

open for further discussion is the universe of second mortgages to which disclosure requirements and term restrictions should apply. It may make sense to cast a wider net, and I look forward to discussing this issue further with all interested parties as work on this bill continues.

But it is important to move the process forward. Time is short, and we must move quickly if we are to gain enactment of this bill before the year is out. For these reasons, I am pleased to cosponsor this bill, and I urge my colleagues to join with us in the effort to provide protections against second-mortgage scams.

By Mr. INOUE (for himself, Mr. MCCAIN, Mr. SIMON, Mr. CAMPBELL, Mr. WELLSTONE, and Mr. DASCHLE):

S. 925. A bill to require the Secretary of the Interior to pay interest on Indian funds invested, to authorize demonstrations of new approaches for the management of Indian trust funds, to clarify the trust responsibility of the United States with respect to Indians, to establish a program for the training and recruitment of Indians in the management of trust funds, to account for daily and annual balances on and to require periodic statements for Indian trust funds, and for other purposes; to the Committee on Indian Affairs.

NATIVE AMERICAN TRUST FUND ACCOUNTING AND MANAGEMENT REFORM ACT OF 1993

• Mr. INOUE. Mr. President, I introduce the Native American Trust Fund and Management Reform Act of 1993, legislation that would: First, require the Secretary of the Interior to invest and pay interest on individual Indian money (IIM) funds held in trust by the Federal Government; second, authorize demonstrations of new and innovative approaches for the management of Indian trust funds; third, clarify the trust responsibility of the United States with respect to Indians; fourth, establish a program for the training and recruitment of Indians in the management of their trust funds; and fifth, require a periodic accounting to Indian trust funds account holders. Its enactment is necessary to reform longstanding mismanagement of the Indian trust fund and to give the 300,000 Native Americans for whom the Bureau of Indian Affairs (BIA) holds money in trust a greater role in the management of the funds which are held in trust for their benefit.

Trust funds currently managed by the United States include the tribal trust fund and the individual Indian moneys account trust fund (IIM trust fund). As of September 30, 1991, approximately 330 tribes have an interest in the tribal trust fund, however, some tribes have multiple accounts. As a result, approximately 2,965 separate accounts comprise the tribal trust fund. The tribes do not participate equally in the fund. In fact, according to the Office of Trust Fund Management, 77 percent of the fund assets are held by 8

percent of the tribes. The IIM trust fund is a deposit fund, usually not voluntary, for individual participants and tribes. It was originally intended to provide banking services for legally incompetent Indian adults and Indian minors without legal guardians. In addition to these fiduciary accounts, the IIM trust fund now contains deposit accounts for certain tribal operations and some tribal enterprises. Approximately 300,000 accounts are held in the IIM trust fund. These Indian trust funds include judgment awards, oil and gas royalty income, income derived from land leases and timber stumpage, and investment income. As trustee for lands and money held in trust by the United States, the Federal Government is responsible for managing and investing almost \$2 billion in tribal and individual Indian funds.

The system of trusteeship and Federal management of Indian funds is deeply rooted in the Federal-Indian relationship. Treaties are the first and probably most important means by which trust funds were held by the United States for the benefit of individuals or tribes. While the earliest treaties did not provide that the United States retain funds in trust for the tribes, in 1820 the Federal Government adopted the policy of holding tribal funds in trust.

Later, the role of trustee was delegated to the Secretary of the Interior. Since 1918, the BIA has had the legal authority to invest Indian trust funds. In 1938, the BIA decided that all individual Indian money (IIM) funds would be invested and managed by its agency offices. Since 1966, the BIA's Branch of Investment has pooled all IIM accounts for investment purposes. The Bureau allocates interest earned on the investment pool to individual accounts.

Mr. President, in April 1992, the House Committee on Government Operations unanimously approved a report based on a 3-year investigation by the Subcommittee on Environment, Energy and Natural Resources of the mismanagement of the \$2 billion Indian trust fund. That report, House Report 102-499, demonstrated that the indifferent supervision and control of the Indian trust funds has consistently resulted in a failure to exercise its responsibility and has failed all reasonable expectations of the tribal and individual account holders, and the Congress.

