

106TH CONGRESS
1ST SESSION

S. 739

To amend the American Indian Trust Fund Management Reform Act to direct the Secretary of the Interior to contract with qualified financial institutions for the investment of certain trust funds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. MURKOWSKI (for himself and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the American Indian Trust Fund Management Reform Act to direct the Secretary of the Interior to contract with qualified financial institutions for the investment of certain trust funds, 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 That the American Indian Trust Fund Management Re-
4 form Act (108 Stat. 4239, 25 U.S.C. 4041), as amended,
5 is further amended by adding a new Title V as follows:

1 **“TITLE V—INVESTMENT OF**
2 **FUNDS—TRIBAL OPTIONS**

3 **“SEC. 501. TRIBAL OPTIONS.**

4 “(a) Within one year from the date of enactment of
5 this title, the Secretary, with the advice and assistance of
6 the Comptroller of the Currency, shall contract with quali-
7 fied financial institutions that are regulated by a federal
8 bank regulatory agency for the investment of all funds
9 presently managed in trust status for Indian tribes and
10 individual Indians by the United States, unless:

11 “(1) the tribe whose money is held in trust re-
12 quests in writing that the funds continue to be in-
13 vested by the Department of the Interior, or

14 “(2) contracting of the particular fund would be
15 inconsistent with the United States’ trust responsi-
16 bility or would contravene any provision of law spe-
17 cifically related to that particular fund.

18 “(b) The Secretary shall afford a tribe an opportunity
19 to designate in writing a qualified financial institution to
20 manage its funds. Unless a tribe designates a specific in-
21 stitution, the Secretary shall comply with the provisions
22 of the Buy-Indian Act (25 U.S.C. 47) in the selection of
23 a qualified financial institution pursuant to this title.

1 “(c) Any contract entered into pursuant to this sec-
2 tion shall, at a minimum, include provisions acceptable to
3 the Secretary that will:

4 “(1) direct that all funds are invested in a man-
5 ner consistent with the requirements of the prudent
6 investor rule applicable to the financial institution,
7 the fiduciary responsibility of the institution, and the
8 trust responsibility of the Secretary;

9 “(2) within the requirements of paragraph (1),
10 permit tribes to direct the financial institution re-
11 garding the kinds of instruments for investment;

12 “(3) subject to the provisions of paragraphs (1)
13 and (2), encourage the investment of funds in ways
14 that directly benefit the affected tribe and Indian
15 community;

16 “(4) require that the financial institution be lia-
17 ble for any financial losses incurred by the trust
18 beneficiary as a result of its failure to comply with
19 the terms of its contract, the investment instructions
20 provided by the tribe, its general fiduciary obliga-
21 tion, or the prudent investor rule;

22 “(5) insure that the financial institution carry
23 sufficient insurance or other surety satisfactory to
24 the Secretary to compensate the trust beneficiary in

1 connection with any liability and the Secretary in
2 the event of a subrogation under subsection (d);

3 “(6) allow the financial institution to recover its
4 reasonable costs incurred in investing trust funds in
5 investment instruments that are 100% guaranteed
6 by the United States and be compensated for invest-
7 ing trust funds in other investment instruments by
8 charging a commercially reasonable fee, approved by
9 the Secretary, that shall be deducted from the cor-
10 pus of the trust funds in the same manner as for
11 private investors.

12 “(d) No provision of this title, nor any action taken
13 pursuant thereto, shall in any way diminish the trust re-
14 sponsibility of the United States for any funds presently
15 managed in the trust status or to the tribes or individual
16 Indians who are the beneficial owners of such funds. The
17 Secretary shall remain responsible for any losses incurred
18 by a trust beneficiary for which a financial institution is
19 liable under paragraph (c)(4) but shall be entitled to sub-
20 rogation of any claim to the extent the beneficiary receives
21 compensation from the United States.

22 “(e) Any amounts transferred shall not result in the
23 closure of the account in question and the Secretary shall
24 be obligated to continue efforts to determine whether the
25 account balance is accurate, including efforts to identify

- 1 and secure documentation supporting such accounting
- 2 balance.”.

