

108TH CONGRESS
1ST SESSION

S. 1540

To provide for the payment of amounts owed to Indian tribes and individual
Indian money account holders.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. DASCHLE introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To provide for the payment of amounts owed to Indian
tribes and individual Indian money account holders.

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 “Indian Trust Payment
5 Equity Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSES.—**

7 (a) FINDINGS.—Congress finds that—

8 (1) the United States has entered into treaties
9 with Indian tribes under which the United States

1 made various commitments to Indian tribes and In-
2 dian people;

3 (2) the United States functions, by treaty and
4 statute, as a trustee for Indian tribes and individual
5 Indians;

6 (3) the United States has a fiduciary obligation
7 to Indian tribes and Indian people and, in accord-
8 ance with that obligation, must use the highest
9 standard of care to protect the assets of Indian
10 tribes and individual Indians;

11 (4) the United States has failed Indian tribes
12 and individual Indians and abridged its treaty obli-
13 gations related to the handling of trust fund man-
14 agement and historical accounting;

15 (5) mismanagement of Indian trust assets by
16 the United States is a longstanding problem that
17 spans many administrations;

18 (6) the complexity and longevity of that mis-
19 management neither mitigates the injustice visited
20 on the 300,000 Native Americans whose accounts
21 have been shortchanged nor absolves the United
22 States of its responsibility to correct the situation in
23 a timely manner;

24 (7) a civil action, *Cobell v. Norton*, Civ. No.
25 96–1285 (RCL), was filed in 1996 in an attempt to

1 obtain a court order to compel the United States to
2 account for the trust funds managed by the United
3 States on behalf of individual Indians;

4 (8) as of the date of enactment of this Act, the
5 overall individual Indian money fund—

6 (A) contains approximately
7 \$3,000,000,000; and

8 (B) distributes more than \$500,000,000
9 each year to individual Indian money account
10 holders;

11 (9) those funds are generated from Indian trust
12 land royalties resulting from leases of that land to
13 oil, agricultural, timber, and mining interests;

14 (10) not only do the parties to the Cobell action
15 disagree on the amount of money owed to individual
16 Indian money account holders, there is disagreement
17 between the United States and the Cobell plaintiffs
18 on the number of individual Indian beneficiaries re-
19 siding in the United States;

20 (11) the United States estimates that, as of the
21 date of enactment of this Act, there are approxi-
22 mately 300,000 individual Indian trust beneficiaries
23 residing in the United States;

1 (12) the United States has never issued a pub-
2 lic approximation of the amount of money owed to
3 individual Indian money account holders;

4 (13) in 2001, the Secretary of the Interior es-
5 tablished the Office of Historical Trust Accounting
6 to determine the means by which a full accounting
7 of individual Indian money accounts could be accom-
8 plished;

9 (14) the Office of Historical Trust Accounting
10 has estimated that the process of conducting the ac-
11 counting—

12 (A) could last a decade or longer;

13 (B) could cost at least \$2,400,000,000;

14 and

15 (C) might not produce a usable result;

16 (15) the Cobell civil action was filed only on be-
17 half of individual Indians, and not Indian tribes; and

18 (16) the Secretary of the Interior has stated
19 that completion of a comprehensive accounting of
20 funds owed to individual Indian money account hold-
21 ers will not be completed for at least 5 years after
22 the date of enactment of this Act.

23 (b) PURPOSES.—The purposes of this Act are—

1 (1) to acknowledge that the United States owes
2 a considerable amount of funds to Indian tribes and
3 individual Indian money account holders;

4 (2) to recognize that the acute human needs of
5 Indians require that the debt be paid to Indians and
6 Indian tribes as promptly as possible;

7 (3) to respect the sovereignty of Indian tribes;
8 and

9 (4) to provide for payments of amounts that In-
10 dians and Indian tribes are owed by the United
11 States.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **ACCOUNTING.**—The term “accounting”
15 means the comprehensive accounting of funds owed
16 to individual Indian money account holders required
17 to be completed by the Secretary as a result of the
18 holding of the court in *Cobell v. Norton*, Civ. No.
19 96–1285 (RCL).

20 (2) **FUND.**—The term “Fund” means the In-
21 dian Trust Payment Equity Fund established by
22 section 5(a).

23 (3) **INDIAN.**—The term “Indian” means an in-
24 dividual who is a member of an Indian tribe (as de-
25 termined by the Indian tribe).

1 (4) INDIAN TRIBE.—The term “Indian tribe”
2 has the meaning given the term in section 4 of the
3 Indian Self-Determination and Education Assistance
4 Act (25 U.S.C. 450b).

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

7 **SEC. 4. INDIAN TRUST PAYMENT EQUITY.**

8 (a) PAYMENTS.—For each of fiscal years 2004
9 through 2008, subject to section 5(d), the Secretary shall
10 use \$2,000,000,000 of the amounts in the Fund to provide
11 to Indian tribes payments of amounts owed by the United
12 States to individual Indian money account holders as a
13 result of mismanagement of the individual Indian money
14 fund.

