

Calendar No. 364

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-207

TO PROVIDE FOR INDIAN TRUST ASSET MANAGEMENT REFORM, AND FOR OTHER PURPOSES

—————
FEBRUARY 8, 2016.—Ordered to be printed
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Mr. BARRASSO, from the Senate Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 383]

The Senate Committee on Indian Affairs, to which was referred the bill (S. 383) to provide for Indian trust asset management reform, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 383, as amended, is to reaffirm the Federal government's fiduciary trust responsibilities to Indian tribes. S. 383, as amended, will establish a demonstration project to give Indian tribes, on a voluntary basis, the opportunity to manage their trust assets. These Indian trust assets are currently held in trust and managed by the Federal government. This bill will also authorize the Secretary of the Department of the Interior to transition the functions of the Office of the Special Trustee for American Indians to one or more appropriate agencies, offices, or bureaus within the Department of the Interior.

BACKGROUND

There exists a Federal trust responsibility through treaties, statutes, and historical relations, to protect and support Indian tribes and individual Indians. The United States holds in trust over 55 million surface acres and 57 million acres of subsurface minerals

for American Indians and Alaska Natives.¹ The Department of the Interior (DOI or Department) manages more than 124,300 leases and approximately \$4.9 billion in trust funds for Indian tribes through the Office of the Special Trustee for American Indians.² According to the Department, there is nothing comparable to this in the commercial trust sector.³

Creation of the Office of the Special Trustee for American Indians

The Indian trust was developed from a series of Congressional actions, beginning with the *General Allotment Act of 1887* (Dawes Act).⁴ Due to policy changes related to the Indian trust, significant confusion developed over time. The *American Indian Trust Fund Management Reform Act of 1994* (1994 Act) was enacted in an attempt to address the confusion.⁵ While the 1994 Act did provide some clarity, “issues of whether the Indian trust is governed by the Administrative Procedures Act or by the common law of trusts” continue to be litigated, and Indian trust issues still remain unresolved.⁶

The 1994 Act created the Office of the Special Trustee for American Indians (OST) within the Department, and was the first major step taken by Congress to reform the Federal government’s management of Indian trust funds.⁷ Under the 1994 Act, “[t]he OST generally oversees the reform of the [DOI] management of Indian trust assets, the direct management of Indian trust funds, establishment of an adequate trust fund management system, and support of [D]epartment claims settlement activities related to the trust funds.”⁸ The OST was intended to improve the accountability and management of Indian trust funds and Individual Indian Money (IIM) accounts held in trust by the Federal government.⁹

Reforming the management of Indian trust assets

In past Congressional hearings, the issue of whether the OST has failed in its efforts to oversee the implementation of Indian trust asset management reforms has been raised.¹⁰ There is concern that there is insufficient oversight over the OST and that, contrary to Congressional intent, the OST’s involvement may have caused greater confusion, burdens, and delays in the processing of trust asset transactions for Indian tribes.¹¹

¹U.S. Department of the Interior, Office of the Special Trustee for American Indians, About OST, *Statistics and Facts*, available at http://www.doi.gov/ost/about_us/statistics-and-facts.cfm.

²*Id.*

³*Id.*

⁴General Allotment (Dawes) Act, Act of Feb. 8, 1887, ch. 119, 24 Stat. 388 (codified as 25 U.S.C. §331 (1887)) (repealed 1934).

⁵See generally, U.S. Department of the Interior, Office of the Special Trustee for American Indians, *About OST*, available at http://www.doi.gov/ost/about_us/index.cfm.

⁶*Id.*

⁷American Indian Trust Fund Reform Act of 1994, Pub. L. No. 103–412, 108 Stat. 4239, 25 U.S.C. 4001 et seq. (1994).

⁸Carol Hardy Vincent et al., *Interior, Environment, and Related Agencies: FY 2007 Appropriations*, Congressional Research Service, Mar. 7, 2007 (RL33399).

⁹See, U.S. Department of the Interior, Office of the Special Trustee for American Indians, *About OST*, available at http://doi.gov/ost/about_us/index.cfm.

