

1 | **American Indian Trust Fund Management Reform Act Amendments of**  
2 | **2005**

3 |  
4 | **DRAFT -- April 25, 2005**  
5 |

6 | NOTE: The text in black is the text of the Northwest Tribes' proposal (as  
7 | it amends the American Indian Trust Fund Management Reform Act of  
8 | 1994). The underlined (red) text and margin deletions represent the  
9 | revisions made to the Northwest Tribes' proposal made by this proposal.

10 | **Section 1. Short Title; Table of Contents.**

- 11 | (a) SHORT TITLE- This Act may be cited as the 'American Indian Trust Fund  
12 | Management Reform Act of 1994'.  
13 | (b) TABLE OF CONTENTS- The table of contents for this Act is as follows:  
14 |

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37 |  
38 |  
39 |  
40 |  
41 |

1  
2 **Section 2. Purpose.**  
3

4 The purposes of this title are—

- 5 (a) to create the Office of the Deputy Secretary for Indian Affairs with a  
6 direct line of authority to oversee and supervise the management and  
7 reform of Indian trust resources under the jurisdiction of the Department  
8 of the Interior;  
9 (b) to provide fiduciary standards and clarify the legal obligations of the  
10 Department for the administration of Indian trust resources;  
11 (c) to promote and advance tribal self-determination through tribal  
12 management of trust resources;  
13 (d) to eliminate the Office of the Special Trustee;  
14 (e) to reorganize and consolidate trust functions within the BIA at the Central  
15 and Field office levels;  
16 (f) to establish a mechanism to evaluate and report as to the adequacy of  
17 funding levels and staffing for trust management;  
18 (g) to provide for independent review of the DOI's administration of trust  
19 functions;  
20 (h) to accelerate implementation of core trust business systems; and  
21 (i) to provide procedures to resolve the Cobell trust fund class action  
22 litigation.  
23  
24  
25  
26

27 **Section 32. Definitions. For the purposes of this Act:**

- 28 (a) AGENCY OFFICE.—The term "Agency Office" means the local Bureau  
29 of Indian Affairs field office that provides services to Indian tribes.  
30  
31 (b) AUDIT.—The term ‘audit’ means an audit using accounting procedures  
32 that conform to generally accepted accounting principles and auditing  
33 procedures that conform to chapter 75 of title 31, United States Code  
34 (commonly known as the ‘Single Audit Act of 1984’).”; and  
35  
36 (c) BUREAU.---The term ‘Bureau’ means the Bureau of Indian Affairs within  
37 the Department of the Interior.  
38  
39 (d) BUREAU FIELD OFFICE. – The term "Bureau field office" – shall mean  
40 the programs, staff, and functions of the BIA Regional Office or the

1 Agency Office according to which of these offices serves as the primary  
2 point of contact with a tribe and as consistent with this Act.

3 (e) BUREAU FIELD OFFICE DIRECTORS.—The term "Bureau field office  
4 directors" shall mean the Regional Director (for the Regional Office level)  
5 and the "Agency Superintendent" (for the Agency level).

6  
7 (f) CENTRAL OFFICE.—The term "Central Office" shall mean the national  
8 Bureau headquarters office.

9  
10 (g) DEPARTMENT.---The term `Department' means the Department of the  
11 Interior.

12  
13 (h) INDIAN TRIBE.--- The term `Indian tribe' means any Indian tribe, band,  
14 nation, or other organized group or community, including any Alaska  
15 Native village or regional or village corporation as defined in or  
16 established pursuant to the Alaska Native Claims Settlement Act (85 Stat.  
17 688), which is recognized as eligible for the special programs and services  
18 provided by the United States to Indians because of their status as Indians.

19  
20 (i) INDIVIDUAL INDIAN--- The term "Individual Indian" means an  
21 individual who is a member of an Indian tribe.

22  
23 (j) INHERENT FEDERAL FUNCTIONS.— The term "inherent Federal  
24 functions" means those Federal functions which cannot legally be  
25 delegated to Indian tribes.

26  
27 (k) NON-MONETARY TRUST ASSET.—The term `non-monetary trust  
28 asset' means any tangible property (such as land, a mineral, coal, oil or  
29 gas, a, forest resource, an agricultural resource, water, a water source, fish,  
30 or wildlife) that is:

31  
32 (1) held by the Secretary for the benefit of an Indian tribe or an  
33 individual Indian or Indians in accordance with Federal law; or

34  
35 (2) owned in fee by an individual Indian or Indians and subject to  
36 statutory restrictions on conveyance in accordance with Federal  
37 law.

38  
39 (l) OFFICE.---The term `Office' means the Office of Special Trustee for  
40 American Indians established by section 302 of the 1994 Act.

41  
42 (m) SECRETARY.---The term `Secretary' means the Secretary of the Interior.

43  
44 (n) SPECIAL TRUSTEE.---The term `Special Trustee' means the Special  
45 Trustee for American Indians appointed under section 302 of the 1994  
46 Act.

1  
2 (o) TRIBAL GOVERNMENT—The term ‘tribal government’ means the  
3 governing body of an Indian tribe.  
4

5 ~~(9) TRUST ASSET. The term ‘trust asset’ means any tangible property~~  
6 ~~(such as land, a mineral, coal, oil or gas, a forest resource, an agricultural~~  
7 ~~resource, water, a water source, fish, or wildlife) held by the Secretary for the~~  
8 ~~benefit of an Indian tribe or an individual member of an Indian tribe in accordance~~  
9 ~~with Federal law.~~

10  
11 (p) TRUST FUNDS.—The term ‘trust funds’ means—

12  
13 (A) all monies or proceeds derived from non-monetary trust assets;  
14 and

15  
16 (B) all funds held by the Secretary for the benefit of an Indian tribe or  
17 an individual ~~member of an~~ Indian ~~tribe~~ in accordance with Federal  
18 law.

19 (q) TRUST RESOURCES. The term ‘trust resources’ means non-  
20 monetary trust assets and/or trust funds.

21  
22 (1~~r~~) TRUSTEE.—The term ‘trustee’ means the United States, or the  
23 Secretary, or any other person who has been delegated authority or that is  
24 is authorized to act as a trustee for ~~trust funds and other trust~~ assets ~~and~~  
25 trust funds.  
26  
27

## 28 TITLE I--RECOGNITION OF TRUST RESPONSIBILITY 29

### 30 Section 101. Congressional Findings and Declaration of Policy

31 (a) FINDINGS. Congress finds and recognizes the following principles to be  
32 the foundations of the United States trust responsibility—

33  
34 (1) the inherent sovereign authority of Indian tribes predates the  
35 United States Constitution and forms a backdrop for the  
36 government-to-government and trust relationship between the  
37 United States and Indian tribes existing from the early days of this  
38 Nation’s history;

39  
40 (2) the tribal right of self-government flows from the inherent  
41 sovereignty of Indian tribes and nations;  
42

- 1           (3) the United States Constitution grants powers to the federal  
2           government in relations with Indian tribes, particularly the  
3           congressional power to regulate commerce with the Indian tribes  
4           (Art. I, Sec. 8, cl. 3), and the presidential power to make treaties  
5           (Art. II, Sec. 2, cl. 2);  
6  
7           (4) federal law uniformly recognizes that tribes have rights to occupy  
8           and govern their lands which has led to a land tenure system where  
9           the United States holds certain tribal and individual Indian  
10           property in beneficial trust or has imposed statutory restrictions on  
11           lands owned in fee by individual Indians. Indian tribes exercise  
12           authority as sovereigns over trust resources;  
13  
14           (5) During the nineteenth century Congress began implementation of  
15           an allotment policy through enactment of the 1887 General  
16           Allotment Act (as amended at 25 U.S.C. § 331 et seq.), and other  
17           allotment legislation. The allotment legislation allowed the United  
18           States to allot communally held tribal lands to individual Indians.  
19           The purpose of the allotment policy was to force Indians to  
20           assimilate into mainstream society, enable non-Indian acquisition  
21           of tribal lands originally set aside for the exclusive benefit of  
22           Indian tribes in violation of treaties, diminish tribal land bases and  
23           erode tribal sovereignty. After allotment, the United States  
24           managed allotted and unallotted lands and established individual  
25           trust accounts for individual Indians who received allotments. The  
26           General Allotment Act and subsequent Allotment Acts did not  
27           diminish tribal jurisdiction over tribal or individually owned lands;  
28  
29           (6) the United States repudiated the assimilation policy in the early  
30           twentieth century, has repeatedly reaffirmed the policy of  
31           promoting tribal self-governance and self-sufficiency and has an  
32           overall trust responsibility to enhance tribal self-government;  
33  
34           (7) the trust relationship imposes fiduciary duties upon the United  
35           States when the United States controls or manages the tribal and  
36           individual Indian trust resources;  
37  
38           (8) the trust responsibility is not diminished by promoting tribal self-  
39           governance and self-sufficiency through self-determination  
40           agreements with tribes for tribal administration of trust resources;  
41

1 (9) the federal bureaucracy has failed to fully meet the United States'  
2 trust fund management obligations to tribes;

3  
4 (10) the failure to meet federal trust obligations stems from the overly-  
5 centralized bureaucracy;

6  
7 (11) the creation of Office of the Special Trustee has not relieved  
8 system delays and inefficiencies, but rather created a duplicative  
9 bureaucracy that has eroded tribal self-determination;

10  
11 (12) decentralizing authority to the local level and increasing tribal  
12 control have proven critical to enhance program effectiveness and  
13 accountability;

14  
15 (13) tribally-driven solutions continue to be hindered by the federal  
16 bureaucracy; and

17  
18 (14) remedial measures must be imposed on the federal bureaucracy to  
19 correct federal mismanagement of Indian trust resources.

20  
21 (b) DECLARATION OF POLICY. It is the policy of Congress—

22 (1) to manage Indian trust resources by clear and enforceable  
23 standards, with an express right of compensation for trust  
24 mismanagement, and independent review of trust management  
25 activity;

26  
27 (2) to protect the governing authority of Indian tribes, including the  
28 right and ability of tribes to regulate management of trust  
29 resources;

30  
31 (3) to reform the United States' Indian trust resources management in a  
32 manner that does not require reprogramming funds from vitally  
33 needed BIA services nor create new levels of bureaucracy that  
34 would impede the delivery of trust services to meet local needs;

35  
36 (4) to allow for an orderly transition from Federal domination to  
37 increased tribal control over trust resources;

1 (5) to provide oversight and technical assistance in flexible  
2 arrangements that meet the unique circumstances and needs of  
3 each tribe; and,

4  
5 (6) to ensure greater tribal government involvement when new  
6 systems and policies for trust management are developed.  
7

8 **Sec. 102. Responsibility of Secretary.**  
9

10 (a) —ADMINISTRATION AND MANAGEMENT. -- The responsibilities of  
11 the Secretary in carrying out the trust responsibilities of the United States  
12 include, but are not limited to --  
13

- 14 (1) Providing for adequate systems for accounting for and reporting  
15 trust fund balances;  
16  
17 (2) Providing for adequate controls over receipts and disbursements;  
18  
19 (3) Providing for periodic, timely reconciliations of financial records  
20 to assure the accuracy of accounts;  
21  
22 (4) Determining accurate cash balances;  
23  
24 (5) Preparing and supplying to account holders periodic account  
25 statements;  
26  
27 (6) Establishing and publishing in the Federal Register consistent  
28 policies and procedures for trust fund management and accounting;  
29  
30 (7) Providing adequate staffing, supervision, and training for trust fund  
31 management and accounting; and  
32  
33 (8) Managing the natural resources located within the boundaries of  
34 Indian reservations and trust lands.  
35

36 (b) ACCOUNTING FOR DAILY AND ANNUAL BALANCES OF INDIAN  
37 TRUST FUNDS.—  
38

- 39 (1) IN GENERAL -- The Secretary shall account for the daily and  
40 annual balance of all trust funds.  
41  
42 (2) PERIODIC STATEMENT OF PERFORMANCE-  
43  
44 (A) IN GENERAL -- Not later than 20 business days after the close  
45 of the second calendar quarter after the date of enactment of

1 this paragraph, and not later than 20 business days after the  
2 close of each calendar quarter thereafter, the Secretary shall  
3 provide to each Indian tribe and individual with respect to  
4 whom the Secretary manages trust a statement of performance  
5 for the trust funds.  
6

7 (B) REQUIREMENTS.—Each statement under subparagraph (A)  
8 shall identify, with respect to the period covered by the  
9 statement--  
10

- 11 (i) the source, type, and status of the funds;
- 12 (ii) the beginning balance of the funds;
- 13 (iii) the gains and losses of the funds;
- 14 (iv) receipts and disbursements of the funds; and
- 15 (v) the ending balance of the funds.

