at least once each quarter, to set policy for the Authority and review its activities. The Board of Directors shall report to the President and the Congress annually on the activities of the Authority.

SEC. 4. The Board of Directors shall, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint and prescribe the duties of a chief legal officer for the Authority, who shall have the title of Indian



Trust Counsel, and who shall be paid at a rate equal to that provided for in level V of the Executive Schedule (5 U.S.C. 5316), and a Deputy Indian Trust Counsel who shall be paid at a rate not in excess of that provided for grade GS-18 in section 5332, of title 5, United States Code.

SEC. 5. (a) The Board of Directors shall appoint, fix the pay of, and prescribe the duties of such attorneys as it deems necessary after consulting with the Indian Trust Counsel.

(b) The Board of Directors shall appoint and fix the compensation of such special counsel and experts as it deems necessary.

(c) Attorneys or special counsel appointed under this section may, at the direction of the Authority, appear for or represent the Authority in any case in any court, before any commission or in any administrative proceeding.

SEC. 6. The Board of Directors shall, subject to the provisions of title 5, United States Code, appoint such employees as it deems necessary in exercising its powers and duties.

SEC. 7. The Authority, in the exercise of its functions, shall be free from control by any Executive Department.

SEC. 8. The Authority, with the consent of an aggrieved Indian, Indian tribe, band, or other identifiable group of Indians, is authorized to render legal services in regard to rights or claims of the Indians to natural resources, including, but not limited to,

rights to land, rights to the use of water, timber, and minerals, and rights to hunt and fish, within the United States' trust responsibility owing to the Indians, which services are now rendered by the Department of the Interior or by the Department of Justice, but nothing in this Act shall absolve the Department of the Interior and the Department of Justice of their responsibilities to the Indians, except that the Department of Justice as of the effective date of this Act or as soon thereafter as practicable, is relieved of its responsibility to Indians with regard to their rights or claims to natural resources, including, but not limited to, rights to land, rights to the use of water, timber, minerals, and rights to hunt and fish. The legal services performed pursuant to this section may include, but shall not be limited to, the investigation and inventorying of Indians' land and water rights, and the preparation and trial and appeal of cases in all courts, before Federal, State, and local commissions, and in all administrative proceedings.

SEC. 9. The Authority, with the consent of an aggrieved Indian, Indian tribe, band or other identifiable group of Indians, acting in the name of the United States as trustee for the Indians, may initiate and prosecute to judgment in all courts of the United States and of the States, against the United States, its departments, agencies, officers and employees, or against any of the States, their subdivisions, departments and agencies, or against persons and corpora-

tions, public or private, all actions in law and equity for the protection, preservation, utilization, conservation, adjudication, or administration of natural resources or interests therein had or claimed by the Indians, including, but not limited to, rights to lands, rights to the use of water, timber, and minerals, and rights to fish and hunt. The Authority is authorized to prosecute appeals in all courts of the United States and of the States, and to intervene in any Federal, State or local administrative proceeding in order to protect the rights of the Indians. The United States waives its sovereign immunity from suit in connection with litigation initiated by the Authority under this section.

SEC. 10. The powers granted to the Authority by this Act shall not extend to the filing or prosecution of any action, claim, or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed under the Indian Claims Commission Act of 1946, as amended, or any other statute authorizing a suit to be brought against the United States.

SEC. 11. The Authority is authorized to:

(1) Make such rules and regulations as it deems necessary to carry out its functions.

(2) Request from any department, agency, or independent instrumentality of the Government any information, personnel, services, or materials it deems necessary to carry out its functions under this



Act; and each such department, agency or instrumentality is authorized to cooperate with the Authority and to comply with a request to the extent permitted by law, on a reimbursable or non-reimbursable basis.

(3) Receive and use funds or services donated by others.

(4) Make such expenditures or grants, either directly or by contract, as may be necessary to carry out its responsibilities under this Act.