¹⁰See, e.g., U.S. Senate Committee on Indian Affairs, Hearing on *Backlogs at the Department of the Interior: Land into Trust Acquisitions; Environmental Impact Statements; Probate; Appraisals and Lease Approvals Before the S. Comm. on Indian Affairs*, 110th Cong. (2007); Senate Committee on Indian Affairs, Hearing on *Where’s the Trustee? U.S. Department of the Interior Backlogs Prevents Tribes From Using Their Lands Before the S. Comm. on Indian Affairs*, 111th Cong. (2009).

¹¹*Id.*

Another concern has also been raised that the OST has outlived its statutory purpose and is performing functions outside the scope of its authority.¹² When Congress established the OST, they acknowledged that the office would be temporary in order for the Department to reform its management system of Indian trust assets. The major reforms that the OST was tasked with were completed years ago.¹³ The Government Accountability Office (GAO) stated that the “OST estimates that almost all key reforms needed to develop an integrated trust management system and to provide improved trust services will be completed by November 2007.”¹⁴

The Office of Trust Services—a separate office within the DOI under the Bureau of Indian Affairs—also has trust-related responsibilities to Indian tribes and individual Indians.¹⁵ There are six divisions within the Office of Trust Services that provide assistance to Indian trust owners. The Office of Trust Services oversees the management, development, and protection of trust and restricted lands, natural resources, and real estate services for Indian tribes.¹⁶ There is concern that functions of the Office of Trust Services overlap with those of the OST, creating confusion and unnecessary redundancies within the Department.¹⁷ The OST manages Indian trust funds while the Office of Trust Services manages Indian trust land and non-monetary trust resources. Although both offices are within the Department, there is little to no communication or coordination between the OST and the Office of Trust Services.

NEED FOR LEGISLATION

The Federal government has mismanaged Indian trust assets continually over the last 40 years. This bill, S. 383, as amended, would streamline the Federal government’s role in the management of Indian trust assets to allow for Indian tribes to have greater involvement. Indian tribes would become more self-determining in the handling of their trust assets and continue to strengthen tribal sovereignty. The OST was not meant to be a permanent office. Directing the Secretary to submit a report to Congress that includes a transition plan will inform Congress to decide whether the functions of the OST should be transitioned to other agencies or bureaus within the Department, and will reduce costs, redundancy, and bureaucracy once the OST is reformed.

LEGISLATIVE HISTORY

114th Congress

S. 383 was introduced on February 5, 2015, by Senator Mike Crapo (R-ID), along with Senator James Risch (R-ID) as an original cosponsor. Senator Patty Murray (D-WA) was added as a cosponsor on January 20, 2016. The bill was referred to the Senate

¹² *Id.*

¹³ See, *The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about its Future Remain*, Government Accountability Office, GAO-07-104 (Dec. 2006).

¹⁴ *Id.*

¹⁵ See, *U.S. Department of the Interior, Bureau of Indian Affairs, Who We Are*, available at <http://bia.gov/WhoWeAre/BIA/OTS>.

¹⁶ The six divisions are: Real Estate Services, Land Titles and Records, Probate, Natural Resources, Forestry and Wildland Fire Management, and Water and Power.

¹⁷ See, e.g., House Committee on Natural Resources, Subcommittee on Indian, Insular, and Alaska Native Affairs, *Legislative Hearing on H.R. 329, H.R. 521, H.R. 812*, 114th Cong. (2015).

Committee on Indian Affairs (Committee). The Committee held an oversight hearing, “A Path Forward: Trust Modernization and Reform for Indian Lands,” where the substance of S. 383 was discussed. On July 29, 2015, the Committee met at a business meeting to consider the bill. One amendment was offered and adopted, and the bill, as amended, was ordered to be favorably reported to the Senate by voice vote.