15 (b) CONTRACTS FOR AUDITING.—The Secretary—

16 (1) may enter into a contract with an Indian
17 tribe under section 102 of the Indian Self-Deter-
18 mination and Education Assistance Act (25 U.S.C.
19 450f), or amend such a contract, to provide funds
20 to the Indian tribe from the Fund to assist the In-
21 dian tribe in performing audits of individual Indian
22 money accounts in accordance with generally accept-
23 ed accounting standards consistent with chapter 75
24 of title 31, United States Code (commonly known as
25 the “Single Audit Act of 1984”); and

1 (2) if the account holder accepts the results of
2 an audit, may use amounts in the Fund as partial
3 payment until a full accounting is satisfied.

4 (c) NO EFFECT ON ACCOUNTING OR JUDICIAL DECISIONS.—Nothing in this section—

6 (1) negates or otherwise affects the requirement
7 of the Department of the Interior to complete the
8 accounting; or

9 (2) constitutes a settlement regarding any individual Indian money account or any civil action to
10 compel an accounting and payment of amounts owed
11 to individual Indian money account holders.

13 **SEC. 5. INDIAN TRUST PAYMENT EQUITY FUND.**

14 (a) ESTABLISHMENT.—There is established in the
15 Treasury of the United States the Indian Trust Payment
16 Equity Fund to be used in carrying out this Act, consisting of such amounts as are appropriated to the Fund
17 under subsection (b).

19 (b) APPROPRIATIONS TO FUND.—There are appropriated to the Fund—

21 (1) such amounts as are made available under
22 subsections (a) and (b) of section 6;

23 (2) such amounts are deposited in the Fund
24 under section 5(d)(2); and

1 (3) any interest earned on investment of
2 amounts in the Fund under subsection (d).

3 (c) EXPENDITURES FROM FUND.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 upon request by the Secretary of the Interior, the
6 Secretary of the Treasury shall transfer from the
7 Fund to the Secretary of the Interior such amounts
8 as the Secretary of the Interior determines are nec-
9 essary to provide payments under section 4(a).

10 (2) ADMINISTRATIVE EXPENSES.—An amount
11 not exceeding 1 percent of the amounts in the Fund
12 shall be available for each fiscal year to pay the ad-
13 ministrative expenses necessary to carry out this
14 Act.

15 (d) INVESTMENT OF AMOUNTS.—

16 (1) INVESTMENTS.—

17 (A) IN GENERAL.—The Secretary of the
18 Treasury shall invest such portion of the Fund
19 as is not, in the judgment of the Secretary of
20 the Treasury, required to meet current with-
21 draws.

22 (B) OBLIGATIONS.—Investments may be
23 made only in interest-bearing obligations of the
24 United States.

1 (2) ACQUISITION OF OBLIGATIONS.—For the
2 purpose of investments under paragraph (1), obliga-
3 tions may be acquired—

4 (A) on original issue at the issue price; or

5 (B) by purchase of outstanding obligations
6 at the market price.

7 (3) SALE OF OBLIGATIONS.—Any obligation ac-
8 quired by the Fund may be sold by the Secretary of
9 the Treasury at the market price.

10 (4) CREDITS TO FUND.—The interest on, and
11 the proceeds from the sale or redemption of, any ob-
12 ligations held in the Fund shall be credited to and
13 form a part of the Fund.

14 (e) TRANSFERS OF AMOUNTS.—

15 (1) IN GENERAL.—The amounts required to be
16 transferred to the Fund under this section shall be
17 transferred at least monthly from the general fund
18 of the Treasury to the Fund on the basis of esti-
19 mates made by the Secretary of the Treasury.

20 (2) ADJUSTMENTS.—Proper adjustment shall
21 be made in amounts subsequently transferred to the
22 extent prior estimates were in excess of or less than
23 the amounts required to be transferred.

1 **SEC. 6. FUNDING.**

2 (a) IN GENERAL.—Out of any funds in the Treasury
3 not otherwise appropriated, the Secretary of the Treasury
4 shall transfer to the Secretary, for deposit in the Fund—

5 (1) not later than 30 days after the date of en-
6 actment of this Act, \$2,000,000,000; and

7 (2) on October 1, 2004, and each October 1
8 thereafter through October 1, 2007,
9 \$2,000,000,000.

10 (b) RECEIPT AND ACCEPTANCE.—The Secretary
11 shall be entitled to receive, shall accept, and shall deposit
12 in the Fund and use to carry out this Act the funds trans-
13 ferred under subsection (a), without further appropriation.

14 (c) AVAILABILITY OF FUNDS.—Funds transferred
15 under subsection (a) shall remain available until expended.

16 **SEC. 7. REPORT.**

17 Not later than 4 years after the date of enactment
18 of this Act, the Secretary shall submit to Congress a re-
19 port that includes—

20 (1) an accounting of all payments made under
21 section 4(a); and

22 (2) a description of the status of, and an esti-
23 mated date of completion for, the accounting.

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