

INDIAN TRUST ASSET REFORM ACT

FEBRUARY 24, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 812]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 812) to provide for Indian trust asset management reform, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Indian Trust Asset Reform Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

Sec. 101. Findings.

Sec. 102. Reaffirmation of policy.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Establishment of demonstration project; selection of participating Indian Tribes.

Sec. 204. Indian trust asset management plan.

Sec. 205. Forest land management and surface leasing activities.

Sec. 206. Effect of title.

TITLE III—IMPROVING EFFICIENCY AND STREAMLINING PROCESSES

Sec. 301. Purpose.

Sec. 302. Definitions.

Sec. 303. Under Secretary for Indian Affairs.

Sec. 304. Office of Special Trustee for American Indians.

Sec. 305. Appraisals and valuations.

Sec. 306. Cost savings.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

SEC. 101. FINDINGS.

Congress finds that—

- (1) there exists a unique relationship between the Government of the United States and the governments of Indian tribes;
- (2) there exists a unique Federal responsibility to Indians;
- (3) through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians;
- (4) the fiduciary responsibilities of the United States to Indians also are founded in part on specific commitments made through written treaties and agreements securing peace, in exchange for which Indians have surrendered claims to vast tracts of land, which provided legal consideration for permanent, ongoing performance of Federal trust duties; and
- (5) the foregoing historic Federal-tribal relations and understandings have benefitted the people of the United States as a whole for centuries and have established enduring and enforceable Federal obligations to which the national honor has been committed.

SEC. 102. REAFFIRMATION OF POLICY.

Pursuant to the constitutionally vested authority of Congress over Indian affairs, Congress reaffirms that the responsibility of the United States to Indian tribes includes a duty to promote tribal self-determination regarding governmental authority and economic development.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT

SEC. 201. SHORT TITLE.

This title may be cited as the “Indian Trust Asset Management Demonstration Project Act of 2016”.

SEC. 202. DEFINITIONS.

In this title:

- (1) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (2) **PROJECT.**—The term “Project” means the Indian trust asset management demonstration project established under section 203(a).
- (3) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

SEC. 203. ESTABLISHMENT OF DEMONSTRATION PROJECT; SELECTION OF PARTICIPATING INDIAN TRIBES.

- (a) **IN GENERAL.**—The Secretary shall establish and carry out an Indian trust asset management demonstration project, in accordance with this title.
- (b) **SELECTION OF PARTICIPATING INDIAN TRIBES.**—
 - (1) **IN GENERAL.**—An Indian tribe shall be eligible to participate in the project if—
 - (A) the Indian tribe submits to the Secretary an application under subsection (c); and
 - (B) the Secretary approves the application of the Indian tribe.
 - (2) **NOTICE.**—
 - (A) **IN GENERAL.**—The Secretary shall provide a written notice to each Indian tribe approved to participate in the project.
 - (B) **CONTENTS.**—A notice under subparagraph (A) shall include—
 - (i) a statement that the application of the Indian tribe has been approved by the Secretary; and
 - (ii) a requirement that the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with section 204.
- (c) **APPLICATION.**—
 - (1) **IN GENERAL.**—To be eligible to participate in the project, an Indian tribe shall submit to the Secretary a written application in accordance with paragraph (2).

(2) REQUIREMENTS.—The Secretary shall consider an application under this subsection only if the application—

(A) includes a copy of a resolution or other appropriate action by the governing body of the Indian tribe, as determined by the Secretary, in support of or authorizing the application;

(B) is received by the Secretary after the date of enactment of this Act; and

(C) states that the Indian tribe is requesting to participate in the project.

(d) DURATION.—The project—

(1) shall remain in effect for a period of 10 years after the date of enactment of this Act; but

(2) may be extended at the discretion of the Secretary.

SEC. 204. INDIAN TRUST ASSET MANAGEMENT PLAN.

(a) PROPOSED PLAN.—

(1) SUBMISSION.—After the date on which an Indian tribe receives a notice from the Secretary under section 203(b)(2), the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with paragraph (2).