16  
17  
18  
19  
20  
21 (3) AUDITS.—With respect to each account containing trust funds,  
22 the Secretary shall—  
23

24 (A) for accounts with less than \$1,000, group accounts separately  
25 to allow for statistical sampling audit procedures;  
26

27 (B) for accounts containing more than \$1,000 at any time during a  
28 given fiscal year—  
29

- 30 (i) conduct, for each fiscal year, an audit of all trust funds;  
31 and
- 32 (ii) include, in the first statement of performance after  
33 completion of the audit, a letter describing the results of  
34 the audit.  
35

36  
37 (C) implementation of these audit requirements shall begin with the  
38 first fiscal year after the date of the enactment of this  
39 subparagraph.  
40

41 **Section 103. Payment of Interest on Individual Indian Money Accounts.**  
42

43 (a) PAYMENT OF INTEREST- The first section of the Act of February 12,  
44 1929 (25 U.S.C. 161a), is amended--  
45

- 1 (1) by striking out `That all' and inserting in lieu thereof `That (a) all';  
2 and  
3 (2) by adding after subsection (a) (as designated by paragraph (1) of  
4 this subsection) the following:  
5

6 "(b) All funds held in trust by the United States and carried in  
7 principal accounts on the books of the United States Treasury to  
8 the credit of individual Indians shall be invested by the Secretary  
9 of the Treasury, at the request of the Secretary of the Interior, in  
10 public debt securities with maturities suitable to the needs of the  
11 fund involved, as determined by the Secretary of the Interior, and  
12 bearing interest at rates determined by the Secretary of the  
13 Treasury, taking into consideration current market yields on  
14 outstanding marketable obligations of the United States of  
15 comparable securities."  
16

- 17 (b) WITHDRAWAL AUTHORITY- The second sentence of subsection (a) of  
18 the first section of the Act of June 24, 1938 (25 U.S.C. 162a), is amended  
19 by inserting `to withdraw from the United States Treasury and' after  
20 `prescribe,'.  
21 (c) TECHNICAL CORRECTION- The second subsection (b) of the first  
22 section of the Act of June 24, 1938 (25 U.S.C. 162a), as added by section  
23 302 of Public Law 101-644 (104 Stat. 4667), is hereby redesignated as  
24 subsection (c).  
25 (d) EFFECTIVE DATE- The amendment made by subsection (a) shall apply  
26 to interest earned on amounts deposited or invested on or after the date of  
27 the enactment of this Act.  
28

29 **Section. 104. Authority for Payment of Claims for Interest Owed.**  
30

31 The Secretary shall make payments to an individual Indian in full satisfaction of  
32 any claim of such individual for interest on amounts deposited or invested on  
33 behalf of such individual before the date of enactment of this Act retroactive to  
34 the date that the Secretary began investing individual Indian monies on a regular  
35 basis, to the extent that the claim is identified--  
36

- 37 (1) by a reconciliation process of individual Indian money accounts, or  
38  
39 (2) by the individual and presented to the Secretary with supporting  
40 documentation, and is verified by the Secretary pursuant to the  
41 Department's policy for addressing accountholder losses.  
42  
43  
44  
45

1 Section 105. Affirmation of **Existing** Standards.

2 (a) The fiduciary duties of the trustee arise from the unique responsibility of the  
3 United States to the Indian tribes, which is embodied in the United States  
4 Constitution, treaties, statutes, executive orders, court opinions, federal  
5 agency regulations and policies, federal course of dealings, common law and  
6 contractual documents.

7 (b) In carrying out the trust responsibility of the United States to Indian tribes,  
8 Congress recognizes and affirms that the trustee in order to the properly  
9 discharge theof trust responsibility of the United States, the trustee requires,  
10 without limitation, that the trustee, using the highest degree of care, skill, and  
11 loyalty, shall—

12  
13 (1) protect and preserve Indian trust resourcesassets from loss,  
14 damage, unlawful alienation, waste, and depletion;

15  
16 (2) ensure that any management of Indian trust resourcesassets  
17 required to be carried out by the Secretary—

18  
19 (A) promotes the interest of the beneficiary~~owner~~; and

20  
21 (B) supports, to the maximum extent practicable in accordance  
22 with the trust responsibility of the Secretary, the beneficial  
23 owner's intended use of the resourcesassets;

24  
25 (3) enforce claims and defend actions on behalf of the trust against  
26 other agents of the United States, the States and other third parties,  
27 including, but not limited to

28 (A) enforcing e-the terms of all leases or other agreements that  
29 provide for the use of trust resourcesassets; and

30 (B) taking e appropriate steps to remedy trespass- or interference  
31 with on-trust or restricted land;

32  
33 (4) promote ~~tribal control and~~ self-determination and tribal cover over  
34 tribal trust land and resources without diminishing the trust  
35 responsibility of the Secretary;

36  
37 (5) allocate and prioritize sufficient budgetary resources and assets for  
38 the prudent administration of the trust, including

39  
40 (A) funds sufficient to select, ~~and~~ oversee and fund sufficient  
41 qualified persons persons tothat manage Indian trust  
42 resourcesassets;

1  
2 (B) funds sufficient for the prudent management and protection of  
3 trust resources;

- 4  
5 (6) confirm that Indian tribes that manage Indian trust resourcesassets  
6 in accordance with contracts and compacts authorized by the  
7 Indian Self-Determination and Education Assistance Act (25  
8 U.S.C. 450 et seq.) are protecting and prudently managinge those  
9 Indian trust resourcesassets;
- 10  
11 (7) provide oversight and review of the performance of the trust  
12 responsibility of the Secretary, including Indian trust resourceasset  
13 and investment management programs, operational systems, and  
14 information systems;
- 15  
16 (8) account for and identify, collect, deposit, invest, and distribute, in a  
17 timely manner, income due or held on behalf of tribal and  
18 individual Indian account holders;
- 19  
20 (9) maintain a verifiable system of records that, at a minimum, is  
21 capable of identifying, with respect to a trust resourceasset—  
22  
23 (A) the location of the trust resourceasset;
- 24  
25 (B) the beneficial owners of the trust resourceasset;
- 26  
27 (C) any legal encumbrances (such as leases or permits) applicable  
28 to the trust resourceasset;
- 29  
30 (D) the user of the trust resourceasset;
- 31  
32 (E) any rent or other payments made;
- 33  
34 (F) the value of the trust resource or other restricted land and  
35 resources associated with the trust resourceasset;
- 36  
37 (G) dates of—  
38  
39 (i) collections;
- 40  
41 (ii) deposits;
- 42  
43 (iii) transfers;
- 44  
45 (iv) disbursements;
- 46

1 (v) imposition of third-party obligations (such as court-  
2 ordered child support or judgments);

3  
4 (vi) statements of earnings;

5  
6 (vii) investment instruments; and

7  
8 (viii) closure of all trust fund accounts relating to the trust fund  
9 [resourceasset](#);

10  
11 (H) documents pertaining to actions taken to prevent or compensate  
12 for any, diminishment of the Indian trust [resourceasset](#); and

13  
14 (I) documents that evidence the actions of the Secretary regarding  
15 the management and disposition of the Indian trust  
16 [resourceasset](#);

17  
18 (10) establish and maintain a system of records that—

19  
20 (A) permits beneficial owners to obtain information regarding  
21 Indian trust [resourcesassets](#) in a, timely manner; and

22  
23 (B) protects the privacy of that information;

24  
25 (11) invest tribal and individual Indian trust funds to ensure that the  
26 trust account remains reasonably productive for the beneficial  
27 owner consistent with market conditions existing at the time at  
28 which investment is made;

29  
30 (12) communicate with beneficial owners regarding the management  
31 and administration of Indian trust [resourcesassets](#); and

32  
33 (13) protect treaty-based fishing, hunting, gathering, and similar rights-  
34 of-access and resource use on traditional tribal land.”

35 (c) Tribal Authority.

36 (1) No provision contained in subsection (b) shall limit the authority of  
37 tribes to develop their own specific standards for the management  
38 of trust resources, nor limit the trustee's authority to approve such  
39 standards; provided that

40 (A) The standards are formally approved by the tribe in a manner  
41 consistent with the tribe's constitution or other governing law  
42 of the tribe.

1 (B) The standards are established in a manner that allows the tribe  
2 and the Secretary to readily compute the amount of revenues  
3 that are expected to be received from each revenue-producing  
4 trust transaction.

5 (C) The standards describe in measurable and/or quantifiable terms  
6 the expected goals and/or intended results from application of  
7 the standards.

8  
9 (D) The standards provide methods for resolving disputes between  
10 tribes, individual Indians and the Federal Government.

11  
12 (E) The standards include a process whereby the Tribe and the  
13 Secretary can conduct mutually acceptable annual evaluations  
14 of the management of trust resources.

15  
16 (2) The trustee shall waive administrative requirements and/or policies  
17 which conflict with tribal resource management plans approved by  
18 the Secretary unless doing so would violate applicable federal law  
19 or judicial decrees.

20 (3) Trustee compliance with tribal law. No provision contained in this  
21 Act shall absolve the trustee of its obligation to comply with  
22 applicable tribal laws and ordinances in carrying out the trust  
23 responsibility unless prohibited by an applicable federal law or  
24 judicial decree.

25 (d) No diminishment of the trust responsibility.-- The enumeration of trust  
26 standards in this section is illustrative and not inclusive and shall not in any  
27 way limit, diminish, reverse, nor repeal any existing trust duties applicable to  
28 the trustee's administration of Indian trust resources, including any trust duty  
29 embodied in the United States Constitution, treaties, statutes, executive orders,  
30 court opinions, federal agency regulations and policies, federal course of  
31 dealings, common law and contractual documents or any existing trust duty of  
32 the United States with respect to the Indian people.

33 (e) Nothing in this section shall be construed to affect, modify, diminish, or  
34 otherwise impair the sovereign immunity from suit enjoyed by Indian tribes.

35 **TITLE II--INDIAN TRUST FUND-RESOURCE MANAGEMENT**  
36 **PROGRAM**

37 **Section 201. Purpose.** The purpose of this title is to allow tribes an opportunity to  
38 manage tribal funds currently held in trust by the United States and to manage non-  
39 monetary trust assets managed by the Secretary through the Bureau, that, consistent with  
40 the trust responsibility of the United States and the principles of self-determination, that  
41 will--

- 1 (a) give Indian tribal governments greater control over the management of such  
2 trust ~~funds and non-monetary trust resources~~~~funds~~; ~~and or~~  
3  
4 (b) ~~otherwise~~ demonstrate how the principles of self-determination can work with  
5 respect to the management of such trust ~~funds~~~~resources~~, in a manner  
6 consistent with the trust responsibility of the United States.  
7

8 **Section 202. Voluntary Withdrawal From Trust Funds Program.**

9 (a) IN GENERAL- An Indian tribe may, in accordance with this section, submit a  
10 plan to withdraw some or all funds held in trust for such tribe by the United  
11 States and managed by the Secretary through the Bureau.  
12

13 (b) APPROVAL OF PLAN- The Secretary shall approve such plan within 90  
14 days of receipt and when approving the plan, the Secretary shall obtain the  
15 advice of the ~~Deputy Secretary for Indian Affairs Special Trustee~~ or prior to  
16 the appointment of such ~~Deputy Secretary Special Trustee~~, the Director of the  
17 Office of Trust Fund Management within the Bureau. Such plan shall meet the  
18 following conditions:  
19

20 (1) Such plan has been approved by the appropriate Indian tribe and is  
21 accompanied by a resolution from the tribal governing body  
22 approving the plan.  
23

24 (2) The Secretary determines such plan to be reasonable after  
25 considering all appropriate factors, including (but not limited to)  
26 the following:  
27

28 (A) The capability and experience of the individuals or institutions  
29 that will be managing the trust funds.  
30

31 (B) The protection against substantial loss of principal.  
32

33 (c) MANAGEMENT THROUGH SELF-DETERMINATION AUTHORITY.—  
34

35 (1) IN GENERAL.—An Indian tribe may use authority granted to the  
36 Indian tribe under the Indian Self-Determination and Education  
37 Assistance Act (25 U.S.C. 450 et seq.) to manage Indian trust  
38 funds and ~~non-monetary~~ trust assets without terminating—  
39

40 (A) the trust responsibility of the Secretary; or  
41

42 (B) the trust status of the funds and assets.  
43

1 (2) NO EFFECT ON TRUST RESPONSIBILITY.—Nothing in this  
2 subsection diminishes or otherwise impairs the trust responsibility  
3 of the United States with respect to the Indian people.

