

108TH CONGRESS
2D SESSION

S. 2770

To establish a National Commission on American Indian Trust Holdings.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2004

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

A BILL

To establish a National Commission on American Indian
Trust Holdings.

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. NATIONAL COMMISSION ON AMERICAN INDIAN**
4 **TRUST HOLDINGS.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the United States has entered into treaties
7 with Indian tribes under which the United States
8 made various commitments to Indian tribes and In-
9 dian people;

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

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

9 (4) the United States has failed Indian tribes
10 and individual Indians and abridged its treaty and
11 other obligations relating to the handling of trust
12 fund management and historical accounting;

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

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

22 (7) in 1996 a civil action, *Cobell v. Norton*, Civ.
23 No. 96-1285 (RCL), was brought in the United
24 States District Court for the District of Columbia to
25 attempt to obtain an order compelling the United

1 States to account for the trust funds managed by
2 the United States on behalf of individual Indians
3 and take all necessary action to bring the United
4 States into compliance with its fiduciary duties;

5 (8) those funds are generated from Indian trust
6 land royalties resulting from leases of that land to
7 oil, agricultural, timber, mining, and other interests;

8 (9) on April 5, 2004, Mr. Alan L. Balaran, the
9 Special Master in the Cobell case, tendered his res-
10 ignation to the Honorable Royce C. Lamberth;

11 (10) in his letter of resignation, Mr. Balaran
12 stated that—

13 (A) there is evidence that energy compa-
14 nies, assisted by the Department of the Inte-
15 rior, routinely pay individual Indians much less
16 than they pay non-Indians for oil and gas pipe-
17 line easements;

18 (B) the Special Master had uncovered evi-
19 dence that the Department fails to diligently
20 monitor oil and gas leasing activities on Indian
21 land; and

22 (C) there is evidence that the Department
23 has been putting the interests of private energy
24 companies ahead of the interests of individual
25 Indian beneficiaries, notwithstanding their fidu-

1 ciary obligation to Indian tribes and Indian
2 beneficiaries; and

3 (11) the Great Plains, Rocky Mountain, and
4 other regions of the United States are rich in other
5 trust assets such as timber, agriculture, mining, and
6 other resources.

7 (b) DEFINITIONS.—In this section:

8 (1) BALARAN LETTER.—The term “Balaran
9 letter” means the letter dated April 5, 2004, from
10 Special Master Alan L. Balaran to the Honorable
11 Royce C. Lamberth.

12 (2) COMMISSION.—The term “Commission”
13 means the National Commission on American Indian
14 Trust Holdings established by subsection (c).

15 (3) DEPARTMENT.—The term “Department”
16 means the Department of the Interior.

17 (c) ESTABLISHMENT OF COMMISSION.—There is es-
18 tablished the National Commission on American Indian
19 Trust Holdings.

20 (d) MEMBERSHIP.—

21 (1) IN GENERAL.—The Commission shall be
22 composed of 10 members, of whom—

23 (A) 2 shall be appointed by the President,
24 1 of whom the President shall designate as
25 Chairperson of the Commission;

1 (B) 2 shall be appointed by the majority
2 leader of the Senate;

3 (C) 2 shall be appointed by the minority
4 leader of the Senate;

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

7 (E) 2 shall be appointed by the minority
8 leader of the House of Representatives.

9 (2) QUALIFICATIONS; INITIAL MEETING.—

10 (A) NONGOVERNMENTAL APPOINTEES.—

11 An individual appointed to the Commission may
12 not be an officer or employee of the Federal
13 Government or any State or local government.

14 (B) OTHER QUALIFICATIONS.—It is the
15 sense of Congress that individuals appointed to
16 the Commission should be prominent United
17 States citizens, with national recognition and
18 significant depth of experience in such profes-
19 sions as land and resource management.

20 (3) DEADLINE FOR APPOINTMENT.—All mem-
21 bers of the Commission shall be appointed not later
22 than 60 days after the date of enactment of this
23 Act.

24 (4) QUORUM.—Six members of the Commission
25 shall constitute a quorum.

1 (5) VACANCIES.—Any vacancy in the Commis-
2 sion shall not affect the powers of the Commission,
3 but shall be filled in the same manner in which the
4 original appointment was made.