(2) CONTENTS.—A proposed Indian trust asset management plan shall include provisions that—

(A) identify the trust assets that will be subject to the plan;

(B) establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian tribe;

(C) allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;

(D) if the Indian tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets—

(i) identify the functions or activities that are being or will be performed by the Indian tribe under the contracts, compacts, or other agreements under that Act, which may include any of the surface leasing or forest land management activities authorized by the proposed plan pursuant to section 205(b); and

(ii) describe the practices and procedures that the Indian tribe will follow;

(E) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan;

(F) include a process for the Indian tribe and the Federal agencies affected by the trust asset management plan to conduct evaluations to ensure that trust assets are being managed in accordance with the plan; and

(G) identify any Federal regulations that will be superseded by the plan.

(3) TECHNICAL ASSISTANCE AND INFORMATION.—On receipt of a written request from an Indian tribe, the Secretary shall provide to the Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a proposed plan.

(b) APPROVAL AND DISAPPROVAL OF PROPOSED PLANS.—

(1) APPROVAL.—

(A) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe submits a proposed Indian trust asset management plan under subsection (a), the Secretary shall approve or disapprove the proposed plan.

(B) REQUIREMENTS FOR DISAPPROVAL.—The Secretary shall approve a proposed plan unless the Secretary determines that—

(i) the proposed plan fails to address a requirement under subsection (a)(2);

(ii) the proposed plan includes 1 or more provisions that are inconsistent with subsection (c); or

(iii) the cost of implementing the proposed plan exceeds the amount of funding available for the management of trust assets that would be subject to the proposed plan.

(2) ACTION ON DISAPPROVAL.—

(A) NOTICE.—If the Secretary disapproves a proposed plan under paragraph (1)(B), the Secretary shall provide to the Indian tribe a written notice of the disapproval, including any reason why the proposed plan was disapproved.

(B) ACTION BY TRIBES.—If a proposed plan is disapproved under paragraph (1)(B), the Indian tribe may resubmit an amended proposed plan by not later than 90 days after the date on which the Indian tribe receives the notice under subparagraph (A).

(3) FAILURE TO APPROVE OR DISAPPROVE.—If the Secretary fails to approve or disapprove a proposed plan in accordance with paragraph (1), the plan shall be considered to be approved.

(4) JUDICIAL REVIEW.—An Indian tribe may seek judicial review of a determination of the Secretary under this subsection in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”), if—

(A) the Secretary disapproves the proposed plan of the Indian tribe under paragraph (1); and

(B) the Indian tribe has exhausted all other administrative remedies available to the Indian tribe.

(c) APPLICABLE LAWS.—Subject to section 205, an Indian trust asset management plan, and any activity carried out under the plan, shall not be approved unless the proposed plan is consistent with any treaties, statutes, and Executive orders that are applicable to the trust assets, or the management of the trust assets, identified in the plan.

(d) TERMINATION OF PLAN.—

(1) IN GENERAL.—An Indian tribe may terminate an Indian trust asset management plan on any date after the date on which a proposed Indian trust asset management plan is approved by providing to the Secretary—

(A) a notice of the intent of the Indian tribe to terminate the plan; and

(B) a resolution of the governing body of the Indian tribe authorizing the termination of the plan.

(2) EFFECTIVE DATE.—A termination of an Indian trust asset management plan under paragraph (1) takes effect on October 1 of the first fiscal year following the date on which a notice is provided to the Secretary under paragraph (1)(A).

SEC. 205. FOREST LAND MANAGEMENT AND SURFACE LEASING ACTIVITIES.

(a) DEFINITIONS.—In this section:

(1) FOREST LAND MANAGEMENT ACTIVITY.—The term “forest land management activity” means any activity described in section 304(4) of the National Indian Forest Resources Management Act (25 U.S.C. 3103(4)).

(2) INTERESTED PARTY.—The term “interested party” means an Indian or non-Indian individual, entity, or government the interests of which could be adversely affected by a tribal trust land leasing decision made by an applicable Indian tribe.

(3) SURFACE LEASING TRANSACTION.—The term “surface leasing transaction” means a residential, business, agricultural, or wind or solar resource lease of land the title to which is held—

(A) in trust by the United States for the benefit of an Indian tribe; or

(B) in fee by an Indian tribe, subject to restrictions against alienation under Federal law.

