

107TH CONGRESS
2D SESSION

S. 2212

To establish a direct line of authority for the Office of Trust Reform Implementation and Oversight to oversee the management and reform of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and to advance tribal management of such funds and assets, pursuant to the Indian Self-Determination Act and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2002

Mr. MCCAIN (for himself, Mr. DASCHLE, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To establish a direct line of authority for the Office of Trust Reform Implementation and Oversight to oversee the management and reform of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and to advance tribal management of such funds and assets, pursuant to the Indian Self-Determination Act and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Trust Asset
3 and Trust Fund Management and Reform Act of 2002”.

4 **SEC. 2. DEPUTY SECRETARY FOR TRUST MANAGEMENT**
5 **AND REFORM.**

6 (a) **DEFINITIONS.**—Section 2 of the American Indian
7 Trust Fund Management Reform Act of 1994 (25 U.S.C.
8 4001) is amended—

9 (1) in paragraph (1), by striking “(1) The
10 term” and inserting the following:

11 “(8) **SPECIAL TRUSTEE.**—The term”;

12 (2) in paragraph (2), by striking “(2) The
13 term” and inserting the following:

14 “(4) **INDIAN TRIBE.**—The term”;

15 (3) in paragraph (3), by striking “(3) The
16 term” and inserting the following:

17 “(7) **SECRETARY.**—The term”;

18 (4) in paragraph (4), by striking “(4) The
19 term” and inserting the following:

20 “(5) **OFFICE.**—The term”;

21 (5) in paragraph (5), by striking “(5) The
22 term” and inserting the following:

23 “(1) **BUREAU.**—The term”;

24 (6) in paragraph (6), by striking “(6) The
25 term” and inserting the following:

26 “(2) **DEPARTMENT.**—The term”;

1 (7) by adding at the end the following:

2 “(3) DEPUTY SECRETARY.—The term ‘Deputy
3 Secretary’ means the Deputy Secretary for Trust
4 Management and Reform appointed under section
5 307(a)(2).

6 “(6) REFORM OFFICE.—The term ‘Reform Of-
7 fice’ means the Office of Trust Reform Implementa-
8 tion and Oversight established by section 307(e).”;

9 (8) by moving paragraphs (1) through (8) (as
10 redesignated by this subsection) so as to appear in
11 numerical order; and

12 (9) by adding at the end the following:

13 “(9) TRUST ASSETS.—The term ‘trust assets’
14 means all tangible property including land, minerals,
15 coal, oil and gas, forest resources, agricultural re-
16 sources, water and water sources, and fish and wild-
17 life held by the Secretary for the benefit of an In-
18 dian tribe or an individual member of an Indian
19 tribe pursuant to Federal law.

20 “(10) TRUST FUNDS.—The term ‘trust funds’
21 means all funds held by the Secretary for the benefit
22 of an Indian tribe or and individual member of an
23 Indian tribe pursuant to Federal law.”.

24 (b) DEPUTY SECRETARY FOR TRUST MANAGEMENT
25 AND REFORM.—Title III of the American Indian Trust

1 Fund Management Reform Act of 1994 (25 U.S.C. 4041
2 et seq.) is amended by adding at the end the following:

3 **“SEC. 307. DEPUTY SECRETARY FOR TRUST MANAGEMENT
4 AND REFORM.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—There is established within
7 the Department the position of Deputy Secretary for
8 Trust Management and Reform.

9 “(2) APPOINTMENT AND REMOVAL.—

10 “(A) APPOINTMENT.—The Deputy Sec-
11 retary shall be appointed by the President, by
12 and with the advice and consent of the Senate.

13 “(B) TERM.—The Deputy Secretary shall
14 be appointed for a term of 6 years.

15 “(C) REMOVAL.—The Deputy Secretary
16 may be removed only for good cause.

17 “(3) ADMINISTRATIVE AUTHORITY.—The Dep-
18 uty Secretary shall report directly to the Secretary.

19 “(4) COMPENSATION.—The Deputy Secretary
20 shall be paid at a rate determined by the Secretary
21 to be appropriate for the position, but not less than
22 the rate of basic pay prescribed for Level II of the
23 Executive Schedule under section 5313 of title 5,
24 United States Code.

25 “(b) DUTIES.—The Deputy Secretary shall—

1 “(1) oversee all trust fund and trust asset mat-
2 ters of the Department, including—

3 “(A) administration and management of
4 the Reform Office; and

5 “(B) financial and human resource matters
6 of the Reform Office; and

7 “(2) engage in appropriate government-to-gov-
8 ernment relations and consultations with Indian
9 tribes and individual trust asset and trust fund ac-
10 count holders on matters involving trust asset and
11 trust fund management and reform within the De-
12 partment.

