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THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 877

Date: December 27, 1974

Time: 8:00 p.m.

FOR ACTION:

Mike Duval ✓ *oh*
Phil Areeda
Max Friedersdorf

cc (for information):

Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8958 - Disposal of Excess Federal
Property on Indian Reservations

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 checked="" 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.

Warren K. Hendriks
For the President

APPROVED
JAN 2-1975

ACTION

THE WHITE HOUSE
WASHINGTON

Last Day: January 4

December 30, 1974

Posted
1/3
To Archives
1/3

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE *C*

SUBJECT: Enrolled Bill H.R. 8958 - Disposal of Excess Federal Property on Indian Reservations

Attached for your consideration is H.R. 8958, sponsored by Representative Meeds, which requires the transfer of excess Federal real property located within Indian reservation boundaries to the Secretary of the Interior for the use of certain Indian groups.

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

Phil Areeda and Max Friedersdorf both recommend approval.

RECOMMENDATION

That you sign H.R. 8958 (Tab B)



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

DEC 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8958 - Disposal of Excess Federal
Property on Indian Reservations
Sponsor - Rep. Meeds (D) Washington

Last Day for Action

January 4, 1975

Purpose

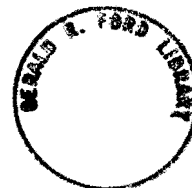
Requires the transfer of excess Federal real property located within Indian reservation boundaries to the Secretary of Interior for the use of certain Indian groups.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval (Informally)
General Services Administration	No objection
Department of Health, Education and Welfare	Defers to Interior

Discussion

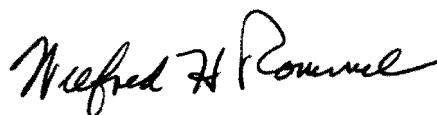
H.R. 8958 would amend the laws regarding Federal real property located within the boundaries of Indian reservations which is declared by an agency to be "excess" to its needs. Under current law, such "excess" property would be offered to other Federal agencies for their use. If no other agency wanted it, the property would be declared "surplus" and would be offered for sale to certain specified categories of groups for their use. H.R. 8958 would require that such Federal "excess" property be transferred to the Secretary of the Interior to be held in trust for the Indians of that reservation rather than made available to other agencies as "surplus." There would be no compensation required. These provisions would apply only to a group,



band, or tribe of Indians which is recognized as eligible for services by Interior's Bureau of Indian Affairs.

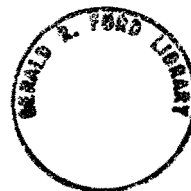
In testimony and letters to the House Government Operations Committee, GSA had requested that "surplus" rather than "excess" property be subject to this transfer, since other agencies may have a need for the property and GSA's normal disposal process would accommodate that need. However, the provision as enrolled would not deprive the Indians of any services they want since the Indians could grant an agency the use of such property for a facility to benefit the Indians. However, a Federal agency would, in certain circumstances, be unable to acquire "excess" property if the designated Indian groups wanted the property for other uses.

In addition, the bill contains a provision which would do essentially the same thing for Indian tribes in Oklahoma. There are no Indian reservations as such in Oklahoma, although there are tribal lands held in trust by the Secretary of the Interior in circumstances analogous to reservations.



Assistant Director for
Legislative Reference

Enclosures



UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



DEC 20 1974

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

Dear Mr. Ash:

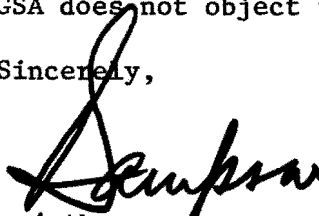
By referral dated December 20, 1974, from the Assistant Director for Legislative Reference, your office requested the views of the General Services Administration on enrolled bill H.R. 8958, 93rd Congress, an act "To amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians."

Although we voiced certain objections to H.R. 8958 as originally introduced, the more serious of these objections have been taken care of by subsequent amendment.

Under the bill, when Federally-owned property located within a reservation is declared excess to the needs of the agency using it, it shall be transferred without compensation to the Secretary of the Interior to be held in trust by him for the benefit and use of the group, band, or tribe of Indians in the reservation.

This still represents a departure from the general rule of property utilization and disposal under which property declared excess to the needs of the using agency does not become surplus property available for other disposal until it has been screened for possible need by other Federal agencies. In view of the limited impact of this departure, however, and the obvious benefit to Indian groups, bands, and tribes, GSA does not object to Presidential approval of the enrolled bill.

