

IN APPEARANCE BEFORE

SENATE COMMITTEE ON INDIAN AFFAIRS

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STATEMENT

Before the Senate Committee on Indian Affairs

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Mr. Chairman:

Mr. Chairman and members of the Committee, good morning. I appreciate the opportunity to come before you today to provide testimony and answer any questions you may have regarding the Office of Navajo and Hopi Indian Relocation and its position on the pending legislation.

In early June of this year, I and my staff met with members of the Committee staff, in Flagstaff, Arizona for the purpose of giving comments on the original draft of S. 1003. The Office is in agreement with the legislation's projected date for completion of relocation and transfer of any remaining functions to a newly created Office of Relocation within the Department of Interior. I understand that the Administration opposes the language concerning enhanced retirement computation and the Office of Personnel Management will be in touch with the Committee in regards to these concerns. Committee staff have already made some changes to the proposed legislation based on recommendations from the Office and we believe the remaining recommendations that the Office will put forth below are sufficiently important to the efficient and timely completion of our mission and the closure of the Office, that they should be implemented.

For convenience, the comments below are made by reference to page and line numbers of the most recent version of S.1003.

1. Page 13, Lines 3-7. This change carries forward the Secretary's authority to take lands into trust acquired under Section 1B, but has omitted the authority to take into trust lands described under Section 1A. Land selection has not been completed in either of these categories and therefore, the Secretary's authority to take lands into trust should extend to both categories. The Office would therefore, recommend that Page 13, Line 5 read, "(1)(A) (1)(B)..."
2. Page 19, Lines 11-13 and Lines 23-25, Page 52, Lines 22-24 and Page 59, Line 25. These three citations all deal with the termination of ONHIR authority, the

establishment of the Office of Relocation within the Department of Interior and the date of commencement of the Secretary's authority over transferred relocation activities. The original draft of the legislation included a date of September 30, 2008 for the termination of ONHIR and the transfer of the functions to the Secretary. The original draft of the legislation stated that the Secretary's authority commenced with the enactment of the legislation. In the most recent version of the proposed legislation that has been corrected to indicate that the effective date of the Secretary's authority will be September 30, 2008. The only date not in synch with these two dates is the date of the establishment of the Office of Relocation within DOI which still reads October 1, 2006. The Office recommends that the date for the establishment of the Office of Relocation within the Department of Interior be changed to September 30, 2008 so that all three dates are consistent.

3. Page 22, Line 16-19. This section states; "(d) P Prohibition. – No payment for benefits under this Act may be made to any head of household, if as of September 30, 2005, that head of household has not been certified as eligible to receive the payment." The Office has several comments in regard to this language.
 - a) The prohibition conflicts with Page 20, Line 10-24 and Page 30, Line 1-2 of S.1003 which provides that "a final determination is made by ONHIR for each appeal described in Paragraph (1) by not later than January 1, 2008.
 - b) The prohibition conflicts with Page 28, Line 15-23 of S.1003 which requires that eligibility determinations be made by ONHIR, "before July 1, 2008, but not later than 90 days after receiving a notice of the imminent removal of a relocatee...."
 - c) The prohibition conflicts with Page 30, Line 4-25 which requires the Commissioner to provide notice not later than 30 days after the enactment of the Navajo Hopi Settlement Act of 2005 to individuals who may have a right to a determination of eligibility.
 - d) This prohibition also conflicts with the Office's recently arrived at agreement with the Navajo-Hopi Legal Services Program to accept certain late applications and certain appeals under very strict guidelines to prevent the possibility of litigation on these clients. It is anticipated that fewer than twenty heads of household will become eligible under this agreement with the Navajo-Hopi Legal Services Program. However, more time is required to complete the review of these cases and the Prohibition as stated above, would not allow the Office to fulfill its side of the agreement.
 - e) The Office, therefore, recommends that the date in the above citation be changed to September 30, 2008 for all of the reasons stated above, as well as for the reason that it makes all of the transition and completion dates consistent.

4. Page 30, Lines 4-25. The steps outlined in the referenced sections have already been accomplished. The Office recommended this language in the 1996 legislation in order to provide an organized vehicle for completing notifications and certifications prior to termination of the agency. Since the legislation was not enacted, the Office implemented these steps under its regulations. To include this language might necessitate the Office repeat steps already taken and might open the door to further relocations and/or litigation. The Office recommends eliminating this entire section.

5. Pages 47 and 48, Section 202. The draft legislation cites an outdated section of title 5 (5 U.S.C. 5597) which was DOD's original authorization to provide separation incentives without OPM approval. DoD has since updated their Voluntary Separation authority under the NSPS law, 5 U.S.C. 9902 (see P.L. 108-136, sec. 1101). We can use the existing voluntary separation authority under 5 U.S.C. 3523, recently updated under the Homeland Security Act (P.L. 107-296, sec. 1313). This updated separation authority gives the agency head the option of offering \$25,000 or less for separations and provides the agency great flexibility in determining how, when, and under what conditions these incentives will be offered – with OPM approval.

Mr. Chairman, That concludes my formal statement. I would be happy to try to answer any questions the Committee has for me and we look forward to working with the Committee to refine this legislation.