

113TH CONGRESS
2D SESSION

H. R. 4388

To establish the American Indian Trust Review Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2014

Mr. GOSAR (for himself, Mr. DAINES, Mr. SCHWEIKERT, Mr. YOUNG of Alaska, Mr. COLE, Mr. MULLIN, Mr. TIPTON, Mr. CARNEY, Mr. FRANKS of Arizona, Mr. SALMON, Ms. MCCOLLUM, Mr. HONDA, Mr. FALEOMAVAEGA, and Mrs. KIRKPATRICK) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To establish the American Indian Trust Review Commission, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Indian Trust
5 Responsibility Review Act of 2014”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds as follows:

8 (1) The Final Report of the American Indian
9 Policy Review Committee, published in 1977, made

1 a number of recommendations regarding the United
2 States administration of its trust relationship with
3 federally recognized Indian tribes and their mem-
4 bers, many of which have not been implemented.

5 (2) There has been no general, comprehensive
6 review of the United States trust relationship with
7 federally recognized Indian tribes since the publica-
8 tion of the Final Report of the American Indian Pol-
9 icy Review Committee.

10 (3) The trust relationship has evolved over time
11 and there is a clear need to re-examine the adminis-
12 tration of the United States constitutional trust re-
13 sponsibility.

14 (4) The duties administered by Federal agen-
15 cies charged with protecting federally recognized In-
16 dian tribal trust resources and providing services
17 often conflict with other duties discharged by the
18 same or separate Federal agencies and departments
19 and it is the beneficiaries of the trust relationship
20 that suffer as a result.

21 (5) In carrying out its trust responsibilities to
22 federally recognized Indian tribes and their mem-
23 bers, it is crucial that Congress have the benefit of
24 a review of the United States trust relationship with
25 federally recognized Indian tribes to improve its abil-

1 ity to exercise oversight over the Executive Branch,
2 pursue policies to empower tribal self-determination,
3 and better administer the trust relationship.

4 **SEC. 3. DECLARATION.**

5 Congress declares that it is timely and essential to
6 conduct a review of the current state of the United States
7 unique trust relationship with federally recognized Indian
8 tribes and their members in order to better administer
9 constitutional trust responsibilities and make necessary re-
10 visions in relevant trust statutes, regulations, and policies
11 for the benefit of American Indian people.

12 **SEC. 4. ESTABLISHMENT OF THE AMERICAN INDIAN TRUST**
13 **REVIEW COMMISSION.**

14 (a) ESTABLISHMENT.—In order to carry out the pur-
15 poses of this Act, there is hereby established the American
16 Indian Trust Review Commission, hereinafter referred to
17 as the “Commission”.

18 (b) MEMBERSHIP.—

19 (1) COMPOSITION.—The Commission shall be
20 composed of 12 members, of whom—

21 (A) 4 shall be appointed by the President,
22 in consultation with the Secretary of the Inte-
23 rior;

24 (B) 3 shall be appointed by the Speaker of
25 the House of Representatives, in consultation

1 with the Chairman of the Committee on Nat-
2 ural Resources of the House of Representatives;

3 (C) 1 shall be appointed by the Minority
4 Leader of the House of Representatives, in con-
5 sultation with the Ranking Member of the Com-
6 mittee on Natural Resources of the House of
7 Representatives;

8 (D) 3 shall be appointed by the Majority
9 Leader of the Senate, in consultation with the
10 Chairman of the Committee on Indian Affairs;
11 and

12 (E) 1 shall be appointed by the Minority
13 Leader of the Senate, in consultation with the
14 Vice Chairman of the Committee on Indian Af-
15 fairs.

16 (2) DIVERSITY OF QUALIFICATIONS.—In mak-
17 ing appointments to the Commission, every effort
18 shall be made to select individuals whose qualifica-
19 tions are not already represented by other members
20 of the Commission.