The management of the Indian trust fund has been grossly inadequate in many respects. The Federal Government has failed to accurately account for trust fund moneys. Indeed, the Government cannot even provide account holders with meaningful periodic statements on their account balances. It does not consistently and prudently invest trust funds and pay interest to account holders. It does not have consistent written policies or procedures that cover all of its trust fund accounting practices.

Financial management of the trust funds has been neglected for decades. Many believe that the crisis which exists in the management of the trust funds can only be cured by dramatic changes.

The real losers in the management of the Indian trust fund are the tribes and the individual Indian account holders. These account holders are the victims of Federal mismanagement, and it is appropriate that the Federal Government undertake the correction of these problems.

Mr. President, the Native American Trust Fund Accounting and Management Reform Act of 1993 is designed to correct these deficiencies. I hope that it will lead to an open discussion of the problems and all possible solutions, so that we can promptly act to resolve the deficiencies identified to date.

Mr. President, Congressman MIKE SYNAR, chairman of the Subcommittee on Environment, Energy and Natural Resources of the House Committee on Government Operations is the principal author of this measure. He has introduced this bill in the House of Representatives. I commend Chairman SYNAR for his leadership and dedicated advocacy in this matter. His persistence and diligence has done much to raise the problems associated with the management of Indian trust funds to the highest levels of Government. I am pleased to introduce this measure in the Senate, and look forward to working with Chairman SYNAR to assure passage of these measures in both Houses.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Trust Fund Accounting and Management Reform Act of 1993".

SEC. 2. DEFINITIONS.

For purposes of this Act—

- (1) the term "Secretary" means the Secretary of the Interior; and
- (2) the term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

TITLE I—TRUST FUND INTEREST PAYMENTS

SEC. 101. PAYMENT OF INTEREST ON FUNDS INVESTED.

(a) PAYMENT OF INTEREST.—(1) The fourth proviso of subsection (a) of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), is amended by striking "may invest" and inserting "shall invest".

(2) The first section of the Act of June 24, 1938 (25 U.S.C. 162a), is amended by adding at the end the following new subsection:

"(d) Amounts deposited or invested under subsection (a) shall earn interest at the appropriate rates, taking into consideration the type of deposit or investment. The Secretary shall periodically pay such interest to the appropriate Indian tribe or individual In-

dian or, at the election of the Indian tribe or individual Indian, add such interest to the principal so deposited or invested."

(b) **TECHNICAL CORRECTION.**—The second subsection (b) of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), as added by section 302 of Public Law 101-644 (104 Stat. 4667), is hereby redesignated as subsection (c).

(c) **REPEAL OF LIMITATION ON UNITED STATES LIABILITY.**—Paragraph (2) of subsection (c) of the first section of the Act of June 24, 1938, as amended by subsection (b), is amended to read as follows:

"(2) Amounts deposited or invested under this subsection shall generate earnings at the appropriate rates, taking into consideration the type of investment concerned. The Secretary shall periodically pay such earnings to the appropriate Indian tribe or individual Indian or, at the election of the Indian tribe or individual Indian, add such earnings to the principal of such funds so invested."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to interest earned on amounts deposited or invested on or after the date of the enactment of this Act.

SEC. 162. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWED.

The Secretary is authorized to make payments to an Indian tribe or an individual Indian—

(1) in full satisfaction of any claim of such Indian tribe or individual Indian for interest on amounts deposited or invested on behalf of such Indian tribe or individual Indian before the date of enactment of this Act under the Act of June 24, 1938 (25 U.S.C. 162a), and who was not paid the appropriate amount of interest on such funds; and

(2) in an amount equal to the interest which would have been earned if funds of such Indian tribe or individual Indians which were subject to the Act of June 24, 1938 (25 U.S.C. 162a), had been deposited or invested in accordance with such Act.

TITLE II—INDIAN TRUST FUND MANAGEMENT DEMONSTRATION PROGRAM

SEC. 201. PURPOSE.

The purpose of this title is to demonstrate new approaches for the management of tribal and individual Indian funds held in trust by the United States and managed by the Secretary through the Bureau, that, consistent with the trust responsibility of the United States and the principles of self-determination, will—

(1) give Indian tribal governments and individual Indian account holders greater control over the management of such trust funds;

(2) pursuant to tribal instructions, involve investment of such trust funds by the Secretary in a manner that will also help to promote economic development in Indian communities; or

(3) otherwise demonstrate how the principles of self-determination can work with respect to the management of such trust funds, in a manner consistent with the trust responsibility of the United States.