4  
5 (d) DISPUTES.—Sections 211 and 212 of this Title shall apply to the plan  
6 approval process established by this section and shall be available to any tribe  
7 submitting a plan for the management of trust funds and/or non-monetary trust  
8 assets under this Act.  
9

### 10 **Section 203. Judgment Funds.**

11 (a) IN GENERAL- The Secretary is authorized to approve plans under section  
12 202 of this title for the withdrawal of judgment funds held by the Secretary.

13  
14 (b) LIMITATION- Only such funds held by the Secretary under the terms of the  
15 Indian Judgment Funds Use or Distribution Act (25 U.S.C. 1401) or an Act of  
16 Congress which provides for the secretarial management of such judgment  
17 funds shall be included in such plans.

18  
19 (c) SECRETARIAL DUTIES- In approving such plans, the Secretary shall  
20 ensure--

21  
22 (1) that the purpose and use of the judgment funds identified in the  
23 previously approved judgment fund plan will continue to be  
24 followed by the Indian tribe in the management of the judgment  
25 funds; and

26  
27 (2) that only funds held for Indian tribes may be withdrawn and that  
28 any funds held for individual tribal members are not to be included  
29 in the plan.

### 30 **Section 204. Technical Assistance.**

31 The Secretary shall--

32  
33 (1) directly or by contract, provide Indian tribes with technical  
34 assistance in developing, implementing, and managing Indian trust  
35 fund investment plans; and

36  
37 (2) among other things, ensure that legal, financial, and other expertise  
38 of the Department of the Interior has been made fully available in  
39 an advisory capacity to the Indian tribes to assist in the  
40 development, implementation, and management of investment  
41 plans.  
42

1 **Section 205. Grant Program.**

2 (a) GENERAL AUTHORITY- The Secretary is authorized to award grants to  
3 Indian tribes for the purpose of developing and implementing plans for the  
4 investment of Indian tribal trust funds.  
5

6 (b) USE OF FUNDS- The purposes for which funds provided under this section  
7 may be used include (but are not limited to)--  
8

- 9 (1) the training and education of employees responsible for monitoring  
10 the investment of trust funds;  
11  
12 (2) the building of tribal capacity for the investment and management  
13 of trust funds;  
14  
15 (3) the development of a comprehensive tribal investment plan;  
16  
17 (4) the implementation and management of tribal trust fund investment  
18 plans; and  
19  
20 (5) such other purposes related to this title that the Secretary deems  
21 appropriate.

22 **Section 206. Return of Withdrawn Funds.**

23 Subject to such conditions as the Secretary may prescribe, any Indian tribe which  
24 has withdrawn trust funds may choose to return any or all of the trust funds such  
25 tribe has withdrawn by notifying the Secretary in writing of its intention to return  
26 the funds to the control and management of the Secretary.

27 **Section 207. Savings Provision.**

28 By submitting or approving a plan under this title, neither the tribe nor the  
29 Secretary shall be deemed to have accepted the account balance as accurate or to  
30 have waived any rights regarding such balance and to seek compensation.  
31

32 **Section 208. Tribal Management of Non-Monetary Trust Assets.**

33  
34 (a) TRUST RESOURCES MANAGEMENT PLANNING PROCESS.— At the  
35 option of an Indian tribe:  
36

- 37 (1) A 10-year trust resources management plan shall be developed and  
38 approved by the Secretary in accordance with the following  
39 process:  
40

1 (A) The Secretary shall develop, as appropriate, the plan in close  
2 consultation with the affected tribe, unless the tribe requests to  
3 develop the plan pursuant to a self-determination agreement or  
4 self-governance compact;

5 (B) An Indian tribe may develop a trust resources management  
6 plan proposal pursuant to a self-determination contract or self-  
7 governance compact. Subject to the provisions of  
8 subparagraph (C), the tribe shall have broad discretion in  
9 designing and carrying out the planning process. At the request  
10 of the tribe, the Secretary shall convene a meeting of tribal  
11 representatives and Agency/Regional Office level staff within  
12 60 days of said request for the purpose of identifying technical  
13 assistance that the tribe and Secretary may deem necessary for  
14 the development of such a management plan.

15  
16 (C) Whether developed directly by the tribe or by the Secretary, the  
17 plan shall—

18  
19 (i) determine available trust resources;

20  
21 (ii) identify specific tribal trust resource goals and objectives;

22  
23 (iii) establish management objectives for the trust resources;

24  
25 (iv) define critical values of the Indian tribe and its citizens  
26 and provide identified management objectives;

27  
28 (v) identify actions to be taken to reach established  
29 objectives;

30  
31 (vi) be developed through public meetings;

32  
33 (vii) use the public meeting records, existing survey  
34 documents, reports, and other research from Federal  
35 agencies, institutions of higher education, and other  
36 available resources;

37  
38 (viii) include Tribal -specific standards for the management of  
39 resources; and

40  
41 (ix) be completed within two years of the technical assistance  
42 meeting provided for in subsection (a)(1)(B).

43  
44 (2) Indian trust resource management plans developed and approved  
45 under this section shall govern the management and administration

1 of Indian trust resources and Indian trust lands by the Bureau and  
2 the Indian tribal government.

3  
4 (b) APPROVAL OF PLAN.—

5  
6 (1) The Secretary shall approve such a plan, provided that—

7  
8     (A) the plan has been approved by the appropriate Indian tribe and is  
9 accompanied by a resolution from the tribal governing body approving the  
10 plan.

11  
12     (B) the Secretary determines the plan to be reasonable and is not  
13 inconsistent with federal statutory law or judicial decree regarding the  
14 management standards for the resources covered by the plan.

15  
16 (2) If the Secretary rejects a plan, the Secretary shall:

17  
18     (A) provide a detailed explanation as to the grounds for denial; and

19  
20     (B) identify technical assistance available that would enable the tribe's  
21 plan to be resubmitted for approval.

22  
23 (c) APPLICABILITY OF OTHER LAW.—

24  
25 (1) MANDATORY.—The provisions of the Indian Self-  
26 Determination and Education Assistance Act (Public Law 93–638)  
27 apply to agreements under which tribes assume responsibilities for  
28 the development, administration and implementation of  
29 management plans under this title.

30  
31 (2) NO EFFECT.—

32  
33 (A) Notwithstanding any other provision of law, the contracts and  
34 cooperative agreements entered into with a tribe pursuant to  
35 this title shall not be subject to Sections 305 or 306 of the Act  
36 (including any regulations developed pursuant thereto). Tribal  
37 exemption from Sections 305 and 306 shall not be a basis for  
38 the Secretary to decline tribal assumption of the functions.

39  
40 (B) Nothing in this Section shall limit the rights of individual  
41 owners of trust or restricted lands to lease such lands without  
42 Secretarial approval pursuant to Section 5 of the Indian Land  
43 Consolidation Act.

44  
45 (d) DISPUTES.—Sections 211 and 212 of this Title shall apply to the trust  
46 resources management plan approval process established by this section and

1 shall be available to any tribe submitting a plan for the management of trust  
2 resources under this Act.

3  
4 (e) AUTHORIZATION OF APPROPRIATIONS.-- There are authorized to be  
5 appropriated such sums as are necessary to carry out this section

6  
7 **Section 209. Establishment of the Tribal Management of Trust Resources**  
8 **Demonstration Project.**

9 ~~**SEC. 307 -- ESTABLISHMENT OF THE TRIBAL MANAGEMENT OF**~~  
10 ~~**TRUST ASSETS DEMONSTRATION PROJECT.**~~

11  
12 (a) PURPOSE. The Tribal Management of Trust ResourcesAssets Demonstration  
13 Project ("Project") is intended to - :

- 14  
15 (1) Enhance the working relationship between the participating tribes  
16 and Department of the Interior for trust management activities by  
17 establishing mutually acceptable methods for addressing trust  
18 issues in a manner that is consistent with tribal priorities and  
19 applicable federal laws;  
20  
21 (2) Maintain a standard of good faith in the administration of federal  
22 trust responsibilities to Indian tribes, the right of tribal self-  
23 determination and self-governance, the government-to-government  
24 relationship between the Indian tribes and the United States, and  
25 provide a meaningful working relationship with participating  
26 tribes.  
27  
28 (3) Establish a process for the full implementation of the Project and  
29 further the continuation of meaningful partnerships between the  
30 participating tribes and the Secretary;  
31  
32 (4) Recognize and utilize tribal expertise and systems to accomplish  
33 appropriate management of trust resources, use those opportunities  
34 to explore the development of effective working models relating to  
35 the management of trust resources, and develop meaningful and  
36 measurable means of quantifying the respective values, standards  
37 and priorities of the participating tribes and the Department.  
38  
39 (5) Identify ways of resolving conflicting management prescriptions  
40 between tribal and federal standards, priorities and values in non-  
41 litigation and cooperative government-to-government forums, and  
42 memorialize those conflict resolution methodologies in a  
43 participating tribe's funding agreement.  
44

45 (b).AUTHORITY. The Secretary of the Interior shall, for a period not to  
46 exceed five years following enactment of this section, administer a

1 demonstration project to be known as the Tribal Management of Trust  
2 ~~Resources~~Assets Demonstration Project according to the provisions of this  
3 title. The Project shall provide for the direct Tribal administration and  
4 management of trust ~~funds and non-monetary resources and~~ trust assets,  
5 including the administration of any funds appropriated by Congress for the  
6 management of Indian ~~trust assets and~~ funds and non-monetary trust assets,  
7 which also includes such funds intended for trust improvement activities.  
8

9 (c) TRIBAL PARTICIPATION

- 10  
11 (1) Any tribe that has entered into an agreement with the Secretary for  
12 the management and/or improvement of trust resources shall be  
13 eligible for inclusion as a participating tribe in the Project. Each  
14 tribe must first submit a formal request to the Secretary to be  
15 included in the demonstration project.  
16  
17 (2) The Secretary shall negotiate and enter into agreements with tribes  
18 to implement the purposes of this section.  
19  
20 (3) A participating tribe may withdraw from the project at any time.  
21

22 (d) STANDARD TRUST MANAGEMENT PRINCIPLES AND

23 PROCEDURES. - Management standards for trust resources that have been  
24 developed and adopted by tribes, and approved by the Secretary, shall be the  
25 applicable standards under the Project. The Secretary shall interpret Federal  
26 laws and regulations in a manner that facilitates approval of a Tribe's  
27 management standards. The Secretary may only refuse to accept Tribal  
28 standards that are inconsistent with applicable Federal treaties, statutes, case  
29 law or regulations not waived, governing the performance of trust functions.  
30 In the event that the Secretary declines to accept a tribe's management  
31 standards, the Secretarial shall inform the tribe in writing of the specific ways  
32 in which the Tribe's management standards fail to meet the standards and  
33 principles of the applicable Federal law governing the performance of trust  
34 functions. The Secretary may propose additional standards to a tribe for its  
35 consideration if the Secretary believes such standards will assist in promoting  
36 the Tribe's participation in the Project and managing the trust resources in a  
37 prudent manner. Tribal management standards may be in any format,  
38 including law, plans, procedures, and policies; provided that:  
39

- 40 (1) The standards are formally approved by the tribe in a manner  
41 consistent with the tribe's constitution or other governing law of  
42 the tribe.  
43 (2) The standards are established in a manner that allows the tribe and  
44 the Secretary to readily compute the amount of revenues that are  
45 expected to be received from each revenue-generating trust  
46 transaction~~(s)~~.

