

Calendar No. 751

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 108-406

MAKING TECHNICAL CORRECTIONS TO LAWS RELATING TO NATIVE AMERICANS, AND FOR OTHER PURPOSES

NOVEMBER 10, 2004.—Ordered to be printed

Filed, under authority of the order of the Senate of October 11, 2004

Mr. CAMPBELL, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 2843]

The Committee on Indian Affairs, to which was referred the bill (S. 2843) to make technical corrections to laws relating to Native Americans, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 2843 is to address miscellaneous provisions related to Indians or Indian tribes in one bill, obviating the need for the introduction and enactment of separate smaller bills. S. 2843 contains twelve provisions, including amending provisions of statutes relating to particular Indian tribes, and modifying certain programs related to Native Americans.

BACKGROUND

The Native American Technical Corrections Act of 2004 contains separate provisions dealing with a variety of topics including the Indian Financing Act of 1974, the Indian Arts and Crafts Act, The Act of June 7, 1924 (also known as the Indian Pueblo Act), The Indian Reorganization Act, The Act of August 9, 1955, the Alaska Native Claims Settlement Act, the Water Resources Development Act of 1999, and the Lake Traverse Reservation Heirship Act. The bill also provides technical amendments to provisions relating to par-

ticular Indian tribes and to general laws relating to Native American programs. A more detailed explanation of each provision is included in the section-by-section analysis included in this report.

LEGISLATIVE HISTORY

The Native American Technical Corrections Act of 2004 (S. 2843) was introduced on September 23, 2004 by Senator Campbell and was referred to the Committee on Indian Affairs. On September 29, 2004, the Committee on Indian Affairs convened a business meeting to consider S. 2943 and other measures that had been referred to it, and on that date the Committee favorably reported the bill with two amendments.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 29, 2004, the Committee on Indian Affairs, in an open session, adopted an amended version of S. 2843 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS OF S. 2843

Section 1. Short Title; Table of Contents

Section 1 provides the short title of the Act as the Native American Technical Corrections Act of 2004 and provides a Table of Contents for the bill.

Section 2. Definition of Secretary

Section 2 defines the term “Secretary” to mean the Secretary of the Interior.

Section 3. Indian Arts and Crafts Act Amendments

In 1990 Congress authorized the establishment of the Indian Arts and Crafts Board (IACB), Department of Interior, to report complaints of fraudulent Indian-made arts and crafts to the Federal Bureau of Investigation. Reporting suspicious Indian-made arts and crafts was necessary to ensure the authenticity of Indian arts and craft-work in response to the growing presence of fraudulent “Indian” products. In 2000, Congress enacted amendments to the Indian Arts and Crafts Act that authorized an Indian tribe the ability to bring civil suit against wholesalers who are involved in the chain of distribution. However, because there are few resources dedicated to enforcing violations of the Indian Arts and Crafts Act of 2000 (Pub. L. 106–497), section 3 authorizes the IACB to impose administrative fines and penalties of up to 100 percent of the price of the goods offered or displayed for sale in violation of the Act, not to exceed \$500,000.

Section 4. Indian Financing Act Amendments

Section 4 amends the Indian Financing Act of 1974 (Pub. L. 93–262) to expedite implementation of a secondary market for the Bureau of Indian Affairs Loan Guaranty Program. Due to a technical error in the previous amendments made to the Loan Guaranty program by the Indian Financing Act Amendments of 2002 (Pub. L. 107–331), section 4 authorizes the Department to promulgate regulations for the secondary market program.

Section 5. Indian Pueblo Land Act Amendments

Section 5 amends the Act of June 7, 1924 (43 Stat. 636, chapter 331) also known as the Indian Pueblo Lands Act of 1924, to clarify the uncertainty and potential law enforcement problems resulting from a Federal district court decision in the case of the *United States v. Gutierrez*¹ No. CR 00–375 LH (D.N.M. Dec. 1, 2000).

The decision overturned precedent regarding the jurisdictional status of the lands within the boundaries of New Mexico Pueblo land grants and resulted in creating a potential void in criminal jurisdiction. Section 5 provides a clarification of the Pueblos regarding criminal jurisdiction on New Mexico Pueblo lands.

Section 6. Indian Reorganization Act Amendment

Section 6 amends Section 17 of the Act of June 18, 1934, (the Indian Reorganization Act, 48 Stat. 987) which authorizes tribally-owned companies incorporated on Indian reservations to use real property for economic development purposes. Under current law, section 17 corporations may not lease tribal land for periods exceeding 25 years. Section 6 extends the allowable term of tribal land leases from 25 to 99 year terms for Section 17 corporations to encourage economic development.

Section 7. Prairie Island Land Conveyance

Section 7 authorizes the transfer of lands now held by the United States Army Corps of Engineers to the Department of the Interior to be held in trust for the benefit of the Prairie Island Indian Community in Red Wing, Minnesota. The transfer will have no effect on the tax status of the lands, nor will the Prairie Island Indian Community be permitted to develop commercial or gaming facilities on the land. The U.S. government's existing flowage easements will be maintained.

Section 8. Gila River Indian Community Binding Arbitration

Section 8 amends Act of August 9, 1955, (Pub. L. 86–326) to allow binding arbitration clauses to be included in all contracts, including leases, that affect tribally-owned land within the Gila River Indian Community reservation. All leases including subleases, master leases and tenant leases would be included under this provision. The tribe intends to conform to standard leasing terms to attract potential tenants to the reservation.

¹The *Gutierrez* decision created uncertainty and the potential for a void in criminal jurisdiction on Pueblo lands. The proposed amendment to the Indian Pueblo Lands Act makes clear that the Pueblos have jurisdiction, as part of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or of another Federally-recognized Indian tribe, or by any other Indian-owned entity committed anywhere within the exterior boundaries of any grant to a Pueblo from a prior sovereign, as confirmed by Congress or the Court of Private Lands Claims.

The legislation also makes clear that the United States has jurisdiction over any offense within these grants described in chapter 53 of title 18, United States Code, committed by or against a member of any federally recognized Indian tribe or any Indian-owned entity, or that involves any Indian property or interest. Finally, the legislation makes clear that the State of New Mexico shall have jurisdiction over any offense within these grants committed by a person who is not a member of a Federally-recognized Indian tribe, provided that the offense is not subject to the jurisdiction of the United States.

Nothing in this amendment is intended to diminish the scope of Pueblo civil jurisdiction within the exterior boundaries of Pueblo grants, which is defined by Federal and Tribal laws and court decisions.

Section 9. Alaska Native Claims Settlement Act Voting Standards Amendment

The Alaska Native Claims Settlement Act (ANCSA) limited Alaska Native Regional Corporations from enrolling Alaska Natives born after December 18, 1971, as shareholders in their respective corporations. Natives born after December 18, 1971 may enroll only if the existing shareholders of the Corporation adopt a resolution by a majority of the total voting power of the corporation. However, geography makes obtaining a majority an extremely difficult threshold to meet. Section 9 would authorize a Shareholder Descendants Resolution to be approved by a majority of the shares voted, either present or by proxy, at an annual meeting.