SEC. 202. DEFINITION.

For the purposes of this title, except for the purposes of section 206, the terms "Indian tribe" and "tribe" mean—

(1) an Indian tribe;

(2) a consortia of Indian tribes; or

(3) an association of Indians holding individual Indian trust fund accounts managed by the Secretary through the Bureau.

SEC. 203. DEMONSTRATION PLANS.

An Indian tribe may submit to the Secretary a plan to demonstrate a new approach for the management of tribal or individual

Indian funds held in trust by the United States for such tribe or the members of such tribe, and as of the date of the enactment of this Act, managed by the Secretary through the Bureau. Such plan may provide for the following:

(1) Management of such funds directly by the Indian tribe in financial institutions selected by the tribe, subject to supervision and oversight by the Secretary. For the purposes of this section, the term "management" may include one or more of the functions carried out, as of the date of the enactment of this Act, by the Secretary through the Bureau in managing such funds, such as collection, disbursement, and investment functions.

(2) Management of such funds by the Secretary in a manner that—

(A) involves investment of such funds in financial institutions on or near the reservation;

(B) increases tribal access to such institutions;

(C) promotes economic development activities on the reservation; or

(D) otherwise promotes tribal priorities.

(3) Management of such funds at the local level through contracts with local financial institutions that meet the purposes of this title.

(4) Such other approaches, as determined by the Secretary, that meet the purpose of this title.

SEC. 204. APPROVAL OF PLANS BY THE SECRETARY.

(a) **IN GENERAL.**—The Secretary shall approve and implement, or provide for the implementation by an Indian tribe of, a plan that meets the following conditions:

(1) Such plan has been approved by the appropriate Indian tribe, as follows:

(A) For a plan involving tribal trust funds, such plan is accompanied by a resolution from the tribal governing body approving the plan.

(B) For a plan submitted by an Indian tribe (as defined in paragraphs (1) and (2) of section 202) involving individual Indian money accounts, where most or all of the account holders are members of the submitting tribe, it is accompanied by a resolution from the tribal governing body approving the plan, along with a certification that the tribe held no fewer than 2 public meetings to provide an opportunity for account holders to comment on the plan.

(C) For a plan submitted by an Indian tribe (as defined in paragraph (3) of section 202), it is accompanied by a written approval signed by each participating account holder, along with a certification that the tribe on whose reservation the trust asset that is the source of the funds is located, has been consulted regarding the plan.

(2) The Secretary determines such plan to be consistent with standards of reasonable prudence, after considering all appropriate factors, including but not limited to the following:

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

(B) The protection against substantial loss of principal.

(C) The rate of return, provided that the plan need not produce the highest rate of return possible if the Indian tribe chooses to accept a lower rate in return for other benefits such as the benefits from investing in local financial institutions.

(D) The ability of the Secretary to effectively monitor the demonstration, pursuant to the trust responsibility of the United States as specified in section 206.

(3) The duration of the plan does not exceed 5 years.

(b) **INVESTMENT IN EQUITIES.**—Nothing in this section shall prohibit an Indian tribe submitting a plan for a demonstration under this section from providing in such plan for the investment of its trust funds in equities, if the Secretary determines that such plan meets the standard of reasonable prudence under subsection (a)(2).

SEC. 205. FEDERAL TRUST RESPONSIBILITY.

(a) **IN GENERAL.**—If an Indian tribe assumes management of trust funds pursuant to a demonstration under this title, the trust responsibility of the United States with respect to such funds shall, for the duration of the demonstration, be limited to the following:

(1) The exercise of reasonable prudence by the Secretary in approving the plan for the demonstration.

(2) An annual audit provided by the Secretary, directly or by contract, to determine that the tribe is performing in conformance with the plan for the demonstration.

(3) If the Secretary finds, through such audits, that the tribe is not in compliance with the terms of the plan, the Secretary shall—

(A) terminate the demonstration; or

(B) prescribe remedial action to be taken by the tribe to achieve compliance with the plan.

(b) **DECREASE IN INTEREST AND LOSS OF PRINCIPAL.**—If a plan for a demonstration submitted under this title and approved by the Secretary provides for the implementation of such demonstration by the Secretary, the United States shall not be liable, during the period of such demonstration, for any decrease in interest rate or any loss of principal that is proximately caused by the Secretary's prudent implementation of such demonstration.