The House companion bill, H.R. 812, the *Indian Trust Asset Reform Act* was introduced by Representative Michael K. Simpson (R-ID) on February 9, 2015. The original cosponsors are Representatives Tom Cole (R-OK) and Denny Heck (D-WA). Representatives Suzan K. DelBene (D-WA), Paul A. Gosar (R-AZ), Walter B. Jones, Jr. (R-NC), Derek Kilmer (D-WA), Raul R. Labrador (R-ID), Cathy McMorris Rodgers (R-WA), Mark Pocan (D-WI), and David G. Reichert (R-WA) were added as cosponsors. The bill was referred to the House Subcommittee on Indian, Insular and Alaska Native Affairs (Subcommittee). On April 14, 2015, the Subcommittee held a hearing on the bill. The House Committee on Natural Resources met at a business meeting to consider H.R. 812 on February 3, 2016. One amendment in the nature of a substitute was offered and adopted, and the bill, as amended, was ordered to be favorably reported to the House by unanimous consent.

Previous Congresses

Since the 107th Congress, there have been numerous bills concerning Indian trust asset reform and management introduced in the Senate and the House of Representatives beginning with S. 2212, the *Indian Trust Asset and Trust Fund Management and Reform Act of 2002*. S. 2212 was introduced by Senator John McCain (R-AZ), along with Senators Thomas S. Daschle (D-SD) and Tim Johnson (D-SD) as cosponsors. The bill was referred to the Committee where a hearing was held on the bill. No further action was taken on S. 2212.

In the 108th Congress, Senator John McCain (R-AZ), along with Senators Thomas A. Daschle (D-SD) and Tim Johnson (D-SD) introduced S. 175, the *Indian Trust Asset and Trust Fund Management and Reform Act of 2003*. The bill was referred to the Committee but no further action took place. During the same Congress, Senator John McCain (R-AZ), along with Senators Thomas A. Daschle (D-SD), Daniel K. Inouye (D-HI), and Tim Johnson (D-SD), introduced S. 1459, the *American Indian Trust Fund Management Reform Act Amendments Act of 2003*. The bill was referred to the Committee but no further action took place. The House companion bill was H.R. 2981, the *American Indian Trust Fund Management Reform Act Amendments Act of 2003*, introduced by Representative Mark Udall (D-CO) and original cosponsor Representative Nick J. Rahall, II (D-WV). H.R. 2981 was referred to the House Committee on Natural Resources where no further action was taken.

The *Indian Trust Reform Act of 2005*, S. 1439, was introduced by Senator John McCain (R-AZ) with Senator Byron L. Dorgan (D-ND) as an original cosponsor in the 109th Congress. The bill was referred to the Committee on Indian Affairs where three hearings were held on the bill. No further action was taken on S. 1439. The House companion bill was H.R. 4322, introduced by Representative

Richard W. Pombo (R-CA), with Representative Nick J. Rahall, II (D-WV) as an original cosponsor. The bill was referred to the House Committee on Resources where no further action was taken on the bill.

In the 111th Congress, H.R. 4783, the Claims Resolution Act of 2010, was enacted and became Public Law 111-291. One of the purposes of H.R. 4783 was to settle the 14 year class action lawsuit, *Elouise Cobell et al. v. Ken Salazar et al.*,¹⁸ by resolving claims that the Federal government violated its trust duties to individual Indian trust beneficiaries. “The IIM [(Individual Indian Money)] accounts primarily contain money collected by the [F]ederal government from farming and grazing leases, timber sales, mining, oil and gas production, and other activities on trust land, as well as certain per capita distributions. The funds in IIM accounts are held in trust by the [F]ederal government for the benefit of individual Indians.”¹⁹

During the 112th Congress, Senator Mike Crapo (R-ID), along with Senator James E. Risch (R-ID), introduced S. 3679, the *Indian Trust Asset Reform Act*. The bill was referred to the Committee where no further action was taken. The House companion bill was H.R. 6617, the *Indian Trust Asset Reform Act*, introduced by Representative Michael K. Simpson (R-ID). H.R. 6617 was referred to the House Subcommittee on Indian and Alaska Native Affairs where no further action was taken. These bills, and subsequent related legislation, were based on two titles of S. 1439/H.R. 4322 as introduced in the 109th Congress: the Indian Trust Asset Demonstration Project and the restructuring of the Office of the Special Trustee for American Indians. Both are incorporated in S. 383 (114th).