21 (3) TERM.—Each member shall be appointed
22 for the life of the Commission.

23 (4) TIME FOR INITIAL APPOINTMENTS.—The
24 appointment of the members of the Commission

1 shall be made no later than 60 days after the date
2 of enactment of this Act.

3 (c) COMMISSION ORGANIZATION.—At its organiza-
4 tional meeting, the members of the Commission appointed
5 pursuant to subsection (b)(1) of this section shall elect
6 from their members, a Chairman and Vice Chairman im-
7 mediately thereafter.

8 (d) VACANCIES.—Vacancies in the membership of the
9 Commission shall not affect the power of the remaining
10 members to execute the functions of the Commission and
11 shall be filled in the same manner as in the case of the
12 original appointment of the member whose seat is vacated.

13 (e) QUORUM.—Eight members of the Commission
14 shall constitute a quorum, but a smaller number, as deter-
15 mined by the Commission, may conduct hearings.

16 **SEC. 5. DUTIES OF THE COMMISSION.**

17 (a) INVESTIGATION; STUDY.—The Commission shall
18 conduct a comprehensive review of the unique trust rela-
19 tionship between the United States and federally recog-
20 nized Indian tribes. The study shall include—

21 (1) a study and analysis of the Constitution,
22 and relevant treaties, compacts, statutes, judicial in-
23 terpretations, and Executive Orders to determine the
24 attributes of the unique trust relationship between

1 the Federal Government, and federally recognized
2 Indian tribes;

3 (2) a review of the policies, practices, and struc-
4 ture of the Federal agencies charged with protecting
5 Indian tribal trust resources and providing services
6 to Indians;

7 (3) a management study of the Bureau of In-
8 dian Affairs and its ability to discharge its trust re-
9 sponsibilities without conflicting with the duties of
10 other Federal agencies and departments;

11 (4) a review of relevant statutes, regulations,
12 and policies to determine the feasibility of author-
13 izing Indian tribes, in their discretion, to assume
14 some or all of the functions, programs, services, and
15 activities now currently undertaken and provided by
16 the Federal Government;

17 (5) a compilation, collection, and analysis of
18 data necessary to understand the extent of the needs
19 of federally recognized Indian tribes, including the
20 adequacy of educational systems, health care, public
21 safety, and infrastructure;

22 (6) the feasibility of creating high-level posi-
23 tions within the Executive Branch to provide feder-
24 ally recognized Indian tribes with maximum partici-
25 pation in policy formation and program development,

1 and the viability of a mechanism to ensure the con-
2 tinuation of critical programs for federally recog-
3 nized Indian tribes;

4 (7) an examination of the appropriate role of
5 State and local governments involvement in actions
6 that permit government and public input and the de-
7 gree to which the Federal Government can ade-
8 quately balance those interests without conflicting
9 with its trust responsibilities towards federally recog-
10 nized Indian tribes; and

11 (8) the recommendations modifying existing
12 laws, procedures, regulations, policies, and practices
13 as will, in the judgment of the Commission, best
14 serve to carry out the policy and declarations of the
15 purposes of the Commission.

16 (b) HEARINGS.—

17 (1) IN GENERAL.—The Commission shall hold
18 hearings, meet, act, take testimony, and receive evi-
19 dence as the Commission considers to be advisable
20 to carry out the duties of the Commission under this
21 Act.

22 (2) PUBLIC REQUIREMENT.—The hearings of
23 the Commission shall be open to the public and held
24 in geographically diverse locations.

1 (3) PREFERENCE.—When considering hearing
2 witnesses, the Commission shall exercise a pref-
3 erence to invite elected officials from a federally rec-
4 ognized Indian tribe before seeking participation
5 from any tribal organization.

6 **SEC. 6. POWERS OF THE COMMISSION.**

7 (a) COMMISSION RULES.—The Commission may
8 make rules respecting its organization and procedures, as
9 it deems necessary, except that no recommendations shall
10 be reported from the Commission unless a majority of the
11 Commission assents.

