

108TH CONGRESS
1ST SESSION

H. R. 2981

To provide for reform of management of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2003

Mr. UDALL of Colorado (for himself and Mr. RAHALL) introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for reform of management of Indian trust funds and assets under the jurisdiction of the Department of the Interior, 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 Fund Management Reform Act Amendments Act of
6 2003”.

1 **SEC. 2. DEFINITIONS.**

2 Section 2 of the American Indian Trust Fund Man-
3 agement Reform Act of 1994 (25 U.S.C. 4001) is amend-
4 ed—

5 (1) by redesignating paragraphs (1), (2), (3),
6 (4), (5), and (6) as paragraphs (7), (4), (6), (5),
7 (2), and (3), respectively, and moving those para-
8 graphs so as to appear in numerical order; and

9 (2) by inserting before paragraph (2) (as redes-
10 ignated by paragraph (1)) the following:

11 “(1) AUDIT.—The term ‘audit’ means an audit
12 using accounting procedures that conform to gen-
13 erally accepted accounting principles and auditing
14 procedures that conform to chapter 75 of title 31,
15 United States Code (commonly known as the ‘Single
16 Audit Act of 1984’); and

17 (3) by adding at the end the following:

18 “(8) TRIBAL GOVERNMENT.—The term ‘tribal
19 government’ means the governing body of an Indian
20 tribe.

21 “(9) TRUST ASSET.—The term ‘trust asset’
22 means any tangible property (such as land, a min-
23 eral, coal, oil or gas, a forest resource, an agricul-
24 tural resource, water, a water source, fish, or wild-
25 life) held by the Secretary for the benefit of an In-

1 dian tribe or an individual member of an Indian
2 tribe in accordance with Federal law.

3 “(10) TRUST FUNDS.—The term ‘trust funds’
4 means—

5 “(A) all monies or proceeds derived from
6 trust assets; and

7 “(B) all funds held by the Secretary for
8 the benefit of an Indian tribe or an individual
9 member of an Indian tribe in accordance with
10 Federal law.

11 “(11) TRUSTEE.—The term ‘trustee’ means the
12 Secretary or any other person that is authorized to
13 act as a trustee for trust assets and trust funds.”.

14 **SEC. 3. RESPONSIBILITIES OF SECRETARY.**

15 Section 102 of the American Indian Trust Fund
16 Management Reform Act of 1994 (25 U.S.C. 4011) is
17 amended to read as follows:

18 **“SEC. 102. RESPONSIBILITIES OF SECRETARY.**

19 “(a) ACCOUNTING FOR DAILY AND ANNUAL BAL-
20 ANCES OF INDIAN TRUST FUNDS.—

21 “(1) IN GENERAL.—The Secretary shall ac-
22 count for the daily and annual balances of all trust
23 funds.

24 “(2) PERIODIC STATEMENT OF PERFORM-
25 ANCE.—

1 “(A) IN GENERAL.—Not later than 20
2 business days after the close of the second cal-
3 endar quarter after the date of enactment of
4 this paragraph, and not later than 20 business
5 days after the close of each calendar quarter
6 thereafter, the Secretary shall provide to each
7 Indian tribe and individual Indian for whom the
8 Secretary manages trust funds a statement of
9 performance for the trust funds.

10 “(B) REQUIREMENTS.—Each statement
11 under subparagraph (A) shall identify, with re-
12 spect to the period covered by the statement—
13 “(i) the source, type, and status of the
14 funds;
15 “(ii) the beginning balance of the
16 funds;
17 “(iii) the gains and losses of the
18 funds;
19 “(iv) receipts and disbursements of
20 the funds; and
21 “(v) the ending balance of the funds.

22 “(3) AUDITS.—With respect to each account
23 containing trust funds, the Secretary shall—

1 “(A) for accounts with less than \$1,000,
2 group accounts separately to allow for statis-
3 tical sampling audit procedures;

4 “(B) for accounts containing more than
5 \$1,000 at any time during a given fiscal year—

6 “(i) conduct, for each fiscal year, an
7 audit of all trust funds; and

8 “(ii) include, in the first statement of
9 performance after completion of the audit,
10 a letter describing the results of the audit.

