

103D CONGRESS
1ST SESSION

S. 925

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.

IN THE SENATE OF THE UNITED STATES

MAY 7 (legislative day, APRIL 19), 1993

Mr. INOUE (for himself, Mr. MCCAIN, Mr. SIMON, Mr. CAMPBELL, Mr. WELLSTONE, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Native American Trust
3 Fund Accounting and Management Reform Act of 1993”.

4 **SEC. 2. DEFINITIONS.**

5 For purposes of this Act—

6 (1) the term “Secretary” means the Secretary
7 of the Interior; and

8 (2) the term “Bureau” means the Bureau of
9 Indian Affairs of the Department of the Interior.

10 **TITLE I—TRUST FUND INTEREST**
11 **PAYMENTS**

12 **SEC. 101. PAYMENT OF INTEREST ON FUNDS INVESTED.**

13 (a) **PAYMENT OF INTEREST.**—(1) The fourth proviso
14 of subsection (a) of the first section of the Act of June
15 24, 1938 (25 U.S.C. 162a), is amended by striking “may
16 invest” and inserting “shall invest”.

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

20 “(d) Amounts deposited or invested under subsection
21 (a) shall earn interest at the appropriate rates, taking into
22 consideration the type of deposit or investment. The Sec-
23 retary shall periodically pay such interest to the appro-
24 priate Indian tribe or individual Indian or, at the election
25 of the Indian tribe or individual Indian, add such interest
26 to the principal so deposited or invested.”.

1 (b) TECHNICAL CORRECTION.—The second sub-
 2 section (b) of the first section of the Act of June 24, 1938
 3 (25 U.S.C. 162a), as added by section 302 of Public Law
 4 101-644 (104 Stat. 4667), is hereby redesignated as sub-
 5 section (c).

6 (c) REPEAL OF LIMITATION ON UNITED STATES LI-
 7 ABILITY.—Paragraph (2) of subsection (c) of the first sec-
 8 tion of the Act of June 24, 1938, as amended by sub-
 9 section (b), is amended to read as follows:

10 “(2) Amounts deposited or invested under this sub-
 11 section shall generate earnings at the appropriate rates,
 12 taking into consideration the type of investment con-
 13 cerned. The Secretary shall periodically pay such earnings
 14 to the appropriate Indian tribe or individual Indian or,
 15 at the election of the Indian tribe or individual Indian,
 16 add such earnings to the principal of such funds so in-
 17 vested.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to interest earned on amounts de-
 20 posited or invested on or after the date of the enactment
 21 of this Act.

22 **SEC. 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR IN-**
 23 **TEREST OWED.**

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

1 (1) in full satisfaction of any claim of such In-
2 dian tribe or individual Indian for interest on
3 amounts deposited or invested on behalf of such In-
4 dian tribe or individual Indian before the date of en-
5 actment of this Act under the Act of June 24, 1938
6 (25 U.S.C. 162a), and who was not paid the appro-
7 priate amount of interest on such funds; and

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

13 **TITLE II—INDIAN TRUST FUND**
14 **MANAGEMENT DEMONSTRA-**
15 **TION PROGRAM**

16 **SEC. 201. PURPOSE.**

17 The purpose of this title is to demonstrate new ap-
18 proaches for the management of tribal and individual In-
19 dian funds held in trust by the United States and man-
20 aged by the Secretary through the Bureau, that, consist-
21 ent with the trust responsibility of the United States and
22 the principles of self-determination, will—

23 (1) give Indian tribal governments and individ-
24 ual Indian account holders greater control over the
25 management of such trust funds;

1 (2) pursuant to tribal instructions, involve in-
2 vestment of such trust funds by the Secretary in a
3 manner that will also help to promote economic de-
4 velopment in Indian communities; or

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

9 **SEC. 202. DEFINITION.**

10 For the purposes of this title, except for the purposes
11 of section 208, the terms "Indian tribe" and "tribe"
12 mean—

13 (1) an Indian tribe;

14 (2) a consortia of Indian tribes; or

15 (3) an association of Indians holding individual
16 Indian trust fund accounts managed by the Sec-
17 retary through the Bureau.

