



9-1-1959


## Authorizing Enrolled Members of the Three Affiliated Tribes of the Fort Berthold Reservation, N. Dak., to Acquire Trust Interests in Tribal Lands of the Reservation, and for Other Purposes

United States Congress

US Senate

[How does access to this work benefit you? Let us know!](#)

Follow this and additional works at: <https://commons.und.edu/indigenous-gov-docs>

 Part of the [American Politics Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Indigenous Studies Commons](#), [Law and Politics Commons](#), [Native American Studies Commons](#), and the [United States History Commons](#)

---

### Recommended Citation

US Congress, Senate. Committee on Interior and Insular Affairs. *Authorizing Enrolled Members of the Three Affiliated Tribes of the Fort Berthold Reservation, N. Dak., to Acquire Trust Interests in Tribal Lands of the Reservation, and for Other Purposes*. Cong., 1st sess., S. Rep. 865. September, 1 1959.  
<https://commons.und.edu/indigenous-gov-docs/101/>.

This Report is brought to you for free and open access by the Elwyn B. Robinson Department of Special Collections at UND Scholarly Commons. It has been accepted for inclusion in US Government Documents related to Indigenous Nations by an authorized administrator of UND Scholarly Commons. For more information, please contact [und.common@library.und.edu](mailto:und.common@library.und.edu).

AUTHORIZING ENROLLED MEMBERS OF THE THREE  
AFFILIATED TRIBES OF THE FORT BERTHOLD RESER-  
VATION, N. DAK., TO ACQUIRE TRUST INTERESTS IN  
TRIBAL LANDS OF THE RESERVATION, AND FOR OTHER  
PURPOSES.

SEPTEMBER 1 (legislative day, AUGUST 31), 1959.—Ordered to be printed

Mr. NEUBERGER, from the Committee on Interior and Insular Affairs,  
submitted the following

## R E P O R T

[To accompany S. 1352]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1352) to authorize enrolled members of the Three Affiliated Tribes of the Fort Berthold Reservation, N. Dak., to acquire trust interests in tribal lands of the reservation, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, line 4, delete "Fort Berthold".

On page 1, line 6, after "authorized" insert ", notwithstanding the provisions of the Constitution of the Three Affiliated Tribes,".

On page 2, line 3, change the period to a comma and add:

or in the name of the individual Indian owner without restriction, as determined by the Secretary of the Interior.

Amend the title so as to read:

A bill to authorize enrolled members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, to acquire tribal lands of the reservation, and for other purposes.

### PURPOSE OF THE BILL

The purpose of S. 1352, introduced by Senator Young of North Dakota, is to permit the enrolled members of the Three Affiliated Tribes of the Fort Berthold Reservation, with the consent of the tribal business council, to acquire tribal lands. Under present law the tribe is precluded from selling tribal lands.



## NEED

The Fort Berthold Indians, by reason of the construction of the Garrison Dam project on the Missouri River, lost the use of about 152,000 acres of their tribal and allotted lands. The lands taken for the project were those on which most of the Indians resided, and the tribe had to relocate and reestablish itself on lands outside the taking area.

Many of the Indians on the reservation in reestablishing themselves have purchased farm or ranch units. In a number of instances the Indians have been unable to block out economic units, and in an effort to be of assistance to these individuals the tribe has used its funds to purchase heirship lands to be used by resident members. The tribe owns approximately 30,000 acres of land, and it is the desire of the tribal business council to permit some of these lands to be sold to enrolled members to help them block out the farming and ranching units.

In its report on S. 1352, the Department of the Interior has recommended three amendments. On only one of the amendments did the committee have some question, and that related to the manner in which title to lands sold would be taken; i.e., in fee or in trust. After receiving a further communication from the Assistant Secretary of the Interior pointing out the consistency of the amendment with current administrative practice, the committee believes that such a provision should be a part of this legislation, and has so recommended.

The favorable reports of the Department of the Interior and the Bureau of the Budget, and the letter of the Assistant Secretary of the Interior to Senator James E. Murray, dated August 11, 1959, are as follows:

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., July 29, 1959.*

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR MURRAY: Your committee has requested a report on S. 1352, a bill to authorize enrolled members of the Three Affiliated Tribes of the Fort Berthold Reservation, N. Dak., to acquire trust interests in tribal lands of the reservation, and for other purposes.

We recommend that the bill be enacted with the amendments suggested below.

The bill authorizes the Secretary of the Interior, with the consent of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, to dispose of tribal lands within the reservation to any enrolled member of the tribes upon such terms and conditions as the Secretary may prescribe. Title to any land so conveyed would be taken in the name of the United States of America in trust for the individual Indian owner.

