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PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

SENATE—*Saturday, October 14, 1978*

(Legislative day of Wednesday, October 11, 1978)

The Senate met in executive session at 9 a.m., on the expiration of the recess, and was called to order by the Honorable DONALD W. RIEGLE, JR., a Senator from the State of Michigan.

PRAYER

The Chaplin, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray:

O God our help in ages past, our hope for years to come, in the march of time this hallowed Chamber soon will be silent and the judgment of history will begin. Thou knowest whether we have done Thy will or our own or neither. Thanks be to Thee for whatever good has been achieved. Help us to forget the low moments and to remember the high moments with gratitude. Preserve precious friendships. Grant us grace and wisdom for the days yet to come.

Now unto the King eternal, immortal, invisible, the only wise God, be honor and glory for ever and ever.

We pray in the name of Him who came not to be ministered unto but to minister and give His life for many. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 14, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DONALD W. RIEGLE, JR., a Senator from the State of Michigan, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. RIEGLE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order the majority is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I reserve my time for the moment.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order the minority is recognized.

Mr. STEVENS. Mr. President, there are no requests for the minority leader's time.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold that?

Mr. STEVENS. I withhold.

ORDER RESERVING LEADERSHIP'S TIME

Mr. ROBERT C. BYRD. Mr. President, without delaying the Senator from Wisconsin, I ask unanimous consent that the time of each leader be reserved until after Mr. PROXMIRE is recognized under the order.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, this is as in legislative session.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the special order the Senator from Wisconsin (Mr. PROXMIRE) is recognized.

TAXATION OF AMERICANS LIVING ABROAD—DANGER OF NO BILL

Mr. PROXMIRE. Mr. President, the House and Senate conferees are now working on the subject of the taxation of Americans living abroad.

The Senate passed an extremely generous bill. I find it difficult to accept it because of its excessive generosity and the special features and deductions it gives to Americans living abroad as compared with those at home.

A miner in West Virginia who would earn $20,000 a year under the new contract would have to pay heavy U.S. taxes. An American citizen living in London, Bonn, Berlin, Zurich, Paris, Athens, or Rome can now "exclude" $20,000 of income off the top before he even starts to pay taxes.

The House bill, however, is outrageous, combining an exclusion with overly generous deductions. For example the 1977 calendar year costs of the Treasury proposal in this area is $254 million. The Senate bill would lose about $310 million in 1977 calendar year calculations. But the House bill would lose $545 million.

We are now at the end of the session. If no bill passes the law reverts to the 1976 reform act which would cost only $180 million in revenue loss.

I have never known a better opportunity to save money for the rest of the American taxpayers. I serve notice that if a bill anything close to the House bill comes out of the conference, or if it is not substantially in the revenue area of the Treasury proposal or Senate bill, this Senator for one would rather have no bill and let the 1976 reform provisions finally go into effect.

A number of individuals and lobbying groups have overstepped themselves on this issue. There are some genuine problems for a limited number of Americans living abroad. But if a "greedy" bill sur-

past decade, the Federal budget has grown from $180 billion to close to $500 billion. During that same period, the proportion of so-called uncontrollable spending has increased from 55 percent of the budget to 75 percent.

For fiscal 1979, the President requested budget increases totaling $40 billion over last fiscal year. Of that amount, fully three-fourths was automatically committed for entitlement programs like social security or welfare before the first budget decision was made. This leaves little room for existing programs to keep pace with inflation, let alone new initiatives for meeting arising needs. All the time, the Congress continually receives demands from constituents for more assistance for local projects or national problems. Clearly, we face a situation in which obsolete or ineffective programs have to be eliminated to make way for new ones.

Too little attention, however, is given to identifying those programs we can cut back or do without. During the 2d session of the 95th Congress, I have chaired a task force of the New Members' Caucus on Congressional Oversight. An inventory we have taken on oversight activities undertaken on programs up for reauthorization has revealed many instances in which only cursory if any evaluation of the effectiveness of such programs was carried out. Even though the House rules require all committees to conduct oversight on existing programs before deciding on continuing them, this requirement, if not ignored, is observed in no uniform way to make sure it is constructive or leads to better control over Government spending. For example, one subcommittee told by staff a reauthorization was just routine and required no oversight. I question whether any measure involving expenditure of tax dollars should be considered so routine that a careful examination of whether the expenditure would be warranted or worthwhile should not be carried out.

Our findings have convinced me that we must establish a system which guarantees the periodic review of all spending programs to determine their effectiveness and the need for them to be extended and amended.

Such a system, in my view, must include several features if it is going to improve congressional oversight activities.

First, a program evaluation system needs an internal enforcement mechanism. As I mentioned earlier, a mere requirement for program review, like the existing House oversight rule, is inadequate without some feature to make sure it is observed. The "sunset" approach of S. 2 is the best such mechanism proposed to date. The termination of all programs every few years, thereby requiring affirmative congressional action before expenditures under them are reauthorized, creates a strong incentive to conduct program review.