12 (b) INFORMATION FROM FEDERAL, TRIBAL, STATE,
13 AND LOCAL AGENCIES.—

14 (1) IN GENERAL.—The Commission may secure
15 directly from a Federal agency such information as
16 the Commission considers to be necessary to carry
17 out this Act.

18 (2) TRIBAL, STATE, AND LOCAL AGENCIES.—
19 The Commission may request the head of any agen-
20 cy of a federally recognized Indian tribe, State, or
21 unit of local government to provide the Commission
22 with such information as the Commission considers
23 necessary to carry out this Act.

1 **SEC. 7. COMMISSION PERSONNEL.**

2 (a) TRAVEL EXPENSES.—The members of the Com-
3 mission shall be allowed travel expenses, including per
4 diem in lieu of subsistence, at rates authorized for employ-
5 ees of agencies under subchapter I of chapter 57 of title
6 5, United States Code, while away from their homes or
7 regular places of business in the performance of services
8 for the Commission.

9 (b) STAFF.—

10 (1) IN GENERAL.—The Chairperson of the
11 Commission, in consultation with the Vice Chairman
12 of the Commission, may—

13 (A) without regard to the civil service laws
14 and regulations, appoint and terminate an execu-
15 tive director and such other additional per-
16 sonnel as may be necessary to enable the Com-
17 mission to perform its duties; and

18 (B) fix the compensation of the executive
19 director and other personnel without regard to
20 chapter 51 and subchapter III of chapter 53 of
21 title 5, United States Code, relating to classi-
22 fication of positions and General Schedule pay
23 rates, except that the rate of pay for the execu-
24 tive director and other personnel may not ex-
25 ceed the rate payable for level V of the Execu-
26 tive Schedule under section 5316 of such title.

1 (2) EXECUTIVE DIRECTOR SUBJECT TO CON-
2 FIRMATION.—The employment of an executive direc-
3 tor shall be subject to confirmation by the Commis-
4 sion by a majority of Commission members voting.

5 (c) DETAIL OF GOVERNMENT EMPLOYEES.—At the
6 request of the Commission, and in the discretion of the
7 relevant agency, any Federal Government employee may
8 be detailed to the Commission without reimbursement,
9 and such detail shall be without interruption or loss of
10 civil service status or privilege.

11 (d) PROCUREMENT OF TEMPORARY AND INTERMIT-
12 TENT SERVICES.—The Chairperson of the Commission
13 may procure temporary and intermittent services under
14 section 3109(b) of title 5, United States Code, at rates
15 for individuals that do not exceed the daily equivalent of
16 the annual rate of basic pay prescribed for level V of the
17 Executive Schedule under section 5316 of such title.

18 **SEC. 8. REPORT OF THE COMMISSION.**

19 (a) IN GENERAL.—Not later than 2 years after the
20 date of enactment of this Act, the Commission shall sub-
21 mit to the President and Congress a report that con-
22 tains—

23 (1) a detailed statement of findings and conclu-
24 sions of the Commission; and

1 (2) the recommendations of the Commission for
2 such legislative and administrative actions as the
3 Commission considers appropriate.

4 (b) EXTENSION.—The President may grant an exten-
5 sion to allow the report required under subsection (a) to
6 be submitted not later than 3 years after the date of the
7 enactment of this Act.

8 (c) ONLINE ACCESS.—The Commission shall make
9 the report required by paragraph (1) publically available
10 on the website of the Department of the Interior.

11 **SEC. 9. NONAPPLICABILITY OF THE FACA.**

12 The Federal Advisory Committee Act (5 U.S.C. App.
13 2) shall not apply to the Commission.

14 **SEC. 10. TERMINATION OF THE COMMISSION.**

15 The Commission shall terminate 30 days after the
16 Commission submits its report under section 8.

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