11 “(b) ADDITIONAL RESPONSIBILITIES.—The respon-
12 sibilities of the Secretary in carrying out the trust respon-
13 sibility of the United States include, but are not limited
14 to—

15 “(1) providing for adequate systems for ac-
16 counting for and reporting trust fund balances;

17 “(2) providing for adequate controls over re-
18 ceipts and disbursements;

19 “(3) providing for periodic, timely reconcili-
20 ations of financial records to ensure the accuracy of
21 account information;

22 “(4) determining accurate cash balances;

23 “(5) preparing and supplying to account hold-
24 ers periodic account statements;

1 “(6) establishing and publishing in the Federal
2 Register consistent policies and procedures for trust
3 fund management and accounting;

4 “(7) providing adequate staffing, supervision,
5 and training for trust fund management and ac-
6 counting; and

7 “(8) managing natural resources located within
8 the boundaries of Indian reservations and trust
9 land.”.

10 **SEC. 4. AFFIRMATION OF STANDARDS.**

11 Title I of the American Indian Trust Fund Manage-
12 ment Reform Act of 1994 (25 U.S.C. 4011 et seq.) is
13 amended by adding at the end the following:

14 **“SEC. 105. AFFIRMATION OF STANDARDS.**

15 “Congress affirms that the proper discharge of trust
16 responsibility of the United States requires, without limi-
17 tation, that the trustee, using the highest degree of care,
18 skill, and loyalty—

19 “(1) protect and preserve Indian trust assets
20 from loss, damage, unlawful alienation, waste, and
21 depletion;

22 “(2) ensure that any management of Indian
23 trust assets required to be carried out by the Sec-
24 retary—

1 “(A) promotes the interest of the beneficial
2 owner; and

3 “(B) supports, to the maximum extent
4 practicable in accordance with the trust respon-
5 sibility of the Secretary, the beneficial owner’s
6 intended use of the assets;

7 “(3)(A) enforce the terms of all leases or other
8 agreements that provide for the use of trust assets;
9 and

10 “(B) take appropriate steps to remedy trespass
11 on trust or restricted land;

12 “(4) promote tribal control and self-determina-
13 tion over tribal trust land and resources without di-
14 minishing the trust responsibility of the Secretary;

15 “(5) select and oversee persons that manage In-
16 dian trust assets;

17 “(6) confirm that Indian tribes that manage In-
18 dian trust assets in accordance with contracts and
19 compacts authorized by the Indian Self-Determina-
20 tion and Education Assistance Act (25 U.S.C. 450
21 et seq.) protect and prudently manage those Indian
22 trust assets;

23 “(7) provide oversight and review of the per-
24 formance of the trust responsibility of the Secretary,
25 including Indian trust asset and investment manage-

1 ment programs, operational systems, and informa-
2 tion systems;

3 “(8) account for and identify, collect, deposit,
4 invest, and distribute, in a timely manner, income
5 due or held on behalf of tribal and individual Indian
6 account holders;

7 “(9) maintain a verifiable system of records
8 that, at a minimum, is capable of identifying, with
9 respect to a trust asset—

10 “(A) the location of the trust asset;

11 “(B) the beneficial owners of the trust
12 asset;

13 “(C) any legal encumbrances (such as
14 leases or permits) applicable to the trust asset;

15 “(D) the user of the trust asset;

16 “(E) any rent or other payments made;

17 “(F) the value of trust or restricted land
18 and resources associated with the trust asset;

19 “(G) dates of—

20 “(i) collections;

21 “(ii) deposits;

22 “(iii) transfers;

23 “(iv) disbursements;

1 “(v) imposition of third-party obliga-
2 tions (such as court-ordered child support
3 or judgments);
4 “(vi) statements of earnings;
5 “(vii) investment instruments; and
6 “(viii) closure of all trust fund ac-
7 counts relating to the trust fund asset;
8 “(H) documents pertaining to actions
9 taken to prevent or compensate for any dimin-
10 ishment of the Indian trust asset; and
11 “(I) documents that evidence the actions of
12 the Secretary regarding the management and
13 disposition of the Indian trust asset;
14 “(10) establish and maintain a system of
15 records that—
16 “(A) permits beneficial owners to obtain
17 information regarding Indian trust assets in a
18 timely manner; and
19 “(B) protects the privacy of that informa-
20 tion;
21 “(11) invest tribal and individual Indian trust
22 funds to ensure that the trust account remains rea-
23 sonably productive for the beneficial owner con-
24 sistent with market conditions existing at the time
25 at which investment is made;

1 “(12) communicate with beneficial owners re-
2 garding the management and administration of In-
3 dian trust assets; and

4 “(13) protect treaty-based fishing, hunting,
5 gathering, and similar rights-of-access and resource
6 use on traditional tribal land.”.