- 1 (3) The standards must describe in measurable and/or quantifiable  
2 terms the expected goals and/or intended results from application  
3 of the standards.  
4 (4) The standards provide methods for resolving disputes between  
5 tribes, individual Indians and the Federal Government.  
6 (5) The standards include a process whereby the Tribe and the  
7 Secretary can conduct mutually acceptable annual evaluations of  
8 the management of trust resources.  
9

10 (e) JOINT EVALUATION CRITERIA AND PROCEDURES/REPORTING -  
11 Each participating tribe and the Secretary will develop joint reporting  
12 requirements, which are consistent with the annual trust evaluation  
13 requirements. Based on a mutually acceptable reporting format, the report will  
14 include methods for determining that trust transactions are carried out  
15 consistent with the requirements contained in trust resource management  
16 prescriptions and can be easily reconciled with trust fund accounts. The  
17 Secretary may conduct additional trust evaluations if sufficient information  
18 exists from credible sources that the Tribe is not operating consistently with  
19 the approved Tribal/Federal management standards.  
20

21 (f) GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES —

- 22  
23 (1) Each tribe participating in the Trust Reform Pilot Project will  
24 develop and maintain with the Secretary non-litigation grievance  
25 and dispute resolution procedures that shall be incorporated into  
26 the tribes' funding agreement.  
27  
28 (2) Nothing within this Section shall be interpreted as waiving a  
29 participating tribe's authority to utilize the dispute resolution and  
30 civil claims provisions under the Indian Self Determination Act.  
31  
32 (3) Sections 211 and 212 of this Title shall apply to disputes under this  
33 Section and shall be available to any tribe participating in the  
34 demonstration project.  
35

36 (g) INAPPLICABILITY OF REPORTING, AUDITING, QUALITY  
37 ASSURANCE AND INDEPENDENT EVALUATION MEASURES  
38 APPLICABLE TO THE TRUSTEE.—No provision of Sections 305 or 306 of  
39 this Act or any other reporting, auditing, quality assurance or independent  
40 evaluation measures, which apply to the Trustee's management of trust  
41 resources shall apply to any tribe participating in the demonstration project  
42 under this Section, nor shall the tribal exemption from such measures  
43 constitute grounds for the Secretary to refuse to negotiate and enter into  
44 agreements with tribes to implement the purposes of this section.  
45  
46

1 Section 210. Great Plains Demonstration Project.  
2

3 (a) IN GENERAL--The Secretary shall establish a Demonstration Project under  
4 which each Agency in the Great Plains Region shall consult with each of the  
5 Tribes it services in order to devise Agency-specific plans that implement  
6 trust reform management at the Agency level and reflect the Tribes' unique  
7 land-based resources. The Indian Tribes in the Great Plains Region are:  
8 Cheyenne River Sioux, Standing Rock Sioux, Crow Creek Sioux, Turtle  
9 Mountain Band of Chippewa, Lower Brule Sioux, Three Affiliated Tribes,  
10 Yankton Sioux, Spirit Lake Sioux, Oglala Sioux, Rosebud Sioux, Santee  
11 Sioux, Sisseton-Wahpeton Oyate, Winnebago, Flandreau Santee Sioux, and  
12 Omaha and Ponca Tribes.

13  
14 (b) TRIBAL CONSULTATION--The Secretary shall not impose trust  
15 management infrastructure reforms on, or alter, the existing trust resource  
16 management system of the Region before consultation with the Indian tribes  
17 that are served by the Agency and in consideration of Agency Plans.

18  
19 (c) PLANNING AND AGENCY COORDINATION--Each Tribe shall devise an  
20 Agency Plan in cooperation with their respective Agency Superintendent,  
21 utilizing tribal expertise and systems to accomplish appropriate management  
22 of trust resources at the Agency level. The Great Plains Demonstration  
23 Project shall operate consistent with the provisions of this Act and pursuant to  
24 an Agency Plan.

25  
26 (d) AGENCY PLANS--

27  
28 (1) IN GENERAL--Any funds made available to accomplish trust  
29 reform at the Agency level shall be expended in accordance with  
30 the Agency Plan developed by the Indian Tribe served by the  
31 Agency.

32  
33 (2) TIMING--Each Agency shall submit the Agency Plan developed  
34 by the Tribe or Tribes of each Agency to the Secretary not later  
35 than 180 days after the date of which funds are made available  
36 through authorization of appropriations.

37  
38 (3) APPROVAL--Not more than 45 days after such submission, or  
39 within a longer time agreed upon by the Indian tribe, the Secretary  
40 shall review and make a determination with respect to such offer.  
41 In the absence of a timely rejection of the offer, in whole or in part,  
42 made in compliance with section 211 of this title, the offer shall be  
43 deemed agreed to by the Secretary.

44  
45 (4) REPORT--The Secretary's response to an Agency Plan shall--  
46

1 (A) Include a report that provides findings and recommendations of  
2 the Secretary concerning the Agency Plan; and

3 (B) Provide the Indian tribe covered by the Agency 60 days in  
4 which to submit comments regarding the findings and  
5 recommendations of the Secretary.

6  
7 (5) SUBMISSION TO CONGRESS--After receiving comments of the  
8 Indian Tribe under paragraph 4(B), the Secretary shall submit to  
9 the Committee on Indian Affairs of the Senate and the Committee  
10 on Appropriations and the Committee on Resources of the House  
11 of Representatives for approval--

12  
13 (A) the Agency Plan;

14  
15 (B) the report of the Secretary; and

16  
17 (C) the comments of the Indian Tribe.

18  
19 (e) PROJECT PERIOD--The Demonstration Project will operate pursuant to an  
20 approved Agency Plan for a period of no less than five years after which time  
21 a report to Congress shall be jointly submitted by the Agency and  
22 participating Tribes, detailing the outcome of the Project for purposes of  
23 feasibility for continuing the Project and expanding its scope for other Bureau  
24 of Indian Affairs Regions and its Tribes.

25  
26 (f) AUTHORIZATION OF APPROPRIATIONS--Agencies participating in the  
27 Demonstration Project under this subparagraph shall receive funding in an  
28 amount not less than \$200,000 per Agency per year for a five year period to  
29 be made available for use in developing Agency Plans and for purposes of  
30 implementation and operation. The minimum funding level shall be increased  
31 each year according to need as determined by the Appropriations Committee.

32  
33 (g) AVAILABILITY--Funds made available under subsection (f) shall remain  
34 available until expended.

35  
36 (h) ELIGIBILITY--All Tribes of the Great Plains Region are eligible to  
37 participate in the Project. Any of the Great Plains Tribes that wish to be  
38 subject to the provisions in this Act in its entirety shall be able to opt-out of  
39 the Demonstration Project at any time, regardless of Agency participation in  
40 the Project.

1 Section 211. Provisions Related to the Secretary.

2 (a) FINAL OFFER

3 In the event the Secretary and a participating Indian tribe are unable to agree, in  
4 whole or in part, on the terms of a plan, contract, compact or funding agreement  
5 (including funding levels) pursuant to Sections 202 (trust fund management), 208  
6 (trust resource management), 209 (trust resource management demonstration  
7 project) and/or 210 (Agency-specific plans for the Great Plains Demonstration  
8 Project), the Indian tribe may submit a final offer to the Secretary. Not more than  
9 45 days after such submission, or within a longer time agreed upon by the Indian  
10 tribe, the Secretary shall review and make a determination with respect to such  
11 offer. In the absence of a timely rejection of the offer, in whole or in part, made in  
12 compliance with subsection (c) of this section, the offer shall be deemed agreed to  
13 by the Secretary.

14  
15 (b) REJECTION OF FINAL OFFERS

16  
17 (1) In General. — If the Secretary rejects an offer made under  
18 subsection (a) of this section (or one or more provisions or funding  
19 levels in such offer), the Secretary shall provide—

20  
21 (A) a timely written notification to the Indian tribe that contains a  
22 specific finding that clearly demonstrates, or that is supported  
23 by a controlling legal authority, that—

24  
25 (i) the amount of funds proposed in the final offer exceeds  
26 the applicable funding level to which the Indian tribe is  
27 entitled;

28  
29 (ii) the program, function, service, or activity (or portion  
30 thereof) that is the subject of the final offer is an  
31 inherent Federal function that cannot legally be  
32 delegated to an Indian tribe;

33  
34 (iii) the Indian tribe cannot carry out the program, function,  
35 service, or activity (or portion thereof) in a manner that  
36 would not result in significant danger or risk to the  
37 public health; or

38  
39 (iv) the Indian tribe is not eligible to participate under any  
40 of the programs in this title;

41  
42 (B) technical assistance to overcome the objections stated in the  
43 notification required by subparagraph (A);

1 (C) the Indian tribe with a hearing on the record with the right to  
2 engage in full discovery relevant to any issue raised in the  
3 matter and the opportunity for appeal on the objections raised,  
4 except that the Indian tribe may, in lieu of filing such appeal,  
5 directly proceed to initiate an action in a Federal district court  
6 pursuant to section 212 of this title; and

7  
8 (D) the Indian tribe with the option of entering into the severable  
9 portions of a final proposed plan, contract, compact and/or  
10 funding agreement, or provision thereof, (including a lesser  
11 funding amount, if any), that the Secretary did not reject,  
12 subject to any additional alterations necessary to conform the  
13 agreement to the severed provisions.

14  
15 (2) Effect of exercising certain option

16  
17 If an Indian tribe exercises the option specified in paragraph (1)(D), that  
18 Indian tribe shall retain the right to appeal the Secretary's rejection under  
19 this section, and subparagraphs (A), (B), and (C) of that paragraph shall  
20 only apply to that portion of the proposed final agreement that was  
21 rejected by the Secretary.

22  
23 (c) BURDEN OF PROOF.-- With respect to any hearing or appeal or civil action  
24 conducted pursuant to this section, the Secretary shall have the burden of  
25 demonstrating by clear and convincing evidence the validity of the grounds  
26 for rejecting the offer (or a provision thereof) made under subsection (b) of  
27 this section.

28  
29 (d) RECORDS.—

30 (1) Unless a tribe specifies otherwise in an agreement, records of the tribe  
31 shall not be considered federal records for the purpose of chapter 5 of title 5,  
32 United States Code.

33 (2) A trust records management system shall be negotiated between tribes and  
34 the Secretary in order to preserve and protect records in accordance with the  
35 following terms:

36 (A) The Secretary shall include in funding agreements sufficient  
37 additional funds to cover the costs of the tribe's records management  
38 activities.

39 (B) The Secretary's access to tribally held trust records shall be limited as  
40 follows:

1                   (i) The Secretary must provide reasonable advance notice indicating  
2                   the purpose for requesting access to records;

3                   (ii) visual inspection of documents shall be deemed sufficient access;

4                   (iii) involuntary removal of trust records shall be expressly prohibited

5                   (C) inactive records may be stored or permanently held by the tribe or, at  
6                   tribal request, be removed and stored at the American Indian Records  
7                   Repository at no cost to the tribe.

8  
9                   **Section 212. Civil Actions.**

10                   (a) CIVIL ACTIONS; CONCURRENT JURISDICTION; RELIEF.-- The United  
11                   States district courts shall have original jurisdiction over any civil action or  
12                   claim against the Secretary arising under this title and, subject to the  
13                   provisions of subsection (d) of this section and concurrent with the United  
14                   States Court of Claims, over any civil action or claim against the Secretary for  
15                   money damages arising under agreements authorized by this subchapter. In an  
16                   action brought under this paragraph, the district courts may order appropriate  
17                   relief including money damages, injunctive relief against any action by an  
18                   officer of the United States or any agency thereof contrary to this title or  
19                   regulations promulgated thereunder, or mandamus to compel an officer or  
20                   employee of the United States, or any agency thereof, to perform a duty  
21                   provided under this subchapter or regulations promulgated hereunder  
22                   (including immediate injunctive relief to reverse the Secretary's declination of  
23                   a plan, contract, compact or funding agreement under this title, or to compel  
24                   the Secretary to award and fund an approved plan, contract, compact or  
25                   agreement.