Sincerely,


Arthur F. Sampson
Administrator





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DEC 24 1974

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

Dear Mr. Ash:

This is in response to Mr. Rommel's request for a report on H.R. 8958, an enrolled bill "To amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians."

The bill directs the Administrator of General Services to transfer without compensation to the Secretary of the Interior excess real property located within Indian reservations. The land is to be held in trust for the Indians.

We defer to the Department of the Interior and to the General Services Administration as to the merits of the enrolled bill.

Sincerely,


Secretary





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 the views of this Department on the enrolled bill H.R. 8958, "To amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band or tribe of Indians."

We recommend that the President approve the enrolled bill.

As enrolled, H.R. 8958 amends section 202(a) of the Federal Property and Administrative Services Act of 1949. As amended by this bill, the Act would require the General Services Administrator to institute procedures necessary to transfer to the Secretary of the Interior real property "excess" to the needs of the Federal agency controlling such property if the property is located within a reservation of any group, band or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. The Secretary would hold property so transferred in trust for the tribe within whose reservation the property is located.

A proviso added to the bill to insure its applicability to Oklahoma Indian tribes stipulated that transfers of real property within the State of Oklahoma made under the provisions of the Act shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian Tribes recognized by the Secretary of the Interior when such property is (1) located within boundaries of former Indian reservations in Oklahoma as defined by the Secretary of the Interior and when such real property was held in trust by the United States for an Indian tribe at the time of its acquisition by the United States or (2) is contiguous to real property presently held in trust by the United States for an Oklahoma Indian Tribe and was at any time held in trust by the United States for an Indian Tribe. This provision is necessitated by the fact that there are no reservations in Oklahoma. Without the proviso added by this amendment the authority granted by H.R. 8958 would have no applicability to Oklahoma. Approval of H.R. 8958 will result in no additional cost to the Federal Government.

The bill does not direct the Indian Claims Commission to determine the extent to which the value of the beneficial interest in any real property conveyed pursuant to H.R. 8958 should or should not be set off against any Claim against the United States determined by the Commission. This provision has been standard in individual land transfer bills. However, under the Indian Claims Commission Act (60 Stat. 1050; 25 U.S.C. 70a), the Commission may inquire into all money or property given gratuitously for the benefit of the claimant, and may set off all or part of such expenditures against any award made to the claimant. We consider this provision of existing law sufficient to direct the Commission's attention to determine the value of such land transfers in setting off against any awards made under the Indian Claims Commission Act.

The Federal tracts to which this bill would apply are generally utilized by the Bureau of Indian Affairs for Indian services and thus are for the most part under the jurisdiction of this Department. When such lands become excess to the Department's needs, often we or the affected tribe seek legislation to transfer the beneficial interest to the tribe. (Examples of such recent transfers may be found in P.L. 92435 and P.L. 92411).

The actual procedures followed are that when federally owned land located within a reservation is declared excess to the needs of this Department or another agency using the land, the Indians on that reservation do not have preferential rights in obtaining the property. Instead, it is treated as any other excess property under the Federal Property and Administrative Services Act of 1949, as amended.

If the Indians wish to obtain excess land, they must ask the Interior Department to make a request for it from the General Services Administration. Interior has discretion to make such a request; it is not required to do so. By the same token, GSA weighs the Interior request along with any others made by other Federal agencies. If GSA determines that Interior has the greatest priority, then it transfers the land to the Interior Department, subject to the approval of the Office of Management and Budget.

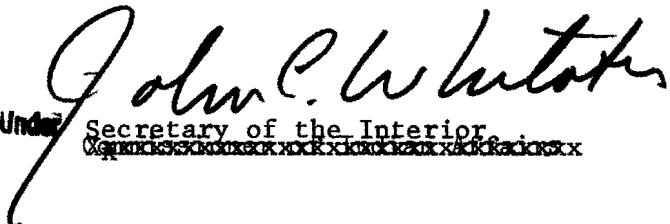


Thus, the Indian's obtaining use of the excess property is contingent upon (1) Interior's requesting the land from GSA; (2) GSA's deciding to transfer the land to Interior; and (3) OMB's approving the transfer. The Indians are by no means guaranteed the use of the land located within their reservation.

Indian tribal governments perform many governmental and economic development activities which are financially assisted by the United States because of its special relationship with the tribes. In addition, tribal governments are in a position to determine the best possible use of the land located within their reservations. The tribal government can utilize this land as a new source of income for the tribe in any number of ways. For example, the tribal government can provide this land to take advantage of the many Federal social programs, such as housing and economic development.