18 **SEC. 203. DEMONSTRATION PLANS.**

19 An Indian tribe may submit to the Secretary a plan
20 to demonstrate a new approach for the management of
21 tribal or individual Indian funds held in trust by the Unit-
22 ed States for such tribe or the members of such tribe, and
23 as of the date of the enactment of this Act, managed by
24 the Secretary through the Bureau. Such plan may provide
25 for the following:

1 (1) Management of such funds directly by the
2 Indian tribe in financial institutions selected by the
3 tribe, subject to supervision and oversight by the
4 Secretary. For the purposes of this section, the term
5 “management” may include one or more of the func-
6 tions carried out, as of the date of the enactment of
7 this Act, by the Secretary through the Bureau in
8 managing such funds, such as collection, disburse-
9 ment, and investment functions.

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

12 (A) involves investment of such funds in fi-
13 nancial institutions on or near the reservation;

14 (B) increases tribal access to such institu-
15 tions;

16 (C) promotes economic development activi-
17 ties on the reservation; or

18 (D) otherwise promotes tribal priorities.

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

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

1 **SEC. 204. APPROVAL OF PLANS BY THE SECRETARY.**

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

5 (1) Such plan has been approved by the appro-
6 priate Indian tribe, as follows:

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

10 (B) For a plan submitted by an Indian
11 tribe (as defined in paragraphs (1) and (2) of
12 section 202) involving individual Indian money
13 accounts, where most or all of the account hold-
14 ers are members of the submitting tribe, it is
15 accompanied by a resolution from the tribal
16 governing body approving the plan, along with
17 a certification that the tribe held no fewer than
18 2 public meetings to provide an opportunity for
19 account holders to comment on the plan.

20 (C) For a plan submitted by an Indian
21 tribe (as defined in paragraph (3) of section
22 202), it is accompanied by a written approval
23 signed by each participating account holder,
24 along with a certification that the tribe on
25 whose reservation the trust asset that is the

1 source of the funds is located, has been con-
2 sulted regarding the plan.

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

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

10 (B) The protection against substantial loss
11 of principal.

12 (C) The rate of return, provided that the
13 plan need not produce the highest rate of re-
14 turn possible if the Indian tribe chooses to ac-
15 cept a lower rate in return for other benefits
16 such as the benefits from investing in local fi-
17 nancial institutions.

18 (D) The ability of the Secretary to effec-
19 tively monitor the demonstration, pursuant to
20 the trust responsibility of the United States as
21 specified in section 205.

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

24 (b) INVESTMENT IN EQUITIES.—Nothing in this sec-
25 tion shall prohibit an Indian tribe submitting a plan for

1 a demonstration under this section from providing in such
2 plan for the investment of its trust funds in equities, if
3 the Secretary determines that such plan meets the stand-
4 ard of reasonable prudence under subsection (a)(2).

5 **SEC. 205. FEDERAL TRUST RESPONSIBILITY.**

6 (a) **IN GENERAL.**—If an Indian tribe assumes man-
7 agement of trust funds pursuant to a demonstration under
8 this title, the trust responsibility of the United States with
9 respect to such funds shall, for the duration of the dem-
10 onstration, be limited to the following:

11 (1) The exercise of reasonable prudence by the
12 Secretary in approving the plan for the demonstra-
13 tion.

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

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

21 (A) terminate the demonstration; or

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

1 (b) **DECREASE IN INTEREST AND LOSS OF PRIN-**
2 **CIPAL.**—If a plan for a demonstration submitted under
3 this title and approved by the Secretary provides for the
4 implementation of such demonstration by the Secretary,
5 the United States shall not be liable, during the period
6 of such demonstration, for any decrease in interest rate
7 or any loss of principal that is proximately caused by the
8 Secretary's prudent implementation of such demonstra-
9 tion.

10 (c) **AGREEMENT.**—Prior to the implementation of
11 any demonstration under this title, the Indian tribe in-
12 volved shall sign a written statement indicating that it un-
13 derstands and accepts the limitations on the trust respon-
14 sibility of the United States as provided in this section.