Section 10. Beaver Airport Land Amendment

The State of Alaska has agreed to transfer 33 acres to the Beaver Kwit'chin Corporation to reconvey title to individual land owners for future growth of the village of Beaver, Alaska. Section 10 authorizes a statutory release of the reverter clause affecting the 33 acres of airport land adjacent to the village of Beaver. The release would avoid triggering a reverter clause which would otherwise cause the land to revert back to the Federal government.

Section 11. Puyallup Indian Tribe Land Claims Settlement Amendments

To provide for the expansion of the Port of Tacoma's shipping terminal and other port facilities, the Port Commission of Tacoma, Washington and the Puyallup Tribal Council executed a cooperative economic development agreement for the expansion of the Port of Tacoma. Under the terms of the agreement, the Tribe is required to relocate its gaming operations from its current location to another location within the Puyallup reservation boundaries. Section 11 authorizes the Federal government to take into trust on behalf of the Puyallup tribe 2 parcels within the Puyallup reservation. The Washington State Congressional delegation, the State of Washington, the Cities of Tacoma, Fife, and Puyallup support the transfer.

Section 12. Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration

Section 12 amends the existing investment provisions in title VI of the Water Resources Development Act of 1999 (Pub. L. 106-53) to correct problems with the existing statutory investment provisions for three Terrestrial Wildlife Habitat Restoration Trust Funds in South Dakota. Section 12 would require that principal and interest amounts be invested separately in nonmarketable market-based special Treasury securities. The change conforms to the Treasury Department's standard investment practices.

Section 13. Sisseton Wahpeton Heirship Act Amendments

Section 13 amends Pub. L. 98-513, a bill pertaining to the inheritance of trust or restricted land on the Lake Traverse Indian Reservation in the states of both North and South Dakota. This section replaces the current section 5 of Pub. L. 98-513 with a new rule applicable to small fractional interests in individual Indian land on

the Lake Traverse Indian reservation. Applicable Supreme Court cases render the current section 5 of the Act as constitutionally suspect.

Section 14. Amendment of Definition

The Native American Graves Protection and Repatriation Act (NAGPRA) (Pub. L. 101-601) is amended in section 2(9), by inserting the words “or was” after the words “that is”. This change is intended to clarify that in the context of repatriations, the term “Native American” refers to a member of a tribe, a people, or a culture that is or was indigenous to the United States.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1955 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 19, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2843, the Native American Technical Corrections Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mike Waters.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2843—Native American Technical Corrections Act of 2004

CBO estimates that implementing S. 2843 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues. S. 2843 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 2843 would amend several federal statutes affecting Indian tribes and Indian people. The bill would require the Indian Arts and Crafts Board to investigate violations under its jurisdiction, rather than referring cases to the Federal Bureau of Investigation as it does under current law. Based on information from the Department of the Interior, CBO estimates that the board would spend less than \$500,000 annually to pursue such cases, subject to the availability of appropriated funds.

The bill also would set new guidelines for the investment and disbursement of certain Indian trust funds. Finally, the bill would authorize the transfer of several pieces of federal property to Indian tribes. Because none of the properties that would be transferred generates any receipts for the Treasury, CBO estimates that those transfers would have no impact on the federal budget.

The CBO staff contact for this estimate is Mike Waters. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enactment of S. 2843 will create only de minimis regulatory or paperwork burdens.

EXECUTIVE COMMUNICATIONS

The Committee has received an official communication from the Administration on the provisions of the bill.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, October 8, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 2843, the "Native American Technical Corrections Act of 2004". The Department has concerns with several of the provisions of the bill.

Sections 7 and 11 would take land into trust for the Prairie Island Indian Community and the Puyallup Indian Tribe, respectively. The Department has continued to express concern about deciphering Congressional intent regarding land in trust. As the trustee for Native Americans, the Department has devoted a great deal of time to trust reform discussions over the past few years. The nature of the trust relationship is now often the subject of litigation. Both the Executive Branch and the Judicial Branch are faced with the question of what exactly Congress intends when it puts land into trust status. What specific duties are required of the Secretary, administering the trust for the benefit of the Tribes, with respect to trust lands? Tribes and individual Indians frequently assert that the duty is the same as that required of a private trustee. Yet, under a private trust, the trustee and the beneficiary have a legal relationship that is defined by private trust principles and a trust instrument that defines the scope of the trust responsibility. We believe that Congress, when it establishes a new trust obligation in connection with the acquisition of new trust land, should provide the guideposts for defining what that relationship means.

Much of the current controversy over the Secretary's trust responsibility stems from the failure to have clear guidance as to the parameters, roles and responsibilities of the trustee and the beneficiary. The Trustee may face a variety of issues relating to the management of trust land and accordingly, the trust responsibility to manage the land should be addressed with clarity and precision. Congress should decide these issues, not the courts.

Therefore, we recommend the Committee set forth in the bill the specific trust duties it wishes the United States to assume with re-

spect to the acquisition of these lands for the Prairie Island Indian Community and the Puyallup Indian Tribe. Alternatively, the Committee should require a trust instrument before any land is taken into trust. This trust instrument would ideally be contained in regulations drafted after consultation with the Tribes and the respective local communities, consistent with parameters set forth by Congress in this legislation. The benefits of this approach are that it would clearly establish the beneficiary's expectations, clearly define the roles and responsibilities of each party, and establish how certain services are provided.

Section 7 provides that in addition to the land, all improvements, cultural resources, and sites on the land are to be held in trust by the United States for the benefit of the Prairie Island Indian Community. We recommend language be added to the bill that specifies that any improvements, appurtenances, and personal property will be transferred to the Tribe in fee, or at least clarifies that and the Department of the Interior is not responsible for maintenance and repair of any improvements, appurtenances, and personal property that may be transferred along with the lands. The Department feels this change is necessary to address any uncertainty about the Government having a fiduciary obligation to repair and maintain any acquired improvements.

Finally, section 7 would require a boundary survey be conducted no later than 5 years after the date of conveyance. The boundary survey should be required prior to the conveyance, to avoid any disputes or the need for corrections after the conveyance has occurred.

Section 8 of S. 2843 would provide the Gila River Indian Community the authority to enter into binding arbitration agreements for any lease or contract the tribe may enter into affecting the tribe's land. We want to make it clear that it is our view that this section would not require the United States to enter into binding arbitration or waive the sovereign immunity of the United States.