26  
27                   (b) REVISION OF AGREEMENTS. -- The Secretary shall not revise or amend a  
28                   plan, agreement, contract or compact under this title without the tribe's  
29                   consent.

30  
31                   (c) APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS. -- Section  
32                   504 of title 5, and section 2412 of title 28 shall apply to administrative appeals  
33                   filed pursuant to this title.

34  
35                   (d) APPLICATION OF CONTRACT DISPUTES ACT. -- The Contract Disputes  
36                   Act (Public Law 95-563, Act of November 1, 1978; 92 Stat. 2383, as  
37                   amended) [41 U.S.C. 601 et seq.] shall apply to disputes arising under this  
38                   title, except that all administrative appeals relating to such disputes shall be  
39                   heard by the Interior Board of Contract Appeals established pursuant to  
40                   section 8 of such Act (41 U.S.C. 607).

1 | **Section 21308. Report to Congress.**

- 2
- 3 | (a) The Secretary shall, beginning one year after the date of the enactment of this
- 4 | Act, submit an annual report to the Committee on ~~Natural~~ Resources of the
- 5 | House of Representatives and the Committee on Indian Affairs of the Senate
- 6 | on the implementation of programs under this title.
- 7 | (b) Such report shall be presented to all tribes for their review and comments
- 8 | prior to the Secretary's presentation of the report to Congress and shall include
- 9 | recommendations (if any) for changes necessary to better implement the
- 10 | purpose of this title.
- 11 | (c) The report and its finding, recommendations and tribal comments shall be a
- 12 | subject for the annual trust oversight hearing discussed further in Section 306
- 13 | of this Act.

14 | **~~SEC. 209. REGULATIONS.~~**

- 15 | ~~(a) IN GENERAL--Not later than 12 months after the date of enactment of this~~
- 16 | ~~title, the Secretary shall promulgate final regulations for the implementation of~~
- 17 | ~~this title. All regulations promulgated pursuant to this title shall be developed by~~
- 18 | ~~the Secretary with the full and active participation of the Indian tribes with trust~~
- 19 | ~~funds held by the Secretary and other affected Indian tribes.~~
- 20 | ~~(b) EFFECT--The lack of promulgated regulations shall not limit the effect of this~~
- 21 | ~~title.~~

22

23 | **TITLE III--REFORMS RELATING TO TRUST RESPONSIBILITY**

24 | **Section 301. Purposes.**

25 | The purposes of this title are--

- 26
- 27 | (a) to provide for more effective management of, and accountability for the
- 28 | proper discharge of, the Secretary's trust responsibilities to Indian tribes and
- 29 | individual Indians by directing the Deputy Secretary to oversee and coordinate
- 30 | reforms within the Department of practices relating to the management and
- 31 | discharge of such responsibilities;
- 32 | (b) to ensure that reform of such practices in the Department is carried out in a
- 33 | unified manner and that reforms of the policies, practices, procedures and
- 34 | systems of the Bureau, Minerals Management Service, and Bureau of Land
- 35 | Management, which carry out such trust responsibilities, are effective,
- 36 | consistent, and integrated;
- 37
- 38 | (c) to create internal quality assurance mechanisms to enhance tribal and
- 39 | individual beneficiary services and participation;
- 40

1 (d) to provide for technical assistance and dispute resolution at the local level  
2 regarding trust fund and trust asset management matters;

3  
4 (e) to provide for a heightened level of independent review of the discharge of the  
5 Secretary's trust duties by the Office of the Inspector General; and

6  
7 (f) to ensure the implementation of all reforms necessary for the proper discharge  
8 of the Secretary's trust responsibilities to Indian tribes and individual Indians.  
9

10 **Section 302. Deputy Secretary For Indian Affairs.**

11 (a) ESTABLISHMENT-

12  
13 (1) In General -- There is established within the Department the  
14 position of Deputy Secretary for Indian Affairs (referred to in this  
15 section as the "Deputy Secretary", who shall report directly to the  
16 Secretary.

17  
18 (2) APPOINTMENT- The Deputy Secretary shall be appointed by the  
19 President, by and with the advice and consent of the Senate.  
20

21 (b) DUTIES.—

22  
23 (1) IN GENERAL.—The Deputy Secretary shall—

24  
25 (A) oversee the Bureau of Indian Affairs;

26  
27 (B) be responsible for carrying out all duties assigned to the  
28 Assistant Secretary for Indian Affairs as of the day before the  
29 date of enactment of the American Indian Trust Fund  
30 Management Reform Act Amendments Act of 2005;

31  
32 (C) oversee all trust fund and trust asset matters of the Department,  
33 including—

34  
35 (i) administration and management;

36  
37 (ii) financial and human resource matters; and

38  
39 (iii) all duties relating to trust fund and trust asset matters;

40  
41 (D) engage in appropriate government-to-government relations and  
42 consultations with Indian tribes and individual trust asset and  
43 trust fund account holders on matters involving trust asset and  
44 trust fund management and reform within the Department; and

1  
2 (E) carry out such other duties relating to Indian affairs as the  
3 Secretary may assign.  
4

5 (2) TRANSFER OF DUTIES.  
6

7 (A) ASSISTANT SECRETARY FOR INDIAN AFFAIRS.—As  
8 of the date of enactment of the American Indian Trust Fund  
9 Management Reform Act Amendments Act of 2005, all duties,  
10 functions and funding assigned to the Assistant Secretary for  
11 Indian Affairs shall be transferred to, and become the  
12 responsibility of, the Deputy Secretary.  
13

14 (B) SPECIAL TRUSTEE. The Office of Special Trustee ~~shall be~~  
15 ~~hereby~~ terminated effective one-hundred and eighty days  
16 following. ~~As of~~ the date of enactment of the American Indian  
17 Trust Management and Reform Act Amendments of 2005;  
18 provided that, subject to the requirements of section 305(a),  
19 nothing herein shall prohibit the Deputy Secretary from  
20 transferring prior to said date, all duties, functions, and funding  
21 assigned to the Special Trustee to other agencies as deemed  
22 appropriate by the Deputy Secretary in his discretion or to  
23 tribes that contract or compact with the Department for the  
24 exercise of such duties, functions and funding; provided further  
25 that funding associated with all transferred functions shall  
26 transfer from OST to the Deputy Secretary; and provided  
27 further that nothing herein shall be deemed to affect the trust  
28 ~~shall be transferred to, and become the~~ responsibility of, the  
29 Deputy Secretary to Indian tribes and their citizens.  
30

31 (3) SUCCESSION.—Any official who is serving as Assistant  
32 Secretary for Indian Affairs on the date of enactment of the  
33 American Indian Trust Fund Management Reform Act  
34 Amendments Act of 2005 and who was appointed by the President,  
35 by and with the advice and consent of the Senate, shall not be  
36 required to be reappointed under subsection (a) to the successor  
37 position authorized under subsection (a) if the Secretary approves  
38 the occupation of the position by the official ~~of the position~~ by the  
39 date that is 180 days after the date of enactment of the American  
40 Indian Trust Fund Management Reform Act Amendments Act of  
41 2005 (or such later date determined by the Secretary if litigation  
42 delay's rapid succession).  
43

44 (c) CORE BUSINESS SYSTEMS

45 (1) IN GENERAL.—The Deputy Secretary, in consultation with  
46 tribes, shall assure that systems to ~~“(C) require the development~~

1 and maintenance of an accurate inventory of all trust funds and  
2 non-monetary trust assets is fully developed and implemented.

3 (2) TITLE, LEASES, SALES AND ACCOUNTING.—

4 (A) The Deputy Secretary shall within 12 months of the enactment  
5 of this Act have fully developed and implemented those  
6 procedures necessary to implement core business systems that  
7 establish and maintain complete and accurate records for Titles,  
8 Leases and Sales, and accounting.

9 (B) The Deputy Secretary shall develop and implementation of  
10 these core business systems in a manner consistent with Section  
11 211(d) of this Act, including the provision of sufficient funding to  
12 tribes carrying out record management systems pursuant to a  
13 records management agreement negotiated in accordance with that  
14 Section.

15 (C) The functions carried out by the Office of Trust Fund  
16 Management (OTFM), and funding relating thereto, shall be  
17 transferred back to the Bureau and reestablished as the BIA Office  
18 of Trust Fund Management.

19  
20 (3) RECONSIDERATION OF INAPPROPRIATE OR  
21 UNSUSTAINABLE SYSTEMS.—

22  
23 (A) The Deputy Secretary, in consultation with tribes, shall  
24 establish procedures to identify inappropriate or unsustainable  
25 business systems and to reconfigure such systems in  
26 accordance with this purpose of this Act.

27  
28 (B) To the extent identified systems cannot be modified to meet the  
29 purposes of this Act, the Secretary, in consultation with Tribes,  
30 shall abandon the development and implementation of such  
31 systems.

32  
33 (2)

34 (d) ASSUMPTION BY TRIBES. All non-inherent federal functions and related  
35 funds and functions of the Deputy Secretary, including those transferred from  
36 the Office of Special Trustee, are available for assumption by an Indian tribe  
37 in the same manner as any other Indian program, services, functions, or  
38 activities.

39  
40 (e) EFFECT ON DUTIES OF OTHER OFFICIALS.—

41  
42 (1) IN GENERAL.—Except as provided in subsection (c) and  
43 paragraph (2), nothing in this section diminishes any responsibility  
44 or duty of the Deputy Secretary of the Interior appointed under the  
45 Act of May 9, 1935 (43 U.S.C. 1452), or any other Federal official,

1 relating to any duty established under this Act or any other  
2 provision of law.

3  
4 (2) TRUST ASSET AND TRUST FUND MANAGEMENT AND  
5 REFORM.—Notwithstanding any other provision of law, the  
6 Deputy Secretary shall have overall management and oversight  
7 authority on matters of the Department relating to Indian trust asset  
8 and trust fund management and reform (including matters that, as  
9 of the day before the date of enactment of the Indian Trust Asset  
10 and Trust Fund Management and Reform Act of 2003, were  
11 carried out by the Commissioner of Indian Affairs). The Office of  
12 Special Trustee shall report to the Deputy Secretary until the  
13 effective date of termination of the Office of Special Trustee  
14 specified in paragraph (2) of subsection (b) of this section for the  
15 purpose of achieving transition of duties of that office to such other  
16 agencies, contracting tribes or compacting tribes as specified by  
17 the Deputy Secretary.

18  
19 (f) REFERENCES TO ASSISTANT SECRETARY DEEMED TO BE TO  
20 DEPUTY SECRETARY.-- Any reference in a law, map, regulation,  
21 document, paper, or other record of the United States to the Assistant  
22 Secretary of the Interior for Indian Affairs shall be deemed to be a reference to  
23 the Deputy Secretary of the Interior for Indian Affairs.

24  
25 (g) SUBSTITUTION OF DEPUTY SECRETARY AS PARTY.—The Deputy  
26 Secretary for Indian Affairs shall be substituted as a party in any pending  
27 court proceeding that names the Assistant Secretary-Indian Affairs, or an  
28 individual acting in his/her official capacity as Assistant Secretary-Indian  
29 Affairs, as a party.