13 “(c) STAFF.—In carrying out this section, the Dep-
14 uty Secretary may hire such staff having expertise in trust
15 asset and trust fund management, financial organization
16 and management, and tribal policy as the Deputy Sec-
17 retary determines is necessary to carry out this section.

18 “(d) EFFECT ON DUTIES OF OTHER OFFICIALS.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), nothing in this section shall be construed
21 to diminish any responsibility or duty of the Assist-
22 ant Secretary of the Interior for Indian Affairs or
23 the Special Trustee relating to any duty of the As-
24 sistant Secretary or Special Trustee established
25 under this Act or any other provision of law.

1 “(2) TRUST ASSET AND TRUST FUND MANAGE-
2 MENT AND REFORM.—Notwithstanding any other
3 provision of law, the Deputy Secretary shall have
4 overall management and oversight authority on mat-
5 ters of the Department relating to trust asset and
6 trust fund management and reform.

7 “(e) OFFICE OF TRUST REFORM IMPLEMENTATION
8 AND OVERSIGHT.—

9 “(1) ESTABLISHMENT.—There is established
10 within the Office of the Secretary the Office of
11 Trust Reform Implementation and Oversight.

12 “(2) REFORM OFFICE HEAD.—The Reform Of-
13 fice shall be headed by the Deputy Secretary.

14 “(3) DUTIES.—The Reform Office shall—

15 “(A) supervise and direct the day-to-day
16 activities of the Assistant Secretary of the Inte-
17 rior for Indian Affairs, the Special Trustee, the
18 Director of the Bureau of Land Management,
19 and the Director of the Minerals Management
20 Service, to the extent they administer or man-
21 age any Indian trust assets or funds;

22 “(B) administer, in accordance with title
23 II, all trust properties, funds, and other assets
24 held by the United States for the benefit of In-

1 dian tribes and individual members of Indian
2 tribes;

3 “(C) require the development and mainte-
4 nance of an accurate inventory of all trust
5 funds and trust assets;

6 “(D) ensure the prompt posting of revenue
7 derived from a trust fund or trust asset for the
8 benefit of each Indian tribe (or individual mem-
9 ber of each Indian tribe) that owns a beneficial
10 interest in the trust fund or trust asset;

11 “(E) ensure that monthly statements of
12 accounts are provided to all trust fund account
13 holders;

14 “(F) ensure that all trust fund accounts
15 are audited at least annually, and more fre-
16 quently as determined to be necessary by the
17 Deputy Secretary;

18 “(G) ensure that the Assistant Secretary
19 of the Interior for Indian Affairs, the Special
20 Trustee, the Director of the Bureau of Land
21 Management, and the Director of the Minerals
22 Management Service provide to the Secretary
23 current and accurate information relating to the
24 administration and management of trust funds
25 and trust assets;

1 “(H) provide for regular consultation with
2 trust fund account holders on the administra-
3 tion of trust funds and trust assets to ensure,
4 to the maximum extent practicable in accord-
5 ance with applicable law, the greatest return on
6 those funds and assets for the trust fund ac-
7 count holders; and

8 “(I) enter into contracts and compacts
9 under section 102 of the Indian Self-Deter-
10 mination Act (25 U.S.C. 450f) or section 403
11 of the Indian Self Determination and Education
12 Assistance Act (25 U.S.C. 458cc) to provide for
13 the management of trust assets and trust funds
14 by Indian tribes pursuant to a Trust Fund and
15 Trust Asset Management and Monitoring Plan
16 developed under section 202 of this Act.

17 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as are nec-
19 essary to carry out this section.”.

20 (c) ADVISORY BOARD.—

21 (1) IN GENERAL.—Section 306 of the American
22 Indian Trust Fund Management Reform Act of
23 1994 (25 U.S.C. 4046) is amended to read as fol-
24 lows:

1 **“SEC. 306. ADVISORY BOARD.**

2 “(a) ESTABLISHMENT AND MEMBERSHIP.—Notwith-
3 standing any other provision of law, the Deputy Secretary
4 described in section 307 shall establish an advisory board
5 to provide advice on all matters within the jurisdiction of
6 the Office of Trust Reform. The advisory board shall con-
7 sist of 9 members, appointed by the Deputy Secretary
8 after consultation with Indian tribes and appropriate In-
9 dian organizations, of which—

10 “(1) 5 members shall represent trust fund ac-
11 count holders, including both tribal and Individual
12 Indian Money accounts;

13 “(2) 2 members shall have practical experience
14 in trust fund and financial management;

15 “(3) 1 member shall have practical experience
16 in fiduciary investment management; and

17 “(4) 1 member, from academia, shall have
18 knowledge of general management of large organiza-
19 tions.