Section 13 would amend the Lake Traverse Reservation Heirship Act by prohibiting any interest of less than 5 percent of the entire undivided ownership of a parcel that is less than 2½ acres, if the interest were expressed in terms of its proportionate share of the total acreage of the parcel of land, to be inherited intestate. Those interests would automatically escheat to the tribe. In addition, an individual would only be able to devise those interests to the Tribe, a member of the Tribe, or those eligible to be a member of the Tribe. As you know, the escheat provisions of the Indian Land Consolidation Act were found unconstitutional in the *Babbitt v. Youpee* and *DuMarce v. Norton* cases because they failed to provide for just compensation. As drafted, Section 13 of the bill has the potential to raise the same issues, and to avoid this, language should be added to provide for just compensation. In addition, we strongly recommend that the bill include a similar retrospective technical correction for interests that have escheated pursuant to the statutory provisions that were at issue in the *Youpee* and *DuMarce* cases.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAVID W. ANDERSON,
Assistant Secretary for Indian Affairs.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 2843 will result in the following changes in existing law, (with existing law proposed to be omitted is enclosed in black brackets and the new language to be added in italic):

INDIAN ARTS AND CRAFTS ACT AMENDMENTS

25 U.S.C. 305(a)

Section 2 of the Act of August 27, 1935 is amended as follows:

It shall be the function and the duty of the Secretary of the Interior through the Board to promote the economic welfare of the Indian tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. In the execution of this function the Board shall have the following powers: (a) to undertake market research to determine the best opportunity for the sale of various products; (b) to engage in technical research and give technical advice and assistance; (c) to engage in experimentation directly or through selected agencies; (d) to correlate and encourage the activities of the various governmental and private agencies in the field; (e) to offer assistance in the management of operating groups for the furtherance of specific projects; (f) to make recommendations to appropriate agencies for loans in furtherance of the production and sale of Indian products; (g) (1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office; (h) to employ executive officers, including a general manager, and such other permanent and temporary personnel as may be found necessary, and prescribe the authorities, duties, responsibilities, and tenure and fix the compensation of such officers and other employees; *Provided*, That chapter 51 and subchapter III of chapter 53 of Title 5 shall be applicable to all permanent employees and that all employees shall be appointed in accordance with the civil-service laws from lists of eligibles to be supplied by the director of the Office of Personnel Management; (I) as a Government agency

to negotiate and execute in its own name contracts with operating groups to supply management, personnel, and supervision at cost, and to negotiate and execute in its own name such other contracts and to carry on such other business as may be necessary for the accomplishment of the duties and purposes of the Board: Provided, That nothing in the foregoing enumeration of powers shall be construed to authorize the Board to borrow or lend money or to deal in Indian goods. For the purposes of this section, the term "Indian arts and crafts organization" means any legally established arts and crafts marketing organization composed of members of Indian tribes; (j) *to investigate violations of this Act; (k) to enforce this Act through the imposition of penalties for violations under section 6; (l) to request the Secretary of the Interior, with advice of the Solicitor, to enforce this Act through injunctive relief; (m) notwithstanding any other provision of law, to enter into reimbursable support agreements with Federal, State, tribal, regional, and local investigative or law enforcement entities in furtherance of the purposes and provisions of this Act.*

25 U.S.C. 305(c)

Section 4 of the Act of August 27, 1935 is amended as follows:

[SEC. 4. APPROPRIATION] SEC. 4. APPROPRIATIONS.

【There is hereby authorized to be appropriated out of any sums in the Treasury not otherwise appropriated such sums as may be necessary to defray the expenses of the Board and carry out the purposes and provisions of Section 305 to 305c of this title. All income derived by the Board from any source shall be covered into the Treasury of the United States and shall constitute a special fund which is hereby appropriated and made available until expended for carrying out the purposes and provisions of said sections. Out of the funds available to it at any time the Board may authorize such expenditures, consistent with the provisions of said sections, as it may determine to be necessary for the accomplishment of the purposes and objectives of said sections.】

(a) *IN GENERAL.*—*There are authorized to be appropriated such sums as are necessary to pay the expenses of the Board and carry out this Act.*

(b) *FUND.*—*All income received by the Board from any source shall be deposited in a special fund, which shall be available to be expended by the Board, without further appropriation, to carry out this Act.*

(c) *USE OF AMOUNTS.*—*Amounts received by the Board resulting from any civil action or enforcement action or enforcement action brought under this Act may be used by the Board consistent with this Act, as necessary for the accomplishment of the purposes of this Act.*

25 U.S.C. 305(d)

Section 5 of the Act of August 27, 1935 is amended as follows:

[SEC. 5. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS; COMPLAINTS; RECOMMENDATIONS] SEC. 5. REFERRAL FOR CRIMINAL AND CIVIL PROCEEDINGS.

【(a) The Board may receive complaints of violations of section 1159 of Title 18, and refer complaints of such violations to the Fed-

eral Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

[(b) The Board may recommend that the Secretary for the Interior refer the matter to the Attorney General for civil action under section 305e of this title.]

(a) *CRIMINAL PROCEEDINGS.*—

(1) *INVESTIGATION.*—*The Board shall investigate violations of section 1159 of title 18, United States Code.*

(2) *ACTION BY THE BOARD.*—*After an investigation is complete, or at any time during an investigation, the Board may—*

(A) *refer the matter to the Attorney General for additional investigation; and*

(B) *recommend to the Attorney General that criminal proceedings be brought under section 1159 of title 18, United States Code.*

(b) *CIVIL PROCEEDINGS.*—

(1) *INVESTIGATIONS.*—*The Board shall investigate violations of section 6.*

(2) *ACTION BY THE BOARD.*—*After an investigation is complete, or at any time during an investigation, the Board may—*

(A) *levy penalties in accordance with section 6; or*

(B) *refer the matter to the Attorney General for civil action under section 6.*

(c) *MANDATORY INVESTIGATION.*—*The Board shall receive and investigate all complaints of violations of section 1159 of title 18, United States Code, and section 6.*

25 U.S.C. 305(e)

Section 6 of the Act of August 27, 1935 is amended as follows:

[SEC. 6. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS.

[(a) **INJUNCTIVE OR EQUITABLE RELIEF; DAMAGES.**—A person specified in subsection (c) of this section may, in a civil action in a court of competent jurisdiction, bring an action against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

[(1) obtain injunctive or other equitable relief; and

[(2) recover the greater of—

[(A) treble damages; or

[(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1000 for each day on which the offer or display for sale or sale continues.

For the purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

[(b) **PUNITIVE DAMAGES; ATTORNEY'S FEE.**—In addition to the relief specified in subsection (a) of this section, the court may award

punitive damages and the costs of suit and a reasonable attorney's fee.

[(c) PERSONS WHO MAY INITIATE CIVIL ACTIONS.—

[(1) A civil action under subsection (a) of this section may be commenced—

[(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization;

[(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization; or (C) by an Indian arts and crafts organization on behalf of itself, or by an Indian on behalf of himself or herself.

