

111TH CONGRESS
1ST SESSION

H. R. 4384

To establish the Utah Navajo Trust Fund Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. MATHESON introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To establish the Utah Navajo Trust Fund Commission, 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 shall be cited as the “Utah Navajo Trust
5 Fund Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) AUDIT.—The term “audit” means an audit
9 using accounting procedures that conform to gen-
10 erally accepted accounting principles and auditing

1 procedures that conform to chapter 75 of title 31,
2 United States Code (commonly known as the “Sin-
3 gle Audit Act” of 1984).

4 (2) BENEFICIARY.—The term “beneficiary”
5 means an enrolled member of the federally recog-
6 nized Indian tribe, the Navajo Nation, who resides
7 in San Juan County, Utah and is listed on a Chap-
8 ter’s roll of members.

9 (3) ELECTION BOARD.—The term “Election
10 Board” means all of the Utah Navajo Chapter
11 Presidents and Vice-Presidents.

12 (4) INCOME.—The term “income” means all
13 revenues from investments made by the Trustee of
14 the trust fund principal, including income from the
15 lease of Trust assets or from any other source.

16 (5) PRINCIPAL.—The term “principal”
17 means—

18 (A) the balance of the Trust Fund as of
19 the date the moneys are received from the State
20 of Utah in accordance with section 12; and

21 (B) all moneys transferred into the Trust
22 Fund from royalties received as specified in the
23 1933 Act.

24 (6) STATE.—The term “State” means the State
25 of Utah.

1 (7) TRUST.—The term “Trust” means the
2 Utah Navajo Trust Fund established in section 12.

3 (8) TRUST ADMINISTRATOR.—The term “Trust
4 Administrator” means the professional trust admin-
5 istrator hired by the Utah Navajo Trust Fund Com-
6 mission to perform the duties and responsibilities as
7 provided in section 11.

8 (9) TRUST ASSET.—The term “Trust asset”
9 means any tangible property (such as land, build-
10 ings, cash, stocks, and bonds) held by the Trust Ad-
11 ministrator for the benefit of the beneficiaries.

12 (10) TRUST FUNDS.—The term “Trust funds”
13 means—

14 (A) all moneys transferred into the Utah
15 Navajo Trust Fund from royalties received as
16 specified in the 1933 Act;

17 (B) all moneys or proceeds derived from
18 Trust assets;

19 (C) all investment income derived from the
20 funds in subparagraphs (A) and (B); and funds
21 held by the Trust Administrator for the benefit
22 of the beneficiaries; and

23 (D) the funds and assets transferred from
24 the State of Utah pursuant to section 12.

1 (11) UTAH NAVAJO TRUST FUND COMMISSION;
 2 COMMISSION.—The term “Utah Navajo Trust Fund
 3 Commission” or “Commission” means the entity
 4 comprising the representatives elected by the bene-
 5 ficiaries in accordance with this Act.

6 (12) UTAH NAVAJO CHAPTERS; CHAPTERS.—
 7 The term “Utah Navajo Chapters” or “Chapters”
 8 means the following chapters of the federally recog-
 9 nized Indian tribe, the Navajo Nation:

- 10 (A) Aneth Chapter.
- 11 (B) Mexican Water Chapter.
- 12 (C) Navajo Mountain Chapter.
- 13 (D) Oljato Chapter.
- 14 (E) Dennehotto Chapter.
- 15 (F) Red Mesa Chapter.
- 16 (G) Teec Nos Pos Chapter.

17 **SEC. 3. AMENDMENT TO PROVIDE FOR THE USE OF ROYAL-**
 18 **TIES.**

19 The Act titled “An Act to permanently set aside cer-
 20 tain lands in Utah as an addition to the Navajo Indian
 21 Reservation, and for other purposes”, approved March 18,
 22 1933 (47 Stat. 1418), is amended in the first section by
 23 striking “paid to the State of Utah” and all that follows
 24 through the end of that section and inserting “deposited
 25 into the ‘Utah Navajo Trust Fund’ established pursuant

1 to section 12 of the Utah Navajo Trust Fund Act of
2 2009.”.

3 **SEC. 4. ELECTION OF UTAH NAVAJO TRUST FUND COMMIS-**
4 **SION.**

5 (a) IN GENERAL.—Not later than 60 days from the
6 date of enactment of this Act, each Utah Navajo Chapter
7 shall conduct, by secret ballot, an election in accordance
8 with this Act for the purpose of selecting a representative
9 to the Utah Navajo Trust Fund Commission. All Chapters
10 shall conduct their elections on the same day.