(b) APPROVAL BY SECRETARY.—The Secretary may approve an Indian trust asset management plan that includes a provision authorizing the Indian tribe to enter into, approve, and carry out a surface leasing transaction or forest land management activity without approval of the Secretary, regardless of whether the surface leasing transaction or forest land management activity would require such an approval under otherwise applicable law (including regulations), if—

(1) the resolution or other action of the governing body of the Indian tribe referred to in section 203(c)(2)(A) expressly authorizes the inclusion of the provision in the Indian trust asset management plan; and

(2) the Indian tribe has adopted regulations expressly incorporated by reference into the Indian trust asset management plan that—

(A) with respect to a surface leasing transaction—

(i) have been approved by the Secretary pursuant to subsection (h)(4) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(h)(4)); or

(ii) have not yet been approved by the Secretary in accordance with clause (i), but that the Secretary determines at or prior to the time of approval under this paragraph meet the requirements of subsection (h)(3) of the first section of that Act (25 U.S.C. 415(h)(3)); or

(B) with respect to forest land management activities, the Secretary determines—

- (i) are consistent with the regulations of the Secretary adopted under the National Indian Forest Resources Management Act (25 U.S.C. 3101 et seq.); and
 - (ii) provide for an environmental review process that includes—
 - (I) the identification and evaluation of any significant effects of the proposed action on the environment; and
 - (II) a process consistent with the regulations referred to in clause (i) for ensuring that—
 - (aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed forest land management activity identified by the Indian tribe; and
 - (bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the forest land management activity.
- (c) TYPES OF TRANSACTIONS.—
- (1) IN GENERAL.—At the discretion of the Indian tribe, an Indian trust asset management plan may authorize the Indian tribe to carry out a surface leasing transaction, a forest land management activity, or both.
 - (2) SELECTION OF SPECIFIC TRANSACTIONS AND ACTIVITIES.—At the discretion of the Indian tribe, the Indian tribe may include in the integrated resource management plan any 1 or more of the transactions and activities authorized to be included in the plan under subsection (b).
- (d) TECHNICAL ASSISTANCE.—
- (1) IN GENERAL.—The Secretary may provide technical assistance, on request of an Indian tribe, for development of a regulatory environmental review process required under subsection (b)(2)(B)(ii).
 - (2) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—The technical assistance to be provided by the Secretary pursuant to paragraph (1) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, contracts, grants, or agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).
- (e) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding subsection (b), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency, rather than any tribal environmental review process under this section.
- (f) DOCUMENTATION.—If an Indian tribe executes a surface leasing transaction or forest land management activity, pursuant to tribal regulations under subsection (b)(2), the Indian tribe shall provide to the Secretary
- (1) a copy of the surface leasing transaction or forest land management activity documents, including any amendments to, or renewals of, the applicable transaction; and
 - (2) in the case of tribal regulations, a surface leasing transaction, or forest land management activities that allow payments to be made directly to the Indian tribe, documentation of the payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States under subsection (g).
- (g) TRUST RESPONSIBILITY.—
- (1) IN GENERAL.—The United States shall not be liable for losses sustained—
 - (A) by an Indian tribe as a result of the execution of any forest land management activity pursuant to tribal regulations under subsection (b); or
 - (B) by any party to a lease executed pursuant to tribal regulations under subsection (b).
 - (2) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to Indian tribes under Federal law (including regulations), the Secretary may, on reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under this section.
- (h) COMPLIANCE.—
- (1) IN GENERAL.—An interested party, after exhausting any applicable tribal remedies, may submit to the Secretary a petition, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of an applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.
 - (2) VIOLATIONS.—If the Secretary determines under paragraph (1) that a violation of tribal regulations has occurred, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescind-

ing the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust land.