[(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

[(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered—

[(i) the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) of this section and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

[(ii) the amount for the costs of investigation awarded pursuant to subsection (b) and reimburse the Board the amount of such costs incurred as a direct result of Board activities in the suit; and;

[(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) of this section may be deducted from the total amount awarded under subsection (a)(2) of this section.

[(d) DEFINITIONS.—As used in this section—

[(1) the term "Indian" means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by the Indian tribe;

[(2) subject to subsection (f), the terms "Indian product" and "product of a particular Indian tribe or Indian arts and crafts organization" has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

[(3) the term "Indian tribe" means—

[(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

[(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

[(4) the term "Indian arts and crafts organization" means any legally established arts and crafts marketing organization composed of members of Indian tribes.

[(e) SAVINGS PROVISION.—In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.]

[(f) REGULATIONS.—Not later than 180 days after November 9, 2000, the Board shall promulgate regulations to include in the definition of the term “Indian product” specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act.]

SEC. 6. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN-PRODUCED GOODS.

(a) **DEFINITIONS.**—*In this section:*

(1) **INDIAN.**—*The term “Indian” means—*

(A) *an individual who is a member of an Indian tribe;*
and

(B) *an individual who, for the purposes of this section, is certified as an Indian artisan by an Indian tribe.*

(2) **INDIAN PRODUCT.**—*Subject to subsection (g), the term “Indian product” has the meaning given the term in regulations that may be promulgated by the Secretary.*

(3) **INDIAN TRIBE.**—*The term “Indian tribe” means—*

(A) *an Indian tribe, band, nation, Alaska native village, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and*

(B) *an Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority.*

(4) **PRODUCT OF A PARTICULAR INDIAN TRIBE OR INDIAN ARTS AND CRAFTS ORGANIZATION.**—*Subject to subsection (g), the term “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given the term in regulations that may be promulgated by the Secretary.*

(5) **SECRETARY.**—*The term “Secretary” means the Secretary of the Interior.*

(b) **IMPOSITION OF PENALTIES BY THE BOARD.**—

(1) **IN GENERAL.**—*The Board may impose a civil penalty against a person that, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests that the good is Indian-produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization resident within the United States.*

(2) **AMOUNT.**—*A civil penalty under paragraph (1) shall not exceed 100 percent of the price of the goods offered or displayed for sale in violation of the Act, not to exceed \$500,000 per person, per violation.*

(3) **FACTORS AFFECTING PENALTY AMOUNT.**—*In determining the amount of a civil penalty to be imposed, the Board shall consider—*

(A) *the severity of the violation;*

(B) *any history of prior violations; and*

(C) whether the amount of the civil penalty will be likely to deter future violations.

(4) *INJUNCTIVE RELIEF.*—If the Board determines that enforcement of this Act under this section will be insufficient to avoid irreparable harm, the Board, with the concurrence of the Solicitor of the Department of the Interior, may request the Secretary to seek injunctive relief in accordance with Section 2 in a court of competent jurisdiction.

(5) *NOTICE AND APPEAL OF BOARD DETERMINATION.*—

(A) *NOTICE.*—

(i) *IN GENERAL.*—If, as a result of an investigation conducted by the Board, it is determined that a violation of this Act has occurred, the Board may, at any time during the investigation, notify the person under investigation regarding the nature of the alleged violation.

(ii) *CONTENT.*—A notice under clause (I) shall include, at a minimum—

- (I) a detailed description of the violation;
- (II) possible remedies, if appropriate;
- (III) opportunity to cure, if appropriate; and
- (IV) any other information that the Board considers necessary.

(B) *APPEAL.*—Any person determined to be in violation of this Act under this subsection may appeal the Board's findings and imposition of civil penalties to the Office of Hearings and Appeals of the Department of the Interior in accordance with part 4 of title 43, Code of Federal Regulations (or any successor regulation).

(c) *INJUNCTIVE OR EQUITABLE RELIEF; DAMAGES.*—

(1) *IN GENERAL.*—A person specified in subsection (e) may, in a civil action in a court of competent jurisdiction, bring an action against a person that, directly or indirectly, offers or displays for sale or sells a good, with or without a government trademark, in a manner that falsely suggests that the good is Indian-produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization resident within the United States, to—

(A) obtain injunctive or other equitable relief; and

(B) recover the greater of—

- (i) treble damages; or
- (ii) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1,000 for each day on which the offer or display for sale or sale continues.

(2) *DAMAGES.*—For purposes of paragraph (1)(B)(i) damages include all gross profits realized by the defendant as a result of the activities found in violation of this subsection.

(d) *PUNITIVE DAMAGES; ATTORNEY'S FEE.*—In addition to the relief specified in subsection (c), the court may award punitive damages, and costs of the civil action, and a reasonable attorney's fee.

(e) *PERSONS WHO MAY INITIATE CIVIL ACTIONS.*—

(1) *IN GENERAL.*—A civil action under subsection (b) may be brought—

(A) by the Attorney General, on request of the Secretary on behalf of—

- (i) an Indian tribe;
- (ii) an Indian;
- (iii) an Indian arts and crafts organization;

(B) by an Indian tribe on behalf of itself, an Indian, or an Indian arts and crafts organization;

(C) by an Indian; or

(D) by an Indian arts and crafts organization.

(2) *DISPOSITION OF AMOUNTS RECOVERED.*—Any amount recovered under this section shall be paid to the Indian tribe, Indian, or Indian arts and crafts organization, except that—

(A) in the case of a civil action under paragraph (1)(A), the Attorney General may deduct from the amount recovered—

(i) the amount for the costs of the civil action and reasonable attorney's fee awarded pursuant to subsection (d), to be deposited in the Treasury of the United States and credit to appropriations currently available to the Attorney General at the time of receipt of the amount; and

(ii) the amount for the costs of investigation awarded pursuant to subsection (d), to be used to reimburse the Board the amount of such costs incurred as a direct result of Board activities in the civil action;

(B) in the case of a civil action under paragraph (1)(B), the amount recovered for the costs of the civil action and reasonable attorney's fee pursuant to subsection (d) may be deducted.

(f) *SEVERABILITY.*—If any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

(g) *REGULATIONS.*—Not later than 180 days after the date of enactment of this subsection, the Board shall promulgate regulations to include in the definition of the term “Indian product” specific examples of each such product to provide guidance to Indian artisans and to purveyors and consumers of Indian arts and crafts.

INDIAN FINANCING ACT AMENDMENTS

Pub. L. 93–262

25 U.S.C. 1485

Section 205 of Public Law 93–262 is amended as follows:

[SEC. 205. SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.]

[(a) *IN GENERAL.*—Any loan guaranteed or insured under this subchapter, including the security given for such loan, may be sold or assigned by the lender to any person.