The Senate bill contains another provision which I believe would serve as an effective enforcement mechanism. This section would make it out of order for Congress to consider reauthorization of a program unless it has been reviewed and the report accompanying the measure addresses certain questions relating to continuation. This proposed rules change in conjunction with the "sunset" concept of termination assures not only that reconsideration of all programs will take place over a 10-year period but also that the review of these programs will be meaningful.

A second feature I believe necessary for a good evaluation system is a comprehensive approach. Including all expenditures would facilitate consideration of programs falling under the same budget functions together. The major cause of the meteoric rise in Government spending in the past decade has been the enactment of a vast array of categorical programs many of which are designed to accomplish similar goals but are fragmented and duplicated. By evaluating all such programs together, we can better determine which are the most effective in meeting needs, where they overlap and how they can be coordinated or consolidated.

For a comprehensive approach to program evaluation to be effective, in my view, it must include tax expenditures in the scope of the process.

The revenue loss through tax expenditures is the fastest growing part of the Federal budget. Ten years ago the loss to the Treasury from such provisions amounted to $35 billion. The budget for the current fiscal year is expected to show a loss of over $124 billion. Because tax expenditures result from efforts to accomplish certain policy goals not related to taxes, they should also be subjected to the same sunset and review requirements as regular spending programs so that periodically they, too, can be evaluated to determine if they are efficiently and effectively accomplishing goals still deemed to be appropriate national policy. By excluding tax expenditures from a program evaluation system, roughly one-fifth of the Federal budget would remain uncontrollable.

The last feature I have found to be essential for effective oversight or evaluation is an explicit but flexible procedure which includes a statement of program intent at the outset and a list of minimum criteria to be considered. The work of the New Members' Task Force on Oversight has revealed most clearly that it is necessary not only to require that oversight be carried out but to spell out how it should be done. As our inventory has shown, oversight means different things to different people. The extreme example of how oversight can fail is the case of one committee that considered a program coming up for extension. It held 1 day of hearings during which a total of 11 witnesses testified, all of whom had a vested interest in seeing the program continued and, not surprisingly, all of whom sang its praises. By requiring that the analysis include agreed upon standards against which program performance can be measured and specified steps for determining their effectiveness, we can prevent meaningless oversight and establish a program evaluation system which will lead to a more efficient and effective Federal Government.

Translating these principles into legislation that workable and acceptable will not be easy. Many questions about cost, time and staffing requirements, the scope of the system and jurisdictional differences that could be created will have to be resolved.

Nevertheless, I believe it is an effort that must be made. The growing disaffection and dissatisfaction with Government on the part of the American people is perfectly understandable as Government continues to expand, taking more and more of income through taxes with few noticeable benefits and too many apparent failures. It is incumbent on the Congress, in my view, to develop a system which will enable us to streamline the Government—cut out the waste and duplication and improve the delivery of services the public sector should provide. The failure to develop such a discipline means that a new initiative, however meritorious, can never be launched and that, ultimately, taxpayer disaffection will result in a blunderbuss proposition 13 for the Federal Government.

I urge my colleagues to join the gentleman from Michigan and other sponsors of program evaluation legislation, as well as the members of the Rules Committee, in developing this much needed system for effective oversight of Government programs.

INDIAN CHILD WELFARE ACT

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12533) to establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12533, with Mr. GEPHARDT in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule the gentleman from Arizona (Mr. UDALL) will be recognized for 30 minutes, and the gentleman from California (Mr. LAGOMARSINO) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill is the result of over 4 years of congressional hearings, oversight, and investigation. During that period, the House, the Senate, and the American Indian Policy Review Commission held days of hearings and heard from hundreds of witnesses on the subject of foster care and adoptive placement of Indian children.

The bill, in concept is supported unanimously by the Indian community; by several States, and by numerous private agencies involved in child welfare matters.

The record developed by this congressional oversight has disclosed a serious problem in Indian child welfare which approaches crisis proportions.

Studies have revealed that about 25 percent of all Indian children are removed from their homes and placed in some foster care or adoptive home or institution. This figure, standing by itself, is shocking.

In 1976, there were 54,709 Indian children under 21 in Arizona. Of these, 1,029 or 1 out of every 52 were placed for adoption. For non-Indians, the ratio was 1 out of every 220. In other words, 4.2 times more Indian children were placed for adoption in Arizona than non-Indian children. The foster care ratio was 1 out of every 98 Indians placed for foster care as opposed to 1 out of every 263 for non-Indians.

The statistics for other States surveyed were no less shocking. These figures not only show that Indian children are being removed from their families at alarming rates, but they also show that in the overwhelming majority of the cases, the children are placed in non-Indian homes.

Indian tribes and Indian people are being drained of their children and, as a result, their future as a tribe and a people is being placed in jeopardy.

There are several reasons for this crisis in the Indian community. One, obviously, is the general poverty existing in Indian communities. Because of their economic or social condition they sometimes find it difficult to adequately raise their children or, more often, this poverty is used by State welfare agencies and officials as prima facia evidence to take the children from their families.

Title II of the bill is aimed at this factor. It authorizes the Secretary of the Interior to make grants to Indian tribes and organizations to operate Indian child and family service programs. These programs would assist in stabilizing Indian families and provides support to alleviate conditions of poverty. In addition, it provides tools to protect and defend the Indian family from outside assault.