15 **SEC. 206. TECHNICAL AND FINANCIAL ASSISTANCE.**

16 The Secretary shall, directly or by contract, provide
17 Indian tribes with technical and financial assistance in de-
18 veloping, implementing, and managing plans for dem-
19 onstrations under this title.

20 **SEC. 207. NO INCOME TAX CONSEQUENCES.**

21 Funds managed pursuant to a demonstration pro-
22 gram under this title, and distributions made from such
23 funds, shall, for purposes of the Internal Revenue Code
24 of 1986, be treated in the same manner as such funds

1 would be treated if such funds were managed directly by
2 the Secretary, through the Bureau.

3 **SEC. 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND**
4 **PROGRAM.**

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

9 (b) **APPROVAL OF PLAN.**—The Secretary shall ap-
10 prove a plan under this section that meets the require-
11 ments specified in section 204(a)(1) and subparagraphs
12 (A) and (B) of section 204(a)(2).

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

17 **SEC. 209. REPORT TO CONGRESS.**

18 The Secretary shall, beginning one year after the date
19 of the enactment of this Act, submit an annual report to
20 the Congress on the implementation of demonstration pro-
21 grams under this title. Such report shall include rec-
22 ommendations for changes necessary to effectively imple-
23 ment the purpose of this title.

1 **TITLE III—RECOGNITION OF**
2 **TRUST RESPONSIBILITY**

3 **SEC. 301. AFFIRMATIVE ACTION REQUIRED.**

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

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

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

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

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

16 “(4) determining accurate cash balances;

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

20 “(6) establishing consistent, written policies and
21 procedures for trust fund management and account-
22 ing; and

23 “(7) providing adequate staffing, supervision,
24 and training for trust fund management and ac-
25 counting.”.

1 **SEC. 302. TRUST RESPONSIBILITY WITH RESPECT TO NATU-**
 2 **RAL RESOURCES.**

3 The Congress recognizes that the trust responsibility
 4 of the United States extends to tribal and individual In-
 5 dian owners of natural resources located within the bound-
 6 aries of Indian reservations and trust lands. This includes
 7 the fiduciary responsibility to manage funds held in trust
 8 by the United States for Indian tribes and individual Indi-
 9 ans derived from actions including, but not limited to, the
 10 use and sale of leased lands, judgments, mineral leases,
 11 oil and gas leases, timber permits and sales, and water
 12 resources.

13 **TITLE IV—TRAINING AND**
 14 **PERSONNEL**

15 **SEC. 401. TRAINING.**

16 (a) **TRAINING PROGRAM.**—The Secretary shall estab-
 17 lish a program to assist Indians, including, but not limited
 18 to, employees of the Bureau and members and employees
 19 of Indian tribes, to obtain expertise in the management
 20 of trust funds. Components of such program may include
 21 the following:

22 (1) An outreach program to encourage and as-
 23 sist Indians to obtain employment with private fi-
 24 nancial institutions.

25 (2) Agreements with financial institutions and
 26 other entities under which such entities would pro-

1 vide classroom training, on-the-job training, intern-
2 ships, and employment opportunities not to exceed 2
3 years, for employees and prospective employees of
4 the Bureau.

5 (b) RECRUITMENT.—

6 (1) EMPLOYMENT DESCRIPTIONS.—The Sec-
7 retary shall ensure that the employment description
8 for any Federal position related to the management
9 of Indian trust funds contains requirements nec-
10 essary to ensure that a person filling such position
11 would have the necessary skills, based on industry
12 standards, to fully perform the position's responsibil-
13 ities in a manner consistent with the responsibility
14 of the United States to properly manage Indian
15 trust funds.

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

21 (c) INDIAN PREFERENCE.—Nothing in this title shall
22 authorize or permit any waiver of Indian preference laws
23 as such term is defined in section 2(f)(2) of Public Law
24 96-135 (25 U.S.C. 472 et seq.).

1 **TITLE V—RESPONSIBILITY TO**
2 **ACCOUNT FOR INDIAN TRUST**
3 **FUNDS**

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

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

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

- 20 (1) identify the source, type, and status of the
21 funds;
- 22 (2) the beginning balance;
- 23 (3) the earnings and losses; and
- 24 (4) the ending balance.

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

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

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