Further, H.R. 8958 would free the Congress from having to routinely consider numerous bills authorizing transfers of small parcels of excess of surplus Federal lands on an Indian reservation to an Indian tribe.

Sincerely yours,


Under Secretary of the Interior
~~Commissioner of the Bureau of Indian Affairs~~

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

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

DEC 26 1974

To
James H. ...
12-26-74
7:00 P.M.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8958 - Disposal of Excess Federal
Property on Indian Reservations
Sponsor - Rep. Meeds (D) Washington

Last Day for Action

January 4, 1975

Purpose

Requires the transfer of excess Federal real property located within Indian reservation boundaries to the Secretary of Interior for the use of certain Indian groups.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Interior

Approval (Informally)

General Services Administration

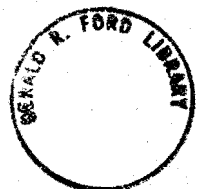
No objection

Department of Health, Education and Welfare

Defers to Interior

Discussion

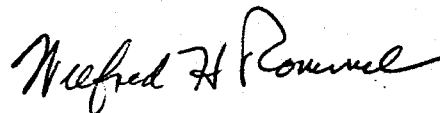
H.R. 8958 would amend the laws regarding Federal real property located within the boundaries of Indian reservations which is declared by an agency to be "excess" to its needs. Under current law, such "excess" property would be offered to other Federal agencies for their use. If no other agency wanted it, the property would be declared "surplus" and would be offered for sale to certain specified categories of groups for their use. H.R. 8958 would require that such Federal "excess" property be transferred to the Secretary of the Interior to be held in trust for the Indians of that reservation rather than made available to other agencies as "surplus." There would be no compensation required. These provisions would apply only to a group,



band, or tribe of Indians which is recognized as eligible for services by Interior's Bureau of Indian Affairs.

In testimony and letters to the House Government Operations Committee, GSA had requested that "surplus" rather than "excess" property be subject to this transfer, since other agencies may have a need for the property and GSA's normal disposal process would accommodate that need. However, the provision as enrolled would not deprive the Indians of any services they want since the Indians could grant an agency the use of such property for a facility to benefit the Indians. However, a Federal agency would, in certain circumstances, be unable to acquire "excess" property if the designated Indian groups wanted the property for other uses.

In addition, the bill contains a provision which would do essentially the same thing for Indian tribes in Oklahoma. There are no Indian reservations as such in Oklahoma, although there are tribal lands held in trust by the Secretary of the Interior in circumstances analogous to reservations.



Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 877

Date: December 27, 1974

Time: 3:00 p.m.

FOR ACTION:

Mike Duval ✓
Phil Areeda *no obj*
Max Friedersdorf *ok*

cc (for information):

Warren Hendricks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8958 - Disposal of Excess Federal
Property on Indian Reservations

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



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.: 877

Date: December 27, 1974

Time: 8:00 p.m.

FOR ACTION: Mike Duval
Phil Areeda ✓
Max Friedersdorf

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8958 - Disposal of Excess Federal
Property on Indian Reservations

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
OK*

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 S. Hendriks
For the President

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: WARREN HENDRIKS

FROM: *Max L. Friedersdorf* MAX L. FRIEDERSDORF

SUBJECT: Action Memorandum - Log No. 877
Enrolled Bill H.R. 8958 - Disposal of
Excess Federal Property on Indian Reservations

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

DISPOSAL OF EXCESS PROPERTY LOCATED WITHIN INDIAN RESERVATIONS

AUGUST 23, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOLIFIELD, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 8958]

The Committee on Government Operations, to whom was referred the bill (H.R. 8958) to amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, beginning in line 3, strike out "Notwithstanding the provisions of the second paragraph of section 602 of this Act, the Administrator," and insert in lieu thereof "The Administrator".

Page 2, line 6, after "transfer" insert "without compensation".

Page 2, line 8, immediately after "Indians" and before the period insert "which is recognized as eligible for services by the Bureau of Indian Affairs".

Page 2, beginning in line 11, strike out "The Secretary" and all that follows down through line 14 on page 3.

PURPOSE

The purpose of H.R. 8958 is to authorize the Administrator of the General Services Administration to transfer to the Department of the Interior property situated within Indian reservations, determined to be excess to the needs of Federal agencies, to be held in trust for the benefit of the Indian tribes occupying the reservation.