(5) Charge a fee based upon the Indians' ability to pay for services rendered pursuant to section 8 of this Act. The fees collected pursuant to this subsection shall be paid into miscellaneous receipts in the Treasury of the United States.

SEC. 12. There are authorized to be appropriated to the Authority created herein such sums as may be necessary to carry out the provisions of this Act.



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

JUL 29 1970

Dear Mr. Speaker:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

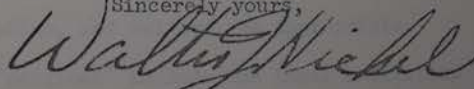
subject to the rights of retrocession or reassumption as provided in the proposal. In those instances where there is a question about the adequacy of the Indian group to control or operate the transferred service or program the Secretary will monitor the program or service to be certain that the rights,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

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

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

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

Sincerely yours,



Secretary of the Interior

Hon. John W. McCormack  
Speaker of the House of Representatives  
Washington, D.C. 20515

Enclosure

A B I L L

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

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

SEC. 1. For the purposes of this Act:

(a) "Indian Tribe" and "Indian Community" means an Indian tribe, band, nation or Alaska Native Community for which the Federal Government provides special programs and services because of their Indian identity. The terms may also include the reservation or other land area in which the tribe or community is located and tribally recognized communities within a reservation.

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

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

(d) "Programs" and "services" include the local activities and undertakings of the Bureau of Indian Affairs of the Department



of the Interior and the Indian health service program of the Public Health Service of the Department of Health, Education, and Welfare serving Indian communities and the related facilities, equipment, supplies, materials and budget. Such other programs as may be designated by a Federal department or agency responsible for the administration thereof may also be transferred pursuant to this Act.

SEC. 2. (a) Notwithstanding any other provision of law, if an Indian tribe or community, after consultation with the Secretary, requests that it be given the control or operation of a program or service administered by the Secretary, the Secretary shall within 120 days from such request, or such later date as may be agreed to by the Secretary and the organization, transfer such control or operation to the Indian tribal organization. Any request made pursuant to this subsection must be accompanied by a plan for carrying out the program or service requested. A tribe or community assuming such control may enter into agreements to carry out all or any part of such program or service. A transfer under this subsection shall stipulate the retrocession procedures provided for in subsections (d) and (e) of this section which are designed to safeguard the residual trust responsibilities of the Federal government. In the case where a requested program or service is serving the members of more than one Indian tribe or community, the requested transfer of such service

or program must be approved by each tribe or community served by said program or service before any transfer shall be required under this Act.

(b) During the period preceding or immediately subsequent to any transfer required by this Act, the Secretary shall provide assistance, other than financial, on the request of the Indian tribal organization, to insure an orderly transfer of the control and operation of the program or service involved.

(c) For each fiscal year during which an Indian tribal organization engages in an activity pursuant to any program or service transferred to it under this Act, the Indian tribal organization shall submit a report to the Secretary including an accounting of the amounts and purposes for which Federal funds were expended and information on conduct of the program or service involved. The reports and records of such Indian tribal organization with respect to such program or operation shall be subject to audit by the Secretary and the Comptroller General of the United States.

(d) Should an Indian tribe or community request retrocession to the Secretary of any program or service which was assumed by the Indian tribal organization under this Act, such retrocession shall be effective upon a date specified by the Secretary within 120 days of such indication or such later date as may be agreed to by the Secretary

and the organization. Such retrocession will not prejudice the tribe's or community's right to again assume control of a service or program at a later date.

(e) In any case where the Secretary determines that any program or service assumed by an Indian tribal organization is being accomplished in a manner which involves (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 Secretary may, under regulations prescribed by him, 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 Secretary. The 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 as indicated by the plan accompanying a request by an Indian tribal organization to again take control or operation of such program or service.