The most distressing and critical factor giving rise to this emerging crisis of Indian families has been the inability or unwillingness of State agencies or officials to understand the different cultural and social norms prevailing in the Indian world. The record shows that, in all too many cases, Indian parents have their children forcibly taken from them not because they are unfit parents or because they cannot adequately provide for those children as measured by the norms prevailing in the Indian community, but because they are Indians.

This is a shocking statement to make and, in this age of victory of racial civil rights, some members may not give it credence. Therefore, I will cite verbatim the findings of fact made by a State court which terminated the parental rights of an Indian woman to her child without finding that she was an unfit mother. I quote:

> The child has physical features, as observed by the Trial Court, of a non-Indian nature and her return to an environment consisting of primarily Indian people would subject her to being reared under unnatural conditions that would be detrimental and endanger her emotional well-being.

Solely on the grounds that she is an Indian living on an Indian reservation, this woman has been denied her child. After months of heartbreak and misery, this woman has had to petition the Supreme Court to review this holding and the case is now pending. We can only hope that they grant review and overturn the lower court decision.

One case of this kind would merit passage of this bill. But, all too often, Indian parents have had to chase their children from State to State—court to court—only to find the door slammed in their face by a denial of practical due process.

Title I of this bill addresses this factor. It clarifies the allocation of jurisdiction over Indian child custody proceedings between Indian tribes and the States. More importantly, it establishes minimum Federal standards and procedural safeguards to protect Indian families when faced with child custody proceedings against them in State agencies or courts.

Mr. Chairman, because of the trust responsibility owed to the Indian tribes by the United States to protect their resources and future, we have an obligation to act to remedy this serious problem. What resource is more critical to an Indian tribe than its children? What is more vital to the tribes' future than its children?

We have the constitutional power to act and we must do so.

I must raise the objections of the Department of Justice to this bill. Seeking a reason to oppose the legislation, Justice has timidly alleged that certain provisions of the bill are unconstitutional as an invasion of State prerogatives.

They offer no support for this position beyond the citation of a 1954 law review article. Eight pages of our committee report is devoted to a close analysis of the Supreme Court decisions in this area and it firmly supports the constitutionality of all the provisions of the bill. In addition, the American law division of the Library of Congress made a similar exhaustive analysis and arrived at the same conclusion.

Finally, I will address the cost factor of the bill. CBO has estimated that this bill will cost approximately $125,000,000 over 5 fiscal years. If that figure were accurate, I would still find the cost worth the goal to be achieved. But, as noted in the committee report, we take issue with some of CBO's assumption in making that estimate and find it too high.

However, I will offer an amendment which would have the result, assuming CBO's estimate is accurate, of reducing the cost of this bill by $80,000,000 over 5 years. The estimated cost would then be $44,000,000 or around $9,000,000 a year.

Mr. Chairman, I urge passage of this most vital legislation.

Mr. LAGOMARSINO. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of H.R. 12533, the Indian Child Welfare Act of 1978.

This bill is directed at conditions which not only threaten the integrity and stability of Indian families and the future of American Indian tribes, but also guarantee a continual sad harvest of individual human suffering.

The record of nearly 5 years of congressional oversight on Indian child placements and adoptions shows a disproportionately high percentage of Indian families are broken up by the removal, often unwarranted, of their children by nontribal public and private agencies. More than 62,000 of the estimated 250,000 children whose parents live on or near reservations are currently in foster care or adoptive homes or institutions. Including those whose families live in urban areas or with rural nonrecognized tribes, the number is closer to 100,000 children.

An Indian child welfare statistical survey conducted by the Association on American Indian Affairs and published in July 1976, showed the rate of separation among Indians is much higher than in non-Indian communities. In Arizona 1 out of every 29 Indian children is placed for adoption as compared to 1 out of every 134 non-Indians. In Wisconsin it is 1 out of 14 as compared to 1 out of 251. This gross disparity is also true of foster care placement and the disparities are found in all of the 24 States surveyed. In some States as high as 95 percent of these children are placed in non-Indian foster or adoptive homes or institutions.

The reasons behind these statistics go beyond the general poverty prevalent in many Indian communities. Hearing witnesses reiterate time and again the failure or inability of State agencies, courts, and procedures to fairly consider the differing cultural and social norms in Indian communities and families. These failures frequently result in the effective denial of due process in Indian child custody proceedings.

The record shows that separations often occur where the natural parent does not understand the nature of the legal documents or proceedings involved; that only about 10 percent of Indian children and their parents are represented by counsel at involuntary placement proceedings. Regrettably, public and private agency officials are all too often unfamiliar with and/or disdainful of Indian culture and society. Often the conditions which lead to separation are not demonstrably harmful or are remediable or transitory in character. Generally, there are no requirements for responsible tribal authorities to be consulted about or even informed of child removal actions by nontribal government or private agents.

There is a clear consensus among Indians and professionals who have dealt with the problems stemming from separation of Indian children from their natural parents and placement in institutions or homes which do not meet their

special cultural needs. In short, it is socially and culturally undesirable.