HEARING

On July 16, 1974, the Committee, through its Government Activities Subcommittee, held a hearing on H.R. 8958. Following that hearing,

the Subcommittee proposed amendments to H.R. 8958 and reported it to the Full Committee. Witnesses appearing at the hearing included representatives of various Indian tribes, the Assistant Commissioner of Real Property for the General Services Administration, and the Honorable Lloyd Meeds, author of the legislation. The Department of the Interior submitted a statement in favor of the bill, as amended.

COMMITTEE VOTE

H.R. 8958 was unanimously approved by voice vote at a meeting of the Full Committee on August 15, 1974, a quorum being present.

EXPLANATION OF AMENDMENTS

The first amendment is technical in nature. It deletes the words "Notwithstanding the provisions of the second paragraph of section 602 of this Act." It is not known why this language was included in the bill as introduced. Deletion will eliminate any confusion in interpretation or adverse construction of the bill's intent and purpose.

Amendment two provides that excess property shall be transferred to the Interior Department for the use by Indian tribes "without compensation." Since the land in question will remain in Federal hands, it does not seem appropriate to exact a charge for its use from the tribes. The fact that many tribes have only limited financial resources also contributed to the committee's belief that they should not be charged for land located within their own reservations. In some instances, at least, the exactment of a charge would prevent a tribe without adequate resources from obtaining needed property. This would clearly defeat efforts to institute self-sufficiency in Indian tribes.

The third amendment is inserted in order to make certain that only those Indian tribes become eligible for Federal excess property which are recognized by the Secretary of the Interior as being eligible for special programs and services provided by the Department of the Interior. The proposed language is that traditionally used to define a Federally-recognized Indian tribe.

The fourth and final amendment accomplishes two purposes. One is merely supportive of amendment two. H.R. 8958, as introduced, authorized the Secretary of the Interior to require reimbursement from an Indian tribe for excess property transferred to Interior in trust for the tribe. The bill provided alternative formulae for computing the amount of reimbursement. Since the committee determined that excess real property should be transferred to Interior for tribal use without reimbursement, as discussed in connection with amendment two, all language relating to reimbursement should be deleted.

The other part of amendment four deletes section 2 of H.R. 8958, as introduced. That section would have authorized GSA to transfer to the Department of the Interior, without reimbursement, Federal surplus property to be used by Indian tribes. This provision is not limited to property located within a reservation.

Surplus real property, in contrast to excess real property, is Federal property which, after being screened by every Federal agency, has been found to be without further need by any Federal agency. Its disposal thereafter may be by one of several routes, including donation to

a State or local public agency for health, education, or conservation purposes, or sale to a State or local public body, generally for a continued public use. Property acquired in neither of the above ways may be purchased by other sources through competitive or negotiated sale.

Such property can represent fairly large acreage and can be located in widely distributed parts of the United States and territories, generally without any relationship to the location of an Indian reservation. Enactment of section 2 could give Indian tribes the right to obtain Federal surplus property in preference to others who may have an equal or greater need for such property. Under this provision, Indian tribes would be singled out for special treatment. The committee was concerned about extending such treatment to any group of people and about determining priorities of eligibility for donable property.

Similarly, the committee questions whether enactment of section 2 would have the effect of placing Indian tribes in a preferred category compared to States, municipalities or other public bodies. A preferred category would result because section 2 provided for the transfer of surplus property without reimbursement. State and local governments are not entitled to such treatment, but must pay fair market value for the property they obtain under these provisions. If section 2 were amended to require reimbursement, the tribes would be treated on the same basis as other governmental bodies. While this might be a desirable solution, the committee lacked sufficient information to make a determination at this time. Also, a determination of this nature should be made by the committees having primary jurisdiction over Indian tribes.

DISCUSSION

Under existing law, Indians residing on reservations are governed under a trustee arrangement administered by the Secretary of the Interior through the Bureau of Indian Affairs. In recent years, a policy has been developing to turn increasing control of their lives over to the Indians themselves, as administered through tribal organizations.

This growing involvement has extended to the initiation of, among others, self-supporting economic endeavors, health services, educational programs, housing projects, and cultural activities. Federal financial and technical assistance is very much a part of such development efforts, but there is a definite move to restore to the Indian tribes greater control over their own affairs.

This program, however, has been retarded in some instances, at least, by a lack of certain types of resources. Testimony by representatives of Indian tribes before the Subcommittee pointed out that the limited land under Indian Control has been a restricting factor in the development and progress of some tribes. Even though a tribe may receive a Federal grant to operate a health, education, or economic program, for example, it may be unable to obtain the use of necessary land or facilities to support a program's operation, even though available land or facilities exist within the reservation.