(3) DOCUMENTATION.—If the Secretary determines under paragraph (1) that a violation of tribal regulations has occurred and a remedy is necessary, the Secretary shall—

(A) make a written determination with respect to the regulations that have been violated;

(B) provide to the applicable Indian tribe a written notice of the alleged violation, together with the written determination; and

(C) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of the trust asset transaction approval responsibilities, provide to the applicable Indian tribe—

(i) a hearing on the record; and

(ii) a reasonable opportunity to cure the alleged violation.

SEC. 206. EFFECT OF TITLE.

(a) LIABILITY.—Subject to section 205 and this section, nothing in this title or an Indian trust asset management plan approved under section 204 shall independently diminish, increase, create, or otherwise affect the liability of the United States or an Indian tribe participating in the project for any loss resulting from the management of an Indian trust asset under an Indian trust asset management plan.

(b) DEVIATION FROM STANDARD PRACTICES.—The United States shall not be liable to any party (including any Indian tribe) for any term of, or any loss resulting from the terms of, an Indian trust asset management plan that provides for management of a trust asset at a less-stringent standard than the Secretary would otherwise require or adhere to in absence of an Indian trust asset management plan.

(c) EFFECT OF TERMINATION OF PLAN.—Subsection (b) applies to losses resulting from a transaction or activity described in that subsection even if the Indian trust asset management plan is terminated under section 204(d) or rescinded under section 205(h).

(d) EFFECT ON OTHER LAWS.—

(1) IN GENERAL.—Except as provided in sections 204 and 205 and subsection (e), nothing in this title amends or otherwise affects the application of any treaty, statute, regulation, or Executive order that is applicable to Indian trust assets or the management or administration of Indian trust assets.

(2) INDIAN SELF-DETERMINATION ACT.—Nothing in this title limits or otherwise affects the authority of an Indian tribe, including an Indian tribe participating in the project, to enter into and carry out a contract, compact, or other agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (including regulations).

(e) SEPARATE APPROVAL.—An Indian tribe may submit to the Secretary tribal regulations described in section 205(b) governing forest land management activities for review and approval under this title if the Indian tribe does not submit or intend to submit an Indian trust asset management plan.

(f) TRUST RESPONSIBILITY.—Nothing in this title enhances, diminishes, or otherwise affects the trust responsibility of the United States to Indian tribes or individual Indians.

TITLE III—IMPROVING EFFICIENCY AND STREAMLINING PROCESSES

SEC. 301. PURPOSE.

The purpose of this title is to ensure a more efficient and streamlined administration of duties of the Secretary of the Interior with respect to providing services and programs to Indians and Indian tribes, including the management of Indian trust resources.

SEC. 302. DEFINITIONS.

In this title:

(1) BIA.—The term “BIA” means the Bureau of Indian Affairs.

(2) DEPARTMENT.—The term “Department” means the Department of the Interior.

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

(4) UNDER SECRETARY.—The term “Under Secretary” means the Under Secretary for Indian Affairs established under section 303(a).

SEC. 303. UNDER SECRETARY FOR INDIAN AFFAIRS.

(a) **ESTABLISHMENT OF POSITION.**—Notwithstanding any other provision of law, the Secretary may establish in the Department the position of Under Secretary for Indian Affairs, who shall report directly to the Secretary.

(b) **APPOINTMENT.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) **EXCEPTION.**—The individual serving as the Assistant Secretary for Indian Affairs on the date of enactment of this Act may assume the position of Under Secretary without appointment under paragraph (1), if—

(A) that individual was appointed as Assistant Secretary for Indian Affairs by the President, by and with the advice and consent of the Senate; and

(B) not later than 180 days after the date of enactment of this Act, the Secretary approves the assumption.

(c) **DUTIES.**—In addition to any other duties directed by the Secretary, the Under Secretary shall—

(1) coordinate with the Special Trustee for American Indians to ensure an orderly transition of the functions of the Special Trustee to one or more appropriate agencies, offices, or bureaus within the Department, as determined by the Secretary;

(2) to the maximum extent practicable, supervise and coordinate activities and policies of the BIA with activities and policies of—

(A) the Bureau of Reclamation;

(B) the Bureau of Land Management;

(C) the Office of Natural Resources Revenue;

(D) the National Park Service; and

(E) the United States Fish and Wildlife Service; and

(3) provide for regular consultation with Indians and Indian tribes that own interests in trust resources and trust fund accounts.