7 **SEC. 5. INDIAN PARTICIPATION IN TRUST FUND ACTIVI-
8 TIES.**

9 Section 202 of the American Indian Trust Fund
10 Management Reform Act of 1994 (25 U.S.C. 4022) is
11 amended by striking subsection (c) and inserting the fol-
12 lowing:

13 “(c) MANAGEMENT THROUGH SELF-DETERMINA-
14 TION AUTHORITY.—

15 “(1) IN GENERAL.—An Indian tribe may use
16 authority granted to the Indian tribe under the In-
17 dian Self-Determination and Education Assistance
18 Act (25 U.S.C. 450 et seq.) to manage Indian trust
19 funds and trust assets without terminating—

20 “(A) the trust responsibility of the Sec-
21 retary; or

22 “(B) the trust status of the funds and as-
23 sets.

24 “(2) NO EFFECT ON TRUST RESPONSIBILITY.—
25 Nothing in this subsection diminishes or otherwise

1 impairs the trust responsibility of the United States
2 with respect to the Indian people.”.

3 **SEC. 6. DEPUTY SECRETARY FOR INDIAN AFFAIRS.**

4 (a) IN GENERAL.—Section 302 of the American In-
5 dian Trust Fund Management Reform Act of 1994 (25
6 U.S.C. 4042) is amended to read as follows:

7 **“SEC. 302. DEPUTY SECRETARY FOR INDIAN AFFAIRS.**

8 “(a) ESTABLISHMENT.—

9 “(1) IN GENERAL.—There is established within
10 the Department the position of Deputy Secretary for
11 Indian Affairs (referred to in this section as the
12 ‘Deputy Secretary’), who shall report directly to the
13 Secretary.

14 “(2) APPOINTMENT.—The Deputy Secretary
15 shall be appointed by the President, by and with the
16 advice and consent of the Senate.

17 “(b) DUTIES.—

18 “(1) IN GENERAL.—The Deputy Secretary
19 shall—

20 “(A) oversee the Bureau of Indian Affairs;
21 “(B) be responsible for carrying out all du-
22 ties assigned to the Assistant Secretary for In-
23 dian Affairs as of the day before the date of en-
24 actment of the American Indian Trust Fund

1 Management Reform Act Amendments Act of
2 2003;

3 “(C) oversee all trust fund and trust asset
4 matters of the Department, including—

5 “(i) administration and management
6 of the Reform Office;

7 “(ii) financial and human resource
8 matters of the Reform Office; and

9 “(iii) all duties relating to trust fund
10 and trust asset matters;

11 “(D) engage in appropriate government-to-
12 government relations and consultations with In-
13 dian tribes and individual trust asset and trust
14 fund account holders on matters involving trust
15 asset and trust fund management and reform
16 within the Department; and

17 “(E) carry out such other duties relating
18 to Indian affairs as the Secretary may assign.

19 “(2) TRANSFER OF DUTIES OF ASSISTANT SEC-
20 RETARY.—As of the date of enactment of the Amer-
21 ican Indian Trust Fund Management Reform Act
22 Amendments Act of 2003, all duties assigned to the
23 Assistant Secretary for Indian Affairs shall be trans-
24 ferred to, and become the responsibility of, the Dep-
25 uty Secretary.