This situation can occur because of the nature of Federal property laws. Under existing law, government-owned land within an Indian reservation may become excess to the needs of the Federal agency using

such land. The property is reported excess to the General Services Administration, which, in turn, "screens" the property through other agencies of the Federal government to see if they have a need for it. If not, the property becomes surplus and can be sold to non-Federal users.

Under present law, the Indian tribe within whose reservation the property is located has no preferential rights in obtaining the property. If the Indian tribe wishes to obtain the land, a request must be processed by the Department of the Interior, as trustee for the tribe. Interior has discretion to make a request for the land. GSA, in turn, weighs the request of Interior against those of other Federal agencies. If it determines that Interior's priority is greatest, it will transfer the property to Interior if OMB agrees. If, however, GSA decides upon a different priority, or if Interior does not make a request in behalf of the Indian tribe, or if OMB does not approve the transfer, the tribe will not obtain the land or facilities. Such a case was, in fact, testified to at the Subcommittee hearings wherein a tribe requested the use of excess Federal property situated within its reservation to support job training and health programs, but was turned down by GSA because OMB objected. The reasons for the rejection do not seem to be supportable on the record; but, nevertheless, the tribe has not been able to obtain the property.

In order to overcome such an impasse in the future and in order to enable Indians to realize the benefits of modern life while retaining their special historical character and identity, H.R. 8958 has been reported unanimously by the Full Committee to require GSA to transfer to the Secretary of the Interior for the benefit of the Indians any land and facilities located within a reservation when such land or facilities are reported excess.

As the Department of the Interior aptly stated in its statement submitted to the Subcommittee: "Tribal governments are in a position to determine the best possible use of the land located within their reservations." In the view of the committee, no other applicant would appear to have as great a right of possession of land located within a reservation as the Indians located thereon. For that reason, whenever property within a reservation becomes excess to other Federal needs, H.R. 8958 makes it mandatory that GSA convey such land to the Department of the Interior to be held in trust by it for such use as the Indian tribe located on the reservation believes best.

There may be situations where another Federal agency, such as the Department of Health, Education, and Welfare, may wish to obtain such excess property to support the operation of a health, education, or job training program, believing it worthy, there is little doubt the tribe will willingly devote the necessary land and facilities for its operations.

The exact amount of land that might eventually be transferred to Indian tribes under this legislation is not known because the demands of Federal agencies for such property obviously changes. It is not contemplated, however, that large amounts of property will be involved. Currently, the Department of the Interior¹ has identified the

¹ See letter from Department of Interior to the Chairman of the Government Operations Committee, July 15, 1974, included in the agency reports below.

following property within reservations as being excess to the needs of various government agencies:

Reservation	Size (acres)	Agency—Remarks
Fiathead, Mont.....	82,875	BIA—Town sites, agency reserve, powers and reservoir reserves.
Blackfeet, Mont.....	3	BIA—Used by tribe.
Fort. Belknap, Mont.....	7.5	BIA—Former schools.
Jemez Pueblo, N. Mex.....	1	BIA—Excess to adjacent school.
Isleta Pueblo, N. Mex.....	1.59	BIA—Former school.
Cochiti Pueblo, N. Mex.....	3,208	Do.
Acoma Pueblo, N. Mex.....	2.5	Do.
Nambe Pueblo, N. Mex.....	2.32	Do.
Tulalip, Wash.....	87	GSA—Surplus, former Army radio station.
Kootenai, Idaho.....	12.5	BIA—Former school and village.
Grand Portage, Minn.....	75.15	BIA—Fire tower.
Nett Lake, Minn.....	5	Do.
La du Flambeau, Wis.....	40	BIA—Excess to present fire tower.
Bad River, Wis.....	40	Do.
Lummi, Wash.....	214	GSA—Former Naval station.

ESTIMATE OF COST OF LEGISLATION

Enactment of H.R. 8958 will not result in additional costs. It could result in reducing receipts from the sale of surplus government property by an amount equal to the excess property within an Indian reservation that is retained in Federal government ownership. This should not be treated as a cost to the government, however, as the property would continue to be government-owned.

AGENCY REPORTS

Reports on H.R. 8958 have been furnished by (1) the Department of the Interior, and (2) the Department of Health, Education, and Welfare. The reports are as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 15, 1974.

HON. CHET HOLIFIELD,
Chairman, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 8958, a bill "to amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians."

We recommend enactment of this bill, if amended as suggested herein.