30  
31  
32 ~~“(f) TRUST IMPLEMENTATION AND OVERSIGHT.—~~

33 ~~“(1) ESTABLISHMENT.— There is established within the Office of the~~  
34 ~~Deputy Secretary responsibility for Trust Implementation and Oversight.~~

35 ~~“(2) DUTIES.— The Deputy Secretary shall—~~

36 ~~“(A) provide direct oversight of the day-to-day activities of all~~  
37 ~~Department of Interior agencies to the extent that such agencies administer~~  
38 ~~or manage any Indian trust assets or funds;~~

39 ~~“(B) administer, in accordance with title II, all trust properties,~~  
40 ~~funds, and other assets held by the United States for the benefit of Indian~~  
41 ~~tribes and individual members of Indian tribes;~~

42 ~~“(C) require the development and maintenance of an accurate~~  
43 ~~inventory of all trust funds and trust assets;~~

44 ~~“(D) ensure the prompt posting of revenue derived from a trust~~  
45 ~~fund or trust asset for the benefit of each Indian tribe (or individual~~

1 member of each Indian tribe) that owns a beneficial interest in the trust  
2 fund or trust asset;

3 ~~“(E) ensure that all trust fund accounts are audited at least  
4 annually, and more frequently as determined to be necessary by the  
5 Deputy Secretary;~~

6 ~~“(F) ensure that the Deputy Secretary, the Director of the Bureau  
7 of Land Management, the Commissioner of Reclamation, and the Director  
8 of the Minerals Management Service provide to the Secretary current and  
9 accurate information relating to the administration and management of  
10 trust funds and trust assets;~~

11 ~~“(G) provide for regular consultation with trust fund account  
12 holders on the administration of trust funds and trust assets to ensure, to  
13 the maximum extent practicable in accordance with applicable law and a  
14 Plan approved under section 202, the greatest return on those funds and  
15 assets for the trust fund account holders consistent with the beneficial  
16 owners’ intended uses for the trust funds; and~~

17 ~~(H) oversee and coordinate the management of trust assets by Department  
18 of Interior agencies.~~

19 ~~(g) AUTHORIZATION OF APPROPRIATIONS. There are authorized to be  
20 appropriated such sums as are necessary to carry out this section.”.~~  
21

## 22 **Section 303. Additional Authorities and Functions of the Deputy Secretary.**

### 23 (a) COMPREHENSIVE STRATEGIC PLAN-

24  
25 (1) IN GENERAL- The Deputy Secretary shall prepare and, after  
26 consultation with Indian tribes and appropriate Indian  
27 organizations, submit to the Secretary and the Committee on  
28 Natural Resources of the House of Representatives and the  
29 Committee on Indian Affairs of the Senate, within one year after  
30 the initial appointment is made under section 302(a)(2), a  
31 comprehensive strategic plan for all phases of the trust  
32 management business cycle that will ensure proper and efficient  
33 discharge of the Secretary's trust responsibilities to Indian tribes  
34 and individual Indians in compliance with this Act.

35  
36 (2) PLAN REQUIREMENTS- The plan prepared under paragraph (1)  
37 shall include the following:

38  
39 (A) Identification of all reforms to the policies, procedures,  
40 practices and systems of the Department, the Bureau of [Indian](#)  
41 [Affairs](#), the Bureau of Land Management, [the Bureau of](#)  
42 [Reclamation](#), [and](#) the Minerals Management Service, [the](#)  
43 [National Park Service](#), [the Office of Surface Mining](#), [the U.S.](#)  
44 [Fish and Wildlife Service](#), [and the U.S. Geological Survey](#)

1 necessary to ensure the proper and efficient discharge of the  
2 Secretary's trust responsibilities in compliance with this Act.

3  
4 (B) Provisions for opportunities for Indian tribes to assist in the  
5 management of their trust ~~accounts~~ resources and to identify  
6 for the Secretary options for the investment of their trust  
7 resources~~accounts~~, in a manner consistent with the trust  
8 responsibilities of the Secretary, in ways that will help promote  
9 economic development in their communities.

10  
11 (C) A timetable for implementing the reforms identified in the  
12 plan, including a date for the proposed termination of the  
13 Office.

14  
15 (b) DUTIES-

16  
17 (1) GENERAL OVERSIGHT OF REFORM EFFORTS- The Deputy  
18 Secretary shall oversee all reform efforts within the Bureau of  
19 Indian Affairs, the Bureau of Land Management, the Bureau of  
20 Reclamation, ~~and~~ the Minerals Management Service, the National  
21 Park Service, the Office of Surface Mining, the U.S. Fish and  
22 Wildlife Service, and the U.S. Geological Survey relating to the  
23 trust responsibilities of the Secretary to ensure the establishment of  
24 policies, procedures, systems and practices to allow the Secretary  
25 to discharge his trust responsibilities in compliance with this Act.

26  
27 (2) BUREAU OF INDIAN AFFAIRS.—

28 (A) MONITOR RECONCILIATION OF TRUST ACCOUNTS.--  
29 The Deputy Secretary shall monitor the reconciliation of tribal  
30 and Individual Indian Money trust accounts to ensure that the  
31 Bureau provides the account holders, with a fair and accurate  
32 accounting of all trust accounts.

33 (B) INVESTMENTS.--The Deputy Secretary shall ensure that the  
34 Bureau establishes appropriate policies and procedures, and  
35 develops necessary systems, that will allow it—

36 (i) to properly to account for and invest, as well as  
37 maximize, in a manner consistent with the statutory  
38 restrictions imposed on the Secretary's investment  
39 options, the return on the investment of all trust fund  
40 monies, and

41 (ii) to prepare accurate and timely reports to account holders  
42 (and others, as required) on a periodic basis regarding all

1 collections, disbursements, investments, and return on  
2 investments related to their accounts.

3 (C) OWNERSHIP AND LEASE DATA.--The Deputy Secretary  
4 shall ensure that the Bureau establishes policies and practices  
5 to maintain complete, accurate, and timely data regarding the  
6 ownership and lease of Indian lands.

7 (3) BUREAU OF LAND MANAGEMENT.--The Deputy Secretary  
8 shall ensure that the Bureau of Land Management establishes  
9 policies and practices adequate to enforce compliance with Federal  
10 requirements for drilling, production, accountability,  
11 environmental protection, and safety with respect to the lease of  
12 Indian lands.

13 (4) MINERALS MANAGEMENT SERVICE.--The Deputy Secretary  
14 shall ensure that the Minerals Management Service establishes  
15 policies and practices to enforce compliance by lessees of Indian  
16 lands with all requirements for timely and accurate reporting of  
17 production and payment of lease royalties and other revenues,  
18 including the audit of leases to ensure that lessees are accurately  
19 reporting production levels and calculating royalty payments.

20 (5) PLACEHOLDER FOR BUREAU SPECIFIC TERMS

21 (c) COORDINATION OF POLICIES.

22 (1) IN GENERAL.--The Deputy Secretary shall ensure that--

23 (A) the policies, procedures, practices, and systems of the Bureau  
24 of Indian Affairs, the Bureau of Land Management, the Bureau  
25 of Reclamation, ~~and~~ the Minerals Management Service, the  
26 National Park Service, the Office of Surface Mining, the U.S.  
27 Fish and Wildlife Service, and the U.S. Geological Survey  
28 related to the discharge of the Secretary's trust responsibilities  
29 are coordinated, consistent, and integrated, and

30 (B) the Department prepares comprehensive and coordinated  
31 written policies and procedures for each phase of the trust  
32 management business cycle.

33 (2) STANDARDIZED PROCEDURES.--The Deputy Secretary shall  
34 ensure that the Bureau imposes standardized trust fund accounting  
35 procedures throughout the Bureau.

36 (3) INTEGRATION OF LEDGER WITH INVESTMENT SYSTEM.-  
37 -The Deputy Secretary shall ensure that the trust fund investment,

1 general ledger, and subsidiary accounting systems of the Bureau  
2 are integrated and that they are adequate to support the trust fund  
3 investment needs of the Bureau.

4 (4) INTEGRATION OF LAND RECORDS, TRUST FUNDS  
5 ACCOUNTING, AND ASSET MANAGEMENT SYSTEMS  
6 AMONG AGENCIES.--The Deputy Secretary shall ensure that--

7 (A) the land records system of the Bureau interfaces with the trust  
8 fund accounting system, and

9 (B) the asset management systems of the Minerals Management  
10 Service and the Bureau of Land Management interface with the  
11 appropriate asset management and accounting systems of the  
12 Bureau, including ensuring that

13 (i) the Minerals Management Service establishes policies  
14 and procedures that will allow it to properly collect,  
15 account for, and disburse to the Bureau all royalties and  
16 other revenues generated by production from leases on  
17 Indian lands; and

18 (ii) the Bureau of Land Management and the Bureau provide  
19 Indian landholders with accurate and timely reports on a  
20 periodic basis that cover all transactions related to leases  
21 of Indian resources.

22 (C) PLACEHOLDER FOR OTHER BUREAU SPECIFIC

23 TERMS

24 (5) TRUST MANAGEMENT PROGRAM BUDGET.

25 (A) DEVELOPMENT AND SUBMISSION.--The Deputy  
26 Secretary shall develop for each fiscal year, with the advice of  
27 program managers of each office within the Bureau of Indian  
28 Affairs, Bureau of Land Management and Minerals  
29 Management Service that participates in trust management,  
30 including the management of trust funds or non-monetary trust  
31 assets~~natural resources~~, or which is charged with any  
32 responsibility under the comprehensive strategic plan prepared  
33 under subsection (a) of this section, a consolidated Trust  
34 Management program budget proposal that would enable the  
35 Secretary to efficiently and effectively discharge his trust  
36 responsibilities and to implement the comprehensive strategic  
37 plan, and shall submit such budget proposal to the Secretary,  
38 the Director of the Office of Management and Budget, and to  
39 the Congress.

1 (B) DUTY OF CERTAIN PROGRAM MANAGERS.--Each  
2 program manager participating in trust management or charged  
3 with responsibilities under the comprehensive strategic plans  
4 shall transmit his office's budget request to the Deputy  
5 Secretary at the same time as such request is submitted to his  
6 superiors (and before submission to the Office of Management  
7 and Budget) in the preparation of the budget of the President  
8 submitted to the Congress under section 1105(a) of title 31,  
9 United States Code.

10 (C) CERTIFICATION OF ADEQUACY OF BUDGET  
11 REQUEST.--The Deputy Secretary shall--

- 12 (i) review each budget request submitted under  
13 subparagraph (B);
- 14 (ii) certify in writing as to the adequacy of such request to  
15 discharge, effectively and efficiently, the Secretary's trust  
16 responsibilities and to implement the comprehensive  
17 strategic plan; and
- 18 (iii) notify the program manager of the Deputy Secretary's  
19 certification under clause (ii).

20 (D) CERTIFICATION SUBJECT TO INSPECTOR GENERAL  
21 REVIEW.--The Office of the Inspector General shall have be  
22 required to to review the Deputy Secretary's budget  
23 certification and report to Congress regarding that certification  
24 as provided in section 8K of the Inspector General Act of 1978  
25 as amended. [See Title VII of this Act for conforming  
26 amendments].

27 (E) MAINTENANCE OF RECORDS.--The Deputy Secretary  
28 shall maintain records of certifications made under paragraph  
29 (3)(B).

30 (F) LIMITATION ON REPROGRAMMING OR TRANSFER.--  
31 No program manager shall submit, and no official of the  
32 Department of the Interior may approve or otherwise authorize,  
33 a reprogramming or transfer request with respect to any funds  
34 appropriated for trust management which is included in the  
35 Trust Management Program Budget unless such request has  
36 been approved by the Deputy Secretary.

37 (d) PROBLEM RESOLUTION.--The Deputy Secretary shall provide such  
38 guidance as necessary to assist Department personnel in identifying problems  
39 and options for resolving problems, and in implementing reforms to

1 Department, Bureau, Bureau of Land Management, and Minerals  
2 Management Service policies, procedures, systems and practices.

3 (e) ACCESS OF DEPUTY SECRETARY.--The Deputy Secretary, and his staff,  
4 shall have access to all records, reports, audits, reviews, documents, papers,  
5 recommendations, files and other material, as well as to any officer and  
6 employee, of the Department and any office or bureau thereof, as the Deputy  
7 Secretary deems necessary for the accomplishment of the duties of the Deputy  
8 Secretary under this Act.

9 (f) RECORDS. -- Indian trust records held by the Department of Interior as  
10 necessary for the Trustee's proper discharge of its fiduciary responsibility to  
11 Indian tribes and Indian individuals shall be deemed 'inter-agency' or 'intra-  
12 agency' documents for the purposes of the exemption from the Freedom of  
13 Information Act, codified in section 552(b) of title 5 of the United States  
14 Code.

15 (g) ANNUAL REPORT.--The Deputy Secretary shall report to the Secretary and  
16 the Committee on Natural Resources of the House of Representatives and the  
17 Committee on Indian Affairs of the Senate each year on the progress of the  
18 Department, the Bureau, the Bureau of Land Management, and the Minerals  
19 Management Service in implementing the reforms identified in the  
20 comprehensive strategic plan under subsection (a)(1) and in meeting the  
21 timetable established in the strategic plan under subsection (a)(2)(C).