5 (e) DUTIES.—

6 (1) IN GENERAL.—The Commission shall—

7 (A) fully examine the allegations made in
8 the Balaran letter;

9 (B) fully examine whether grazing, leasing,
10 and other trust asset interests have been man-
11 aged equitably and in a manner consistent with
12 Federal trust law (including regulations);

13 (C) fully examine such other alleged
14 breaches of the fiduciary responsibility owed by
15 the United States to Indian tribes and indi-
16 vidual Indians that come to the Commission's
17 attention as the Commission considers appro-
18 priate;

19 (D) build on the investigations of other en-
20 tities, and avoid unnecessary duplication, by re-
21 viewing the findings, conclusions, and rec-
22 ommendations of earlier studies of the manage-
23 ment by the Department of Indian trust assets
24 and trust funds; and

(E) not later than 1 year after the date as of which all members of the Commission have been appointed, submit to the President and Congress a report that states the findings of the Commission and makes recommendations for corrective measures that can be taken to—

(i) recoup any losses suffered by Indian tribes or individual Indians as a result of breaches of fiduciary duty by the Department; or

(ii) prevent any breaches of fiduciary duty in the future.

(2) RELATIONSHIP TO PREVIOUS STUDIES.—

When investigating facts and circumstances relating to the management of Indian trust assets and trust funds, the Commission shall—

(A) first review the information compiled by, and the findings, conclusions, and recommendations that resulted from, previous studies (including congressional investigations); and

(B) after that review, pursue any appropriate area of inquiry if the Commission determines that—

- 1 (i) earlier studies had not investigated
- 2 that area;
- 3 (ii) the earlier investigation of that
- 4 area had not been complete; or
- 5 (iii) new information not reviewed in
- 6 the earlier studies had become available
- 7 with respect to that area.

8 (3) FOLLOWUP REVIEW.—At least once every 2
 9 years after the date on which the Commission sub-
 10 mits the report under paragraph (1), the Commis-
 11 sion shall—

12 (A) reconvene to examine the effectiveness
 13 of any actions taken in response to the report
 14 in achieving the goals described in clauses (i)
 15 and (ii) of paragraph (1)(D); and

16 (B) submit to the President and Congress
 17 a report that describes the findings of the Com-
 18 mission and makes any further recommenda-
 19 tions as the Commission considers appropriate.

20 (f) POWERS OF COMMISSION.—

21 (1) IN GENERAL.—

22 (A) HEARINGS AND EVIDENCE.—The
 23 Commission may—

24 (i) hold such hearings and sit and act
 25 at such times and places, take such testi-

mony, receive such evidence, and administer such oaths as the Commission considers advisable to carry out this section; and

(ii) subject to subparagraph (B)(i), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(B) SUBPOENAS.—

(i) ISSUANCE.—

(I) IN GENERAL.—A subpoena may be issued under this subsection only—

(aa) by the agreement of the Chairperson; or

(bb) by the affirmative vote of 6 members of the Commission.

(II) SIGNATURE.—Subject to subclause (I), subpoenas issued under this subsection may be issued under the signature of the Chairperson or

1 any member designated by a majority
2 of the Commission, and may be served
3 by any person designated by the
4 Chairperson or by a member des-
5 ignated by a majority of the Commis-
6 sion.

7 (ii) ENFORCEMENT.—

8 (I) IN GENERAL.—In the case of
9 contumacy or failure to obey a sub-
10 poena issued under subparagraph (A),
11 the United States district court for
12 the judicial district in which the sub-
13 poenaed person resides, is served, or
14 may be found, or where the subpoena
15 is returnable, may issue an order re-
16 quiring such person to appear at any
17 designated place to testify or to
18 produce documentary or other evi-
19 dence. Any failure to obey the order of
20 the court may be punished by the
21 court as a contempt of that court.

22 (II) ADDITIONAL ENFORCE-
23 MENT.—In the case of any failure of
24 any witness to comply with any sub-
25 poena or to testify when summoned

1 under authority of this section, the
2 Commission may, by majority vote,
3 certify a statement of fact consti-
4 tuting such failure to the appropriate
5 United States attorney, who may
6 bring the matter before the grand
7 jury for its action, under the same
8 statutory authority and procedures as
9 if the United States attorney had re-
10 ceived a certification under sections
11 102 through 104 of the Revised Stat-
12 utes (2 U.S.C. 192 through 194).