Senators Mike Crapo (R-ID) and James E. Risch (R-ID) introduced S. 165, the *Indian Trust Asset Reform Act*, in the 113th Congress. The bill was referred to the Committee and the Committee held an oversight hearing, “Improving the Trust System: Continuing Oversight of the Department of the Interior’s Buy-Back Program,” where testimony was heard on S. 165. The Committee took no further action on S. 165. The House companion bill, H.R. 409, the *Indian Trust Asset Reform Act* was introduced by Representative Michael K. Simpson (R-ID), with Representatives Tom Cole (R-OK) and Raul R. Labrador (R-ID) as cosponsors. H.R. 409 was referred to the House Subcommittee on Indian and Alaska Native Affairs where a hearing was held on the bill but no further action was taken.

SUMMARY OF SUBSTITUTE AMENDMENT

At a Committee business meeting held on July 8, 2015, Senator Crapo (R-ID) offered an amendment in the nature of a substitute. The amendment was agreed to.

In addition to technical corrections, the substitute amendment clarifies and amends the Findings and Definitions sections, and the Titles of the Act. Section 204, Indian Trust Asset Management Plan (Plan), is amended to expand what functions or activities per-

¹⁸*Elouise Cobell, et al. v. Ken Lee Salazar, et al.*, 573 F.3d 808 (2009); 387 U.S. App. D.C. 339 (2009).

¹⁹FAQs, Indian Trust Settlement (2015), available at <http://www.indiantrust.com/faq>.

formed by an Indian tribe can be included in the contents of the Plan.

The substitute amendment removes the Standards and Trust Responsibility provisions from the Applicable Laws in section 204(c) and incorporates the removed subsection into sections 205 and 206.

Section 204(e), Approval of Certain Agreements by Indian Tribe, shifted to its own section in the substitute amendment, section 205, Forest Land Management and Surface Leasing Activities. Trust Responsibility in section 205(g) was amended to state the United States is not liable for losses sustained by an Indian tribe as a result of executing a forest land management activity, or by any party to a lease, both pursuant to tribal regulations under section 205(b).

In section 206, Effect of Title, an additional subsection (c) is added to further clarify the future liability of the Federal government for losses resulting from an Indian tribe directing that a transaction or activity be terminated, or managed by a lesser standard than the Federal standards in a Plan.

S. 383, as amended, authorizes the contracting and compacting of trust asset management for *Indian tribes under the Indian Self-Determination and Education Assistance Act* (ISDEAA) (25 U.S.C. 450 et seq.). To further clarify, the ISDEAA or its related regulations shall not be affected by this Act.

In section 206(e), Separate Approval, clarifies that an Indian tribe may submit tribal regulations that provide for the HEARTH Act²⁰ treatment of forest management activities for review and approval without needing to submit in a Plan.

As amended, a new Section 304(c) is added to clarify that the transition plan and report required by Section 304 does not, by itself, cause the termination of OST. Additional revisions are made to sections 301, 305, and 306 for clarity and consistency.

SECTION-BY-SECTION ANALYSIS OF S. 383, AS ORDERED REPORTED

Section 1—Short title; Table of contents

This section states that the Act may be cited as the “Indian Trust Asset Reform Act.”

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

Section 101. Findings

This section sets forth the findings of Congress that—

There exists a unique relationship between the Federal government and the governments of Indian tribes;

There exists a unique Federal responsibility to Indians;

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;

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,

²⁰*Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012* (HEARTH ACT), Pub. L. No. 112–151 (2012).

which provided legal considerations for permanent, ongoing performance of Federal trust duties; and

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.

Section 102. Reaffirmation of policy

This section reaffirms the fiduciary responsibilities of the United States to Indian tribes, including a duty to promote tribal self-determination regarding governmental authority and economic development.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT

Section 201. Short title

This section states that this title may be cited as the “Indian Trust Asset Management Demonstration Project Act of 2015.”

Section 202. Definitions

This section sets forth definitions—

“Indian tribe” has the meaning given the term in the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b);

“Project” means the Indian trust asset demonstration project established under section 203(a); and

“Secretary” means the Secretary of the Interior.

Section 203. Establishment of demonstration project; Selection of participating Indian tribes

Section 203(a) states that the Secretary shall establish and carry out the Indian trust asset management demonstration project, in accordance with this title.