(d) **PERSONNEL PROVISIONS.**—

(1) **APPOINTMENTS.**—The Under Secretary may appoint and fix the compensation of such officers and employees as the Under Secretary determines to be necessary to carry out any function transferred under this section.

(2) **REQUIREMENTS.**—Except as otherwise provided by law—

(A) any officer or employee described in paragraph (1) shall be appointed in accordance with the civil service laws;

(B) the compensation of such an officer or employee shall be fixed in accordance with title 5, United States Code; and

(C) in appointing or otherwise hiring any employee, the Under Secretary shall give preference to Indians in accordance with section 12 of the Act of June 18, 1934 (25 U.S.C. 472).

SEC. 304. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS.

(a) **REPORT TO CONGRESS.**—Notwithstanding sections 302 and 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042 and 4043), not later than 1 year after the date of enactment of this Act, the Secretary shall prepare and, after consultation with Indian tribes and appropriate Indian organizations, submit to the Committee on Natural Resources of the House of Representatives, the Committee on Indian Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate a report that includes—

(1) an identification of all functions, other than the collection, management, and investment of Indian trust funds, that the Office of the Special Trustee performs independently or in concert with the BIA or other Federal agencies, specifically those functions that affect or relate to management of nonmonetary trust resources;

(2) a description of any functions of the Office of the Special Trustee that will be transitioned to other bureaus or agencies within the Department prior to the termination date of the Office, as described in paragraph (3), together with the timeframes for those transfers; and

(3) a transition plan and timetable for the termination of the Office of the Special Trustee, to occur not later than 2 years after the date of submission of the report, unless the Secretary determines that an orderly transition cannot be accomplished within 2 years, in which case the report shall include—

(A) a statement of all reasons why the transition cannot be effected within that time; and

(B) an alternative date for completing the transition.

(b) **FIDUCIARY TRUST OFFICERS.**—Subject to applicable law and regulations, the Secretary, at the request of an Indian tribe or a consortium of Indian tribes, shall include fiduciary trust officers in a contract, compact, or other agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(c) **EFFECT OF SECTION.**—Nothing in this section or the report required by this section—

(1) shall cause the Office of the Special Trustee to terminate; or

(2) affect the application of sections 302 and 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042 and 4043).

SEC. 305. APPRAISALS AND VALUATIONS.

(a) **IN GENERAL.**—Notwithstanding section 304, not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with Indian tribes and tribal organizations, shall ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency, or other administrative entity within the Department.

(b) **MINIMUM QUALIFICATIONS.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish and publish in the Federal Register minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property.

(c) **SECRETARIAL APPROVAL.**—In any case in which an Indian tribe or Indian beneficiary submits to the Secretary an appraisal or valuation that satisfies the minimum qualifications described in subsection (b), and that submission acknowledges the intent of the Indian tribe or beneficiary to have the appraisal or valuation considered under this section, the appraisal or valuation—

(1) shall not require any additional review or approval by the Secretary; and

(2) shall be considered to be final for purposes of effectuating the transaction for which the appraisal or valuation is required.

SEC. 306. COST SAVINGS.

(a) **IN GENERAL.**—For any program, function, service, or activity (or any portion of a program, function, service, or activity) of the Office of the Special Trustee that will not be operated or carried out as a result of a transfer of functions and personnel following enactment of this Act, the Secretary shall—

(1) identify the amounts that the Secretary would otherwise have expended to operate or carry out each program, function, service, and activity (or portion of a program, function, service, or activity); and

(2) provide to the tribal representatives of the Tribal-Interior Budget Council or the representative of any other appropriate entity that advises the Secretary on Indian program budget or funding issues a list that describes—

(A) the programs, functions, services, and activities (or any portion of a program, function, service, or activity) identified under paragraph (1); and

(B) the amounts associated with each program, function, service, and activity (or portion of a program, function, service, or activity).