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



SEC. 3. The Secretary is authorized, upon the request of any Indian tribe, band, group, or community, to detail any civil service employee serving under a career or career-conditional appointment for a period of up to 180 days to such Indian tribe, band, group, or community for the purpose of assisting such Indian tribe, band, group or community in its control or operation of a program or service transferred to it pursuant to this Act. The Secretary may, upon a showing by an Indian tribe, band, group or community of a need for an employee detailed pursuant to this section, extend such detail for a period not to exceed 180 days.

SEC. 4. Nothing in this Act shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians.

United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUL 20 1970

Dear Mr. Speaker:

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

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

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

Section 2(a) of the proposal provides that notwithstanding any other statute, executive orders, or regulations, civil service employees serving under an appointment not limited to one year or less who, before December 31, 1980, transfer to an Indian tribal organization in connection with governmental or other activities which are or have been performed by employees in or for Indian communities will be entitled, if agreed to by the employee and the Indian tribal organization to:

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

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

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

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

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

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



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

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

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

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

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

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

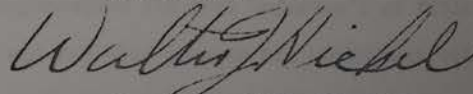
Section 6 provides that this proposal will be effective 60 days after the date of its enactment.

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

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

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

Sincerely yours,



Secretary of the Interior

Hon. John W. McCormack  
Speaker, House of Representatives  
Washington, D.C. 20515

Enclosure

A B I L L

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

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

SEC. 1. This Act may be cited as the "Federal Employees Indian Tribal Organization Transfer Act".

SEC. 2. (a) Notwithstanding other statutes, Executive orders, or regulations, an employee serving under an appointment not limited to one year or less who transfers on or before December 31, 1980, to an Indian tribal organization in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if he and the Indian 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 Indian tribal organization is deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the Indian tribal organization



any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the Indian 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 benefits 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 employees.

(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 Indian 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 he transfers to an Indian tribal organization remain to his credit for retirement purposes during covered service with the Indian tribal organization.

(3) 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 Indian 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.

(4) 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 Indian tribal organization are currently deposited in the Employees' 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.

(5) To be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if he transferred at the time such an activity was transferred to the Indian tribal organization or within 90 calendar days after such a transfer of activities and (A) he makes application for reemployment not later than 5 years after the date of his transfer to the Indian tribal organization, or (B) the activity is transferred back to the Government of the United States.

On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the agency from which he transferred. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. If, at the time of transfer to the Indian tribal organization the employee received a lump-sum payment for annual leave and he is reemployed under this paragraph within one year from the date of transfer, he shall refund to the agency from which he transferred the amount of the lump-sum payment, and the leave covered by the said lump-sum payment shall be restored to his account. If an employee is reemployed under this paragraph, the period of his service with an Indian tribal organization and



the period necessary to effect his reemployment are deemed creditable service for all appropriate civil service employment purposes.

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

SEC. 3. An employee who transfers to an Indian tribal organization under section 2 of this Act and the Indian tribal organization to which he transfers shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of subsection (a) of section 2 of this Act before the date of his transfer to the Indian tribal organization. An employee who transfers to an Indian tribal organization under section 2 of this Act shall continue to be entitled to the benefits of section 2 of this Act if he transfers to the employment of another Indian tribal organization to perform service in activities of the type described in section 2 of this Act.

SEC. 4. For the purposes of this Act--

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

(b) "Indian tribal" includes, but is not limited to, Alaska Native; and

(c) "Indian tribal organization" includes, but is not limited to, Indian tribal governing bodies, their agencies and instrumentalities, and corporations and other organizations which are controlled by (1) one or more of the described Indian tribal governing bodies or their agencies or instrumentalities, or (2) by a board of directors elected or selected by one or more of the described Indian tribal governing bodies or their agencies or instrumentalities.

SEC. 5. The President may prescribe regulations necessary to carry out this Act and to protect and assure the compensation, retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate.

SEC. 6. This Act shall be effective 60 days after the date of its enactment.