22  
23 Section 304. Trust Administration and Service Requirements for Bureau Field  
24 Offices.

25 (a) CONSOLIDATION OF FUNCTIONS. -- In order to enhance accountability,  
26 improve performance and increase efficiency in the delivery of programs and  
27 services at the local level, the Deputy Secretary, in consultation with tribes  
28 and Bureau field office directors shall:

29 (1) ensure the elimination of duplicative bureaucracy at the Regional  
30 Office and Agency levels resulting from the Departmental  
31 reorganization that separated trust and non-trust functions and that  
32 transferred certain functions and funding to the OST;

33 (2) provide for consolidation that assures returning functions and  
34 related funding from OST back to the Bureau and determining a  
35 mechanism for allocating funding through the Bureau;

36 (3) delegate decision-making authority to Bureau field office directors  
37 over all program, services, functions and activities administered by  
38 that field office;

- 1           (4) delegate line authority to Bureau field office directors over all  
2           employees performing duties at the field office level, regardless of  
3           whether those functions are deemed to be programmatic or  
4           administrative;
- 5           (5) ensure that staffing, training, technical assistance and funding is  
6           sufficient to meet each field office's obligations as established by  
7           law and policy;
- 8           (6) establish and enforce performance standards for meeting the  
9           trustee's responsibilities to tribal and individual beneficiaries; and
- 10          (7) preserve tribal authority to consolidate function and function in  
11          order to maximize program efficiencies consistent with the intent  
12          of the Indian Self Determination Act.

13          (b) QUALITY ASSURANCE AND AUDIT FIELD OFFICES.--Personnel  
14          servng in quality assurance and audit field offices under Section 305 of this  
15          Act, shall not be deemed field office employees for the purpose of this  
16          Section.

17          **Section 305. Quality Assurance and Audit.**

18          (a) QUALITY ASSURANCE AND AUDIT. – In order to enhance  
19          accountability, improve performance and increase efficiency, the Deputy  
20          Secretary shall establish a quality assurance and audit unit within the Deputy  
21          Secretary's Office to provide technical assistance, conduct performance  
22          reviews and audits at the field offices and to issue recommendations to field  
23          office directors regarding deficiencies in the administration of the trustee's  
24          trust management responsibilities at the field offices.

25          (b) DESIGNATION OF ADDITIONAL PERSONNEL AT TRIBAL  
26          REQUEST.—

- 27           (1) Upon the request of the tribes with citizens owning or holding  
28           beneficial title to more than fifty percent of the individual  
29           restricted or trust surface and mineral acres located within the  
30           geographic area served by a field office, the quality assurance and  
31           audit unit shall retain any trust officer positions established for  
32           that field office and existing as of the date of enactment of the  
33           American Indian Trust Management and Reform Act Amendments  
34           of 2005, whether such positions are filled or unfilled as of said  
35           date; provided that such tribal requests shall be documented by  
36           resolution of the governing bodies of the tribes and presented to  
37           the Deputy Secretary within ninety days from the date of  
38           enactment of the American Indian Trust Management and Reform  
39           Act Amendments of 2005.

1           (2) The purpose of the quality assurance and audit unit trust officers  
2           shall be the coordination with individual Indians and tribes served  
3           by the field office to ensure that their interests and rights are being  
4           protected and coordination with the field office to ensure the  
5           provision of quality services by the field office in a manner  
6           consistent with the federal trust responsibility. The quality  
7           assurance and audit unit trust officers shall have such other  
8           authority and perform such other functions as described in  
9           subsection (c) of this section or as delegated by the Deputy  
10           Secretary.

11           (c) PROCEDURES.-- The Deputy Secretary, in consultation with tribes, shall  
12           establish procedures for the operation, management and scope of the quality  
13           assurance and audit unit, which shall:

14           (1) provide for scheduled and unannounced reviews and audits;

15           (2) include procedures for responding to tribal and individual  
16           beneficiary requests; and

17           (3) provide tribes and individual beneficiaries with a right to appeal  
18           quality assurance and audit unit recommendations, and/or agency  
19           action or inaction on those recommendations, to the Interior Board  
20           of Indian Appeals and/or to the Assistant Inspector General for  
21           Trust.

22           (d) LIMITATION OF AUTHORITY.-- The quality assurance and audit unit  
23           shall not have any authority with respect to tribal trust resource management,  
24           nor authority to request reports, conduct site visits or otherwise review or  
25           audit activities carried out by any tribe under a self-determination agreement;  
26

27           **Section 306. Independent Accountability for the Indian Trust.**

28           (a) The Inspector General Act of 1978 shall be amended to create an Assistant  
29           Inspector General for the Indian Trust with the Office of the Inspector General  
30           in the Department of Interior. [See terms in Section 702]

31           (b) ANNUAL CONGRESSIONAL OVERSIGHT HEARING.—

32           (1) The annual report of the Assistant Inspector General for the Indian  
33           Trust shall serve as the basis for an annual oversight hearing in the  
34           Senate Committee for Indian Affairs and the House Resources  
35           Committee.

36           (2) The oversight hearing will also consider the findings,  
37           recommendations and tribal comments provided for in the Deputy  
38           Secretary's annual report as provided by Section 211 of this Act.

1                                   (3) The Committees shall consider other topics it considers appropriate  
2                                   pursuant to consultation with tribes, individual beneficiaries and  
3                                   agency officials.

4     **Section 307.4 Reconciliation Report.** The Secretary shall transmit to the Committee on  
5     Natural Resources of the House of Representatives and the Committee on Indian Affairs  
6     of the Senate, by May 31, 1996, a report identifying for each tribal trust fund account for  
7     which the Secretary is responsible a balance reconciled as of September 30, 1995. In  
8     carrying out this section, the Secretary shall consult with the Deputy Secretary. The  
9     report shall include--

10                               (1) a description of the Secretary's methodology in reconciling trust  
11                               fund accounts;

12                               (2) attestations by each account holder that--

13                                       (A) the Secretary has provided the account holder with as full and  
14                                       complete accounting as possible of the account holder's funds  
15                                       to the earliest possible date, and that the account holder accepts  
16                                       the balance as reconciled by the Secretary; or

17                                       (B) the account holder disputes the balance of the account holder's  
18                                       account as reconciled by the Secretary and statement  
19                                       explaining why the account holder disputes the Secretary's  
20                                       reconciled balance; and

21                               (3) a statement by the Secretary with regard to each account balance  
22                               disputed by the account holder outlining efforts the Secretary will  
23                               undertake to resolve the dispute.  
24

25 | **Section 3085. Staff and Consultants.**

26  
27                               (a) STAFF.--The Deputy Secretary may employ such staff as the Deputy  
28                               Secretary deems necessary. The Deputy Secretary may request staff assistance  
29                               from within the Department and any office or Bureau thereof as the Deputy  
30                               Secretary deems necessary.

31  
32                               (b) CONTRACTS.--To the extent and in such amounts as may be provided in  
33                               advance by appropriations Acts, the Deputy Secretary may enter into contracts  
34                               and other arrangements with public agencies and with private persons and  
35                               organizations for consulting services and make such payments as necessary to  
36                               carry out the provisions of this title.

37  
38                               (c) INDEPENDENT LEGAL COUNSEL ON INDIAN TRUST MATTERS.—  
39                               Notwithstanding any other provision of law the Deputy Secretary shall be  
40                               authorized to retain counsel on Indian trust matter who shall be independent of  
41                               the Department of the Interior's Office of the Solicitor. The Indian Trust

1 Counsel shall advise the Deputy Secretary solely with respect to the fiduciary  
2 trust obligations of the Deputy Secretary.

3  
4 ~~SEC. 306. ADVISORY BOARD. *The Consortium proposal does not*~~  
5 ~~*address Section 306. Rather it proposes a new section 307 which would*~~  
6 ~~*suggest the intent is to retain Section 306. I have serious concerns that an*~~  
7 ~~*advisory board to the Deputy Secretary would not be consistent with the*~~  
8 ~~*logic of the elevation of the AS-IA...*~~  
9

10 ~~(a) ESTABLISHMENT AND MEMBERSHIP. Notwithstanding any other~~  
11 ~~provision of law, the Special Trustee shall establish an advisory board to~~  
12 ~~provide advice on all matters within the jurisdiction of the Special Trustee.~~  
13 ~~The advisory board shall consist of nine members, appointed by the Special~~  
14 ~~Trustee after consultation with Indian tribes and appropriate Indian~~  
15 ~~organizations, of which--~~

16 ~~(1) five members shall represent trust fund account holders, including both~~  
17 ~~tribal and Individual Indian Money accounts;~~

18 ~~(2) two members shall have practical experience in trust fund and financial~~  
19 ~~management;~~

20 ~~(3) one member shall have practical experience in fiduciary investment~~  
21 ~~management; and~~

22 ~~(4) one member, from academia, shall have knowledge of general~~  
23 ~~management of large organizations.~~

24 ~~(b) TERM. Each member shall serve a term of two years.~~

25 ~~(c) FACCA. The advisory board shall not be subject to the Federal Advisory~~  
26 ~~Committee Act.~~

27 ~~(d) TERMINATION. The Advisory Board shall terminate upon termination~~  
28 ~~of the Office of Special Trustee.~~

29 **TITLE IV. INDIVIDUAL INDIAN MONEY ACCOUNT HOLDER**  
30 **CLAIMS SETTLEMENT.**  
31

32 **Section 401. Mediator.**  
33

- 34 (a) APPOINTMENT; DUTIES; QUALIFICATIONS; TERMINATION OF  
35 DUTIES - Within thirty days after the date of enactment of this Act, the  
36 Director of the Federal Mediation and Conciliation Service shall appoint a  
37 Mediator hereinafter referred to as the "Mediator") who shall assist in  
38 negotiations for the settlement of the rights and interests of the parties in the  
39 case of Cobell v. Norton, Civ No. 96-1285 (RCL). The Mediator Shall not  
40 have any interest, direct or indirect, in the settlement of the interests and rights  
41 of the parties to the litigation. The duties of the Mediator shall cease upon the  
42 entering of a full agreement into the records of the District Court or the  
43 submission of a report to the District Court after a default in negotiations or a  
44 partial agreement among the parties.

1  
2 (b) NATURE OF PROCEEDINGS - The proceedings in which the Mediator shall  
3 be acting shall be those in the Cobell case now pending in the United States  
4 District Court for the District of Washington, D.C. (hereinafter referred to as  
5 “the District Court”).  
6

7 (c) ASSISTANCE FOR MEDIATOR - The Mediator is authorized to request  
8 from any department, agency, or independent instrumentality of the Federal  
9 Government any information, personnel, service, or materials he deems  
10 necessary to carry out his responsibilities under the provisions of this Title  
11 Each such department, agency, or instrumentality is authorized to cooperate  
12 with the Mediator and to comply with such requests to the extent permitted by  
13 law, on a reimbursable or nonreimbursable basis.  
14

15 (d) STAFF ASSISTANTS AND CONSULTANTS - The mediator may retain the  
16 services of such staff assistants and consultants as he shall deem necessary,  
17 subject to the approval of the Director of the Federal Mediation and  
18 Conciliation Service.  
19

20 **Section 402. Negotiating Teams.**  
21

22 (a) APPOINTMENT; TIME; MEMBERSHIP; NATURE OF AUTHORITY -  
23 Within thirty days after the appointment of the mediator by the Director of  
24 the Federal Mediation and Conciliation Service, the mediator shall  
25 communicate in writing with the parties directing them to appoint a  
26 negotiating team to represent each party. Each negotiating team shall be  
27 composed of not more than five members. Each party shall promptly fill any  
28 vacancies which may occur on its negotiating team. Notwithstanding any  
29 other provision of law, each negotiating team, when appointed, shall have full  
30 authority to bind its principals with respect to any matter concerning the  
31 Cobell litigation.  
32

33 (b) FAILURE TO SELECT AND CERTIFY - In the event either or both of the  
34 parties fail to select and certify a negotiating team within thirty days after the  
35 mediator communicates with the them under subsection (a) of this section or  
36 to select and a replacement member within thirty days of the occurrence of a  
37 vacancy, the provisions of section 404 of this title shall become effective.  
38

39 (c) FIRST NEGOTIATING SESSION; TIME AND PLACE; CHAIRMAN;  
40 SUGGESTIONS FOR PROCEDURE, AGENDA, AND RESOLUTION OF  
41 ISSUES IN CONTROVERSY - Within fifteen days after the designation of  
42 both negotiating teams, the Mediator shall schedule the first negotiating  
43 session at such time and place as he deems appropriate. The negotiating  
44 sessions, which shall be chaired by the Mediator, shall be held at such times  
45 and places as the Mediator deems appropriate. At such sessions, the Mediator

1 may, if he deems it appropriate, put forward his own suggestions for  
2 procedure, the agenda, and the resolution of the issues in controversy.