H.R. 8958 contains two amendments to the Federal Property and Administrative Services Act. The first, in section 1 of the bill, would amend section 202(a) so as to require the General Services Administrator to institute procedures necessary to transfer to the Secretary of the Interior Federal real property "excess" to the needs of the Federal agency controlling such property if it is within an Indian reservation. The Secretary would hold property so transferred in trust for the tribe within whose reservation the property was located. The Secre-

tary could require reimbursement for property held in trust in this manner only if the tribe had been paid for it when the United States acquired title.

The Federal tracts to which section 1 would apply are generally utilized by the Bureau of Indian Affairs for Indian services and thus are for the most part under the jurisdiction of this Department. When such lands become excess to the Department's needs, often we or the affected tribe seek legislation to transfer the beneficial interest to the tribe. (Examples of such recent transfers may be found in Public Law 92-435 and Public Law 92-411). Thus, section 1 would have the result of making legislation unnecessary in these cases. Attached is a list of Federal parcels which might be transferred to trust status after enactment of this bill. We note that in addition to the Federal Property and Administrative Services Act of 1949, provisions relating to the disposal of real property and improvements thereto no longer needed by the Bureau of Indian Affairs are set out in statutes codified in sections 292, 293, 294 and 443a of Title 25, United States Code. These statutes would not be affected by H.R. 8958.

Indian tribal governments perform many governmental and economic development activities which are financially assisted by the United States because of its special relationship with the tribes. In addition, tribal governments are in a position to determine the best possible use of the land located within their reservations. Therefore, we consider the authorization of land transfers in section 1 to be in the national interest. However, we defer to the General Services Administration as to whether such transfer should be mandatory or discretionary with the Administrator.

We believe, however, that the amendment in section 1 may be intended to—and should—apply only to federally recognized tribes. To make this clear, we recommend that the term "Indian tribe" be used throughout the bill and that the following new section, which would amend the definitional sections of the Act, be added to the bill:

"Section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472) is amended by adding a new subsection (m), as follows:

"(m) The term 'Indian tribe' means the governing body of an Indian tribe, band, nation, pueblo, colony, rancheria, or community (including Alaska native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), recognized as eligible for the special programs and services provided by the Secretary of the Interior for Indians because of their status as Indians.'"

We also note that section 1 does not provide for the eventuality of a tribe's not wanting the beneficial interest in excess real property on its reservation. We believe that all transfer of such property into trust status should be set in motion by tribal request. We also believe that the Secretary of the Interior should be made a concurring party to such requests, for he would be ultimately responsible for carrying out duties and obligations imposed by statute and the trust status with respect to the new tribal trust land. We recommend that the amendment in section 1 be modified to reflect these considerations.

The last sentence of section 1 provides for the determination of the amount to be reimbursed by a tribe which had been compensated when land to be restored to it was acquired by the United States. The amount

which the tribe may be required to pay is the lesser of "(1) the original compensation paid by the United States or (2) the fair market value of such property, after deducting any benefit which has accrued or may accrue to the United States from the use of such property by such group, band, or tribe * * *".

The provision is consistent with the Federal interest in tribal government activities, but it would be difficult to anticipate with precision the benefits which may accrue from the land's use in the future. In addition, the language excludes consideration of any benefit realized by the Federal Government other than from use by the tribe. We recommend that, rather than provide for reimbursement, the bill include the following provision, which is in line with provisions which have generally been standard in the individual land transfer bills mentioned above:

"The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050; 25 U.S.C. 70a), the extent to which the value of the beneficial interest in real property conveyed pursuant to this section should or should not be set off against any claim against the United States determined by the Commission."

Section 2 of H.R. 8958 would grant discretionary authority to the General Services Administration to transfer real property surplus to the needs of all Federal agencies to the Secretary of the Interior to be held in trust for the benefit and use of any Indian group, band, tribe, or organization which has demonstrated to the Secretary that it needs such surplus property in order to operate any program for the benefit of such group, band, tribe or organization. The property would revert to the General Services Administrator when no longer being used for the purposes for which it was transferred. We defer to the General Services Administration concerning this provision.

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,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

Enclosure.