(b) **TRIBAL RECOMMENDATIONS.**—Not later than 90 days after the date of receipt of a list under subsection (a)(2), the tribal representatives of the Tribal-Interior Budget Council and the representatives of any other appropriate entities that advise the Secretary on Indian program budget or funding issues may provide recommendations regarding how any amounts or cost savings should be reallocated, incorporated into future budget requests, or appropriated to—

(1) the Secretary;

(2) the Office of Management and Budget;

(3) the Committee on Appropriations of the House of Representatives;

(4) the Committee on Natural Resources of the House of Representatives;

(5) the Committee on Appropriations of the Senate; and

(6) the Committee on Indian Affairs of the Senate.

PURPOSE OF THE BILL

The purpose of H.R. 812 is to provide for Indian trust fund management reform.

BACKGROUND AND NEED FOR LEGISLATION

The term “federal trust responsibility to Indians” is frequently referenced to characterize the federal government’s obligation to carry out terms of treaties and statutes in a just manner for the benefit of Indians. There is, however, no general statutory definition of “trust responsibility.” The term developed from early 19th

century Supreme Court decisions holding that recognized Indian tribes are “domestic dependent nations”¹ over which Congress exercises exclusive and plenary power. Accordingly, tribes’ lands and affairs were managed by the United States (first by the War Department and then by the Interior Department) “under a highly paternalistic system where the presumptively knowledgeable Secretary protects incompetent wards.”² The record of this historic system of comprehensive federal supervision over tribal affairs is one of exceptionally high rates of poverty, joblessness, health problems, and suicide across large segments of Indian Country. As a former Assistant Secretary for Indian Affairs has stated:

With these ideas as the foundation of the trust, it grew into a stifling, paternalistic, and ultimately ineffective system of managing Indian property. While virtually all other areas of federal Indian policy have undergone dramatic change, with a radical shifting of authority from the Bureau of Indian Affairs to tribal governments, the trust remains largely ineffective, unenforceable, and immune from fundamental change.³

The modern era of promoting tribal self-determination was launched by President Richard M. Nixon. In his Special Message on Indian Affairs (July 8, 1970), President Nixon argued, “It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people.” He would later add, “In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we suggest a policy in which the Federal government and the Indian community play complementary roles.”

Congress subsequently enacted the Indian Self-Determination and Education Assistance Act (ISDEAA, 25 U.S.C. 450 et seq.), which authorizes tribes to deliver federal services and benefits to their members under negotiated contracts, compacts, or annual funding agreements with the government. In addition to authorizing these “638 contracts,” Congress in consultation with tribes has enacted a number of laws designed to increase the opportunity for tribes to assume greater degrees of administration over their assets.

While tribes over the last 40 years have increased their capacity to administer federal funds and services, most of their lands and tribal funds continue to be held in trust by the Secretary of the Interior, an arrangement that is often a hindrance to Indian prosperity. Some statutes require the Secretary to perform comprehensive control over an Indian asset in a manner that exposes taxpayers to enormous liabilities if the Secretary mismanages trust assets. In these cases, the Secretary’s primary concern is risk avoidance, which may benefit the taxpayer but not the tribe. Other statutes authorize the Secretary to perform merely basic administrative duties for Indians with no enforceable fiduciary standards. Accordingly, an Indian trust asset could be underutilized or even

¹ See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

² Statement of David A. Mullon, Chief Counsel, NCAI, Prepared Statement on H.R. 409, the *Indian Trust Asset Reform Act*, before the Sub. Cmte. on Indian and Alaska Native Affairs, May 2014.

³ Kevin Gover, “An Indian Trust for the Twenty-First Century,” *Natural Resources Journal*, Spring 2006, 46 Nat. Resources J. 317, p. 1.

mismanaged with no meaningful remedy available to the beneficial owner of that asset.

Need for Legislation

Because the current paradigm of the trust responsibility as conceived and implemented by the government has, in the view of at least one prominent Indian critic, “wreak[ed] all manner of harm on tribal communities,”⁴ H.R. 812 sets forth a process by which a tribe may opt to assume direct control over its trust assets, providing the United States taxpayer is not held financially liable by any party for losses incurred as a result. Title I sets forth Congressional findings and a reaffirmation of policy concerning the United States’ trust responsibilities to Indians. Title II authorizes a demonstration project in which an Indian tribe may be authorized to negotiate to assume management and control of its non-mineral trust assets under a plan approved by the Secretary of the Interior. Title III elevates the status of Indian Affairs responsibilities by granting the Secretary of the Interior the option to create a new Under Secretary for Indian Affairs, who would work directly with the Special Trustee for American Indians to ensure an orderly transition of Office of the Special Trustee functions.