[(b) *INITIAL TRANSFERS.*—

[(1) *IN GENERAL.*—The lender of a loan guaranteed or insured under this subchapter may transfer to any individual or legal entity—

[(A) all rights and obligations of the lender in the loan or in the unguaranteed or uninsured portion of the loan; and

[(B) any security given for the loan.

[(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—

[(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

[(B) the lender shall give notice of the transfer to the Secretary.

[(3) RESPONSIBILITIES OF TRANSFEREE.—On any transfer under paragraph (1), the transferee shall—

[(A) be deemed to be the lender for the purpose of this subchapter;

[(B) become the secured party of record; and

[(C) be responsible for—

[(i) performing the duties of the lender; and

[(ii) servicing the loan in accordance with the terms of the guarantee by the Secretary of the loan.]

SEC. 205. SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.

(a) *IN GENERAL.*—All or any portion of a loan guaranteed or insured under this title, including the security given for the loan—

(1) may be transferred by the lender by sale or assignment to any person; and

(2) may be retransferred by the transferee.

(b) *TRANSFERS OF LOANS.*—With respect to a transfer described in subsection (a)—

(1) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (h); and

(2) the transferee shall give notice of the transfer to the Secretary.

[(c) SECONDARY TRANSFERS.—

[(1) *IN GENERAL.*—Any transferee under subsection (b) of this section of a loan guaranteed or insured under this subchapter may transfer to any individual or legal entity—

[(A) all rights and obligations of the transferee in the loan or in the unguaranteed or uninsured portion of the loan; and

[(B) any security given for the loan.

[(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—

[(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i) of this section; and

[(B) the transferor shall give notice of the transfer to the Secretary.

[(3) *ACKNOWLEDGMENT BY THE SECRETARY.*—On receipt of a notice of a transfer under paragraph (2)(B), the Secretary shall issue to the transferee an acknowledgment by the Secretary of—

[(A) the transfer; and

[(B) the interest of the transferee in the guaranteed or insured portion of the loan.

[(4) RESPONSIBILITIES OF LENDER.—Notwithstanding any transfer permitted by this subsection, the lender shall—

[(A) remain obligated on the guarantee agreement or insurance agreement between the lender and the Secretary;

[(B) continue to be responsible for servicing the loan in a manner consistent with that guarantee agreement or insurance agreement; and

[(C) remain the secured creditor of record.]

[(d)] (c) FULL FAITH AND CREDIT.—

(1) IN GENERAL.—The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this subchapter after the date of enactment of this subsection.

(2) [VALIDITY] VALIDITY.—

(A) IN GENERAL.—[Except as provided in subparagraph (B)], *Except as provided by regulations in effect on the date on which a loan is made*, the validity of the guarantee or insurance of a loan under this subchapter shall be [incontestable if the obligations of the guarantee or insurance held by a transferee have been acknowledged under subsection (c)(3) of this section.] *incontestable*.

(B) EXCEPTION FOR FRAUD OR MISREPRESENTATION.—Subparagraph (A) shall not apply in a case in which a transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation, in connection with a loan. VALIDITY.—Except as provided by regulations in effect on the date on which a loan is made,

[(e)] (d) DAMAGES.—Notwithstanding section 3302 of Title 31, the Secretary may recover from a lender of a loan under this subchapter any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

[(f)] (e) FEES.—[The Secretary] (1) IN GENERAL.—*The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.*

(2) COMPENSATION OF FISCAL TRANSFER AGENT.—*A fiscal transfer agent designated under subsection (f) may be compensated through any of the fees assessed under this section and any interest earned on any funds or fees collected by the fiscal transfer agent while the funds or fees are in the control of the fiscal transfer agent and before the time at which the fiscal transfer agent is contractually required to transfer such funds to the Secretary or to transferees or other holders.*

[(g)] (f) CENTRAL REGISTRATION OF LOANS.—On promulgation of final regulations under [subsection (i)] *subsection (h)* of this section, the Secretary shall—

(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and

(2) enter into 1 or more contracts with a fiscal transfer agent—

[(A) to act as the designee of the Secretary under this section; and

(B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions[, and issuance of acknowledgments,] under this section.

[(h)] (g) POOLING OF LOANS.—

(1) IN GENERAL.—Nothing in this subchapter prohibits the pooling of whole loans or interests in loans transferred under this section.

(2) REGULATIONS.—In promulgating regulations under subsection (i) of this section, the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.

[(i)] (h) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promote transfers of loans and guaranteed and insured portions of loans under this section.

INDIAN PUEBLO LAND ACT AMENDMENTS

(43 Stat. 636, Chapter 331)

The Act of June 7, 1924, also known as the Indian Pueblo Land Act is amended as follows:

At the end of 43 Stat. 636 insert the following:

SEC. 20. CRIMINAL JURISDICTION.

(a) IN GENERAL.—*Except as otherwise provided by Congress, jurisdiction over offenses committed anywhere within the exterior boundaries of any grant form a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian tribe of New Mexico, shall be provided in this section.*

(b) JURISDICTION OF THE PUEBLO.—*The Pueblo has jurisdiction, as an act of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or of another federally recognized Indian tribe, or by any other Indian-owned entity.*

(c) JURISDICTION OF THE UNITED STATES.—*The United States has jurisdiction over any offense described in chapter 53 of title 18, United States Code, committed by or against a member of any federally recognized Indian tribe or any Indian-owned entity, or that involves any Indian property or interest.*

(d) JURISDICTION OF THE STATE OF NEW MEXICO.—*The State of New Mexico shall have jurisdiction over any offense committed by a person who is not a member of a federally recognized Indian tribe, which offense is not subject to the jurisdiction of the United States.*

INDIAN REORGANIZATION ACT CORPORATION AMENDMENT

25 U.S.C. 477

Section 17 of the Act of June 18, 1936 (Commonly known as the Indian Reorganization Act) is amended as follows:

The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe; *Provided*, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated

tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to **【sell, mortgage, or lease for a period exceeding twenty five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress】** *sell or mortgage, or to lease as lessor for a period exceeding 99 years, for any trust or restricted land included in the limits of the reservation, except that such authority may not exceed 25 years in the case of activities authorized under the Indian Gaming Regulatory Act (25 U.S.C. 2701, et seq.)*

**GILA RIVER INDIAN COMMUNITY MANDATORY BINDING
ARBITRATION**

25 U.S.C. 415(f)

Section(f) of the Act of August 5, 1955 is amended as follows:

(f) **【Any lease entered into under the Act of August 9, 1955 (69 Stat. 539), as amended, or any contract entered into under section 2103 of the Revised Statutes 925 U.S.C. 81), as amended, affecting land】** *Any contract, including a lease, affecting land* within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such lease or contract. **【Such leases or contracts entered into pursuant to such Acts】** *Such contracts* shall be considered within the meaning of “commerce” as defined and subject to the provisions of section 1 of Title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by Title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of Title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of Title 28.