11 (b) CANDIDATES; VOTERS.—Each Utah Navajo
12 Chapter shall, by resolution in an open meeting, determine
13 which candidates for representative to the Utah Navajo
14 Trust Fund Commission meet the criteria set forth in sec-
15 tion 9 and are able to carry out the duties specified in
16 this Act. Each candidate that a Utah Navajo Chapter de-
17 termines meets the criteria in section 9 and who is able
18 to carry out the duties specified in this Act shall be placed
19 on the ballot as a potential representative to the Utah
20 Navajo Trust Fund Commission for a vote by the bene-
21 ficiaries who are 18 years of age or older and are reg-
22 istered with that Chapter. Eligible voters within this sec-
23 tion are not limited to voters who voted in the last election.
24 Only voters registered with the Chapter conducting the
25 election for a representative to the Utah Navajo Trust

1 Fund Commission and who are beneficiaries of the Trust
2 are eligible to vote on that chapter ballot.

3 (c) REIMBURSEMENT FOR COSTS.—The reasonable
4 costs of conducting the election, as determined in the
5 Commission’s discretion, may be reimbursed from the
6 Trust, at the discretion of the Utah Navajo Trust Fund
7 Commission, to each Utah Navajo Chapter within 90 days
8 of receipt of the Trust assets transferred pursuant to sec-
9 tion 12, and if not reimbursed by that time, reimburse-
10 ment is no longer allowed. If the Commission determines
11 to reimburse the reasonable costs for one Utah Navajo
12 Chapter, the Commission must reimburse the reasonable
13 costs for all Chapters.

14 **SEC. 5. NOTICE OF ELECTION.**

15 Once an election is set by each Utah Navajo Chapter
16 to elect a representative to the Utah Navajo Trust Fund
17 Commission, each Chapter shall publish notice of the elec-
18 tion in accordance with this Act. Notice of the election
19 is sufficient if published at least once for two consecutive
20 weeks in a newspaper of reservation wide and San Juan
21 County wide distribution. Each Chapter may provide other
22 notice as appropriate. The notice shall contain—

- 23 (1) the date of the election;
- 24 (2) a descriptive summary of the purpose of the
- 25 election;

1 (3) a descriptive summary of each candidate for
2 that Chapter's representative to the Utah Navajo
3 Trust Fund Commission;

4 (4) a brief statement of the legal effect of the
5 proposed measure as it will appear on the ballot;

6 (5) a citation to the Chapter resolution ref-
7 erenced in section 4(b) where the Chapter has deter-
8 mined that each applicant listed on the ballot meets
9 the criteria set forth in this Act;

10 (6) notice that copies of the complete text of
11 the referendum measure and copies of each deter-
12 mination that a candidate meets the requirements of
13 the Act are available for inspection or purchase (du-
14 plication cost only) at the Chapter Office for 15
15 days prior to the election; and

16 (7) a specific statement that the candidate who
17 receives the highest number of votes from that
18 Chapter's election shall be the Chapter's representa-
19 tive to the Utah Navajo Trust Fund Commission.

20 **SEC. 6. FORM OF BALLOT.**

21 Each Chapter shall prepare the official ballot for the
22 election of a representative to the Utah Navajo Trust
23 Fund Commission in the following manner:

24 (1) The official title of the referendum measure
25 shall be printed on the official ballot. The official

1 title of the referendum measure to be voted upon
2 shall be agreed upon by all Chapters.

3 (2) A descriptive summary of the referendum
4 measure shall be prepared by each Chapter and
5 printed on the official ballot following the official
6 title. The descriptive summary shall provide the reg-
7 istered voters with an unbiased objective summary of
8 the effect of a vote. The referendum shall specifically
9 state that the candidate receiving the highest num-
10 ber of votes shall be selected as that Chapter's rep-
11 resentative to the Utah Navajo Trust Fund Commis-
12 sion. The Chapters may obtain independent legal as-
13 sistance in drafting the descriptive summary.

14 (3) Following the official title and descriptive
15 summary of the referendum measure, a brief state-
16 ment of legal effect shall be printed on the ballot. A
17 brief statement of legal effect shall, in a brief and
18 objective phrase, explain the resulting effect a "yes"
19 or "for" and "no" or "against" vote will have on ex-
20 isting law when a candidate receives the highest
21 number of votes cast in that particular manner. The
22 brief statement of legal effect shall be agreed upon
23 by all Chapters. The Chapters may obtain inde-
24 pendent legal advice in drafting the brief statement

1 of legal effect. The brief statement of legal effect
2 shall appear on the ballot as follows:

3 (A) A “yes” (or “for”) vote shall have the
4 legal effect of _____ (the blank to be filled in
5 as appropriate).