SECTION-BY-SECTION ANALYSIS OF H.R. 812, AS ORDERED REPORTED

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

Sec. 101. Findings. Sets forth Congressional findings regarding the United States’ unique relationship with Indian tribes and the United States’ responsibility to protect and support Indian tribes and Indians.

Sec. 102. Reaffirmation of Policy. Sets forth that Congress reaffirms the United States’ duty to promote tribal self-determination regarding governmental authority and economic development.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT

Sec. 201. Short Title. Provides that this title may be cited as the “Indian Trust Asset Management Demonstration Project Act of 2016.”

Sec. 202. Definitions. Provides definitions for this title.

Sec. 203. Establishment of Demonstration Project; Selection of Participating Indian Tribes. Directs the Secretary of the Interior to establish and carry out an Indian trust asset management demonstration project. Provides that Indian tribes desiring to participate in the project must submit, and the Secretary approve, a written application. The demonstration project shall remain in effect for ten (10) years after enactment but may be extended at the discretion of the Secretary.

Sec. 204. Indian Trust Asset Management Plan. Provides that an Indian tribe shall, after receiving notice from the Secretary that it is eligible to participate in the demonstration project, submit to the Secretary a proposed Indian trust asset management plan. The Secretary may not approve a proposed plan unless it is consistent with federal treaties, statutes, and executive orders applicable to

⁴ Gover, *supra*, at 1.

the trust assets or the management of the trust assets. After a tribe submits a proposed plan, the Secretary shall approve or disapprove it within 120 days.

Sec. 205. Forest Land Management and Surface Leasing Activities. Under this section, the Secretary may approve an Indian trust asset management plan that authorizes the Indian tribe to enter into, approve, and carry out a surface leasing transaction or forest land management activity without approval of the Secretary, regardless of whether the surface leasing transaction or forest land management activity would require such an approval under otherwise applicable law, including regulations. Most of this section is adopted verbatim from the Helping Expedite and Advance Responsible Tribal Home Ownership of 2012 (HEARTH Act, Public Law 112–151).

Sec. 206. Effect of Title. Provides that nothing in this title or in a trust asset management plan shall affect the liability of the United States or an Indian tribe participating in the project. Provides that nothing in this title shall affect application of any treaty, statute, executive order applicable to the trust assets or the management of the trust assets subject to the plan. Provides that nothing in this title diminishes or affects the trust responsibility of the United States to Indian tribes or individual Indians. Subsection 206(d) clarifies that title II does not preclude Indian tribes from performing activities in a trust asset management plan under the ISDEAA. Section 206(e) clarifies that an Indian tribe may submit tribal regulations that provide for HEARTH Act treatment for forest management activities for review and approval without submitting them as part of a trust asset management plan.

TITLE III—IMPROVING EFFICIENCY AND STREAMLINING PROCESSES

Sec. 301. Purpose. Provides that the purpose of this title is to ensure efficient and streamlined administration of duties of the Secretary with respect to providing services and programs to Indian tribes and Indians, including the management of Indian trust resources.

Sec. 302. Definitions. Provides definitions for this title.

Sec. 303. Under Secretary for Indian Affairs. Authorizes the Secretary, at the Secretary’s discretion, to establish the position of Under Secretary for Indian Affairs, who would report directly to the Secretary. In addition to other enumerated duties, the Under Secretary would coordinate the Office of the Special Trustee to ensure an orderly transition of the functions of the Special Trustee to the appropriate agencies, offices, or bureaus with the Department. This subsection also allows for the Under Secretary to provide regular consultation with Indian tribes and Indians that own interests in trust resources and trust fund accounts. Lastly, Section 303(b) provides that the Assistant Secretary for Indian Affairs within the Department of the Interior may assume the position of Under Secretary without appointment if the Secretary was appointed by the President and confirmed by the Senate, and the assumption shall not occur later than 180 days after enactment of the Act.