**ALASKA NATIVE CLAIMS SETTLEMENT ACT VOTING
STANDARDS AMENDMENT**

43 U.S.C. 1629(b)

Subsection (d)(3) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629(b)) is amended as follows:

(b) BASIC PROCEDURE.—

(1) An amendment or resolution described in subsection (a) of this section *or an amendment to the articles of incorporation described in section 7(g)(1)(B)* may be approved by the board of directors of a Native Corporation in accordance with its by-laws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such a special meeting). One or more such amendments or resolu-

tions may be submitted to the shareholders and voted upon at one meeting.

(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) of this section and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the shareholders, by firstclass mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation. The corporation may also communicate with its shareholders at any time and in any manner authorized by the laws of the State.

(B) The board of directors may, but shall not be required to, appraise or otherwise determine the value of—

(i) land conveyed to the corporation pursuant to section 1613(h)(1) of this title or any other land used as a cemetery;

(ii) the surface estate of land that is both—

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title; and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of title 16); or

(iii) land or interest in land which the board of directors believes to be only of speculative value; in connection with any communication made to the shareholders pursuant to this subsection.

(C) If the board of directors determines, for quorum purposes or otherwise, that a previously-noticed meeting must be postponed or adjourned, it may, by giving notice to the shareholders, set a new date for such meeting not more than forty-five days later than the original date without sending the shareholders a new written notice (or a new summary of changes to be effected). If the new date is more than forty-five days later than the original date, however, a new written notice (and a new summary of changes to be effected if such a summary was originally sent pursuant to subparagraph (A)), shall be sent or delivered to shareholders not less than thirty days nor more than forty-five days prior to the new date.

TECHNICAL CORRECTIONS

117 Stat. 278

Section 337(a) of the Department of the Interior and Related Agencies Appropriations Act of 2003 is amended.—

(a) **[Section 1629(b) of title 43, United States Code,]** *Section 36 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629(b))* is amended—

(1) at subsection (d)(1) by striking “An” and inserting in its place “Except as otherwise set forth in subsection (d)(3) of this section, an”;

(2) [by creating the following new subsection:] *in subsection (d), by adding at the end the following:*

“(d)(3) A resolution described in subsection (a)(3) of this section shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

“(A) a majority of the shares present or represented by proxy at the meeting relating to such resolution, or

“(B) an amount of shares greater than a majority of the shares present or represented by proxy at the meeting relating to such resolution (but not greater than two-thirds) of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.”; and

(3) by creating the following new subsection:

“(f) SUBSTANTIALLY ALL OF THE ASSETS.—For purposes of this section and section 1629(e) of this title, a Native Corporation shall be considered to be transferring all or substantially all of its assets to a Settlement Trust only if such assets represent two-thirds or more of the fair market value of the Native Corporations’s total assets”.

117 Stat. 278, Sec. 337

SEC. 337. CLARIFICATION OF ALASKA NATIVE SETTLEMENT TRUST.

(a) Section 1629b of title 43, United States Code, is amended—

(1) at subsection (d)(1) by striking “An” and inserting in its place “Except otherwise set forth in subsection (d)(3) of this section, an”;

(2) by creating the following new subsection:

“[(d)] (3) A resolution described in subsection (a)(3) of this section shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

“(A) a majority of the shares present or represented by proxy at the meeting relating to such resolution, or

“(B) an amount of shares greater than a majority of the shares presently represented by proxy at the meeting relating to such resolution (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.”; and

(3) by creating the following new subsection:

“(f) SUBSTANTIALLY ALL OF THE ASSETS.—For purposes of this section and [Section 1629e of this title] *section 39*, a Native Corporation shall be considered to be transferring all or substantially all of its assets to a Settlement Trust only if such assets represent two-thirds or more of the fair market value of the Native Corporations’s total assets.”

(b) [Section 1629e(a) (3) of title 43, United States Code], *Section 39(a)(3) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629e(a)(3))* is amended by striking subparagraph (B) and inserting in its place the following:

43 U.S.C. 1629e(3)(B)(ii)

43 U.S.C. 1629e(3)(B)(ii) is amended as follows:

- (ii) a shareholder vote on such transfer is required by [(a)(4) of section 1629b of this title] *section 36(a)(4)*.

CHEYENNE RIVER SIOUX TRIBE, LOWER BRULE SIOUX TRIBE, AND STATE OF SOUTH DAKOTA TERRESTRIAL WILDLIFE HABITAT RESTORATION

113 Stat. 386

Section 602(a)(4) of the Water Resources Development Act of 1999 is amended as follows:

(4) FUNDING FOR CARRYING OUT PLANS.—

(A) STATE OF SOUTH DAKOTA.—

(i) NOTIFICATION.—On a receipt of the plan for terrestrial wildlife habitat restoration submitted by the State of South Dakota, each of the committees referred to in paragraph (3) shall notify the Secretary *and the Secretary of the Treasury* of the receipt of the plan.

(ii) [AVAILABILITY OF FUNDS.—On notification in accordance with clause (I), the Secretary shall make available to the State of South Dakota funds from the South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund established under section 603, to be used to carry out the plan for terrestrial wildlife habitat restoration submitted by the State and only after the Trust Fund is fully capitalized.] *AVAILABILITY OF FUNDS.—On notification in accordance with clause (i), the Secretary of the Treasury shall make available to the State of South Dakota funds from the State of South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund established under section 603 used to carry out the plan for terrestrial wildlife habitat restoration submitted by the State of South Dakota after the State certifies to the Secretary of the Treasury that the funds to be disbursed will be used in accordance with section 603(d)(3) and only after the Trust Fund is fully capitalized.*

(B) CHEYENNE RIVER SIOUX TRIBE AND LOWER BRULE SIOUX TRIBE.—

(i) NOTIFICATION.—On a receipt of the plan for terrestrial wildlife habitat restoration submitted by the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe, each of the committees referred to in paragraph (3) shall notify the Secretary of the Treasury of the receipt of each of the plans.

(ii) [AVAILABILITY OF FUNDS.—On notification in accordance with clause (I), the Secretary of the Treasury shall make available to the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe funds from the Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund and the Lower Brule Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust

Fund, respectively, established under section 604, to be used to carry out the plan for Terrestrial Wildlife Habitat Restoration submitted by the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe, respectively, and only after the Trust Fund is fully capitalized.】 *AVAILABILITY OF FUNDS.—On notification in accordance with clause (I), the Secretary of the Treasury shall make available to the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe funds from the Cheyenne River Sioux Terrestrial Wildlife Habitat Restoration Trust Fund and the Lower Brule Sioux Terrestrial Wildlife Habitat Restoration Trust Fund, respectively, established under section 604, to be used to carry out the plans for terrestrial wildlife habitat restoration submitted by the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe, respectively, after the respective tribe certifies to the Secretary of the Treasury that the funds to be disbursed will be used in accordance with section 604(d)(3) and only after the Trust Fund is fully capitalized.*

Section 603(c) of the Water Resources Development Act of 1999 is amended as follows:

【(c) INVESTMENTS.—

【(1) IN GENERAL.—At the request of the Secretary, the Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed by the United States as to both principal and interest.