(c) **AGREEMENT.**—Prior to the implementation of any demonstration under this title, the Indian tribe involved shall sign a written statement indicating that it understands and accepts the limitations on the trust responsibility of the United States as provided in this section.

SEC. 206. TECHNICAL AND FINANCIAL ASSISTANCE.

The Secretary shall, directly or by contract, provide Indian tribes with technical and financial assistance in developing, implementing, and managing plans for demonstrations under this title.

SEC. 207. NO INCOME TAX CONSEQUENCES.

Funds managed pursuant to a demonstration program under this title, and distributions made from such funds, shall, for purposes of the Internal Revenue Code of 1986, be treated in the same manner as such funds would be treated if such funds were managed directly by the Secretary, through the Bureau.

SEC. 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND PROGRAM.

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

(b) **APPROVAL OF PLAN.**—The Secretary shall approve a plan under this section that meets the requirements specified in section 204(a)(1) and subparagraphs (A) and (B) of section 204(a)(2).

(c) **TERMINATION OF TRUST RESPONSIBILITY.**—Beginning on the date funds are withdrawn pursuant to this section, any trust responsibility of the United States with respect to such funds shall terminate.

SEC. 209. REPORT TO CONGRESS.

The Secretary shall, beginning one year after the date of the enactment of this Act, submit an annual report to the Congress on the implementation of demonstration programs under this title. Such report shall in-

clude recommendations for changes necessary to effectively implement the purpose of this title.

TITLE III—RECOGNITION OF TRUST RESPONSIBILITY

SEC. 301. AFFIRMATIVE ACTION REQUIRED.

The first section of the Act of June 24, 1938 (25 U.S.C. 162a), as amended by section 101(a)(2), is amended by adding at the end the following new subsection:

“(e) The Secretary shall properly discharge the trust responsibilities of the United States under this section by—

“(1) providing adequate systems for accounting for and reporting trust fund balances;

“(2) providing adequate controls over receipts and disbursements;

“(3) providing periodic, timely reconciliations to assure the accuracy of accounts;

“(4) determining accurate cash balances;

“(5) preparing and supplying account holders with meaningful periodic statements of their account balances;

“(6) establishing consistent, written policies and procedures for trust fund management and accounting; and

“(7) providing adequate staffing, supervision, and training for trust fund management and accounting.”

SEC. 302. TRUST RESPONSIBILITY WITH RESPECT TO NATURAL RESOURCES.

The Congress recognizes that the trust responsibility of the United States extends to tribal and individual Indian owners of natural resources located within the boundaries of Indian reservations and trust lands. This includes the fiduciary responsibility to manage funds held in trust by the United States for Indian tribes and individual Indians derived from actions including, but not limited to, the use and sale of leased lands, judgments, mineral leases, oil and gas leases, timber permits and sales, and water resources.

TITLE IV—TRAINING AND PERSONNEL

SEC. 401. TRAINING.

(a) TRAINING PROGRAM.—The Secretary shall establish a program to assist Indians, including, but not limited to, employees of the Bureau and members and employees of Indian tribes, to obtain expertise in the management of trust funds. Components of such program may include the following:

(1) An outreach program to encourage and assist Indians to obtain employment with private financial institutions.

(2) Agreements with financial institutions and other entities under which such entities would provide classroom training, on-the-job training, internships, and employment opportunities not to exceed 2 years, for employees and prospective employees of the Bureau.

(b) RECRUITMENT.—

(1) EMPLOYMENT DESCRIPTIONS.—The Secretary shall ensure that the employment description for any Federal position related to the management of Indian trust funds contains requirements necessary to ensure that a person filling such position would have the necessary skills, based on industry standards, to fully perform the position's responsibilities in a manner consistent with the responsibility of the United States to properly manage Indian trust funds.

(2) PAY.—The Secretary, in consultation with the Office of Personnel Management, shall establish the rate of pay payable for a position related to the management of Indian trust funds at a level of the General Schedule appropriate for such position.

(c) INDIAN PREFERENCE.—Nothing in this title shall authorize or permit any waiver of Indian preference laws as such term is defined in section 2(d)(2) of Public Law 96-135 (25 U.S.C. 472 et seq.).