For a child, separation can cause a loss of identity and self-esteem. The high number of separations undoubtedly contribute directly to the comparatively high rates among Indian children of school dropouts, alcoholism and drug abuse, suicides, and crime. Moreover, separation of an Indian child from his family leads to the loss of his right to share in the cultural and property benefits of membership in his tribe.

For parents, separation is likely also to result in a loss of self-esteem, which in turn can aggravate conditions, such as alcohol abuse, which may initially have led to a child's removal from the family.

For Indians generally and tribes in particular, the continued wholesale removal of their children by nontribal governments and private agencies constitutes a serious threat to their existence as ongoing, self-governing communities.

The United States, as trustee for Indian tribal lands and resources, has a clear interest and responsibility to act to assist tribes in protecting their most precious resource, their children. H.R. 12533 is, therefore, designed to prevent the unnecessary and unjustifiable separation of Indian children from their families and tribal communities by providing for effective due process and equal protection under the law.

The bill clarifies jurisdiction over child custody proceedings relating to Indian children, establishes minimum procedural and evidentiary standards for the removal of Indian children from their families and placement in foster homes or institutions. In addition, it provides for grant assistance to Indian tribes and organizations for the operation of child and family service programs.

Mr. Chairman, the bill's provisions are well explained in the committee's report and I will not detail them here.

Suffice it to say that the bill as reported by the committee is the result of thorough and careful consideration of a broad range of viewpoints and proposals. The House bill is a rewrite of its Senate counterpart, S. 1214. Many suggestions of the Departments of Interior, Justice, and HEW have been included in the text. In fact, of some 30 specific suggestions made by Justice and Interior which are contained in their letters in the committee report, 22 are now part of the bill. Those not included were considered and found either unnecessary or not meritorious. On that point, I would like to express dismay at the persistence of the Department of Justice in alleging that this bill may have constitutional problems.

Justice originally raised its constitutional concerns months ago. The committee provided in its report an extensive analysis and rebuttal of these questions. Nevertheless, within the past few days the Department has contacted Members of the House making the same arguments it did months ago. It has made absolutely no effort to reply to the committee's position.

Mr. Chairman, at this point I include a letter written by Chairman UDALL to the Justice Department with respect to its conduct on this matter.

COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS,
Washington, D.C., October 2, 1978.

Hon. PATRICIA M. WALD,
Assistant Attorney General,
Department of Justice,
Washington, D.C.

DEAR ATTORNEY GENERAL WALD: I have reviewed your letter of September 15 to Congressman Roncalio, which reiterates the objections of the Department of Justice to certain provisions of H.R. 12533, concerning Indian child welfare. The Committee very carefully considered the Department's concerns as set forth in your February 9 and May 23 letters, and amended the bill to meet some of the Department's objections. On other points, the Committee did not agree with your position.

You list three constitutional problems:

First, you express objection to section (4)(b). Since this is no more than a definition of a term, it has no substantive effect in and of itself. It relates to your third point and I discuss it below.

Secondly, you raise constitutional objections to section 102 regarding the imposition of Federal procedural and substantive standards on state courts. The only legal support you cite for your position is a 1954 Columbia Law Review article. The Committee has explored the case law at some length and has expressed its opinion on the matter on pages 12 through 19 of the Committee report. Enclosed is a copy to which I invite your attention.

Your third point, which is essentially the same as your first, questions the constitutionality of section 101(b) with respect to a non-tribal member custodian of an Indian child not a member of a tribe. I would first point out that section 101(b) deals with foster care placement and termination of parental rights. These are actions affecting parental, not custodial, rights. The subsection, as amended, also gives either parent a right to veto the transfer of a case to the tribal court. Secondly, as amended, the subsection would permit the state court to refuse to transfer the case for good cause. Finally, as noted on pages 16 and 20 of the Committee report, the Committee disagrees with the Department on the legal status of an Indian child who is "merely" eligible for enrollment in an Indian tribe.

You also find two technical problems with this legislation:

First, you object to the phrase in the declaration of purpose with respect to the "special responsibility and legal obligations" of the United States based upon the *White* v. *Califano* decision. While I do feel that such a responsibility exists under current law, I would not object to an amendment striking the phrase.

Secondly, you object to the definition of "reservation" in section 4(10) to the extent that it relates to reservation boundaries that have been disestablished. You state that it could be read to re-establish such boundaries without taking into account the impact on the residents in the areas to be affected. The only residents who would be affected would be members of Indian tribes and Indian children who are members of or eligible for membership in an Indian tribe. The Committee expressly took this into consideration and fully intends that the provisions have this impact. Non-Indians will no more be affected by this provision than are non-Indians who currently live within a reservation which has not been disestablished.

I firmly believe that a review of the legislative record on this bill will persuade one that a domestic crisis exists for Indian families and that state courts and agencies and their procedures share a large part of the responsibility for this crisis. I firmly believe that the future and integrity of Indian tribes and Indian families are in danger because of this crisis. I regret very much that the Department of Justice has not seen fit to cooperate fully with the Congress in resolving this crisis, but, rather has raised constitutional and other objections with little legal support for these positions.

