

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 4, 1983

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of S. 2623, which would amend the Tribally Controlled Community Colleges Assistance Act of 1978 and extend its authorities through 1987.

I am taking this action with reluctance, because my Administration is deeply committed to providing educational opportunities for American Indians. Education is critical to economic betterment for all elements of our society. It is an equally important aspect of increasing self-determination for American Indians. I support fully the intent of S. 2623 to improve existing Indian community college programs. My Administration is dedicated to furthering this goal. The bill which is before me, however, includes a number of provisions that are unacceptable and that do not contribute to enhancement of Indian education.

Foremost among the unacceptable provisions of this bill is section 2, which would declare the Federal government's support of tribal community colleges to be a part of its trust responsibility toward Indian tribes. College level Indian education has never been characterized in law or treaty as a trust responsibility of the Federal government, and to do so now would potentially create legal obligations and entitlements that are not clearly intended or understood. Such a declaration is wholly unnecessary to the continuation of a successful program of Federal assistance to tribally controlled community colleges.

Although the conference report on S. 2623 suggests that "Federal policy (on Indian education) should be clear and unequivocal", the enrolled bill is highly ambiguous as to the nature and extent of this new policy of trust responsibility. S. 2623 imposes what the conference report itself admits is a "very general" trust responsibility. However, neither the bill nor the report makes any attempt to define the nature or extent of that responsibility, except to suggest -- in nonbinding report language -- some concepts that are not intended. This vague non-statutory language could be interpreted by the courts in a variety of ways. It could be read as establishing a trust relationship that creates an absolute responsibility to provide assistance to tribal colleges and Indian students regardless of need, and it could establish a highly undesirable precedent for making all Indian social service programs a part of the Federal government's "very general" trust responsibility.

Finally, section 2 would also provide that grants could be used for the improvement and expansion of physical facilities. When the program of assistance to tribally controlled community colleges was originally conceived, the Congress contemplated use of existing community facilities. To begin

more

(OVER)

a major new building program when there are so many other competing tribal needs would be duplicative, unwarranted, and ill-advised under current economic conditions. Funds provided through the Bureau of Indian Affairs for the tribally controlled community colleges assistance program are for program support only, and should remain so.

Another unacceptable provision is in section 14(b) of this bill, which would subject regulations issued by the Secretary of the Interior under the program to an unconstitutional legislative veto device presently found in section 431 of the General Education Provisions Act. The Attorney General has advised me, and I agree, that two Houses of Congress cannot bind the Executive Branch by passing a concurrent resolution that is not presented to me for approval or veto. Such a provision unconstitutionally encroaches on the principle of separation of powers that is at the foundation of our government.

In addition to these strong objections, I also have serious reservations about a number of other provisions of the bill, which could significantly increase Federal expenditures in a time that demands fiscal restraint. Those reservations have been explained in reports and testimony of the Department of the Interior on the bill.

The authorities in the Tribally Controlled Community Colleges Assistance Act are not scheduled to expire until September 30, 1984, under current law. Accordingly, there will be no interruption of our current successful program activities as a result of my disapproval of S. 2623. It is my hope that Congress will reconsider legislation extending the Act early in the next session and enact a bill which both advances the program's objectives and meets the Administration's objections to S. 2623.

RONALD REAGAN

THE WHITE HOUSE,

January 3, 1983.

#