1 “(3) SUCCESSION.—Any official who is serving
2 as Assistant Secretary for Indian Affairs on the date
3 of enactment of the American Indian Trust Fund
4 Management Reform Act Amendments Act of 2003
5 and who was appointed by the President, by and
6 with the advice and consent of the Senate, shall not
7 be required to be reappointed under subsection (a)
8 to the successor position authorized under subsection
9 (a) if the Secretary approves the occupation by the
10 official of the position by the date that is 180 days
11 after the date of enactment of the American Indian
12 Trust Fund Management Reform Act Amendments
13 Act of 2003 (or such later date determined by the
14 Secretary if litigation delays rapid succession).

15 “(c) STAFF.—In carrying out this section, the Dep-
16 uty Secretary may hire such staff having expertise in trust
17 asset and trust fund management, financial organization
18 and management, and Federal Indian law and policy as
19 the Deputy Secretary determines is necessary to carry out
20 this title.

21 “(d) EFFECT ON DUTIES OF OTHER OFFICIALS.—

22 “(1) IN GENERAL.—Except as provided in sub-
23 section (c) and paragraph (2), nothing in this sec-
24 tion diminishes any responsibility or duty of the
25 Deputy Secretary of the Interior appointed under

1 the Act of May 9, 1935 (43 U.S.C. 1452), or any
2 other Federal official, relating to any duty estab-
3 lished under this Act or any other provision of law.

4 “(2) TRUST ASSET AND TRUST FUND MANAGE-
5 MENT AND REFORM.—Notwithstanding any other
6 provision of law, the Deputy Secretary shall have
7 overall management and oversight authority on mat-
8 ters of the Department relating to trust asset and
9 trust fund management and reform (including mat-
10 ters that, as of the day before the date of enactment
11 of the Indian Trust Asset and Trust Fund Manage-
12 ment and Reform Act of 2003, were carried out by
13 the Commissioner of Indian Affairs).

14 “(e) OFFICE OF TRUST REFORM IMPLEMENTATION
15 AND OVERSIGHT.—

16 “(1) ESTABLISHMENT.—There is established
17 within the Office of the Secretary the Office of
18 Trust Reform Implementation and Oversight.

19 “(2) REFORM OFFICE HEAD.—The Reform Of-
20 fice shall be headed by the Deputy Secretary.

21 “(3) DUTIES.—The Reform Office shall—

22 “(A) supervise and direct the day-to-day
23 activities of the Deputy Secretary, the Commis-
24 sioner of Reclamation, the Director of the Bu-
25 reau of Land Management, and the Director of

1 the Minerals Management Service, to the extent
2 that those officials administer or manage any
3 Indian trust assets or funds;

4 “(B) administer, in accordance with title
5 II, all trust properties, funds, and other assets
6 held by the United States for the benefit of In-
7 dian tribes and individual members of Indian
8 tribes;

9 “(C) require the development and mainte-
10 nance of an accurate inventory of all trust
11 funds and trust assets;

12 “(D) ensure the prompt posting of revenue
13 derived from a trust fund or trust asset for the
14 benefit of each Indian tribe (or individual mem-
15 ber of each Indian tribe) that owns a beneficial
16 interest in the trust fund or trust asset;

17 “(E) ensure that all trust fund accounts
18 are audited at least annually, and more fre-
19 quently as determined to be necessary by the
20 Deputy Secretary;

21 “(F) ensure that the Deputy Secretary, the
22 Director of the Bureau of Land Management,
23 the Commissioner of Reclamation, and the Di-
24 rector of the Minerals Management Service pro-
25 vide to the Secretary current and accurate in-

1 formation relating to the administration and
2 management of trust funds and trust assets;
3 and

4 “(G) provide for regular consultation with
5 trust fund account holders on the administra-
6 tion of trust funds and trust assets to ensure,
7 to the maximum extent practicable in accord-
8 ance with applicable law and a Plan approved
9 under section 202, the greatest return on those
10 funds and assets for the trust fund account
11 holders consistent with the beneficial owners in-
12 tended uses for the trust funds.

13 “(4) CONTRACTS AND COMPACTS.—The Reform
14 Office may carry out its duties directly or through
15 contracts and compacts under section 102 of the In-
16 dian Self-Determination Act (25 U.S.C. 450f) or
17 section 403 of the Indian Self Determination and
18 Education Assistance Act (25 U.S.C. 458cc) to pro-
19 vide for the management of trust assets and trust
20 funds by Indian tribes pursuant to a Trust Fund
21 and Trust Asset Management and Monitoring Plan
22 developed under section 202 of this Act.