6 (B) A “not” (or “against”) vote shall have
7 the legal effect of _____ (the blank to be filled
8 in as appropriate).

9 (4) Below the brief statement of legal effect
10 there shall be printed on the ballot the cor-
11 responding words “yes” or “for” and “no” or
12 “against”, as may be appropriate, and a place for
13 the voter to put a mark indicating his/her pref-
14 erence. Each voter may only vote once and may only
15 vote “yes” or “for” for one candidate.

16 (5) A minimum of four copies of the complete
17 text of the referendum measure shall be made avail-
18 able in each polling place for the voters to review.
19 Each voter shall be informed by the poll judges and
20 clerks at each polling place that copies of the com-
21 plete text are available to review in the polling place.

22 (6) Dispute of an official title, descriptive sum-
23 mary or brief statement of legal effect may be deter-
24 mined by a hearing before the Election Board. A
25 dispute must be raised 7 days before the election

1 and a decision on the dispute must be rendered by
2 3 days before the election.

3 **SEC. 7. CONDUCT OF ELECTIONS.**

4 (a) POLLING PLACE SUPERVISION; APPEAL BY PER-
5 SONS NOT ALLOWED TO VOTE.—

6 (1) POLL JUDGE.—Before an election, the
7 President of each Utah Navajo Chapter shall hire at
8 least one independent poll judge, provide such poll
9 judge with necessary instruction, swearing in, and
10 transport the ballot boxes and voting machines to
11 the polling places for each election community. The
12 poll judge shall—

13 (A) guard the polls;

14 (B) maintain order;

15 (C) instruct voters in the techniques of
16 balloting;

17 (D) retain custody of the account for all
18 ballots, the ballot box, and the poll books; and

19 (E) supervise and have supervisory author-
20 ity over any assistant judges and poll clerks in
21 guarding the polls.

22 (2) POLL CLERK.—Each Utah Navajo Chapter
23 shall hire a poll clerk to enter each voter in the poll
24 books and issue ballots.

1 (3) POLLING PLACE.—A voter must vote at the
2 polling place where he or she is registered to vote.

3 (4) APPEAL OF VOTING ELIGIBILITY.—Any per-
4 son who is not allowed to vote may appeal to the
5 Election Board immediately, whose decision shall be
6 final.

7 (b) TIME.—Voting shall begin at 6:00 a.m. and shall
8 end at 7:00 p.m. All voters present at the poll places and
9 in line to vote at 7:00 p.m. shall be allowed to vote.

10 (c) COUNTING OF VOTES.—At the close of the elec-
11 tion, the poll judge at each polling place shall tabulate the
12 results of the balloting, seal and lock the ballot boxes with
13 the poll books and keys in the ballot boxes, and transmit
14 the results of the balloting to the Election Board via tele-
15 phone or radio communications and in writing. A poll
16 watcher shall be allowed at all times during the balloting
17 and during the counting of the votes.

18 (d) CANVASS OF VOTES; RECOUNT.—

19 (1) ITEMS FORWARDED TO ELECTION BOARD.—
20 Each poll judge shall forward to the Election Board
21 for distribution the following:

22 (A) Sealed ballot boxes containing all of
23 the ballots cast in the election.

24 (B) All unused or spoiled ballots.

25 (C) Data packs.

1 (D) Keys.

2 (E) A written statement of the election re-
3 sults on a form provided by the Election Board
4 and certified by the poll judge at each polling
5 place.

6 (F) The list of beneficiaries in the Chap-
7 ter.

8 (2) CANVASS.—The Election Board shall—

9 (A) canvass the written statements of elec-
10 tion results from each polling place; and

11 (B) total the election results.

12 (3) RECOUNT.—No recount of ballots of any
13 polling place shall be made unless, not later than 10
14 days after the election, a registered voter who voted
15 on the referendum objects and the Election Board
16 sees sufficient reason to recount the election results.
17 The Election Board may, on its own initiative, con-
18 duct a recount of the votes of any polling place if
19 the Election Board determines that there may have
20 been substantial irregularity in the voting or count-
21 ing of the ballots. The Election Board may use the
22 poll judge to assist in canvassing and recounting bal-
23 lots.