Section 203(b) provides that an Indian tribe shall be eligible to participate in the Project if the Indian tribe submits to the Secretary an application under subsection (c); and if the Secretary approves the application of the Indian tribe. This section also provides notice requirements for the Secretary to provide each approved Indian tribe to participate in the Project.

Section 203(c) provides the application content requirements for the Secretary to consider an Indian tribe’s application to be eligible to participate in the Project.

Section 203(d) provides that the Project shall be in effect for 10 years after the date of enactment of this Act; and may be extended at the discretion of the Secretary.

Section 204. Indian trust asset management plan

Section 204(a) provides the proposed Indian trust asset management plan requirements for an Indian tribe to follow once they receive a notice from the Secretary under section 203(b)(2). This subsection also provides the content requirements and provisions that must be included in the proposed Indian trust asset management plan. On receipt of a written request from the 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.

Section 204(b) sets forth that 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. This subsection also describes the requirements for disapproval of a proposed plan submitted by an Indian tribe. The Secretary shall provide written notice to an Indian tribe if their proposed plan is disapproved. The Indian tribe may resubmit an amended plan not later than 90 days after the date on which the Indian tribe receives the written notice of disapproval. If the Secretary fails to approve or disapprove a proposed plan in accordance with paragraph (1), the plan shall be considered to be approved. An Indian tribe may seek judicial review of a determination of the Secretary, in accordance with the Administrative Procedure Act, if the Secretary disapproves the proposed plan of an Indian tribe; and the Indian tribe has exhausted all administrative remedies.

Section 204(c) states that 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 trust assets, or the management of the trust assets, identified in the plan.

Section 204(d) provides an Indian tribe the requirements to follow if they want to terminate an approved Indian trust asset management plan. This subsection also sets forth the effective date for when the terminated plan takes effect.

Section 205. Forest land management and surface leasing activities

Section 205(a) sets forth definitions—

“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)).

“Interested Party” means an Indian or non-Indian individual, entity, or government the interests of which could be adversely affected by a tribal trust leasing decision made by an applicable Indian tribe.

“Surface Leasing Transaction” means a residential, business, agricultural, or wind or solar resource lease of land the title to which is held—in trust by the United States for the benefit of an Indian tribe; or in fee by an Indian tribe, subject to restrictions against alienation under Federal law.

Section 205(b) states that 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 certain conditions are met.

Section 205(c) provides for which types of transactions an Indian tribe can authorize to carry out. This subsection also allows for an Indian tribe to be able to select which transactions and activities are authorized to be carried out by the Indian tribe.

Section 205(d) allows for an Indian tribe to request technical assistance from the Secretary for development of a regulatory environmental review process required under subsection (b)(2)(B)(ii) of this section. This subsection also provides technical assistance by the Secretary to an Indian tribe 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.).

Section 205(e) states that an Indian tribe shall have the authority to rely on the Federal environmental review process, rather than any Tribal environmental review process, if an Indian tribe carries out a project or activity funded by a Federal agency.

Section 205(f) provides for documentation requirements Indian tribes must follow if they execute a surface leasing transaction or forest land management activity.

Section 205(g) states that the United States shall not be liable for losses sustained by an Indian tribe as a result of the execution of any forest land management activity pursuant to tribal regulations under subsection (b) of this section, or by any party to a lease executed pursuant to tribal regulations under subsection (b) of this section. This subsection allows for the Secretary to fulfill the trust obligation of the United States to Indian tribes by enforcing the provisions of, or canceling, any lease executed by the Indian tribe under this section.

Section 205(h) provides an interested party, after exhausting any available tribal remedies, the option to submit a petition to the Secretary to determine whether an Indian tribe is complying with their tribal regulations. If the Secretary determines a violation has occurred, the Secretary may take any action determined to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming Federal responsibility for the approval of leases of tribal trust land. Documentation of the violation of tribal regulations will be necessary and the Secretary shall issue a written determination of the violation; provide written notice to the violating Indian tribe; and 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 the Indian tribe a hearing on the record and a reasonable opportunity to cure the alleged violation.

Section 206. Effect of title

Section 206(a) states that subject to section 205 and this section, nothing in this title or an approved Indian trust asset management plan 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.

Section 206(b) sets forth 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.

Section 206(c) states that 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).