FEDERAL REAL PROPERTY WITHIN RESERVATIONS AND IDENTIFIED AS EXCESS TO AGENCIES NEEDS

Reservation	Size (acres)	Agency, remarks
Flathead, Mont.....	82. 875	BIA—Town sites, agency reserve, powers and reservoir reserves.
Blackfeet, Mont.....	3	BIA—Used by tribe.
Fort Belknap, Mont.....	7. 5	BIA—Former schools.
Jemez Pueblo, N. Mex.....	1	BIA—Excess to adjacent school.
Isleta Pueblo, N. Mex.....	1. 59	BIA—Former school.
Cochiti Pueblo, N. Mex.....	3. 208	Do.
Acoma Pueblo, N. Mex.....	2. 5	Do.
Nambe Pueblo, N. Mex.....	2. 32	Do.
Tulalip, Wash.....	87	GSA—Surplus, former Army radio station.
Kootenai, Idaho.....	12. 5	BIA—Former school and village.
Grand Portage, Minn.....	75. 15	BIA—Fire tower.
Nett Lake, Minn.....	5	Do.
Lac du Flambeau, Wis.....	40	BIA—Excess to present fire tower.
Bad River, Wis.....	40	Do.
Lummi, Wash.....	214	GSA—Former Naval station.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 15, 1974.

HON. CHET HOLIFIELD,
Chairman, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of June 28, 1973, for a report on H.R. 8958, a bill "to amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians."

The bill would amend Section 202(a) of the Federal Property and Administrative Services Act of 1949, as amended, to permit the Administrator of General Services to transfer to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians, to be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located.

The bill would also amend Section 203(k) of the Act by adding paragraph (5) to permit the Administrator to transfer to the Secretary of the Interior surplus real property, including buildings, fixtures, and equipment situated thereon, to be held in trust by the Secretary for the benefit and use of any group, band, tribe, or organization of Indians which has demonstrated to the Secretary that they need such surplus land in order to operate any program for the benefit of the group, band, tribe, or organization.

This Department does not object to the transfer of excess real property within an Indian reservation to the Secretary of the Interior for the use of the reservation's group, band, or tribe of Indians, because such use would appear to be appropriate. We defer to GSA as to whether that transfer should be mandatory or discretionary. However, we do not believe that Section 203(k) of the Act should be amended to provide for the transfer of surplus real property, wherever situated, to the Secretary of the Interior for any unspecified use by any group, band, tribe, or organization of Indians. This would create a priority for Indian use notwithstanding other worthwhile uses such as health or educational use by the local communities near which the property is situated.

It should be noted that the reference on lines 3 and 4, page 2 of the bill to the second paragraph of Section 602 of the Federal Property and Administrative Services Act is inappropriate, as Section 602(b) refers only to the superseding of an Executive Order of 1933 and of two sections of a law concerned with the disposal of government records.

We would therefore recommend that the bill not be enacted in its present form.

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

Sincerely,

CASPAR W. WEINBERGER,
Secretary.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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 italic, existing law in which no change is proposed is shown in roman) :

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES
ACT OF 1949

* * * * *

PROPERTY UTILIZATION

SEC. 202. (a) **[In]** (1) *Subject to the provisions of paragraph (2) of this subsection, in order to minimize expenditures for property, the Administrator shall prescribe policies and methods to promote the maximum utilization of excess property by executive agencies, and he shall provide for the transfer of excess property among Federal agencies and to the organizations specified in section 109(f). The Administrator, with the approval of the Director of the Bureau of the Budget, shall prescribe the extent of reimbursement for such transfers of excess property: Provided, That reimbursement shall be required of the fair value, as determined by the Administrator, of any excess property transferred whenever net proceeds are requested pursuant to section 204(b) or whenever either the transferor or the transferee agency (or the organizational unit affected) is subject to the Government Corporation Control Act (59 Stat. 597, 31 U. S. C. 841) or is an organization specified in section 109(f); and that excess property determined by the Administrator to be suitable for distribution through the supply centers of the General Services Administration shall be retransferred as prices fixed by the Administrator with due regard to prices established in accordance with section 109(b).*

(2) *The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located.*

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DISPOSAL OF EXCESS PROPERTY LOCATED WITHIN INDIAN RESERVATIONS

DECEMBER 11, 1974.—Ordered to be printed

Mr. BROCK, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany H.R. 8958]

The Committee on Government Operations, to which was referred the bill (H.R. 8958) to amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

COMMITTEE AMENDMENT

The amendment adopted by the committee is as follows:
On page 2, line 11, after the word "located" insert the following:

: *Provided*, That such transfers shall be made to Oklahoma Indian tribes recognized by the Secretary of the Interior when such land (1) is located within the boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior and when such land was held in trust by the United States for an Indian tribe at the time of its acquisition by the United States, or (2) is contiguous to land presently held in trust by the United States for an Oklahoma Indian tribe and was at any time held in trust by the United States for an Indian tribe.