I fully intend to seek House passage of this bill as reported by the Committee. While we may have to accept one or more amendments on the floor, I will strongly resist any amendments inconsistent with my strong views, above, particularly your third constitutional argument. Should this legislation be sent to the President for his signature, it would be a shame and a travesty for the Department to recommend a veto. The right of Indian tribes and Indian families to their children is a human right and the defense of human rights, like charity, begins at home.

Sincerely,

MORRIS K. UDALL,
Chairman.

Mr. LAGOMARSINO. Mr. Chairman, I yield back the balance of my time.

Mr. UDALL. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Under the rule it shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs now printed in the bill as an original bill for the purpose of amendment and said substitute shall be read by sections instead of by titles.

The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibility and legal obligations to the American Indian people, to protect the best interests of Indian children

and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

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

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 697), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father whose paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code. In any case were it has been judicially determined that a reservation has been diminished or the boundaries disestablished, the term shall include the lands within the last recognized boundaries of such diminished reservation prior to enactment of the statute which resulted in the diminishment or disestablishment;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that all sections preceding title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENT OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer a technical amendment to the sections preceding title I.

The Clerk read as follows:

Amendment offered by Mr. UDALL: On page 29, in line 24, strike the phrase "(85 Stat. 688, 697)" and insert, in lieu thereof, the phrase "(85 Stat. 688, 689)".

The amendment was agreed to.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The remainder of the bill is as follows:

TITLE I—CHILD CUSTODY PROCEEDNGS

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipts requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a

language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights, to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in paragraph (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ites.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, or biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population on homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement continues only for a reasonable time and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. None of the provisions of this title, except section 101(a), shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the construction, operation, and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children are provided the same support as Indian foster children; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV–B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV–B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children are provided the same support as Indian foster children;

(2) the construction, operation, and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4 (c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain and affidavit of the biological parents or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (80 Stat. 381).

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. (a)(1) Within six months from the date of this Act, the Secretary shall consult with Indian tribes, Indian organizations, and Indian interest groups in the consideration and formulation of rules and regulations to implement the provisions of this Act.

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

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

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

(b) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revisions or amendments to such rules and regulations, the Secretary shall present the proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and shall, to the extent practicable, consult with tribes, organizations, and groups specified in subsection (b)(1) of this section, and shall publish any proposed revisions or amendments in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and to receive comments from, other interested parties.

TITLE IV—PLACEMENT PREVENTION STUDY

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provisions of educational facilities for children in the elementary grades.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

TECHNICAL AMENDMENTS OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer certain technical amendments to title I, and ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. UDALL: On page 31, in line 12, strike the period after the word "tribe" and insert, in lieu thereof, a comma.

On page 37, in line 3, strike the word "paragraph" and insert, in lieu thereof, the word "subsection".

On page 37, in line 23, strike the word "or" where it appears the first time and insert, in lieu thereof, the word "a".

On page 38, in line 20, insert the phrase "title IV of" after the word "by" and, in line 21, strike the phrase "(82 Stat. 79)" and insert, in lieu thereof, the phrase "(82 Stat. 73, 78)".

On page 39, in line 15, strike the word "on" and insert, in lieu thereof, the word "in".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments en bloc be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, they are purely technical amendments. They have been cleared with the other side. I do not believe there is any controversy.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona (Mr. UDALL).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer technical amendments to title III.

The Clerk read as follows: On page 46, in lines 20 and 21, strike the phrase "(80 Stat. 381)" and insert, in lieu thereof, the phrase "(5 U.S.C. 552), as amended".

On page 48, in line 13, strike the phrase "subsection (b)(1)" and insert, in lieu thereof, the phrase "subsection (a)(1)".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that these technical amendments be considered as read, printed in the RECORD, and considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, I know of no controversy surrounding the amendments. I ask for their adoption.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona (Mr. UDALL).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer an amendment to title IV.

The Clerk read as follows:

Amendment offered by Mr. UDALL: On page 48, in line 19, strike the phrase "PLACEMENT PREVENTION STUDY" and insert, in lieu thereof, the word 'MISCELLANEOUS".

On page 49, in line 7, strike the word "provisions" and insert, in lieu thereof, the word "provision".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of the title IV amendment and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, these are entirely technical in nature.

I ask for their adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. UDALL).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer three further amendments and ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr UDALL: On page 41, in line 22, insert a comma after the word "child" and the phrase "who is a resident of or is domiciled on a reservation, but temporarily located off the reservation,".

On page 43, in line 6, strike the phrase "the construction, operation, and maintenance" and insert, in lieu thereof, the phrase "the operation and maintenance" and, on page 44, in line 24, strike the phrase "the construction, operation, and maintenance of" and insert, in lieu thereof, the phrase "the operation and maintenance of".

On pages 47 and 48, strike all of section 302 and insert, in lieu thereof, the following:

"SEC. 302. Within 180 days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act."

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of these amendments en bloc and that they be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, where an Indian child is residing or domiciled off an Indian reservation the State has full jurisdiction over the child in a custody proceeding, including the power to remove the child from the parents on an emergency basis to protect the child.