Sec. 304. Office of Special Trustee for American Indians. Directs the Secretary to submit to Congress within one year of enactment, among other things, information on a transition plan for the Office

of the Special Trustee (OST) to terminate within two years of the date of the submission. Directs the Secretary to consult with Indian tribes and tribal organizations on the information to be submitted to Congressional authorizing and appropriations committees. The Act does not require the Secretary to implement or execute the transition plan. Section 304(b) authorizes Indian tribes or a consortium of Indian tribes to include certain OST employees known as fiduciary trust officers in contracts, compacts, or cooperative agreements under the ISDEAA.

Sec. 305. Appraisals and Valuations. Section 305(a) requires the Secretary, within 18 months of enactment, in consultation with Indian tribes and tribal organizations, to ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency or other administrative entity within the Department. Sections 305(b) and (c) establish a process whereby the Secretary establishes minimum qualifications for persons to prepare appraisals and valuations of Indian trust property. When an Indian tribe or Indian beneficiary submits an appraisal or valuation to the Secretary that satisfies those minimum qualifications—and the submission acknowledges the tribe or beneficiary’s intent to have the appraisal or valuation considered under this new subsection—the appraisal or valuation will not require any further Secretarial review or approval and will be considered final for purposes of effectuating the applicable transaction, regardless of the length of time required to obtain other approvals that may be necessary to complete the underlying transaction.

Sec. 306. Cost Savings. Provides that for any function or activity of OST which will not be carried out as a result of any transfer of functions or personnel under this title, the Secretary shall identify any resulting cost savings and provide this information to the Tribal-Interior Budget Council (TBIC) within 60 days, or other appropriate advisory committee. Within 90 days of receiving this information, the tribal representatives of the TBIC or other advisory committee may provide recommendations to the Secretary on how any cost savings should be reallocated, incorporated into future budget requests or appropriated.

COMMITTEE ACTION

H.R. 812 was introduced on February 9, 2015, by Congressman Michael K. Simpson (R-ID). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On April 14, 2015, the Subcommittee held a hearing on the bill. On February 2, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Chairman Rob Bishop (R-UT) offered an amendment in the nature of a substitute. The amendment was adopted by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent on February 3, 2016.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on

Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

Under current law, the Department of the Interior (DOI) is responsible for managing financial assets held in trust by the federal government for the benefit of Indian tribes. H.R. 812 would amend current law to give tribes more authority to manage their own assets. The bill also would expand tribes' authority to enter into leases for certain services and activities on tribal land—particularly related to management of tribally owned natural resources—without DOI's approval.

CBO does not expect that implementing H.R. 812 would affect the federal government's overall costs to provide services and other assistance to tribes. Under current law, some of those costs are incurred directly by DOI; in other cases, the department provides financial support for tribes to perform such work. In the latter case, DOI typically retains a role in approving and overseeing contracts and other agreements entered into by the tribe for such activities.

Under the bill, to the extent that tribes shift toward hiring non-federal contractors to manage financial assets, DOI might face increased costs to review and approve such contracts. At the same time, CBO expects that expanding tribes' authority to use certain leases to procure services related to natural resources owned by the tribe would reduce the department's administrative workload. Taken as a whole, CBO estimates that any net change in federal costs—which would be subject to appropriation—would be insignificant in any given year.

Because enacting H.R. 812 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 812 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 812 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Any costs incurred by tribes as a result of using additional authority granted by the bill would be incurred voluntarily.

On January 29, 2016, CBO transmitted a cost estimate for S. 383, the Indian Trust Asset Reform Act, as ordered reported by the Senate Committee on Indian Affairs on July 29, 2015. H.R. 812 is similar to S. 383 and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office estimates that implementing this bill would not “affect the federal government’s overall costs to provide services and other assistance to tribes” and “that any net change in federal costs—which would be subject to appropriation—would be insignificant in any given year.”

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for Indian trust fund management reform.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