Section 206(d) provides that 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, except as provided in subsection (e) and sections 204 and 205. This subsection also provides that nothing in this title limits or otherwise affects the authority of an Indian tribe, including one 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).

Section 206(e) provides that if an Indian tribe does not submit or intend to submit an Indian trust asset management plan, an Indian tribe may submit tribal regulations governing forest land management activities to the Secretary for review and approval.

Section 206(f) states that 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

Section 301. Purpose

Section 301 provides the purpose of Title III is to ensure a more 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.

Section 302. Definitions

Section 302 sets forth definitions—

“BIA” means the Bureau of Indian Affairs.

“Department” means the Department of the Interior.

“Secretary” means the Secretary of the Interior.

“Under Secretary” means the individual appointed to the position of Under Secretary for Indian Affairs established under section 303(a).

Section 303. Under Secretary for Indian Affairs

Section 303(a) provides that the Secretary may establish in the Department the position of Under Secretary for Indian Affairs, who shall report directly to the Secretary.

Section 303(b) sets forth that the President shall appoint the Under Secretary with the advice and consent of the Senate. This subsection also provides when this Act is enacted, the Secretary may assume the position of Under Secretary without appointment if the Secretary was appointed by the President, with the advice and consent of the Senate, and no later than 180 days after this Act is enacted, the Secretary approves the assumption of the position of Under Secretary.

Section 303(c) provides the duties of the Under Secretary, as directed by the Secretary, shall be to coordinate with the Special Trustee for American Indians to ensure an orderly transition of the

functions of the Special Trustee to the appropriate agencies, offices, or bureaus within 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.

Section 303(d) provides that the Under Secretary may appoint and fix the compensation for their personnel determined to be necessary in carrying out the functions transferred within this section. This subsection provides other personnel requirements of the officers or employees appointed by the Under Secretary.

Section 304. Office of Special Trustee for American Indians

Section 304(a) provides that no later than one year after enactment of this Act the Secretary shall prepare and, after consultation with Indian tribes and appropriate tribal organizations, submit a report to Congress.

Section 304(b) states the Secretary, at the request of an Indian tribe or consortia of Indian tribes, shall include fiduciary trust offices in a contract, compact, or other agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

Section 304(c) states that nothing in this section or the report terminates the Office of the Special Trustee; or affects the application of sections 302 and 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042, 4043).

Section 305. Appraisals and valuations

Section 305(a) provides that no later than 18 months after the 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.

Section 305(b) provides that the Secretary shall establish and publish in the Federal Register the minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property, no later than one year after enactment of this Act.

Section 305(c) states that when an Indian tribe or Indian beneficiary submits to the Secretary an appraisal or valuation that satisfies the minimum qualifications described in subsection (b), and the submission acknowledges the intent of the Indian tribe or Indian beneficiary to have the appraisal or valuation considered under this subsection, the appraisal or valuation shall not require any additional review or Secretarial approval; and shall be considered final for purposes of effectuating the transaction for which the appraisal or valuation is required.

Section 306. Cost savings

Section 306(a) provides that for any program, function, service, or activity of the Office of Special Trustee that will not be operated or carried out after the date of enactment of this Act as a result of a transfer of functions and personnel, the Secretary shall identify the amounts the Secretary would have expended to carry out the program, function, service, and activity; and provide to the Tribal/Interior Budget Council a list that describes the programs,

functions, services, and activities identified in paragraph (1); and the amounts associated with each program, function, service, and activity.

Section 306(b) states that 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 budget or funding issues may provide recommendations to the Secretary, the Office of Management and Budget, and four Committees in the House of Representatives and Senate.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated January 29, 2016, was prepared for S. 383:

JANUARY 29, 2016.

Hon. JOHN BARRASSO,
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. 383, the Indian Trust Asset Reform Act.

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

Sincerely,

KEITH HALL.

Enclosure.

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. S. 383 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 S. 383 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 S. 383 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 383 would not increase net direct spending or on-budg-

et deficits in any of the four consecutive 10-year periods beginning in 2026.

S. 383 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.

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

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 383, as amended.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 383, as amended, will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 383, as amended, will not make any changes in existing law.