Where the child is residing or domiciled on the reservation, there was some question about the power of the State to make an emergency removal and placement of such child who is temporarily within the State's jurisdiction. Section 112 was adopted by the committee to make it clear that the State would have that power.

However, the committee did not intend that the State could invade the jurisdiction of the tribe by going onto the reservation to make such an emergency removal. My amendment simply makes this clear.

Title II authorizes the Secretary to make grants to fund Indian child and family programs both on and off the reservation. Tribes and Indian organizations are authorized to use such funds to construct facilities to house the operation of these programs.

CBO estimated the cost of this bill at $125,000,000 spread over a 5-fiscal-year period. Approximately $80,000,000 of that estimate grows out of construction authorizations and assumptions about cost of construction of family centers and number constructed. While the committee disagreed with CBO's estimates and assumption, the construction authority would undoubtedly be considerable.

My amendment deletes all language from title II relating to construction authority. First, such authority might already exist under existing law and, second, most tribes and tribal organizations would find existing structures to house their family assistance programs.

Based upon CBO's estimates, my amendment would save $80,000,000 and result in a cost of the bill of approximately $44,000,000 over 5 fiscal years or about $9,000,000 per year.

Section 302, as reported, imposes tight time schedules and consulting requirements on the Secretary of the Interior in promulgating regulations implementing the legislation. These include consulting with pertinent congressional committees and with relevant Indian organizations. The Department of the Interior, in its report on the bill, objected to some provisions of this section.

The consulting and time requirements are burdensome and unnecessary. My amendment would simply require the Secretary to promulgate necessary regulations within 6 months of the act. However, I think that it should be clear that it is the intent of Congress that the Secretary consult fully with Indian tribes and organizations in drafting such rules and regulations.

While the committee disagreed with this estimate, the construction authority undoubtedly would be considerable, therefore I am deleting all language from title II relating to construction authority and, based on the estimates, my amendment would cut the cost by $80 million and make the estimated cost $44 million over 5 fiscal years at $9 million a year.

Mr. LAGOMARSINO. Mr. Chairman, the minority side has no objection to the amendments and will accept them.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona (Mr. UDALL).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. LAGOMARSINO

Mr. LAGOMARSINO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr LAGOMARSINO:

On page 27, beginning on line 2, strike the comma after the word "nation" and delete the phrase "in fulfillment of its special responsibility and legal obligations to the American Indian people,".

Mr. LAGOMARSINO (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LAGOMARSINO. Mr. Chairman, section 3 of H.R. 12533 declares the policy of the United States to protect the best interests of Indian children "in fulfillment of its special responsibility and legal obligations to the American Indian people." The Department of Justice has expressed fear that this language may be used by a court to hold the United States liable for the financial support of Indian families far in excess of the provisions of title II of the bill, regardless of whether Congress has appropriated money for such purpose. Justice's concern stems from a Federal District Court ruling in the case of White against Califano holding that similar language in other legislation obligated the Federal Government to make support payments for Indians for mental health purposes.

This amendment would strike the phrase which Justice finds objectionable; however, I would emphasize that in so doing it would not in any way change the overall intent of the declaration of policy.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Speaker, the amendment the gentleman offers has been prepared by the gentleman from Colorado (Mr. JOHNSON), our distinguished minority counterpart. We have discussed the amendment. I think it is a good amendment and I am prepared to accept the amendment as well as the remaining six amendments the gentleman from California is preparing to offer on behalf of the gentleman from Colorado (Mr. JOHNSON).

Mr. LAGOMARSINO. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. LAGOMARSINO).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR LAGOMARSINO

Mr. LAGOMARSINO. Mr. Chairman, I offer the six remaining amendments and ask unanimous consent that they may be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. LAGOMARSINO:

On page 27, line 19, after "institution" insert "or the home of a guardian or conservator."

On page 28 on line 22 strike the semicolon after the word "tribe" and add the following: "or who is an Alaska Native and a member of a Regional Corporation as defined in Section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);".

On page 30, in line 7, strike the period after the word "Code", the phrase "In any", and all of lines 8 through 13 and insert, in lieu thereof, the following: "and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation".

On page 42, line 3, delete, "continues only for a reasonable period of time" and insert in lieu thereof "terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child".

On page 42, in line 9 add an "s" to the word "section" and insert after "101(a)" the phrase "108, and 109," and, in line 12, after the word "to", insert the phrase "one hundred and eighty days after".

On page 43, strike all of lines 20 through 22 and insert in lieu thereof the following: "(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs; and" On page 44, strike all of line 23 and insert in lieu thereof the following: "may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support for maintenance and medical needs;"

Mr. LAGOMARSINO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LAGOMARSINO. Mr. Chairman, the first amendment in this series is intended to correct an oversight in the definition of the term "foster care placement."

As reported, the bill defines foster care placement as any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

In several States, temporary child placements are made to a guardian or conservator rather than to a foster care home or institution. Although the terminology used is different, the proceedings are essentially the same. My amendment merely provides that State proceedings for Indian child placement to temporary guardians and conservators are included under the appropriate provisions of this act.