20 “(b) TERM.—Each member shall serve a term of 2
21 years.

22 “(c) FACA.—The advisory board shall not be subject
23 to the Federal Advisory Committee Act.”.

24 (2) PREVIOUS ADVISORY BOARD.—The advisory
25 board authorized under section 306 of the American
26 Indian Trust Fund Management Reform Act of

1 1994 (25 U.S.C. 4046) as in effect on the day be-
2 fore the date of enactment of this Act shall termi-
3 nate on the date of enactment of this Act.

4 (d) CONFORMING AMENDMENTS.—

5 (1) Section 302 of the American Indian Trust
6 Fund Management Reform Act of 1994 (25 U.S.C.
7 4042) is amended—

8 (A) in the second sentence of subsection
9 (a), by striking “who shall” and inserting “who,
10 except as provided in subsection (b)(3), shall”;
11 and

12 (B) in subsection (b), by adding at the end
13 the following:

14 “(3) TRUST FUND MANAGEMENT.—The Special
15 Trustee shall report directly to the Deputy Secretary
16 with respect to matters relating to trust fund man-
17 agement and reform.”.

18 (2) Section 303 of the American Indian Trust
19 Fund Management Reform Act of 1994 (25 U.S.C.
20 4043) is amended—

21 (A) by striking subsection (a);

22 (B) in subsection (b)(1), by striking “The
23 Special Trustee” and inserting “Except as pro-
24 vided in section 307(d), the Special Trustee”;

1 (C) in subsection (c)(5)(A), by striking “or
 2 which is charged with any responsibility under
 3 the comprehensive strategic plan prepared
 4 under subsection (a) of this section,”;

5 (D) by striking subsection (f); and

6 (E) by redesignating subsections (b)
 7 through (e) as subsections (a) through (d), re-
 8 spectively.

9 **SEC. 3. INDIAN PARTICIPATION IN TRUST FUND ACTIVI-**
 10 **TIES.**

11 Title II of the American Indian Trust Fund Manage-
 12 ment Reform Act of 1994 (25 U.S.C. 4021 et seq.) is
 13 amended—

14 (1) by striking sections 202 and 203; and

15 (2) by inserting after section 201 the following:

16 **“SEC. 202. PARTICIPATION IN TRUST FUND AND TRUST**
 17 **ASSET MANAGEMENT ACTIVITIES BY INDIAN**
 18 **TRIBES.**

19 “(a) **PLANNING PROGRAM.**—To meet the purposes of
 20 this title, a 10-year Indian Trust Fund and Trust Asset
 21 Management and Monitoring Plan (in this section referred
 22 to as the ‘Plan’) shall be developed and implemented as
 23 follows:

24 “(1) Pursuant to a self-determination contract
 25 or compact under section 102 of the Indian Self-De-

1 termination Act (25 U.S.C. 450f) or section 403 of
2 the Indian Self Determination and Education Assist-
3 ance Act (25 U.S.C. 458cc), an Indian tribe may de-
4 velop or implement a Plan. Subject to the provisions
5 of paragraphs (3) and (4), the tribe shall have broad
6 discretion in designing and carrying out the plan-
7 ning process.

8 “(2) To include in a Plan particular trust funds
9 or assets held by multiple individuals, an Indian
10 tribe shall obtain the approval of a majority of the
11 individuals who hold an interest in any such trust
12 funds or assets.

13 “(3) The Plan shall be submitted to the Sec-
14 retary for approval pursuant to the Indian Self-De-
15 termination Act (25 U.S.C. 450f et seq.).

16 “(4) If a tribe chooses not to develop or imple-
17 ment a Plan, the Secretary shall develop or imple-
18 ment, as appropriate, a Plan in close consultation
19 with the affected tribe.

20 “(5) Whether developed directly by the tribe or
21 by the Secretary, the Plan shall—

22 “(A) determine the amount and source of
23 funds held in trust;

24 “(B) identify and prepare an inventory of
25 all trust assets;

1 “(C) identify specific tribal goals and ob-
2 jectives;

3 “(D) establish management objectives for
4 the funds and assets held in trust;

5 “(E) define critical values of the Indian
6 tribe and its members and provide identified
7 management objectives;

8 “(F) identify actions to be taken to reach
9 established objectives;

10 “(G) use existing survey documents, re-
11 ports and other research from Federal agencies,
12 tribal community colleges, and land grant uni-
13 versities; and

14 “(H) be completed within 3 years of the
15 initiation of activity to establish the Plan.