【(2) INTEREST RATE.—The Secretary of the Treasury shall invest amounts in the fund in obligations that carry the highest rate of interest among available obligations of the required maturity.】

(c) INVESTMENTS.—

(1) *ELIGIBLE OBLIGATIONS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall invest the amounts deposited under subsection (b) and the interest earned on those amounts only in interest-bearing obligations of the United States issued directly to the Fund.*

(2) *INVESTMENT REQUIREMENTS.—*

(A) *IN GENERAL.—The Secretary of the Treasury shall invest the Fund in accordance with all of the requirements of this paragraph.*

(B) *SEPARATE INVESTMENTS OF PRINCIPAL AND INTEREST—*

(i) *PRINCIPAL ACCOUNT.—The amounts deposited in the Fund under subsection (b) shall be credited to an account within the Fund (referred to in this paragraph as the “principal account”) and invested as provided in subparagraph (C).*

(ii) *INTEREST ACCOUNT.—The interest earned from investing amounts in the principal account of the Fund shall be transferred to a separate account within the Fund (referred to in this paragraph as the “interest account”) and invested as provided in subparagraph (D).*

(iii) *CREDITING.*—The interest earned from investing amounts in the interest account of the Fund shall be credited to the interest account.

(C) *INVESTMENT OF PRINCIPAL ACCOUNT.*—

(i) *INITIAL INVESTMENT.*—Each amount deposited in the principal account of the Fund shall be invested initially in eligible obligations having the shortest maturity then available until the date on which the amount is divided into 3 substantially equal portions and those portions are invested in eligible obligations that are identical (except for transferability) to the next-issued publicly issued Treasury obligations having a 2-year maturity, a 5-year maturity, and a 10-year maturity, respectively.

(ii) *SUBSEQUENT INVESTMENT.*—As each 2-year, 5-year, and 10-year eligible obligation matures, the principal of the maturing eligible obligation shall also be invested initially in the shortest-maturity eligible obligation then available until the principal is reinvested substantially equally in the eligible obligations that are identical (except for transferability) to the next issued publicly issued Treasury obligations having 2-year, 5-year, and 10-year maturities.

(iii) *DISCONTINUANCE OF ISSUANCE OF OBLIGATIONS.*—If the Department of the Treasury discontinues issuing to the public obligations having 2-year, 5-year, or 10-year maturities, the principal of any maturing eligible obligation shall be reinvested substantially equally in eligible obligations that are identical (except for transferability) to the next-issued publicly issued Treasury obligations of the maturities longer than 1 year then available.

(D) *INVESTMENT OF INTEREST ACCOUNT.*—

(i) *BEFORE FULL CAPITALIZATION.* Until the date on which the Fund is fully capitalized, amounts in the interest account of the Fund shall be invested in eligible obligations that are identical (except for transferability) to publicly issued Treasury obligations that have maturities that coincide, to the greatest extent practicable, with the date on which the Fund is expected to be fully capitalized.

(ii) *AFTER FULL CAPITALIZATION.*—On and after the date on which the Fund is fully capitalized, amounts in the interest account of the Fund shall be invested and reinvested in eligible obligations having the shortest maturity then available until the amounts are withdrawn and transferred to fund the activities authorized under subsection (d)(3).

(E) *PAR PURCHASE PRICE.*—The price to be paid for eligible obligations purchased as investments of the principal account shall not exceed the par value of the obligations so that the amount of the principal account shall be preserved in perpetuity.

(F) *HIGHEST YIELD.*—Among eligible obligations having the same maturity and purchase price, the obligation to be purchased shall be the obligation having the highest yield.

(G) *HOLDING TO MATURITY.*—Eligible obligations purchased shall generally be held to their maturities.

(3) *ANNUAL REVIEW OF INVESTMENT ACTIVITIES.*—Not less frequently than once each calendar year, the Secretary of the Treasury shall review with the State of South Dakota the results of the investment activities and financial status of the Fund during the proceeding 12-month period.

(d) *PAYMENTS.*—

(1) *IN GENERAL.*—All amounts credited as interest under subsection (c) shall be available, without fiscal year limitation, to the State of South Dakota for use in accordance with paragraph (3) after the Fund has been fully capitalized.

(2) *WITHDRAWAL AND TRANSFER OF FUNDS.*—Subject to section 602(a)(4)(A), the Secretary of the Treasury shall withdraw amounts credited as interest under paragraph (1) and transfer the amounts to the State of South Dakota for use as State funds in accordance with paragraph (3) after the Fund has been fully capitalized.

Section 604(c) of the Water Resources Development Act of 1999 is amended as follows:

[(c) *INVESTMENTS.*—

[(1) *IN GENERAL.*—The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

[(2) *INTEREST RATE.*—The Secretary of the Treasury shall invest amounts in the Funds in obligations that carry the highest rate of interest among available obligations of the required maturity.]]

(c) *INVESTMENTS.*—

(1) *ELIGIBLE OBLIGATIONS.*—Notwithstanding any other provision of law, the Secretary of the Treasury shall invest the amounts deposited under subsection (b) and the interest earned on those amounts only in interest-bearing obligations of the United States issued directly to the Funds.

(2) *INVESTMENT REQUIREMENTS.*—

(A) *IN GENERAL.*—The Secretary of the Treasury shall invest each of the Funds in accordance with all of the requirements of this paragraph.

(B) *SEPARATE INVESTMENTS OF PRINCIPAL AND INTEREST.*—

(i) *PRINCIPAL ACCOUNT.*—The amounts deposited in each Fund under subsection (b) shall be credited to an account within the Fund (referred to in this paragraph as the “principal account”) and invested as provided in subparagraph (C).

(ii) *INTEREST ACCOUNT.*—The interest earned from investing amounts in the principal account of each Fund shall be transferred to a separate account within the Fund (referred to in this paragraph as the “interest account”) and invested as provided in subparagraph (D).

(iii) *CREDITING.*—The interest earned from investing amounts in the interest account of each Fund shall be credited to the interest account.

(C) *INVESTMENT OF PRINCIPAL ACCOUNT.*—

(i) *INITIAL INVESTMENT.*—Each amount deposited in the principal account of each Fund shall be invested initially in eligible obligations having the shortest maturity then available until the date on which the amount is divided into 3 substantially equal portions and those portions are invested in eligible obligations that are identical (except for transferability) to the next-issued publicly issued Treasury obligations having a 2-year maturity, a 5-year maturity, and a 10-year maturity, respectively.