Mr. Chairman, in explanation of the second amendment in this series, let me state that under the definition of an Indian in paragraph 3 of section 4 of H.R. 12533, Alaskan Natives who are at-large members of Native Regional Corporations or who are members of the 13th Regional Corporation for nonresident Alaskan Natives may be excluded from the protections of this act. Such exclusion would be unintentional on the committee's part and my amendment would make certain it would not occur.

This amendment does not alter the inclusion in the definition of the term Indian those Alaska Natives who are members of Alaska Native villages. Moreover, it does confer tribal status on the Regional Corporations.

Mr. Chairman, with reference to the third amendment in this series, paragraph 10 of section 4 of this bill defines the term "reservation" and includes language which would have the effect of reestablishing the diminished or disestablished boundaries of at least two reservations solely for the purpose of tribal jurisdiction over Indian child placements. The Department of Justice has expressed concern over constitutional and other problems which may result from the extension of jurisdiction in this manner.

While I do not agree that the existing provision raises constitutional problems, I believe the definition should be clarified. Therefore, my amendment strikes the sentence that Justice objects to and adds language providing for tribal jurisdiction within diminished reservations to extend only over lands held in trust or subject to a restriction against alienation by the United States for the benefit of an Indian tribe or individual.

Mr. Chairman, in explanation of the fourth amendment, section 112 of H.R. 12533 states that nothing in title I of the bill shall preclude State authorities from temporarily removing an Indian child from his parent or custodian when they are off reservation in order to prevent imminent physical damage or harm to the child. It provides that such emergency removals shall continue "only for a reasonable time," after which the State must either initiate formal custody proceedings or restore the child to his family.

Because what is "reasonable" is open to wide-ranging interpretation and abuse, this amendment clarifies the intent of the section by requiring an emergency placement to terminate when the reason for it no longer exists, specifically, when it is no longer necessary for the prevention of imminent physical harm to the child.

Mr. Chairman, in explanation of the fifth amendment, section 113 of H.R. 12533 provides for the procedural and evidentiary requirements for State court proceedings under title I to take effect immediately upon enactment. This provision creates the likelihood that many child custody proceedings involving Indian children, either in progress or about to begin, will be subject to litigation and invalidation for violating the provisions of this act.

My amendment is simply intended to avoid such disruptions by delaying for 180 days the effective date of the bill, except for three sections. The delay would also allow the States, the Interior Department and other parties time to familiarize themselves with the act's provisions.

The sections excepted by this amendment are: First, section 101(a), which states existing law with respect to tribal jurisdiction; second, section 108, which authorizes retrocession of child custody jurisdiction to tribes under certain circumstances; and, third, section 108, which authorizes tribes and States to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings.

Mr. Chairman, with reference to the last amendment in this series, let me state that title II of H.R. 12533 authorizes the Secretary of the Interior to make grants to Indian tribes to establish family service and maintenance programs. Grants could be used for a variety of purposes, including establishment of adoption subsidy programs under which Indian children could be provided the same support as foster children. These subsidies would enable foster care families in particular and Indian families in general to adopt children where they might otherwise not be financially able to do so.

Concern has been expressed that the language in sections 201(a)(7) and 202 is unclear as to the limits intended for such programs. My amendment provides that the level of adoptive subsidies would be comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenace and medical needs.

Thirty-five States and the District of Columbia now provide adoption subsidies, particularly for hard-to-place children and/or children who are already in foster care. Subsidies are usually limited to the amounts provided for foster care.

The record of State programs has shown that not only have adoption subsidies enabled many more children to grow up in family environments, but also that they have been able to do so at a cost far below that which would be required to maintain them in institutional care. Similar results could be expected from tribal programs.

I would like to ask the chairman of the committee if he agrees with my understanding that it is the committee's intent that neither the language of the bill nor any regulations promulgated by the Interior Department shall be construed as establishing any entitlement to an adoption subsidy and, further, that it is not intended that any adoption subsidies be provided where the adoptive family's economic conditions clearly do not warrant it.

These are also amendments that have been prepared by the minority ranking member, the gentleman from Colorado (Mr. JOHNSON). They have been cleared with the majority and I would hope that the Committee would accept these amendments.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, let me say that these amendments have indeed been cleared and they are satisfactory to me.

Mr. LAGOMARSINO. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California (Mr. LAGOMARSINO).

The amendments were agreed to.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. GEPHARDT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 12533) to establish standards for the placement of Indian chilren in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes, pursuant to House Resolution 1374, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER. Pursuant to the provisions of House Resolution 1374, the Committee on Interior and Insular Affairs is discharged from further consideration of the Senate bill (S. 1214) to establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves to strike out all after the enacting clause of the Senate bill S. 1214 and to insert in lieu thereof the provisions of H.R. 12533, as passed by the House, as follows:

HOUSE AMENDMENTS TO SENATE BILLS

S. 1214

Amendment offered by Mr. UDALL: Strike out all after the enacting clause of S. 1214 and insert in lieu thereof the provisions contained in H.R. 12533 as passed by the House.

That this Act may be cited as the "Indian Child Welfare Act of 1978".