1 (e) CERTIFICATION OF ELECTION.—Not less than 10
 2 days following an election, the Election Board shall certify
 3 the election results.

4 (f) APPEAL OF DISPUTED ELECTIONS.—

5 (1) IN GENERAL.—A disputed election may be
 6 appealed, in writing, to the Election Board by an eli-
 7 gible beneficiary who voted in the referendum elec-
 8 tion not later than 10 calendar days after the elec-
 9 tion.

10 (2) RULES AND REGULATIONS.—The Election
 11 Board shall—

12 (A) issue rules and regulations for the de-
 13 termination of how such disputes shall be han-
 14 dled; and

15 (B) pursuant to rules and regulations
 16 issued under subparagraph (A), issue a decision
 17 upholding or vacating disputed elections.

18 **SEC. 8. EFFECT OF UTAH NAVAJO TRUST FUND COMMIS-**
 19 **SION ELECTION.**

20 (a) BINDING.—Each Chapter's vote on a representa-
 21 tive for the Utah Navajo Trust Fund Commission shall
 22 be binding and have the effect of law.

23 (b) SELECTION AMENDED OR REPEALED.—The se-
 24 lection of a representative for the Utah Navajo Trust

1 Fund Commission by this referendum election shall be
2 amended or repealed only—

3 (1) when the term ends;

4 (2) by the outcome of a vote on a subsequent
5 referendum or initiative election by a Chapter con-
6 cerning the same subject matter as that of the ref-
7 erendum which originally adopted the legislation; or

8 (3) if the United States Congress effectively
9 amends or repeals this Act.

10 **SEC. 9. APPLICATION REQUIREMENTS.**

11 Candidates for representative to the Utah Navajo
12 Trust Fund Commission shall attest that he or she has
13 not been convicted at any time of an offense of dishonest
14 conduct against, or arising out of, any Federal, State, or
15 Navajo Nation law.

16 **SEC. 10. UTAH NAVAJO TRUST FUND COMMISSION.**

17 (a) ESTABLISHMENT.—Not later than 90 days after
18 the date of the enactment of this Act, there shall be estab-
19 lished a Utah Navajo Trust Fund Commission.

20 (b) MEMBERS; TERMS.—The Commission shall have
21 7 members, composed of one member elected by each of
22 the 7 Utah Navajo Chapters. Each member shall serve
23 for a term of 4 years.

24 (c) DUTIES.—The Commission shall—

1 (1) select by at least a $\frac{5}{7}$ vote an independent
2 Trust Administrator for the Utah Navajo Trust
3 Fund that meets the requirements of this Act and
4 that has no conflict of interest with the Commission;

5 (2) ensure that amounts in the Trust are in-
6 vested, managed, and administered for the health,
7 education, and general welfare of the beneficiaries;

8 (3) establish written investment goals, objec-
9 tives, and guidelines for the investment of the Trust
10 assets, determine projects to fund, define rules of
11 eligibility, establish applications, and monitor imple-
12 mentation of the Utah Navajo Trust Fund;

13 (4) authorize expenditure of amounts in the
14 Utah Navajo Trust Fund for approved projects only;

15 (5) report to the beneficiaries through each
16 Chapter on—

17 (A) details of recommended expenditures
18 as they relate to community purposes;

19 (B) the achievement of the objectives of
20 the Utah Navajo Trust Fund; and

21 (C) future projects, plans, and programs
22 under consideration;

23 (6) have a thorough understanding of this Act;

24 (7) ensure that not more than 5 percent of the
25 amounts in the Utah Navajo Trust Fund in any fis-

1 cal year are expended on administrative costs of the
2 Commission and the Trust Administrator;

3 (8) not use Trust assets for the personal use of
4 the Commission members;

5 (9) obtain an annual independent audit of the
6 Utah Navajo Trust Fund;

7 (10) report to the beneficiaries through each
8 Chapter—

9 (A) on the audit obtained by the Commis-
10 sion and the Trust Administrator;

11 (B) the use of the Trust property for im-
12 plementation and community purposes as pro-
13 vided in this Act and the annual assessment re-
14 quired by this section; and

15 (C) the investment of the Trust property,
16 including compliance with the objectives of the
17 Trust and results for each year;

18 (11) establishing and making available to the
19 beneficiaries policies and procedures for Trust Fund
20 management and accounting;

21 (12) providing adequate staffing, supervision,
22 and training for Trust Fund management and ac-
23 counting;

1 (13) prepare and maintain a census of bene-
2 ficiaries based on data and documentation provided
3 by the Chapters;

4 (14) administer its duties pursuant to this Act
5 in offices located in Montezuma Creek on the Navajo
6 Nation Reservation in San Juan County, Utah;

7 (15) establish a process by which the bene-
8 ficiaries can apply for health, education, and housing
9 assistance;

10 (16) ensure that Navajos living outside of the
11 Navajo Nation in San Juan County, Utah, remain
12 eligible for educational assistance from the Trust
13 Fund;

14 (17) to make rules to govern its operations, em-
15 ploy professional staff, and contract with outside ad-
16 visers to provide legal or other services necessary for
17 the proper administration of this Act; and

18 (18) maintain records of Commission meetings,
19 decisions, and accounts.

20 (d) AUTHORITIES.—The Commission may—

21 (1) retain independent advisors to assist it in
22 the formulation and adoption of its investment
23 guidelines; and

24 (2) hire employees as necessary to assist in car-
25 rying out the Commission's duties under this Act.

1 (e) APPLICABLE LAW.—The Commission, its officers,
2 agents, and employees shall be subject to the laws of the
3 State of Utah and shall undertake its duties in accordance
4 with the laws of the State of Utah. In the absence of more
5 specific statutory duties and responsibilities under Federal
6 or State law, common law duties shall govern the adminis-
7 tration of the Trust.

8 (f) STATUS UNDER CERTAIN LAWS.—The Commis-
9 sion, its officers, agents, and employees shall not be a de-
10 partment, agency, or instrumentality of the Government
11 of the United States and shall not be subject to title 31,
12 United States Code. The Commission, and its officers, em-
13 ployees, and agents shall not be considered officers, em-
14 ployees, or agents of the Government of the United States.

15 (g) USES OF TRUST ASSETS.—Not later than 60
16 days after receipt of the Trust assets pursuant to section
17 12, and annually thereafter, the Commission shall conduct
18 an annual assessment to determine the eligible uses of
19 Trust assets and modify uses based on assessment anal-
20 ysis results. Trust assets may only be used for the health,
21 education, and welfare of the beneficiaries.

22 (h) ASSESSMENT.—The term “assessment” means
23 taking one of the following actions to assess the health,
24 education, and general welfare needs of the beneficiaries—

25 (1) a survey of the beneficiaries that includes—

1 (A) a random sample large enough to se-
2 cure an accurate representation of their needs;
3 and

4 (B) a response rate large enough to pro-
5 vide an accurate representation of those needs;

6 (2) at least three public hearings held to survey
7 and solicit beneficiary needs that are advertised for
8 two weeks before the hearing by—

9 (A) announcements by the Utah Navajo
10 Chapters, if allowed by the Chapter;

11 (B) notice posted in the Chapter buildings
12 and other public locations, if allowed by the
13 Chapter;

14 (C) notice of the meeting announced on
15 the radio or television; and

16 (D) notice of the meeting published at
17 least once per week for two consecutive weeks
18 in any newspaper of reservation wide and San
19 Juan County wide circulation; or

20 (3) a physical inventory—

21 (A) conducted by the Commission; and

22 (B) coordinated with—

23 (i) each Utah Navajo Chapter;

24 (ii) other sources; and

1 (iii) conducted to determine needs in-
 2 cluding—

3 (I) the number and capacity of
 4 public facilities;

5 (II) the extent of graveled and
 6 paved—

7 (aa) roads; or

8 (bb) airstrips;

9 (III) the inventory of water re-
 10 sources;

11 (IV) the extent of residential
 12 electrical power distribution; and

13 (V) the number and condition of
 14 housing units.

15 (i) ASSESSMENT ANALYSIS RESULTS.—The term
 16 “assessment analysis results” means the analysis—

17 (1) of the results of the assessment required by
 18 this section; and

19 (2) that is developed by the Commission in ac-
 20 cordance with this section.

21 **SEC. 11. UTAH NAVAJO TRUST FUND TRUST ADMINIS-**
 22 **TRATOR.**

23 (a) DUTIES.—The Trust Administrator selected by
 24 the Commission under section 10 shall—

1 (1) have a thorough understanding of this Act,
2 and other policies, procedures, or documents pre-
3 pared by the Commission;

4 (2) provide professional financial management
5 services to assist the Commission in the investment
6 and administration of the Utah Navajo Trust Fund;

7 (3) receive and pay out of the Utah Navajo
8 Trust Fund in accordance with funding directions
9 received from the Commission and Trust administra-
10 tion fees and expenses approved by the Commission;

11 (4) in conjunction with the Commission, obtain
12 an independent annual audit of the Utah Navajo
13 Trust Fund;

14 (5) report to the Commission and the Chapters
15 on—

16 (A) the audit;

17 (B) the use of the Trust Property for the
18 health, education, and welfare purposes as pro-
19 vided in this Act and the annual assessment re-
20 quired by section 10; and

21 (C) the investment of the Trust property,
22 including compliance with the objectives of the
23 Trust and results for each year;

1 (6) invest the assets of the Trust in a manner
2 consistent with the investment guidelines developed
3 by the Commission;

4 (7) provide for adequate systems for accounting
5 for and reporting Trust Fund balances;

6 (8) provide for adequate controls over receipts
7 and disbursements;

8 (9) provide for periodic, timely reconciliations of
9 financial records to ensure the accuracy of account
10 information;

11 (10) determine accurate cash balances;

12 (11) prepare and supply to the Commission
13 periodic account statements; and

14 (12) provide adequate staffing, supervision, and
15 training for Trust Fund management and account-
16 ing.

17 (b) COMPENSATION.—The Trust Administrator may
18 be compensated for such services on a fixed contract fee
19 basis or on such other terms and conditions as are reason-
20 able and customary for such services.

21 (c) REMOVAL.—The Trust Administrator may be re-
22 moved by a majority vote of the Commission for illegal
23 conduct, laundering money, abusing funds, or upon at
24 least a $\frac{5}{7}$ vote of the Commission for any reason.

1 (d) APPLICABLE LAW.—The Trust Administrator, its
2 officers, agents, and employees shall be subject to the laws
3 of the State of Utah. The Trust Administrator, its offi-
4 cers, agents, and employees shall take any actions in ac-
5 cordance with the laws of the State of Utah. In the ab-
6 sence of more specific statutory duties and responsibilities
7 under Federal or State law, common law duties shall gov-
8 ern the administration of the Trust.

9 (e) STATUS UNDER CERTAIN LAWS.—The Trust Ad-
10 ministrator, its officers, agents, and employees shall not
11 be a department, agency, or instrumentality of the Gov-
12 ernment of the United States and shall not be subject to
13 title 31, United States Code. The Financial Trustee and
14 its officers, employees, and agents shall not be considered
15 officers, employees, or agents of the Government of the
16 United States.

17 **SEC. 12. ESTABLISHMENT OF TRUST.**

18 (a) AUDIT.—Not later than 90 days after selection
19 of a Trust Administrator by the Utah Navajo Trust Fund
20 Commission in accordance with this Act, the State of Utah
21 shall prepare an audit and accounting of the Trust assets
22 in the Utah Navajo Trust Fund, as established and ad-
23 ministered by the State of Utah prior to passage of this
24 Act. Not later than 120 days after selection of a Trust
25 Administrator by the Utah Navajo Trust Fund Commis-

1 sion, the State of Utah shall transfer the Trust assets to
2 the Trust Administrator selected pursuant to this Act.
3 The Trust Administrator shall establish the Utah Navajo
4 Trust Fund with the assets transferred from the State of
5 Utah.

6 (b) JUDGMENTS.—Any judgments awarded the bene-
7 ficiaries against the State by a court after the date of
8 transfer of the assets specified in subsection (a) shall be
9 transferred into the Trust Fund not later than 90 days
10 after any final judgment against the State.

11 **SEC. 13. FIDUCIARY STANDARDS OF THE TRUSTEE.**

12 The Commission and the Trust Administrator and
13 their officers, agents, and employees shall discharge their
14 duties with respect to the Trust assets solely in the inter-
15 est of the Utah Navajo Trust Fund and through it, the
16 beneficiaries of the Trust—

17 (1) for the exclusive purpose of—

18 (A) providing benefits to the beneficiaries;

19 and

20 (B) defraying reasonable expenses of ad-
21 ministering the functions of the Trust, not to
22 exceed 5 per cent per annum;

23 (2) by diversifying investments so as to mini-
24 mize the risk of large losses and to avoid dispropor-
25 tionate influence over a particular industry or firm,

1 unless under the circumstances it is clearly prudent
2 not to do so;

3 (3) in accordance with this Act;

4 (4) in choosing and contracting for professional
5 investment management services and in continuing
6 the use of an investment manager, the Commission
7 must act prudently and in the interest of the bene-
8 ficiaries;

9 (5) using the highest degree of care, skill, pru-
10 dence, diligence, and loyalty to—

11 (A) protect and preserve the trust assets
12 from loss, damage, unlawful alienation, waste,
13 and depletion;

14 (B) ensure that management of Trust as-
15 sets promotes the interest of the beneficial
16 owner, and supports the eligible use of the as-
17 sets specified in this Act;

18 (C) enforce the terms of all leases or other
19 agreements that provide for the use of Trust
20 assets, and take appropriate steps to remedy
21 trespass on Trust assets; and

22 (D) account for and identify, collect, de-
23 posit, and invest, in a timely manner, income
24 due or held on behalf of the beneficiaries and
25 in accordance with this Act;

1 (6) maintain a verifiable system of records that,
2 at a minimum, is capable of identifying, with respect
3 to a Trust asset—

4 (A) the location of the Trust asset;

5 (B) any legal encumbrances (such as leases
6 or permits) applicable to the Trust asset;

7 (C) the user of the Trust asset;

8 (D) any rent or other payments made;

9 (E) the value of land and resources associ-
10 ated with the Trust asset;

11 (F) dates of collections, deposits, transfers,
12 disbursements, imposition of third-party obliga-
13 tions, statements of earnings, investment in-
14 struments, and closure of all accounts relating
15 to the trust fund asset;

16 (G) documents pertaining to actions taken
17 to prevent or compensate for any diminishment
18 of a Trust asset; and

19 (H) documents that evidence the manage-
20 ment and disposition of a Trust asset;

21 (7) establish and maintain a system of records
22 that permits beneficiaries to obtain information re-
23 garding Trust assets in a timely manner;

24 (8) invest Trust funds to ensure that the Trust
25 remains reasonably productive for the beneficiaries

1 consistent with market conditions existing at the
2 time at which investment is made; and

3 (9) communicate with beneficiaries regarding
4 the management and administration of Trust assets.

5 **SEC. 14. PROHIBITIONS WITH RESPECT TO THE TRUST.**

6 (a) IN GENERAL.—The Commission and the Trust
7 Administrator and their officers, agents, and employees
8 shall not—

9 (1) deal with the assets of the Trust in their
10 own interest;

11 (2) in an individual or in any other capacity act
12 in any transaction involving the assets of the Trust
13 on behalf of a party (or represent a party) whose in-
14 terests are adverse to the interests of the Trust or
15 the interests of the beneficiaries; or

16 (3) receive any consideration for their own per-
17 sonal account from any party dealing with the assets
18 of the Trust.

19 (b) LIABILITY.—Any provision in an agreement or in-
20 strument that purports to relieve the Commission or the
21 Trust Administrator from responsibility or liability for a
22 responsibility, obligation, or duty under this Act shall be
23 void. Nothing in this Act shall preclude—

24 (1) the Trust from purchasing insurance for the
25 Commission or Trust Administrator or for itself to

1 cover liability or losses occurring by reason of the
2 act or omission of the Commission or Trust Admin-
3 istrator if such insurance permits recourse by the in-
4 surer against the Commission or Trust Adminis-
5 trator in the case of a breach of fiduciary obligation
6 by such Commission or Trust Administrator; or

7 (2) the Commission or Trust Administrator
8 from purchasing insurance to cover liability under
9 this Act from and for their own account.

10 (c) LIMITATION ON ADMINISTRATIVE FEE USE.—
11 The Commission or Trust Administrator may not use
12 Trust Funds, nor claim as administrative costs, funds
13 used to lobby any Federal, State, or tribal government nor
14 to travel outside of the boundaries of the Navajo Nation
15 other than necessary to meet with investment advisors or
16 auditors or to maintain real property owned by the Trust
17 Fund at the time of passage of this Act.

18 **SEC. 15. LIABILITY AND BONDING.**

19 The Commission or Trust Administrator and their of-
20 ficers, employees, and agents who handle funds or other
21 property of the Trust (hereafter in this subsection referred
22 to as “Trust officials”) shall be bonded. Such bond shall
23 provide protection to the Trust against loss by reason of
24 acts of fraud or dishonesty on the part of any Trust offi-

1 cial, directly or through the connivance of others, and shall
2 be in accordance with the following:

3 (1) The amount of such bond shall be fixed at
4 the beginning of each fiscal year of the Trust by the
5 Utah Navajo Trust Fund Commission. Such amount
6 shall not be less than 10 percent of the amount of
7 the funds handled.

8 (2) It shall be unlawful for any Trust official to
9 receive, handle, disburse, or otherwise exercise cus-
10 tody or control of any of the funds or other property
11 of the Trust without being bonded as required by
12 this subsection and it shall be unlawful for any
13 Trust official, or any other person having authority
14 to direct the performance of such functions, or any
15 of them, to be performed by any Trust official, with
16 respect to whom the requirements of this subsection
17 have not been met.

18 (3) It shall be unlawful for any person to pro-
19 cure any bond required by this subsection from any
20 surety or other company or through any agent or
21 broker in whose business operations such person has
22 any control or significant financial interest, direct or
23 indirect.

1 **SEC. 16. AUDIT AND REPORT.**

2 (a) IN GENERAL.—The Trust Administrator shall ac-
3 count for the daily and annual balances of all Trust funds.

4 (b) PERIODIC STATEMENT OF PERFORMANCE.—

5 (1) IN GENERAL.—Not later than 20 business
6 days after the close of the second calendar quarter
7 after the date the State transfers the assets in sec-
8 tion 12, and not later than 20 business days after
9 the close of each calendar quarter thereafter, the
10 Trust Administrator shall provide to the bene-
11 ficiaries, through the Commission and each Chapter,
12 for whom the Financial Trustee manages the Trust
13 assets, a statement of performance for the Trust
14 funds. Such periodic Statement of Performance shall
15 be published in a newspaper of San Juan countywide
16 and reservation wide circulation and contain a sum-
17 mary of the statement.

18 (2) REQUIREMENTS.—Each statement under
19 subparagraph (A) shall identify, with respect to the
20 period covered by the statement—

21 (A) the source, type, and status of the
22 funds;

23 (B) the beginning balance of the funds;

24 (C) the gains and losses of the funds;

25 (D) receipts and disbursements of the
26 funds; and

1 (E) the ending balance of the funds.

2 (c) AUDITS.—With respect to each account con-
3 taining Trust assets, the Trust Administrator shall con-
4 duct, for each fiscal year, an audit of all trust funds; and
5 include, in the first statement of performance after com-
6 pletion of the audit, a letter describing the results of the
7 audit.

8 (d) INDEPENDENT AUDITS.—The Trust shall annu-
9 ally engage an independent qualified public accountant to
10 audit the financial statements of the Trust.

11 **SEC. 17. ELIGIBLE BENEFICIARIES.**

12 The Commission shall establish and maintain a cen-
13 sus of eligible beneficiaries within 60 days of the enact-
14 ment of this Act. All individuals listed on the census shall
15 meet the criteria for beneficiaries defined in this Act.

16 **SEC. 18. ENFORCEMENT.**

17 The Commission and the Trust Administrator shall
18 be liable for any mismanagement, waste, fraud, abuse, or
19 other claims, actions, or inaction and may be named as
20 a defendant in any action pursuant to this Act. By accept-
21 ing the election results for the Commission or the selection
22 as the Trust Administrator, each submits to the jurisdic-
23 tion and consents to suit for all proceedings arising from
24 or related to performance of their duties under this Act,
25 in the United States District Court for the State of Utah.

1 One or more beneficiaries or the United States Govern-
2 ment may bring a civil action to enjoin any act or practice
3 by the Commission or the Trust Administrator or their
4 employees or agents that violates any provision of this Act;
5 or to obtain other appropriate relief to redress such viola-
6 tions, or to enforce any provisions of this Act. Express
7 cause of action and normal equitable remedies shall be
8 available.

9 **SEC. 19. LIABILITY OF THE UNITED STATES.**

10 (a) IN GENERAL.—Nothing in this Act is intended
11 to create a cause of action against the United States or
12 to allow to be maintained in any court any potential
13 breach-of-trust actions brought by or on behalf of the
14 beneficiaries of the Utah Navajo Trust Fund for equitable,
15 monetary, or Administrative Procedure Act-based relief
16 against the United States whether or not such claims spe-
17 cifically assert an alleged breach of trust, call for an ac-
18 counting, or seek declaratory relief. The United States
19 shall not be liable for any actions or inactions of the Com-
20 mission or the Trust Administrator.

21 (b) CERTAIN LIABILITY.—Notwithstanding sub-
22 section (a), nothing in this Act shall affect the liability
23 of the United States for misdeeds by the United States
24 when it had control over Trust assets.

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