3  
4 (d) FAILURE TO ATTEND TWO CONSECUTIVE SESSIONS OR BARGAIN  
5 IN GOOD FAITH - In the event either negotiating team fails to attend two  
6 consecutive sessions or, in the opinion of the Mediator, either negotiating  
7 team fails to bargain in good faith or an impasse is reached, the provisions of  
8 section 404 of this title shall become effective.

9  
10 (e) DISAGREEMENTS WITHIN TEAM - In the event of a disagreement within  
11 a negotiating team the majority of the members of the team shall prevail and  
12 act on behalf of the team.

13  
14 **Section 403. Implementation of Agreements.**

15  
16 (a) FULL AGREEMENT - If, within one hundred and eighty days after the first  
17 session scheduled by the Mediator under section 402 of this title, full  
18 agreement is reached, such agreement shall be put in such form as the  
19 Mediator determines best expresses the intent of the parties. The agreement  
20 shall be reviewed by each negotiating team and the mediator shall consider  
21 their comments, if any, thereon. The mediator shall then put the agreement in  
22 final form and it shall signed by the members of negotiating teams and the  
23 Mediator. The Mediator shall then cause the agreement to be entered into the  
24 records of the proceedings in the Cobell case. The provisions of the  
25 agreement shall be adopted by the District Court and put into effect  
26 immediately thereafter.

27  
28 (b) PARTIAL AGREEMENT - If, within the one hundred and eighty-day period  
29 referred to in subsection (a) of this section, a partial agreement has been  
30 reached between the parties and they wish such partial agreement to go into  
31 effect, they shall follow the procedure set forth in subsection (a) of this  
32 section. The partial agreement shall then be considered by the Mediator in  
33 preparing his report, and the District Court in making a final adjudication,  
34 pursuant to section 404 of this title.

35  
36 (c) CONSISTENCY WITH EXISTING LAW - For the purpose of this section,  
37 the negotiating teams may make any provision in the agreement or partial  
38 agreement not inconsistent with existing law. No such agreement or any  
39 provision in it shall result in a taking by the United States of private property  
40 compensable under the Fifth Amendment of the Constitution of the United  
41 States.

42  
43 **Section 404. Default or Failure to Reach Agreement; Recommendations to District**  
44 **Court; Final Adjudication.** -- If the negotiating teams fail to reach full agreement within  
45 the time period allowed in section 403 of this title or if one or both of the parties are in  
46 default under the provisions of section 402(b) or (d) of this title, the Mediator, within

1 ninety days thereafter, shall prepare and submit to the District Court a report containing  
2 his recommendations for the settlement of the interests and rights set out in section 401(a)  
3 of this title which shall be most reasonable and suitable in light of the law and  
4 circumstances and consistent with the provisions of this subchapter. Following the  
5 District Court's review of the report and recommendations and any further proceedings  
6 which the District Court may schedule, the District Court is authorized to make a final  
7 adjudication and enter judgment in the Cobell case consistent with the report and  
8 recommendations of the Mediator, and the District Court shall do so no later than 180  
9 days after receipt of the Mediator's report and recommendations.

10  
11 **TITLE V. LAND CONSOLIDATION.**

12  
13 **This is reserved as a placeholder for provisions on land Consolidation.**

14  
15 [The Tribal Trust Legislation Work Group has issued a statement  
16 of principles concerning land consolidation]

17  
18  
19 **TITLE VI. ADMINISTRATIVE PROVISIONS AND DISCLAIMERS**

20  
21 **Section 601. Regulations.**

22  
23 **(a) IN GENERAL-**

24  
25 **(1) PROMULGATION-** Not later than 90 days after the date of the  
26 enactment of the American Indian Trust Fund Management  
27 Reform -Amendments Act of 2005, the Secretary shall initiate  
28 procedures under subchapter III of chapter 5 of title 5, United  
29 States Code, to negotiate and promulgate such regulations as are  
30 necessary to carry out this title.

31  
32 **(2) PUBLICATION OF PROPOSED REGULATIONS-** Proposed  
33 regulations to implement this title shall be published in the Federal  
34 Register by the Secretary no later than 18 months after the date of  
35 the enactment of the American Indian Trust Fund Management  
36 Reform Amendments Act of 2005.

37  
38 **(3) EXPIRATION OF AUTHORITY-** The authority to promulgate  
39 regulations under paragraph (1) shall expire 24 months after the  
40 date of the enactment of the American Indian Trust Fund  
41 Management Reform Amendments Act of 2005.

1 (b) COMMITTEE-

2  
3 (1) IN GENERAL- A negotiated rulemaking committee established  
4 pursuant to section 565 of title 5, United States Code, to carry out  
5 this section shall include federal government representatives and  
6 representatives nominated by Indian tribes with trust funds held by  
7 the Secretary, tribes managing trust resources under Self-  
8 Determination Act agreements, tribes eligible for participation in  
9 the trust asset management demonstration project, tribes eligible  
10 for the Great Plains Demonstration Program, and other affected  
11 Indian tribes. (2) REQUIREMENTS-

12  
13 (A) The committee shall confer with, and accommodate  
14 participation by, representatives of Indian tribes, inter-tribal  
15 consortia, and tribal organizations

16 (B) The committee shall provide mechanisms for consultation with  
17 individual Indians.

18  
19 (c) ADAPTATION OF PROCEDURES- The Secretary shall adapt the negotiated  
20 rulemaking procedures to the unique context of self-governance and the  
21 government-to-government relationship between the United States and Indian  
22 tribes.

23  
24 (d) EFFECT- The lack of promulgated regulations shall not limit the effect of this  
25 Act.

26  
27  
28 **Section 602. MISCELLANEOUS Savings Provisions.**

29  
30 (a) FEDERAL TRUST AND TREATY RESPONSIBILITIES.-- Nothing in the  
31 Act shall be construed to diminish in any way the trust responsibility of the  
32 United States to Indian tribes and individual Indians that exists under treaties,  
33 Executive orders, or other laws, regulations, policies, agreements and court  
34 decisions.

35  
36 (b) TRIBAL SELF-DETERMINATION AND SELF-GOVERNANCE.-- Nothing  
37 in the Act shall be construed to diminish in any way ~~Nothing in this Act~~  
38 ~~diminishes or otherwise impairs the:~~(A) trust responsibility of the United States  
39 ~~with respect to the Indian people, or~~(B) the rights and authority of tribes  
40 pursuant to the Indian Self-Determination Education and Assistance Act, 25  
41 U.S.C. Sec. 450 et seq.- All agreements entered into pursuant to such law  
42 shall remain in full force and effect.

43  
44 Section 603. Severability. -- If any provision of this Act, or the application of any  
45 provision of this Act to any person or circumstance, is held invalid, the application of

1 such provision or circumstance and the remainder of this Act shall not be affected  
2 thereby.

## 3 4 5 TITLE VII. CONFORMING AMENDMENTS

### 6 Section 701. Government Organization Employees.

7  
8 (a) Section 5313 of title 5, United States Code, is amended by inserting  
9 “Deputy Secretary of the Interior for Indian Affairs” after “Deputy  
10 Secretary of the Interior”

11  
12 (b) Section 5315 of title 5, United States Code, is amended by striking  
13 “Assistant Secretaries of the Interior (6)” and inserting “Assistant  
14 Secretaries of the Interior (5)”.

15  
16 Section 702. Inspector General Act of 1978.—A new section 8K shall be added at the  
17 end of Appendix 3, of title 5, United States Code Annotated, which shall read as follows:

18  
19 Section 8K. Special Provisions relating to the Inspector General of the  
20 Department of the Interior.

21  
22 (a) In addition to the Assistant Inspector Generals provided for in section  
23 3(d) of the Inspector General Act of 1978, the Inspector General of the  
24 Department of Interior shall, in accordance with applicable laws and  
25 regulations governing the civil service, appoint an Assistant Inspector  
26 General for the Indian Trust who shall have oversight responsibility  
27 for internal investigations, performance reviews, audits, and appeals  
28 with respect to the United States' trust responsibilities to American  
29 Indian tribes and individuals and as provided for in the American  
30 Indian Trust Fund Management Reform Amendments Act of 2005.

31  
32 (b) The responsibility for supervision of programs and operations of DOI  
33 described in paragraph (a) shall not extend to tribes or tribal  
34 organizations carrying out trust programs, functions, services and  
35 activities pursuant to agreements under the ISDEAA.

36  
37 (c) The Assistant Inspector General for Indian Trust shall independently  
38 review the Deputy Secretary's budget certification and provide an  
39 independent report on that budget certification to the Senate  
40 Committee on Indian Affairs and House Resources Committee.

41  
42 (d) The Assistant Inspector General for Indian Trust may initiate, conduct  
43 and supervise audits and investigations in the Department of the  
Interior as the Assistant Inspector General for Indian Trust considers

1 appropriate, whether the requests for such investigations come from  
2 Departmental officials, Indian tribes or individual Indian beneficiaries.

3  
4 (e) When Indian tribes and individual Indian beneficiaries provide a  
5 written request for action from the Assistant Inspector General for  
6 Trust, a response as to whether or not the requested action will be  
7 carried out must be provided within 30 days of receipt of the request.  
8 For decisions not to carry out the requested action, a detailed  
9 explanation of the grounds for the Assistant Inspector's decision must  
10 be provided.

11  
12 (f) The Assistant Inspector General shall provide independent review of  
13 actions associated with the Deputy Secretary for Indian Affairs'  
14 "quality assurance and audit unit" as provided by Section 305 of  
15 American Indian Trust Fund Management Reform Amendments Act  
16 of 2005.

17  
18 (g) Reporting to Congress.—

19  
20 (1) The Assistant Inspector General for Indian Trust shall  
21 provide an annual report to the Senate Committee on Indian  
22 Affairs and House Resources Committee which shall  
23 include, but need not be limited to, the content listed in  
24 Section 5 of the Inspector General Act of 1978.

25 (2) The Assistant Inspector General shall be available to appear  
26 at annual hearings to discuss the report and its implications.  
27

28  
29  
30  
31 **TITLE VIII IV--AUTHORIZATION OF APPROPRIATIONS**

32  
33 **Section 801. Authorization of Appropriations.--** There is authorized to be appropriated  
34 such sums as may be necessary to carry out the provisions of this Act.

35  
36 **~~Sec. 9. RESOLUTION OF TRIBAL CLAIMS~~**

37  
38 ~~There shall be a process for resolving tribal claims against the United States for the~~  
39 ~~mismanagement of trust assets and funds, including the possibility of a tribal claims~~  
40 ~~commission. [detailed language needed].~~

41  
42 **~~Sec. 10. FRACTIONATED HEIRSHIPS AND HEIRSHIP~~**

43 ~~Enacted tribal laws governing heirship and probate, shall be the prevailing~~  
44 ~~law governing such issues. [detailed language needed].~~

45  
46 **~~Sec. 11. INDEPENDENT LEGAL COUNSEL FOR TRUST ISSUES~~**

1 | ~~——The Deputy Secretary shall have independent legal counsel to resolve~~  
2 | ~~conflicts involving trust matters.~~

3 |  
4 | ~~SEC. 12. REGULATIONS.~~

5 | ~~The Secretary of the Interior, in consultation with interested Indian tribes, shall~~  
6 | ~~promulgate such regulations as are necessary to carry out this Act and amendments~~  
7 | ~~made by this Act.~~