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of

parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102 and 103 of this Act.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided,* That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101

(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, after-school care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, after-school care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

SEC. 204. For the purposes of section 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information in maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

TITLE IV—MISCELLANEOUS

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Commit-

tee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elmentary grades.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 12533) was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just passed.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

FEDERAL RECLAMATION DAMS SAFETY

Mr. MEEDS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11153) to authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Washington (Mr. MEEDS).

The motion was agreed.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11153, with Mr. PICKLE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Washington (Mr. MEEDS) will be recognized for 30 minutes, and the gentleman from Idaho (Mr. SYMMS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Washington (Mr. MEEDS).

Mr. MEEDS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman and members of the Committee, I would, at the outset, like to express my deep appreciation to the ranking minority member, the gentleman from New Mexico (Mr. LUJAN) who, unfortunately, is not able to be here today, but who has been very helpful in the adoption and preparation of this legislation which we sponsored with 21 of our colleagues some time ago.

Mr. Chairman, this is a totally bipartisan bill, and I know of no opposition to the bill at all.

Mr. Chairman, H.R. 11153 would authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Bureau of Reclamation dams and related facilities to preserve their structural safety. This measure, which I had the honor to introduce, in cosponsorship with a bipartisan group of 22 of my colleagues, results from an executive recommendation of the Secretary of the Interior.

Through a program initiated in 1965—the examination of existing structures program—the Bureau of Reclamation has identified 27 Bureau dams which would not be able to withstand a maximum probable flood or a maximum credible earthquake and therefore in need of repair. Needed modifications have been completed on 10 of these 27 dams and are authorized and underway on 4 dams. However, authorization is still required for work on the remaining 13 dams. H.R. 11153, by authorizing to be appropriated "such sums as may be necessary" to carry out dam safety modifications. This legislation would enable the Secretary of the Interior to not only repair these 13 dams but also to repair any other dams the Bureau of Reclamation may discover in need of safety modifications.

The bill provides that these modifications are for safety purposes only and not for providing any additional benefits over and above those originally authorized and provided by the original dams and reservoirs. Also, this measure provides that the costs of modifying the dams shall be allocated among the authorized purposes served by the dams and reservoirs in accordance with standard cost allocation procedures. Costs allocated to irrigation shall be reimbursable only to the extent of the water users' ability to repay as determined by the Secretary.

In summary, this is an important measure that should be passed with dispatch; both from the urgency of the fiscal year 1979 budget cycle and from the standpoint of assuring that potential threats to life and property are eliminated at the earliest possible date. Accordingly, I urge all Members of this body to join with me in its passage.

Mr. WEISS. Mr. Chairman, will the gentleman yield?

Mr. MEEDS. I will be delighted to yield to the gentleman from New York.

Mr. WEISS. I appreciate the gentleman's yielding.

I have an indication that the National Wildlife Federation has some problem with this legislation, and I understand that the basis of their concern was whether there would be full cost recovery from the users of the dam for whom it was originally constructed. I wonder if the gentleman could enlighten us with respect to those concerns?

Mr. MEEDS. Yes. I am sure those concerns will be allayed by an amendment which I will offer which clarifies those concerns.

Mr. WEISS. I appreciate the gentleman's comments.

Mr. MEEDS. Mr. Chairman, I reserve the remainder of my time.

Mr. SYMMS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am pleased to join the gentleman from Washington in support of this bill and I urge my colleagues on this side of the aisle to give it their support.

All we are doing here is giving the Secretary of the Interior the authority to repair or modify any Bureau of Reclamation dam that is found to be unsafe. And we give him a fund to work from. The amount he will need from the fund will be determined by the amount of work necessary on each dam. We have written into the bill a congressional review mechanism so the Congress can retain control over the purse strings and make certain that each job is absolutely necessary.

The administration, in keeping with its continuing vendetta against Western farmers, asked for two provisions that our committee refused to include in the bill. First, it asked for an open-ended appropriation authority so it could spend as much as it wanted on whatever projects it chose, with no congressional control over the projects or the cost; then it demanded that the farmers whose water is impounded by these dams be forced to pay 100 percent of those costs. If they refused to pay, of course, the Government could shut off their water.

Our committee was not about to leave the farmers that vulnerable to the Carter bureaucrats. Over the past 2 years, we have seen all too clearly what this administration has in mind for our Western agriculture and ranching community, and we wrote a different scenario into the bill.

First, we built a control into the bill so that each project will be reviewed by the Congress to determine its feasibility and its costs.

Second, we removed the "such as are necessary" language and authorized a specific ceiling on appropriations.

Third, we made the repair costs nonreimbursable so the Government will have to pay for its own mistakes. It just does not make sense for the Government to design a dam incorrectly, force the farmers to pay for it, then go back and correct its own mistakes and force the farmers to pay a second time for the correction. With that kind of a policy, there would be no incentive for the Government ever to make the dam totally safe. Whole generations of engineers could make a lifetime profession out of repairing, modifying, correcting, and rebuilding a single dam, all at the expense of the helpless farmer. And when the farmers go broke, the administration bureaucrats could go in and take over the farm and raffle it off in parcels in a national lottery as they have been trying to do for the past 2 years.

With those policy questions settled, there is no doubt about the need for this bill. The failure of the Teton Dam