TITLE V—RESPONSIBILITY TO ACCOUNT FOR INDIAN TRUST FUNDS

SEC. 501. RESPONSIBILITY OF SECRETARY TO ACCOUNT FOR THE DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS.

(a) REQUIREMENT TO ACCOUNT.—The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(b) PERIODIC STATEMENT OF PERFORMANCE.—Not later than 10 business days after the close of a calendar month, the Secretary shall provide a statement of performance to each Indian tribe and individual with respect to whom funds are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a). The statement, for the period concerned, shall—

(1) identify the source, type, and status of the funds;

(2) the beginning balance;

(3) the earnings and losses; and

(4) the ending balance.

(c) ANNUAL AUDIT.—The Secretary shall cause to be conducted an annual audit on a fiscal year basis of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a), and shall include a letter relating to the audit in the first statement of performance provided under subsection (b) after the completion of the audit.

(d) EFFECTIVE DATE.—This section shall take effect October 1, 1993, but shall only apply with respect to earnings and losses occurring on or after October 1, 1993, on funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian.

• Mr. MCCAIN. Mr. President, I join my good friend and the distinguished chairman of the Committee on Indian Affairs, Senator INOUE, as an original cosponsor of the Native American Trust Fund Accounting and Management Act of 1993. The Trust Fund Reform Act introduces for discussion several concepts regarding the accounting and management of Indian trust funds that deserve careful review and deliberation by all interested parties.

As the Committee on Indian Affairs examines this bill, we would, of course, benefit from the views of those Indian tribes that have already successfully invested their own trust funds separate from any funds that might be held for them by the Bureau of Indian Affairs [BIA]. It seems to me that since eight tribes account for 77 percent of the tribal trust funds held by BIA, it is very possible that language can be developed which simply authorizes each tribe to divest their funds from the BIA and then select the financial institution which the tribe believes can best serve their investment needs. No only would this provide peace of mind to those concerned about current BIA trust fund management, but it could provide tribes with important economic leverage in their local community.

Finally, Mr. President, there may be some tribes or individual Indians who will choose to leave their trust funds under the management of the BIA.

That is certainly their right as an account holder. Such a decision, however, requires the various affected parties to ask themselves if it is worth spending an unknown amount of funds to reform the current system, or to consider alternative methods for managing Indian trust funds. It is my hope that the committee, tribes, and individual Indians will give serious consideration to the idea of authorizing the Secretary of the Interior to contract with a private financial institution to perform the necessary investment and management services. This is not a new idea, and I realize the enormous controversy which enveloped such a proposal when it was first offered by the mid-1980's. However, in light of the serious reports characterizing the BIA's mismanagement of Indian trust funds, I believe, it is an idea worth reconsidering. Perhaps the only difference with this proposal—and a very key difference—is that the tribes and individual account holders will be consulted first this time around.

I look forward to working with all interested parties as we seek new ways to provide improved management for these trust funds. •

By Mr. ROBB (for himself, Mr. AKAKA, Mr. DECONCINI, Mr. PRESSLER, and Mr. SHELBY):

S.J. Res. 90. A joint resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy; to the Committee on Commerce, Science, and Transportation.

AMATEUR RADIO SERVICE JOINT RESOLUTION

• Mr. ROBB. Mr. President, today, I am pleased to be joined by Senators AKAKA, DECONCINI, PRESSLER, and SHELBY to introduce a joint resolution that will grant well-deserved recognition to a valuable national resource, the Amateur Radio Service. For the past 80 years, this group of dedicated volunteers has been first on the scene for virtually every communications emergency. When Mother Nature or a human misstep causes the telephone lines to go down or radio circuits to be overloaded, the ham operators are there with their equipment, providing communications until the regular infrastructure is back to normal.

Radio amateurs also demonstrate their expertise in another way, as technical innovators. Eager to push back technical frontiers, amateurs probe the upper limits of the useful radio spectrum, discover much about radio propagation, and develop practical and affordable alternatives to complicated expensive new equipment from the laboratories.

Our resolution expresses the Nation's gratitude for both the technical and disaster communications achievements of the Amateur Radio Service. But words without deeds, it is often said, are empty. Keeping that in mind, this resolution goes beyond commendation to give the amateurs a tool of persuasion to smooth their path: It urges