The United States has acquired approximately 152,000 acres of Indian lands on the Fort Berthold Reservation under the act of October 29, 1949 (63 Stat. 1026), in connection with the construction of the Garrison Dam on the Missouri River. The area taken by the United States included approximately 126,000 acres of trust allotted lands and 26,000 acres of tribal lands. As the majority of the Indian resi-



dents of the reservation resided upon the lands that were taken by the United States, it was necessary for them to relocate and reestablish themselves on lands outside the taking area. In many instances the individual Indians have not had sufficient funds to acquire the acreage necessary for an economic farm or ranch unit. To assist the individual members to relocate and reestablish themselves outside of the taking area, the governing body of the Three Affiliated Tribes has authorized the use of tribal funds to purchase Indian lands in an heirship status and to purchase lands from nonresident Indian landowners for utilization by resident members. As of December 31, 1958, there were 29,583.4 acres of land in tribal ownership.

The tribal business council wishes to sell tribal lands to the individual members who need additional acreage to provide economic units. The Indians of the Fort Berthold Reservation are organized with a constitution and charter under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and tribal lands cannot be sold without specific legislative authorization.

We have asked for but have not yet received the views of the tribal business council on this bill.

The following amendments to the bill are recommended:

1. On page 1, line 4, delete "Fort Berthold". This is a technical change to make the language conform to the official name of the governing body.

2. On page 1, line 6, after "authorized" insert either "subject to the provisions of the Constitution of the Three Affiliated Tribes," or "notwithstanding the provisions of the Constitution of the Three Affiliated Tribes,".

The tribal constitution contains a prohibition against the sale of tribal land, and the bill should indicate clearly whether it does or does not supersede the constitutional provision.

3. On page 2, line 3, change the period to a comma and add "or in the name of the individual Indian owner without restriction, as determined by the Secretary of the Interior."

We believe that title to any property acquired by individual Indians who are capable of managing their own affairs without assistance should be conveyed to such Indians in unrestricted fee rather than in trust so that the Department may concentrate its efforts in behalf of those Indians who are in need of assistance.

The Bureau of the Budget has advised us that there is no objection to the submission of this report.

Sincerely yours,

ROGER ERNST,  
*Assistant Secretary of the Interior.*

---

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., July 24, 1959.

Hon. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
New Senate Office Building, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letter of March 16, 1959, requesting the views of the Bureau of the Budget on S. 1352, a bill to authorize enrolled members of the Three Affiliated Tribes of



the Fort Berthold Reservation, N. Dak., to acquire trust interests in tribal lands of the reservation, and for other purposes.

The purpose of the bill is to authorize the Secretary of the Interior, with the approval of the tribal business council, to dispose of tribal lands within the reservation to any enrolled member of the tribes. Title to any land so conveyed would be held by the United States in trust for the Indian owner.

The Department of the Interior recommends that the bill be enacted if it is amended to permit conveyance of unrestricted titles to individual Indians who are capable of managing their own affairs. The Department also recommends several technical amendments.

The Bureau of the Budget would not object to enactment of S. 1352 if the bill is amended in accordance with the recommendations of the Department of the Interior.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., August 11, 1959.*

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR MURRAY: In our reports on S. 1105 and S. 1352 we recommended an amendment to each bill that would give the Secretary of the Interior discretion to decide whether the title to land acquired by an individual member of the tribe should be taken in trust or in an unrestricted status.

When the subcommittee reported the bills to the full committee it did so without prejudice to the foregoing recommendation. We should like to explain the reasons for our recommendation.

When an individual Indian acquires a tract of land by purchase, he has no right under the present law to acquire a trust title, and it has been the practice of the Department for many years to examine each case as it arises and to determine whether the Indian needs Federal assistance in handling the newly acquired property. If he does, and if the property is being acquired with trust funds, he is permitted to acquire a trust title. If he is able to handle his own affairs without Federal assistance, however, he is required to take an unrestricted title. Bear in mind that we are dealing only with new acquisitions of land and not with original allotment.

We believe that this practice is sound both from the standpoint of the Indians and the Government. If the Indian needs assistance he acquires a trust title. If he is fully competent he is not allowed to use the Government as a shield for tax immunity and as a means of acquiring free management services.

Many instances have arisen where an Indian, sometimes a former Bureau of Indian Affairs employee, is engaged in an extensive farming or ranching enterprise and is competent in every sense of the term, but keeps his property in trust merely to avoid taxes. There is no general law or Federal policy that permits such an individual who

expands his farm or ranch by purchasing additional land to impose an additional trust responsibility on the Federal Government.

The trust device was authorized for use on a mass basis when the reservations were originally allotted because it was impractical to examine each case individually. The situation is different, however, when a tract of land is being purchased by an individual. His competency can be considered on an individual basis, and if he is successfully conducting a farm or ranch enterprise there is no good reason for allowing him to acquire additional land in trust when his only purpose is to avoid taxes and the inevitable result is to dilute the services that are available to other Indians who need help. The efforts of the Bureau of Indian Affairs should be concentrated on the Indians who need help, and the competent Indian should be encouraged to stand on his own feet.

The Department has been following this practice for many years, and we believe that it would be unwise to create a statutory exception for the two reservations involved in the pending bills.

Sincerely yours,

ROGER ERNST,  
*Secretary of the Interior.*

○