(ii) *SUBSEQUENT INVESTMENT.*—As each 2-year, 5-year, and 10-year eligible obligation matures, the principal of the maturing eligible obligation shall also be invested initially in the shortest-maturity eligible obligation then available until the principal is reinvested substantially equally in the eligible obligations that are identical (except for transferability) to the next issued publicly issued Treasury obligations having 2-year, 5-year, and 10-year maturities.

(iii) *DISCONTINUATION OF ISSUANCE OF OBLIGATIONS.*—If the Department of the Treasury discontinues issuing to the public obligations having 2-year, 5-year, or 10-year maturities, the principal of any maturing eligible obligation shall be reinvested substantially equally in eligible obligations that are identical (except for transferability) to the next-issued publicly issued Treasury obligations of the maturities longer than 1 year then available.

(D) *INVESTMENT OF THE INTEREST ACCOUNT.*—

(i) *BEFORE FULL CAPITALIZATION.*—Until the date on which each Fund is fully capitalized, amounts in the interest account of the Fund shall be invested in eligible obligations that are identical (except for transferability) to publicly issued Treasury obligations that have maturities that coincide, to the greatest extent practicable, with the date on which the Fund is expected to be fully capitalized.

(ii) *AFTER FULL CAPITALIZATION.*—On and after the date on which each Fund is fully capitalized, amounts in the interest account of the Fund shall be invested and reinvested in eligible obligations having the shortest maturity then available until the amounts are withdrawn and transferred to fund the activities authorized under subsection (d)(3).

(E) *PAR PURCHASE PRICE.*—The price to be paid for eligible obligations purchased as investments of the principal account shall not exceed the par value of the obligations so that the amount of the principal account shall be preserved in perpetuity.

(F) *HIGHEST YIELD.*—Among eligible obligations having the same maturity and purchase, the obligation to be purchased shall be the obligation having the highest yield.

(G) *HOLDING TO MATURITY.*—Eligible obligations purchased shall generally be held to their maturities.

(3) *ANNUAL REVIEW OF INVESTMENT ACTIVITIES.*—Not less frequently than once each calendar year, the Secretary of the Treasury shall review with the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe the results of the investment activities and financial status of the funds during the preceding 12-month period.

LAKE TRAVERSE RESERVATION HEIRSHIP

98 Stat. 2413

Section 5 of the Pub. L. 98-513 (98 Stat. 2413) is amended as follows:

【SEC. 5. Notwithstanding any other provision of this Act, no person shall be entitled by devise or descent to take any interest, including any interest in a life estate under section 4 of this Act, less than two and one-half acres, or the equivalent thereof, in trust or restricted land within the reservation. Any interest less than two and one-half acres of a devisee or intestate distributee of a decedent under section 3 of this Act, shall escheat to the tribe and title to such escheated interest shall be taken in the name of the United States in trust for the tribe: Provided, That the provision of this section shall not be applicable to the devise or descent of any interest in trust or restricted land located within a municipality.】

SEC. 5. INHERITANCE OF SMALL FRACTIONAL INTERESTS.

(a) *DEFINITION OF SMALL FRACTIONAL INTEREST.*—In this section, the term “small fractional interest” means an undivided trust or restricted interest in a parcel of land within the reservation that—

(1) represents less than 5 percent of the entire undivided ownership of the parcel of land (as reflected in the decedent’s estate inventory as of the date on which the decision maker enters the final decision determining heirs); and

(2) does not exceed the equivalent of 2 and one-half acres if the interest were to be expressed in terms of its proportionate share of the total acreage of the parcel of land of which the interest is a part.

(b) *INTESTATE INHERITANCE IN GENERAL.*—Notwithstanding section 3, no small fractional interest shall pass by intestate succession under this Act or any other provision of law except as provided in subsection (c).

(c) *INHERITANCE BY TRIBE.*—If a person dies possessed of a small fractional interest that has not been devised in accordance with subsection (d) to 1 or more eligible devisees described in that subsection, the small fractional interest shall pass to the Tribe, with title to the interest to be held by the United States in trust for the Tribe.

(d) *INHERITANCE BY TESTAMENTARY DEVISE.*—

(1) *ELIGIBLE DEVISEES.*—Notwithstanding any other provision of this Act, and subject to paragraph (2), a small fractional interest may be devised only to the following eligible devisees:

- (A) *The tribe.*
- (B) *Any person who is a member, or eligible to be a member, of the tribe.*
- (2) *REQUIREMENTS.—No devise of a small fractional interest shall be valid as to a devisee unless—*
- (A) *the devisee is eligible to receive the interest by devise under paragraph (1);*
- (B) *the devisee is expressly identified in the devise by name; and*
- (C) *the devise is made in a will that has been approved by the Secretary of the Interior in accordance with section 2 of the Act of June 25, 1910 (36 Stat. 856, chapter 431).*
- (3) *HOLDING IN TRUST.—Any small fractional interest devised in accordance with this subsection shall pass to the devisee or devisees on the death of the testator, with title to be held by the United States in trust for the devisee or devisees.*
- (e) *NOTICE TO LANDOWNERS; CERTIFICATION.—*
- (1) *NOTICE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall provide notice of the amendment made by subsection (a) to owners of trust and restricted interests in land within the Lake Traverse Indian Reservation by—*
- (A) *posting written notice of the amendment at the administrative headquarters of the Sisseton-Wahpeton Sioux Tribe of North Dakota and South Dakota and at the Agency of the Bureau of Indian Affairs located in Agency Village, South Dakota;*
- (B) *publishing the notice not fewer than 4 times in newspapers of general circulation in all counties in which any part of the Lake Traverse Indian Reservation is located; and*
- (C) *sending the notice by first class mail to the last known addresses of Indians with interests in trust or restricted land within the Lake Traverse Indian Reservation for whom the Secretary has such an address.*
- (2) *CERTIFICATION.—After providing notice under paragraph (1), the Secretary shall—*
- (A) *certify that notice has been given in accordance with that paragraph; and*
- (B) *publish notice of the certification in the Federal Register.*
- (f) *EFFECTIVE DATE.—*
- (1) *EFFECT ON INTERESTS.—The amendment made by subsection (a) shall not affect any interest in the estate of a person who dies before the date that is one year after the date on which the Secretary publishes notice of the certification under subsection (b)(2).*
- (2) *EFFECT ON WILLS.—The amendment made by subsection (a) shall not affect the validity or effect of any will executed before the date that is 1 year after the date on which the Secretary publishes notice of the certification under subsection (b)(2).*

AMENDMENT OF DEFINITION

25 U.S.C. 3001(9)

25 U.S.C. 3001(9) is amended as follows:

(9) "Native American" means of, or relating to, a tribe, people, or culture that is *or was* indigenous to the United States.

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