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[H.R. 812, Indian Trust Asset Reform Act](#)

FLOOR SITUATION

On Wednesday, February 24, 2016, the House will consider [H.R. 812](#), the Indian Trust Asset Reform Act, under suspension of the rules. H.R. 812 was introduced on February 9, 2015 by Rep. Michael Simpson (R-ID), and was referred to the Committee on Natural Resources, which ordered the bill reported by unanimous consent on February 3, 2016.

SUMMARY

H.R. 812 authorizes a demonstration project for tribes to negotiate on a voluntary basis with the Secretary of the Interior to manage their trust assets in accordance with relevant federal treaties, statutes, and Executive Orders. The bill also allows the Secretary to create a new position of Under Secretary for Indian Affairs within the Department of the Interior.

BACKGROUND

The term “federal trust responsibility to Indians” is frequently referenced to characterize the federal government’s obligation to carry out terms of treaties and statutes in a just manner for the benefit of Indians. There is, however, no general statutory definition of “trust responsibility.”

The term developed from early 19th century Supreme Court decisions holding that recognized Indian tribes are “domestic dependent nations” over which Congress exercises exclusive and plenary power. Accordingly, tribes’ lands and affairs were managed by the United States “under a highly paternalistic system where the presumptively knowledgeable Secretary protects incompetent wards.”¹ The result of this historic system of comprehensive federal supervision over tribal affairs is exceptionally high rates of poverty, joblessness, health problems, and suicide.²

The modern era of promoting tribal self-determination was launched by President Richard M. Nixon. In his Special Message to Congress on Indian Affairs, President Nixon argued, “It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities

¹ See Statement of David A. Mullon, Chief Counsel, NCAI, