

112TH CONGRESS
2D SESSION

S. 3679

To provide for Indian trust asset management reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2012

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

A BILL

To provide for Indian trust asset management reform, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Indian Trust Asset Reform Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

Sec. 101. Congressional statement of findings.

Sec. 102. Congressional reaffirmation of policy.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT

- Sec. 201. Short title.
 Sec. 202. Definitions.
 Sec. 203. Establishment of demonstration project; selection of participating Indian tribes.
 Sec. 204. Indian trust asset management plan.
 Sec. 205. Effect of title.

TITLE III—RESTRUCTURING BUREAU OF INDIAN AFFAIRS AND
OFFICE OF SPECIAL TRUSTEE

- Sec. 301. Purpose.
 Sec. 302. Definitions.
 Sec. 303. Under Secretary for Indian Affairs.
 Sec. 304. Transfer of functions of Assistant Secretary for Indian Affairs.
 Sec. 305. Office of Special Trustee for American Indians.
 Sec. 306. Cost savings recommendations.
 Sec. 307. Hiring preference.

1 TITLE I—RECOGNITION OF
2 TRUST RESPONSIBILITY

3 SEC. 101. CONGRESSIONAL STATEMENT OF FINDINGS.

4 The Congress, after careful review of the Federal
 5 Government’s historical and special legal relationship
 6 with, and resulting responsibilities to, American Indian
 7 people, finds that—

8 (1) the relationship of Indian tribes to the
 9 United States is founded in part on the settled doc-
 10 trine of the law of nations that when a stronger sov-
 11 ereign assumes authority over a weaker sovereign,
 12 the stronger one assumes a duty of protection for
 13 the weaker one, which does not surrender its right
 14 to self-government;

15 (2) the United States fiduciary responsibilities
 16 to Indians also constitutes a foundational basis for,
 17 not merely a function of, congressional legislation re-

1 garding Indians because it constitutes an inherent
2 presupposition of our constitutional structure, which
3 provides an inherent limit on the exercise and appli-
4 cation of the Indian Commerce Clause and the Trea-
5 ty Clause of the Constitution;

6 (3) the United States fiduciary responsibilities
7 to Indians also are founded in part on specific com-
8 mitments made through written treaties and agree-
9 ments securing peace, in exchange for which Indians
10 have surrendered claims to vast tracts of land, which
11 provided legal consideration for permanent, ongoing
12 performance of Federal trust duties; and

13 (4) the foregoing historic Federal-tribal rela-
14 tions and understandings have benefitted the people
15 of the United States as a whole for centuries and es-
16 tablished enduring and enforceable Federal obliga-
17 tions to which the national honor has been com-
18 mitted.

19 **SEC. 102. CONGRESSIONAL REAFFIRMATION OF POLICY.**

20 Pursuant to its constitutionally vested authority over
21 Indian affairs, the Congress hereby reaffirms the following
22 regarding the proper discharge of the United States fidu-
23 ciary responsibilities to Indians—

24 (1) enforceable fiduciary duties necessarily arise
25 when the United States assumes control or super-

vision over tribal trust assets even though nothing is said expressly in the governing statutes or regulations, unless Congress has expressly specified otherwise;

(2) in general, the most exacting common-law fiduciary standards which govern private trustees also govern the United States when it manages Indian trust assets, and enforceable Federal trust duties for Indian trust asset management are not limited to the express terms of statutes and regulations;

(3) the fact that the United States simultaneously performs another task for another interest that Congress has obligated it by statute to do does not compromise or limit the United States enforceable fiduciary obligations to Indians; and

(4) the United States fiduciary responsibilities to Indian tribes include and are not limited by a duty to promote tribal self-determination regarding governmental authority and economic development.

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “Indian Trust Asset Management Demonstration Project Act of 2012”.

1 **SEC. 202. DEFINITIONS.**

2 In this title:

3 (1) **PROJECT.**—The term “Project” means the
4 Indian trust asset management demonstration
5 project established under section 103(a).

6 (2) **INDIAN TRIBE.**—The term “Indian tribe”
7 means an Indian tribe that—

8 (A) is federally recognized; and

9 (B) submits an application under section
10 203(c).

11 (3) **SECRETARY.**—The term “Secretary” means
12 the Secretary of the Interior.

13 **SEC. 203. ESTABLISHMENT OF DEMONSTRATION PROJECT;**
14 **SELECTION OF PARTICIPATING INDIAN**
15 **TRIBES.**

16 (a) **IN GENERAL.**—The Secretary shall establish and
17 carry out an Indian trust asset management demonstra-
18 tion project, in accordance with this title.

19 (b) **SELECTION OF PARTICIPATING INDIAN**
20 **TRIBES.**—

21 (1) **INDIAN TRIBES.**—

22 (A) **IN GENERAL.**—Any Indian tribe shall
23 be eligible to participate in the Project if—

24 (i) the Indian tribe submits to the
25 Secretary an application under subsection
26 (c); and

1 (ii) the Secretary approves the appli-
2 cation of the Indian tribe.

3 (2) NOTICE.—

4 (A) IN GENERAL.—The Secretary shall
5 provide a written notice to each Indian tribe ap-
6 proved to participate in the Project.

7 (B) CONTENTS.—A notice under subpara-
8 graph (A) shall include—

9 (i) a statement that the application of
10 the Indian tribe has been approved by the
11 Secretary; and

12 (ii) a requirement that the Indian
13 tribe shall submit to the Secretary a pro-
14 posed Indian trust asset management plan
15 in accordance with section 104.

16 (c) APPLICATION.—

17 (1) IN GENERAL.—To be eligible to participate
18 in the Project, an Indian tribe shall submit to the
19 Secretary a written application in accordance with
20 paragraph (2).

21 (2) REQUIREMENTS.—The Secretary shall take
22 into consideration an application under this sub-
23 section only if the application—

24 (A) includes a copy of a resolution or other
25 appropriate action by the governing body of the

1 Indian tribe, as determined by the Secretary, in
 2 support of or authorizing the application;

3 (B) is received by the Secretary after the
 4 date of enactment of this Act; and

5 (C) states that the Indian tribe is request-
 6 ing to participate in the Project.

7 (d) DURATION.—The Project shall remain in effect
 8 for a period of 8 years after the date of enactment of this
 9 Act.

10 **SEC. 204. INDIAN TRUST ASSET MANAGEMENT PLAN.**

11 (a) PROPOSED PLAN.—

12 (1) SUBMISSION.—After the date on which an
 13 Indian tribe receives a notice from the Secretary
 14 under section 203(b)(2), the Indian tribe shall sub-
 15 mit to the Secretary a proposed Indian trust asset
 16 management plan in accordance with paragraph (2).

17 (2) CONTENTS.—A proposed Indian trust asset
 18 management plan shall include provisions that—

19 (A) identify the trust assets that will be
 20 subject to the plan, including financial and non-
 21 financial trust assets;

22 (B) establish trust asset management ob-
 23 jectives and priorities for Indian trust assets
 24 that are located within the reservation, or oth-

erwise subject to the jurisdiction, of the Indian tribe;

(C) allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;

(D) if the Indian tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets—

(i) identify the functions or activities that are being performed by the Indian tribe under the contracts or compacts; and

(ii) describe the proposed management systems, practices, and procedures that the Indian tribe will follow;

(E) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan;

(F) include a process for the Indian tribe and the Federal agencies affected by the trust asset management plan to conduct annual eval-

uations to ensure that trust assets are being managed in accordance with the plan; and

(G) identify any Federal regulations that will be superseded by the plan.

(3) AUTHORITY OF INDIAN TRIBES TO DEVELOP SYSTEMS, PRACTICES, AND PROCEDURES.—

For purposes of preparing and carrying out a management plan under this section, an Indian tribe that has compacted or contracted activities or functions under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), for purposes of carrying out the activities or functions, may develop and carry out trust asset management systems, practices, and procedures that differ from any such systems, practices, and procedures used by the Secretary in managing the trust assets if the systems, practices, and procedures of the Indian tribe meet the requirements of the laws, standards, and responsibilities described in subsection (c).

(4) TECHNICAL ASSISTANCE AND INFORMATION.—The Secretary shall provide to an Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a pro-

1 posed plan on receipt of a written request from the
2 Indian tribe.

3 (b) APPROVAL AND DISAPPROVAL OF PROPOSED
4 PLANS.—

5 (1) APPROVAL.—

6 (A) IN GENERAL.—Not later than 120
7 days after the date on which an Indian tribe
8 submits a proposed Indian trust asset manage-
9 ment plan under subsection (a), Secretary shall
10 approve or disapprove the proposed plan.

11 (B) REQUIREMENTS FOR DISAPPROVAL.—
12 The Secretary shall approve a proposed plan
13 unless the Secretary determines that—

14 (i) the proposed plan fails to address
15 a requirement under subsection (a)(2);

16 (ii) the proposed plan includes one or
17 more provisions that are inconsistent with
18 subsection (c); or

19 (iii) the cost of implementing the pro-
20 posed plan exceeds the amount of funding
21 available for the management of trust as-
22 sets that would be subject to the proposed
23 plan.

24 (2) ACTION ON DISAPPROVAL.—

1 (A) NOTICE.—If the Secretary disapproves
2 a proposed plan under paragraph (1)(B), the
3 Secretary shall provide to the Indian tribe a
4 written notice of the disapproval, including any
5 reason why the proposed plan was disapproved.

6 (B) ACTION BY TRIBES.—If a proposed
7 plan is disapproved under paragraph (1)(B),
8 the Indian tribe may resubmit an amended pro-
9 posed plan not later than 90 days after the date
10 on which the Indian tribe receives the notice
11 under subparagraph (A).

12 (3) FAILURE TO APPROVE OR DISAPPROVE.—If
13 the Secretary fails to approve or disapprove a pro-
14 posed plan in accordance with paragraph (1), the
15 plan shall be considered to be approved.

16 (4) JUDICIAL REVIEW.—An Indian tribe may
17 seek judicial review of the determination of the Sec-
18 retary in accordance with subchapter II of chapter
19 5, and chapter 7, of title 5, United States Code
20 (commonly known as the “Administrative Procedure
21 Act”) if—

22 (A) the Secretary disapproves the proposed
23 plan of the Indian tribe under paragraph (1) or
24 (3); and

1 (B) the Indian tribe has exhausted any
2 other administrative remedy available to the In-
3 dian tribe.

4 (c) APPLICABLE LAWS; STANDARDS; TRUST RE-
5 SPONSIBILITY.—

6 (1) APPLICABLE LAWS.—An Indian trust asset
7 management plan, and any activity carried out
8 under the plan, shall not be approved unless the pro-
9 posed plan is consistent with—

10 (A) all Federal treaties, statutes, Executive
11 orders, and court decisions that are applicable
12 to the trust assets, or the management of the
13 trust assets, identified in the plan; and

14 (B) all tribal laws that are applicable to
15 the trust assets, or the management of trust as-
16 sets, identified in the plan, except to the extent
17 that the laws are inconsistent with the treaties,
18 statutes, Executive orders, and court decisions
19 referred to in subparagraph (A).

20 (2) STANDARDS.—Subject to the laws referred
21 to in paragraph (1)(A), an Indian trust asset man-
22 agement plan shall not be approved unless the Sec-
23 retary determines that the plan will—

24 (A) protect trust assets from loss, waste,
25 and unlawful alienation;

1 (B) promote the interests of the beneficial
2 owner of the trust asset;

3 (C) conform, to the maximum extent prac-
4 ticable, to the preferred use of the trust asset
5 by the beneficial owner, unless the use is incon-
6 sistent with a treaty, statute, regulation, Execu-
7 tive order, or court decision referred to in para-
8 graph (1)(A);

9 (D) protect any applicable treaty-based
10 fishing, hunting and gathering, and similar
11 rights relating to the use, access, or enjoyment
12 of a trust asset; and

13 (E) require that any activity carried out
14 under the plan be carried out in good faith and
15 with loyalty to the beneficial owner of the trust
16 asset.

17 (3) TRUST RESPONSIBILITY.—An Indian trust
18 asset management plan shall not be approved unless
19 the Secretary determines that the plan is consistent
20 with the trust responsibility of the United States to
21 the Indian tribe and individual Indians.

22 (d) TERMINATION OF PLAN.—

23 (1) IN GENERAL.—An Indian tribe may termi-
24 nate an Indian trust asset management plan on any
25 date after the date on which a proposed Indian trust

1 asset management plan is approved by providing to
2 the Secretary—

3 (A) a notice of the intent of the Indian
4 tribe to terminate the plan; and

5 (B) a resolution of the governing body of
6 the Indian tribe authorizing the termination of
7 the plan.

8 (2) EFFECTIVE DATE.—A termination of an In-
9 dian trust asset management plan under paragraph
10 (1) takes effect on October 1 of the first fiscal year
11 following the date on which a notice is provided to
12 the Secretary under paragraph (1)(A).

13 **SEC. 205. EFFECT OF TITLE.**

14 (a) LIABILITY.—Nothing in this title, or a trust asset
15 management plan approved under section 204, shall inde-
16 pendently diminish, increase, create, or otherwise affect
17 the liability of the United States or an Indian tribe partici-
18 pating in the Project for any loss resulting from the man-
19 agement of an Indian trust asset under an Indian trust
20 asset management plan.

21 (b) EFFECT ON OTHER LAWS.—Except for any regu-
22 lation superseded by a trust asset management plan ap-
23 proved under section 204, nothing in this title amends or
24 otherwise affects the application of any treaty, statute,
25 regulation, Executive order, or court decision that is appli-

1 cable to Indian trust assets or the management or admin-
 2 istration of Indian trust assets.

3 (c) TRUST RESPONSIBILITY.—Nothing in this title
 4 diminishes or otherwise affects the trust responsibility of
 5 the United States to Indian tribes and individual Indians.

6 **TITLE III—RESTRUCTURING BU-**
 7 **REAU OF INDIAN AFFAIRS**
 8 **AND OFFICE OF SPECIAL**
 9 **TRUSTEE**

10 **SEC. 301. PURPOSE.**

11 The purpose of this title is to ensure a more effective
 12 and accountable administration of duties of the Secretary
 13 of the Interior with respect to providing services and pro-
 14 grams to Indians and Indian tribes, including the manage-
 15 ment of Indian trust resources.

16 **SEC. 302. DEFINITIONS.**

17 In this title:

18 (1) BUREAU.—The term “Bureau” means the
 19 Bureau of Indian Affairs.

20 (2) OFFICE.—The term “Office” means the Of-
 21 fice of Trust Reform Implementation and Oversight
 22 referred to in section 303(c).

23 (3) SECRETARY.—The term “Secretary” means
 24 the Secretary of the Interior.

1 (4) UNDER SECRETARY.—The term “Under
2 Secretary” means the individual appointed to the po-
3 sition of Under Secretary for Indian Affairs, estab-
4 lished by section 303(a).

5 **SEC. 303. UNDER SECRETARY FOR INDIAN AFFAIRS.**

6 (a) ESTABLISHMENT OF POSITION.—There is estab-
7 lished in the Department of the Interior the position of
8 Under Secretary for Indian Affairs, who shall report di-
9 rectly to the Secretary.

10 (b) APPOINTMENT.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the Under Secretary shall be appointed
13 by the President, by and with the advice and consent
14 of the Senate.

15 (2) EXCEPTION.—The officer serving as the As-
16 sistant Secretary for Indian Affairs on the date of
17 enactment of this Act may assume the position of
18 Under Secretary without appointment under para-
19 graph (1) if—

20 (A) the officer was appointed as Assistant
21 Secretary for Indian Affairs by the President by
22 and with the advice and consent of the Senate;
23 and

1 (B) not later than 180 days after the date
2 of enactment of this Act, the Secretary ap-
3 proves the assumption.

4 (c) DUTIES.—In addition to the duties transferred to
5 the Under Secretary under sections 304 and 305, the
6 Under Secretary, acting through an Office of Trust Re-
7 form Implementation and Oversight, shall—

8 (1) carry out any activity relating to trust fund
9 accounts and trust resource management of the Bu-
10 reau (except any activity carried out under the Of-
11 fice of the Special Trustee for American Indians be-
12 fore the date on which the Office of the Special
13 Trustee is abolished), in accordance with the Amer-
14 ican Indian Trust Fund Management Reform Act of
15 1994 (25 U.S.C. 4001 et seq.);

16 (2) develop and maintain an inventory of Indian
17 trust assets and resources;

18 (3) coordinate with the Special Trustee for
19 American Indians to ensure an orderly transition of
20 the functions of the Special Trustee under section
21 305;

22 (4) supervise any activity carried out by the De-
23 partment of the Interior, including but not limited
24 to—

1 (A) to the extent that the activities relate
2 to Indian affairs, activities carried out by—

3 (i) the Commissioner of Reclamation;

4 (ii) the Director of the Bureau of
5 Land Management;

6 (iii) the Director of the Office of Nat-
7 ural Resources Revenue;

8 (iv) the Director of the National Park
9 Service; and

10 (v) the Director of the U.S. Fish and
11 Wildlife Service; and

12 (B) intergovernmental relations between
13 the Bureau and Indian tribal governments;

14 (5) to the maximum extent practicable, coordi-
15 nate activities and policies of the Bureau with activi-
16 ties and policies of—

17 (A) the Bureau of Reclamation;

18 (B) the Bureau of Land Management;

19 (C) the Office of Natural Resources Rev-
20 enue;

21 (D) the National Park Service; and

22 (E) the U.S. Fish and Wildlife Service;

23 (6) provide for regular consultation with Indi-
24 ans and Indian tribes that own interests in trust re-
25 sources and trust fund accounts;

1 (7) manage and administer Indian trust re-
2 sources in accordance with any applicable Federal
3 law;

4 (8) take steps to protect the security of data re-
5 lating to individual Indian and Indian tribal trust
6 accounts; and

7 (9) take any other measure the Under Sec-
8 retary determines to be necessary with respect to In-
9 dian affairs.

10 **SEC. 304. TRANSFER OF FUNCTIONS OF ASSISTANT SEC-**
11 **RETARY FOR INDIAN AFFAIRS.**

12 (a) TRANSFER OF FUNCTIONS.—There is transferred
13 to the Under Secretary any function of the Assistant Sec-
14 retary for Indian Affairs that has not been carried out
15 by the Assistant Secretary as of the date of enactment
16 of this Act.

17 (b) DETERMINATIONS OF CERTAIN FUNCTIONS BY
18 THE OFFICE OF MANAGEMENT AND BUDGET.—If nec-
19 essary, the Office of Management and Budget shall make
20 any determination relating to the functions transferred
21 under subsection (a).

22 (c) PERSONNEL PROVISIONS.—

23 (1) APPOINTMENTS.—The Under Secretary
24 may appoint and fix the compensation of such offi-
25 cers and employees as the Under Secretary deter-

1 mines to be necessary to carry out any function
2 transferred under this section.

3 (2) REQUIREMENTS.—Except as otherwise pro-
4 vided by law—

5 (A) an officer or employee described in
6 paragraph (1) shall be appointed in accordance
7 with the civil service laws; and

8 (B) the compensation of the officer or em-
9 ployee shall be fixed in accordance with title 5,
10 United States Code.

11 (d) DELEGATION AND ASSIGNMENT.—

12 (1) IN GENERAL.—Except as otherwise ex-
13 pressly prohibited by law or otherwise provided by
14 this section, the Under Secretary may—

15 (A) delegate any of the functions trans-
16 ferred to the Under Secretary by this section
17 and any function transferred or granted to the
18 Under Secretary after the date of enactment of
19 this Act to such officers and employees of the
20 Office as the Under Secretary may designate;
21 and

22 (B) authorize successive redelegations of
23 such functions as the Under Secretary deter-
24 mines to be necessary or appropriate.

1 (2) DELEGATION.—No delegation of functions
2 by the Under Secretary under this section shall re-
3 lieve the Under Secretary of responsibility for the
4 administration of the functions.

5 (e) REORGANIZATION.—The Under Secretary may al-
6 locate or reallocate any function transferred under this
7 section among the officers of the Office, and establish,
8 consolidate, alter, or discontinue such organizational enti-
9 ties in the Office, as the Under Secretary determines to
10 be necessary or appropriate.

11 (f) RULES.—The Under Secretary may prescribe, in
12 accordance with the provisions of chapters 5 and 6 of title
13 5, United States Code, such rules and regulations as the
14 Under Secretary determines to be necessary or appro-
15 priate to administer and manage the functions of the Of-
16 fice.

17 (g) TRANSFER AND ALLOCATIONS OF APPROPRIA-
18 TIONS AND PERSONNEL.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided in this section, the personnel employed in con-
21 nection with, and the assets, liabilities, contracts,
22 property, records, and unexpended balances of ap-
23 propriations, authorizations, allocations, and other
24 funds employed, used, held, arising from, available
25 to, or to be made available in connection with, the

1 functions transferred by this section, subject to sec-
2 tion 1531 of title 31, United States Code, shall be
3 transferred to the Office.

4 (2) UNEXPENDED FUNDS.—Unexpended funds
5 transferred pursuant to this subsection shall be used
6 only for the purposes for which the funds were origi-
7 nally authorized and appropriated.

8 (h) INCIDENTAL TRANSFERS.—

9 (1) IN GENERAL.—The Director of the Office of
10 Management and Budget, at any time the Director
11 may provide, may make such determinations as are
12 necessary with regard to the functions transferred
13 by this section, and make such additional incidental
14 dispositions of personnel, assets, liabilities, grants,
15 contracts, property, records, and unexpended bal-
16 ances of appropriations, authorizations, allocations,
17 and other funds held, used, arising from, available
18 to, or to be made available in connection with such
19 functions, as are necessary, to carry out this section.

20 (2) TERMINATION OF AFFAIRS.—The Director
21 of the Office of Management and Budget shall pro-
22 vide for the termination of the affairs of all entities
23 terminated by this section and for any further meas-
24 ures and dispositions as are necessary to effectuate
25 the purposes of this section.

1 (i) EFFECT ON PERSONNEL.—

2 (1) IN GENERAL.—Except as otherwise pro-
3 vided by this section, the transfer pursuant to this
4 section of full-time personnel (except special Govern-
5 ment employees) and part-time personnel holding
6 permanent positions shall not cause any such em-
7 ployee to be separated or reduced in grade or com-
8 pensation for a period of at least 1 year after the
9 date of transfer of the employee under this section.

10 (2) EXECUTIVE SCHEDULE POSITIONS.—Except
11 as otherwise provided in this section, any person
12 who, on the day preceding the date of enactment of
13 this Act, held a position compensated in accordance
14 with the Executive Schedule prescribed in chapter
15 53 of title 5, United States Code, and who, without
16 a break in service, is appointed to a position in the
17 Office having duties comparable to the duties per-
18 formed immediately preceding such appointment
19 shall continue to be compensated in the new position
20 at not less than the rate provided for the previous
21 position, for the duration of the service of the person
22 in the new position.

23 (3) TERMINATION OF CERTAIN POSITIONS.—
24 Positions whose incumbents are appointed by the
25 President, by and with the advice and consent of the

1 Senate, the functions of which are transferred by
2 this title, shall terminate on the date of enactment
3 of this Act.

4 (j) SEPARABILITY.—If a provision of this section or
5 the application of this section to any person or cir-
6 cumstance is held invalid, neither the remainder of this
7 section nor the application of the provision to other per-
8 sons or circumstances shall be affected.

9 (k) TRANSITION.—The Under Secretary may use—
10 (1) the services of the officers, employees, and
11 other personnel of the Assistant Secretary for Indian
12 Affairs relating to functions transferred to the Office
13 by this section; and

14 (2) funds appropriated to the functions for such
15 period of time as may reasonably be needed to facili-
16 tate the orderly implementation of this section.

17 (l) REFERENCES.—Any reference in a Federal law,
18 Executive order, rule, regulation, delegation of authority,
19 or document relating to the Assistant Secretary for Indian
20 Affairs, with respect to functions transferred under this
21 section, shall be deemed to be a reference to the Under
22 Secretary.

23 (m) RECOMMENDED LEGISLATION.—Not later than
24 180 days after the effective date of this title, the Under
25 Secretary, in consultation with the appropriate committees

1 of Congress and the Director of the Office of Management
 2 and Budget, shall submit to Congress any recommenda-
 3 tions relating to additional technical and conforming
 4 amendments to Federal law to reflect the changes made
 5 by this section.

6 (n) EFFECT OF SECTION.—

7 (1) CONTINUING EFFECT OF LEGAL DOCU-
 8 MENTS.—Any legal document relating to a function
 9 transferred by this section that is in effect on the
 10 date of enactment of this Act shall continue in effect
 11 in accordance with the terms of the document until
 12 the document is modified or terminated by—

13 (A) the President;

14 (B) the Under Secretary;

15 (C) a court of competent jurisdiction; or

16 (D) operation of Federal or State law.

17 (2) PROCEEDINGS NOT AFFECTED.—This sec-
 18 tion shall not affect any proceeding (including a no-
 19 tice of proposed rulemaking, an administrative pro-
 20 ceeding, and an application for a license, permit,
 21 certificate, or financial assistance) relating to a
 22 function transferred under this section that is pend-
 23 ing before the Assistant Secretary on the date of en-
 24 actment of this Act.

1 **SEC. 305. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN IN-**
2 **DIANS.**

3 (a) **TERMINATION.**—Notwithstanding sections 302
4 and 303 of the American Indian Trust Fund Management
5 Reform Act of 1994 (25 U.S.C. 4042; 4043), the Office
6 of Special Trustee for American Indians shall terminate
7 on the effective date of this section.

8 (b) **TRANSFER OF FUNCTIONS.**—There is transferred
9 to the Under Secretary any function of the Special Trustee
10 for American Indians that has not been carried out by
11 the Special Trustee as of the effective date of this section.

12 (c) **DETERMINATIONS OF CERTAIN FUNCTIONS BY**
13 **THE OFFICE OF MANAGEMENT AND BUDGET.**—If nec-
14 essary, the Office of Management and Budget shall make
15 any determination relating to the functions transferred
16 under subsection (b).

17 (d) **PERSONNEL PROVISIONS.**—

18 (1) **APPOINTMENTS.**—The Under Secretary
19 may appoint and fix the compensation of such offi-
20 cers and employees as the Under Secretary deter-
21 mines to be necessary to carry out any function
22 transferred under this section.

23 (2) **REQUIREMENTS.**—Except as otherwise pro-
24 vided by law—

1 (A) any officer or employee described in
 2 paragraph (1) shall be appointed in accordance
 3 with the civil service laws; and

4 (B) the compensation of such an officer or
 5 employee shall be fixed in accordance with title
 6 5, United States Code.

7 (e) DELEGATION AND ASSIGNMENT.—

8 (1) IN GENERAL.—Except as otherwise ex-
 9 pressly prohibited by law or otherwise provided by
 10 this section, the Under Secretary may—

11 (A) delegate any of the functions trans-
 12 ferred to the Under Secretary under this sec-
 13 tion and any function transferred or granted to
 14 the Under Secretary after the effective date of
 15 this section to such officers and employees of
 16 the Office as the Under Secretary may des-
 17 ignate; and

18 (B) authorize successive redelegations of
 19 the functions as are necessary or appropriate.

20 (2) DELEGATION.—No delegation of functions
 21 by the Under Secretary under this section shall re-
 22 lieve the Under Secretary of responsibility for the
 23 administration of the functions.

24 (f) REORGANIZATION.—The Under Secretary may al-
 25 locate or reallocate any function transferred under sub-

1 section (b) among the officers of the Office, and establish,
2 consolidate, alter, or discontinue such organizational enti-
3 ties in the Office as the Under Secretary determines to
4 be necessary or appropriate.

5 (g) RULES.—The Under Secretary may prescribe, in
6 accordance with the provisions of chapters 5 and 6 of title
7 5, United States Code, such rules and regulations as the
8 Under Secretary determines to be necessary or appro-
9 priate to administer and manage the functions of the Of-
10 fice.

11 (h) TRANSFER AND ALLOCATIONS OF APPROPRIA-
12 TIONS AND PERSONNEL.—Except as otherwise provided
13 in this section, the personnel employed in connection with,
14 and the assets, liabilities, contracts, property, records, and
15 unexpended balances of appropriations, authorizations, al-
16 locations, and other funds employed, used, held, arising
17 from, available to, or to be made available in connection
18 with the functions transferred by this section, subject to
19 section 1531 of title 31, United States Code, shall be
20 transferred to the Office.

21 (i) INCIDENTAL TRANSFERS.—

22 (1) IN GENERAL.—The Director of the Office of
23 Management and Budget, at any time the Director
24 may provide, may make such determinations as are
25 necessary with regard to the functions transferred

1 by this section, and make such additional incidental
2 dispositions of personnel, assets, liabilities, grants,
3 contracts, property, records, and unexpended bal-
4 ances of appropriations, authorizations, allocations,
5 and other funds held, used, arising from, available
6 to, or to be made available in connection with such
7 functions, as are necessary, to carry out this section.

8 (2) TERMINATION OF AFFAIRS.—The Director
9 of the Office of Management and Budget shall pro-
10 vide for the termination of the affairs of all entities
11 terminated by this section and for any further meas-
12 ures and dispositions as are necessary to effectuate
13 the purposes of this section.

14 (j) EFFECT ON PERSONNEL.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided by this section, the transfer pursuant to this
17 section of full-time personnel (except special Govern-
18 ment employees) and part-time personnel holding
19 permanent positions shall not cause any such em-
20 ployee to be separated or reduced in grade or com-
21 pensation for a period of at least 1 year after the
22 date of transfer of the employee under this section.

23 (2) EXECUTIVE SCHEDULE POSITIONS.—Except
24 as otherwise provided in this section, any person
25 who, on the day preceding the effective date of this

1 section, held a position compensated in accordance
 2 with the Executive Schedule prescribed in chapter
 3 53 of title 5, United States Code, and who, without
 4 a break in service, is appointed to a position in the
 5 Office having duties comparable to the duties per-
 6 formed immediately preceding such appointment,
 7 shall continue to be compensated in the new position
 8 at not less than the rate provided for the previous
 9 position, for the duration of the service of the person
 10 in the new position.

11 (3) TERMINATION OF CERTAIN POSITIONS.—
 12 Positions the incumbents of which are appointed by
 13 the President, by and with the advice and consent
 14 of the Senate, and the functions of which are trans-
 15 ferred by this title, shall terminate on the effective
 16 date of this section.

17 (k) SEPARABILITY.—If a provision of this section or
 18 the application of this section to any person or cir-
 19 cumstance is held invalid, neither the remainder of this
 20 section nor the application of the provision to other per-
 21 sons or circumstances shall be affected.

22 (l) TRANSITION.—The Under Secretary may use—
 23 (1) the services of the officers, employees, and
 24 other personnel of the Special Trustee relating to

1 functions transferred to the Office by this section;
2 and

3 (2) funds appropriated to those functions for
4 such period of time as may reasonably be needed to
5 facilitate the orderly implementation of this section.

6 (m) REFERENCES.—Any reference in a Federal law,
7 Executive order, rule, regulation, delegation of authority,
8 or document relating to the Special Trustee, with respect
9 to functions transferred under this section, shall be
10 deemed to be a reference to the Under Secretary.

11 (n) RECOMMENDED LEGISLATION.—Not later than
12 180 days after the effective date of this title, the Under
13 Secretary, in consultation with the appropriate committees
14 of Congress and the Director of the Office of Management
15 and Budget, shall submit to Congress any recommenda-
16 tions relating to additional technical and conforming
17 amendments to Federal law to reflect the changes made
18 by this section.

19 (o) EFFECT OF SECTION.—

20 (1) CONTINUING EFFECT OF LEGAL DOCU-
21 MENTS.—Any legal document relating to a function
22 transferred by this section that is in effect on the ef-
23 fective date of this section shall continue in effect in
24 accordance with the terms of the document until the
25 document is modified or terminated by—

- 1 (A) the President;
- 2 (B) the Under Secretary;
- 3 (C) a court of competent jurisdiction; or
- 4 (D) operation of Federal or State law.

5 (2) PROCEEDINGS NOT AFFECTED.—This sec-
 6 tion shall not affect any proceeding (including a no-
 7 tice of proposed rulemaking, an administrative pro-
 8 ceeding, and an application for a license, permit,
 9 certificate, or financial assistance) relating to a
 10 function transferred under this section that is pend-
 11 ing before the Special Trustee on the effective date
 12 of this section.

13 (p) EFFECTIVE DATE.—This section shall take effect
 14 on April 1, 2013, or 180 days following enactment of this
 15 Act into law, whichever is earlier.

16 **SEC. 306. COST SAVINGS RECOMMENDATIONS.**

17 (a) COST SAVINGS IDENTIFICATION.—Within 60
 18 days of the effective date in section 305(p), the Under Sec-
 19 retary shall initiate procedures to—

- 20 (1) identify the programs, functions, services,
- 21 and activities (or any portions of programs, func-
- 22 tions, services, or activities) that will not have to op-
- 23 erate or carry out as a result of any transfer of
- 24 functions and personnel under section 305;

1 (2) identify the amounts that the Secretary
2 would have otherwise expended to operate or carry
3 out each program, function, service, and activity (or
4 any portion of a program, function, service, or activ-
5 ity) identified pursuant to paragraph (1); and

6 (3) provide to the Secretary and the tribal rep-
7 resentatives of the Tribal/Interior Budget Council,
8 within 120 days of the effective date in section
9 305(p), a list of the programs, functions, services,
10 and activities (or any portions of programs, func-
11 tions, services, or activities) identified pursuant
12 paragraph (1) and the amounts associated with each
13 program, function, service, and activity (or any por-
14 tion of a program, function, service, or activity)
15 identified pursuant to paragraph (2).

16 (b) TRIBAL RECOMMENDATIONS.—Within 120 days
17 of receipt of the information in subsection (a)(3), the trib-
18 al representatives of the Tribal/Interior Budget Council
19 may provide recommendations to the Secretary and the
20 Office of Management and Budget on how any amounts
21 or cost savings should be reallocated and/or incorporated
22 into future budget requests.

23 **SEC. 307. HIRING PREFERENCE.**

24 In appointing or otherwise hiring any employee to the
25 Office, the Under Secretary shall give preference to Indi-

1 ans in accordance with section 12 of the Act of June 8,
2 1934 (25 U.S.C. 472).

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