23 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as are nec-
25 essary to carry out this section.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) IN GENERAL.—

3 (A) Section 5313 of title 5, United States
4 Code, is amended by inserting “Deputy Sec-
5 retary of the Interior for Indian Affairs” after
6 “Deputy Secretary of the Interior”.

7 (B) Section 5315 of title 5, United States
8 Code, is amended by striking “Assistant Secre-
9 taries of the Interior (6)” and inserting “As-
10 sistant Secretaries of the Interior (5)”.

11 (C) Title III of the American Indian Trust
12 Fund Management Reform Act of 1994 (25
13 U.S.C. 4041 et seq.) is amended by striking the
14 title heading and inserting the following:

15 **“TITLE III—REFORMS RELATING**
16 **TO TRUST RESPONSIBILITY”.**

17 (D) Section 301(1) of the American Indian
18 Trust Fund Management Reform Act of 1994
19 (25 U.S.C. 4041(1)) is amended by striking “by
20 establishing in the Department of the Interior
21 an Office of Special Trustee for American Indi-
22 ans” and inserting “by directing the Deputy
23 Secretary”.

1 (E) Section 303 of the American Indian
2 Trust Fund Management Reform Act of 1994
3 (25 U.S.C. 4043) is amended—

4 (i) by striking the section heading and
5 inserting the following:

6 "SEC. 303. ADDITIONAL AUTHORITIES AND FUNCTIONS OF
7 THE DEPUTY SECRETARY. ";

11 (iii) in subsection (e)—

12 (I) by striking the subsection
13 heading and inserting the following:

14 "(e) ACCESS OF DEPUTY SECRETARY.—"; and

15 (II) by striking "of his duties"
16 and inserting "of the duties of the
17 Deputy Secretary"; and

18 (iv) by striking “Special Trustee”
19 each place it appears and inserting “Dep-
20 uty Secretary”

21 (F) Sections 304 and 305 of the American
22 Indian Trust Fund Management Reform Act of
23 1994 (25 U.S.C. 4044, 4045) are amended by
24 striking “Special Trustee” each place it appears
25 and inserting “Deputy Secretary”.

(G) The first section of Public Law 92-22
(43 U.S.C. 1453a) is repealed.

15 SEC. 7. COMMISSION FOR REVIEW OF INDIAN TRUST FUND

16 MANAGEMENT RESPONSIBILITIES.

17 (a) ESTABLISHMENT.—There is established a com-
18 mission, to be known as the “Commission for Review of
19 Indian Trust Fund Management Responsibilities” (re-
20 ferred to in this section as the “Commission”), for the
21 purpose of assessing the fiduciary and management re-
22 sponsibilities of the Federal Government with respect to
23 Indian tribes and individual Indian beneficiaries.

24 (b) MEMBERSHIP.—

5 (B) 2 members shall be appointed by the
6 Majority Leader of the Senate;

7 (C) 2 members shall be appointed by the
8 Minority Leader of the Senate;

(D) 2 members shall be appointed by the
Speaker of the House of Representatives; and

11 (E) 2 members shall be appointed by the
12 Minority Leader of the House of Representa-
13 tives.

21 (B) shall include members who have expe-
22 rience in—

23 (i) trust management;

24 (ii) fiduciary investment management;

1 (iii) Federal Indian law and policy;

2 and

3 (iv) financial management.

11 (5) TERM; VACANCIES.—

12 (A) TERM.—A member shall be appointed
13 for the life of the Commission.

14 (B) VACANCIES.—A vacancy on the Com-
15 mission—

16 (i) shall not affect the powers of the
17 Commission; and

18 (ii) shall be filled in the same manner
19 as the original appointment was made.

20 (c) MEETINGS

25 (2) PROCEDURES.—The Commission shall—

1 (A) meet at the call of the Chairperson;

2 and

3 (B) establish procedures for conduct of
4 business of the Commission, including public
5 hearings.