13 (2) CONTRACTING.—The Commission may, to
14 such extent and in such amounts as are provided in
15 Acts of appropriation, enter into contracts to enable
16 the Commission to discharge the duties of the Com-
17 mission.

18 (3) INFORMATION FROM FEDERAL AGENCIES.—

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

23 (B) PROVISION OF INFORMATION.—On re-
24 quest of the Chairperson of the Commission,

1 the head of the agency shall provide the infor-
2 mation to the Commission.

3 (4) ASSISTANCE FROM THE SECRETARY OF THE
4 INTERIOR.—The Secretary of the Interior shall pro-
5 vide to the Commission on a reimbursable basis ad-
6 ministrative support and other services for the per-
7 formance of the functions of the Commission.

8 (5) POSTAL SERVICES.—The Commission may
9 use the United States mails in the same manner and
10 under the same conditions as other agencies of the
11 United States.

12 (g) PERSONNEL MATTERS.—

13 (1) COMPENSATION OF MEMBERS.—A member
14 of the Commission who is not an officer or employee
15 of the Federal Government shall be compensated at
16 a rate equal to the daily equivalent of the annual
17 rate of basic pay prescribed for level IV of the Exec-
18 utive Schedule under section 5315 of title 5, United
19 States Code, for each day (including travel time)
20 during which the member is engaged in the perform-
21 ance of the duties of the Commission.

22 (2) TRAVEL EXPENSES.—A member of the
23 Commission shall be allowed travel expenses, includ-
24 ing per diem in lieu of subsistence, at rates author-
25 ized for an employee of an agency under subchapter

1 I of chapter 57 of title 5, United States Code, while
2 away from the home or regular place of business of
3 the member in the performance of the duties of the
4 Commission.

5 (3) STAFF.—

6 (A) IN GENERAL.—The Chairperson of the
7 Commission may, without regard to the civil
8 service laws (including regulations), appoint
9 and terminate an executive director and such
10 other additional personnel as are necessary to
11 enable the Commission to perform the duties of
12 the Commission.

13 (B) CONFIRMATION OF EXECUTIVE DIREC-
14 TOR.—The employment of an executive director
15 shall be subject to confirmation by the Commis-
16 sion.

17 (C) COMPENSATION.—

18 (i) IN GENERAL.—Except as provided
19 in clause (ii), the Chairperson of the Com-
20 mission may fix the compensation of the
21 executive director and other personnel
22 without regard to the provisions of chapter
23 51 and subchapter III of chapter 53 of
24 title 5, United States Code, relating to

1 classification of positions and General
2 Schedule pay rates.

3 (ii) MAXIMUM RATE OF PAY.—The
4 rate of pay for the executive director and
5 other personnel shall not exceed the rate
6 payable for level V of the Executive Sched-
7 ule under section 5316 of title 5, United
8 States Code.

9 (4) DETAIL OF FEDERAL GOVERNMENT EM-
10 PLOYEES.—

11 (A) IN GENERAL.—An employee of the
12 Federal Government may be detailed to the
13 Commission without reimbursement.

14 (B) CIVIL SERVICE STATUS.—The detail of
15 the employee shall be without interruption or
16 loss of civil service status or privilege.

17 (5) PROCUREMENT OF TEMPORARY AND INTER-
18 MITTENT SERVICES.—The Chairperson of the Com-
19 mission may procure temporary and intermittent
20 services in accordance with section 3109(b) of title
21 5, United States Code, at rates for individuals that
22 do not exceed the daily equivalent of the annual rate
23 of basic pay prescribed for level V of the Executive
24 Schedule under section 5316 of that title.

1 (h) NO EFFECT ON COBELL CASE.—Nothing in this
2 section limits the findings, remedies, jurisdiction, author-
3 ity, or discretion of the court in the civil action Cobell v.
4 Norton, Civ. No. 96–1285 (RCL) (D.D.C.).

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

8 (j) TERMINATION OF COMMISSION.—The Commis-
9 sion shall terminate on the date that is 10 years after the
10 date on which the Commission submits the report of the
11 Commission under subsection (e)(1)(D).

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