16 “(b) MANAGEMENT AND ADMINISTRATION.—Plans
17 developed and approved under subsection (a) shall govern
18 the management and administration of funds and assets
19 held in trust by the Bureau and the Indian tribal govern-
20 ment.

21 “(c) NO TERMINATION REQUIREMENT.—Indian
22 tribes implementing an approved Plan shall not be re-
23 quired to terminate the trust relationship in order to im-
24 plement such Plan.

1 “(d) PLAN DOES NOT TERMINATE TRUST.—Devel-
2 oping or implementing a Plan shall not be construed or
3 deemed to constitute a termination of the trust status of
4 the assets or funds that are included in, or subject to, the
5 Plan.

6 “(e) LIABILITY.—An Indian tribe managing and ad-
7 ministering trust funds and trust assets in a manner that
8 is consistent with a Plan shall not be liable for waste or
9 loss of an asset or funds that are included in such Plan.

10 “(f) INDIAN PARTICIPATION IN MANAGEMENT AC-
11 TIVITIES.—

12 “(1) TRIBAL RECOGNITION.—The Secretary
13 shall conduct all management activities of funds and
14 assets held in trust in accordance with goals and ob-
15 jectives set forth in a Plan approved pursuant to
16 and in accordance with all tribal laws and ordi-
17 nances, except in specific instances where such com-
18 pliance would be contrary to the trust responsibility
19 of the United States.

20 “(2) TRIBAL LAWS.—

21 “(A) IN GENERAL.—Unless otherwise pro-
22 hibited by Federal law, the Secretary shall com-
23 ply with tribal law pertaining to the manage-
24 ment of funds and assets held in trust.

25 “(B) DUTIES.—The Secretary shall—

1 “(i) provide assistance in the enforce-
2 ment of tribal laws described in subpara-
3 graph (A);

4 “(ii) provide notice of such tribal laws
5 to persons or entities dealing with tribal
6 funds and assets held in trust; and

7 “(iii) upon the request of an Indian
8 tribe, require appropriate Federal officials
9 to appear in tribal forums.

10 “(3) WAIVER OF REGULATIONS.—In any case
11 in which a regulation or administrative policy of the
12 Department of the Interior conflicts with the objec-
13 tives of the Plan, or with a tribal law, the Secretary
14 may waive the application of such regulation or ad-
15 ministrative policy unless such waiver would con-
16 stitute a violation of a Federal statute or judicial de-
17 cision or would conflict with the Secretary’s trust re-
18 sponsibility under Federal law.

19 “(4) SOVEREIGN IMMUNITY.—This section does
20 not constitute a waiver of the sovereign immunity of
21 the United States, nor does it authorize tribal justice
22 systems to review actions of the Secretary.

23 “(5) TRUST RESPONSIBILITY.—Nothing in this
24 section shall be construed to diminish or expand the
25 trust responsibility of the United States toward In-

1 dian funds and assets held in trust, or any legal ob-
2 ligation or remedy resulting from such funds and as-
3 sets.

4 “(g) REPORT.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the enactment of this section, and annually
7 thereafter, the Secretary shall submit a report to the
8 Committee on Indian Affairs of the Senate and the
9 Committee on Resources of the House of Represent-
10 atives.

11 “(2) CONTENTS.—The report required under
12 paragraph (1) shall detail the following:

13 “(A) The efforts of the Department to im-
14 plement this section.

15 “(B) The nature and extent of consultation
16 between the Department, Tribes, and individual
17 Indians with respect to implementation of this
18 section.

19 “(C) Any recommendations of the Depart-
20 ment for further changes to this Act, accom-
21 panied by a record of consultation with Tribes
22 and individual Indians regarding such rec-
23 ommendations.”.

1 **SEC. 4. REGULATIONS.**

2 (a) **IN GENERAL.**—Not later than 1 year after the
3 date of enactment of this Act, the Secretary of the Interior
4 shall promulgate regulations to carry out the amendments
5 made by this Act.

6 (b) **ACTIVE PARTICIPATION.**—All regulations promul-
7 gated in accordance with subsection (a) shall be developed
8 with the full and active participation of Indian tribes that
9 have trust funds and assets held by the Secretary.

○