9 (d) DUTIES.—The Commission shall—

10 (1) review and assess Federal laws and policies
11 relating to the management of Indian trust funds;

16 (A) historical accounting;

17 (B) settlement of disputed tribal and indi-
18 vidual accounts; and

19 (C) revisions of—

20 (j) management standards:

21 (ii) administrative management structure:
22

23 (iii) investment policies and account-
24 ing; and

25 (iv) reporting procedures; and

3 (e) REPORT.—Not later than 32 months after the
4 date on which the Commission holds the initial meeting
5 of the Commission, the Commission shall submit to Con-
6 gress, the Secretary of the Interior, and the Secretary of
7 the Treasury a report that includes the results of the as-
8 sessment conducted, and the recommendations made, by
9 the Commission under subsection (d).

10 (f) POWERS OF COMMISSION.—

16 (2) INFORMATION FROM FEDERAL AGENCIES.—

17 (A) IN GENERAL.—The Commission may
18 secure directly from a Federal agency such in-
19 formation as the Commission considers nec-
20 essary to carry out this section.

21 (B) PROVISION OF INFORMATION.—On re-
22 quest of the Chairperson of the Commission,
23 the head of the agency shall provide the infor-
24 mation to the Commission.

- 4 (A) the Department of the Interior;
- 5 (B) the Department of Treasury; and
- 6 (C) the Department of Justice.

14 (g) COMMISSION PERSONNEL MATTERS.—

15 (1) COMPENSATION OF MEMBERS.—

16 (A) NON-FEDERAL EMPLOYEES.—A mem-
17 ber of the Commission who is not an officer or
18 employee of the Federal Government shall be
19 compensated at a rate equal to the daily equiva-
20 lent of the annual rate of basic pay prescribed
21 for level IV of the Executive Schedule under
22 section 5315 of title 5, United States Code, for
23 each day (including travel time) during which
24 the member is engaged in the performance of
25 the duties of the Commission.

15 (3) STAFF.—

16 (A) IN GENERAL.—The Chairperson of the
17 Commission may, without regard to the civil
18 service laws (including regulations), appoint
19 and terminate an executive director and such
20 other additional personnel as are necessary to
21 enable the Commission to perform the duties of
22 the Commission.

23 (B) CONFIRMATION OF EXECUTIVE DIREC-
24 TOR.—The employment of an executive director

1 shall be subject to confirmation by the Commis-
2 sion.

3 (C) COMPENSATION.—

4 (i) IN GENERAL.—Except as provided
5 in clause (ii), the Chairperson of the Com-
6 mission may fix the compensation of the
7 executive director and other personnel
8 without regard to the provisions of chapter
9 51 and subchapter III of chapter 53 of
10 title 5, United States Code, relating to
11 classification of positions and General
12 Schedule pay rates.

13 (ii) MAXIMUM RATE OF PAY.—The
14 rate of pay for the executive director and
15 other personnel shall not exceed the rate
16 payable for level V of the Executive Sched-
17 ule under section 5316 of title 5, United
18 States Code.

19 (h) EXEMPTION FROM FACA.—The Federal Advi-
20 sory Committee Act (5 U.S.C. App.) shall not apply to
21 the Commission.

22 (i) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated such sums as are nec-
24 essary to carry out this section.

1 (j) TERMINATION OF COMMISSION.—The Commis-
2 sion and the authority of the Commission under this sec-
3 tion terminates on the date that is 3 years after the date
4 on which the Commission holds the initial meeting of the
5 Commission.

6 **SEC. 8. REGULATIONS.**

7 The Secretary of the Interior, in consultation with in-
8 terested Indian tribes, shall promulgate such regulations
9 as are necessary to carry out this Act and amendments
10 made by this Act.

11 **SEC. 9. EFFECT OF ACT.**

12 (a) COURT PROCEEDINGS.—Nothing in this Act lim-
13 its the findings, remedies, jurisdiction, authority, or dis-
14 cretion of the courts in the matter entitled Cobell v. Nor-
15 ton, Civ. No. 96-1285 (RCL).

16 (b) USE OF FUNDS.—No funds appropriated for the
17 purpose of an historical accounting of the individual In-
18 dian trust funds shall be used except as provided in an
19 order of the court in Cobell v. Norton, Civ. No. 96-1285
20 (RCL) entered after the date of enactment of this Act.

○