EXPLANATION OF COMMITTEE AMENDMENT

The Committee amendment to H.R. 8958 adds a provision that will extend the same disposal authority for excess land in Oklahoma that

is provided by the bill for the rest of the United States. This provision is necessitated by the fact that there are no reservations in Oklahoma. Without the proviso added by this amendment the authority granted by H.R. 8958 would have no applicability to Oklahoma. The amendment provides for transfers of excess public land to Oklahoma tribes if such land is located within the boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior if such land was held in trust by the United States for a recognized Indian tribe at the time of its acquisition, or if the land is contiguous to land held in trust for an Oklahoma tribe and at any time in its history was held in trust by the United States for an Indian tribe.

BACKGROUND

Under existing law, Indians residing on reservations are governed under a trustee arrangement administered by the Secretary of the Interior through the Bureau of Indian Affairs.

When federally-owned land located within a reservation is declared excess to the needs of an agency using the land, the Indians on that reservation do not have preferential rights in obtaining the property. Instead, it is treated as any other excess property under the Federal Property and Administrative Services Act of 1949, as amended.

If the Indians wish to obtain the excess land, they must ask the Interior Department to make a request for it from the General Services Administration. Interior has discretion to make such a request; it is not required to do so. By the same token, GSA weighs the Interior request along with any others made by other Federal agencies. If GSA determines that Interior has the greatest priority, then it transfers the land to the Interior Department, subject to the approval of the Office of Management and Budget.

In other words, the Indian's obtaining use of the excess property is contingent upon (1) Interior's requesting the land from GSA; (2) GSA's deciding to transfer the land to Interior; and (3) OMB's approving the transfer. The Indians are by no means guaranteed the use of the land located within their reservation, and there have been examples of such use being denied them.

H.R. 8958 makes it mandatory that GSA convey excess land located within a reservation to the Secretary of the Interior to be held in trust for such use as the Indian tribe located on the reservation believes best.

There may be situations where another Federal agency may wish to obtain such excess property to support the operation of a program beneficial to the Indian tribe. In these cases the tribe can devote such land and facilities for the agency's operations as it sees fit.

Since the needs of Federal agencies often change, it is not possible to estimate how much land might eventually be transferred under the terms of H.R. 8958. It is not contemplated that large amounts of property will be involved.

ESTIMATED COST OF LEGISLATION

Enactment of H.R. 8958 will result in no additional costs to the Government.

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, as reported, are shown as follows (matter omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman) :

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES
ACT OF 1949

* * * * *

PROPERTY UTILIZATION

SEC. 202. (a) **[In]** (1) *Subject to the provisions of paragraph (2) of this subsection, in order to minimize expenditures for property, the Administrator shall prescribe policies and methods to promote the maximum utilization of excess property by executive agencies, and he shall provide for the transfer of excess property among Federal agencies and to the organizations specified in section 109(f). The Administrator, with the approval of the Director of the Bureau of the Budget, shall prescribe the extent of reimbursement for such transfers of excess property: Provided, That reimbursement shall be required of the fair value, as determined by the Administrator, of any excess property transferred whenever net proceeds are requested pursuant to section 204(b) or whenever either the transferor or the transferee agency (or the organizational unit affected) is subject to the Government Corporation Control Act (59 Stat. 597, 31 U.S.C. 841) or is an organization specified in section 109(f); and that excess property determined by the Administrator to be suitable for distribution through the supply centers of the General Services Administration shall be retransferred as prices fixed by the Administrator with due regard to prices established in accordance with section 109(b).*

(2) *The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located: Provided, That such transfers shall be made to Oklahoma Indian tribes recognized by the Secretary of the Interior when such land (1) is located within the boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior and when such land was held in trust by the United States for an Indian tribe at the time of its acquisition by the United States, or (2) is contiguous to land presently held in trust by the United States for an Oklahoma Indian tribe and was at any time held in trust by the United States for an Indian tribe.*

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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 amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 202 (a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(a)) is amended as follows:

(1) The first sentence of such subsection is amended by striking out "In" at the beginning of such sentence and inserting in lieu thereof: "(1) Subject to the provisions of paragraph (2) of this subsection, in".

(2) Such subsection is amended by adding at the end thereof the following new paragraph:

"(2) The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located: *Provided,* That such transfers of real property within the State of Oklahoma shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian tribes recognized by the Secretary of the Interior when such real property (1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of Interior and when such real property was held in trust by the United States for an Indian tribe at the time of acquisition by the United States, or (2) is contiguous to real property presently held in trust by the United States for an Oklahoma Indian tribe and was at any time held in trust by the United States for an Indian tribe."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*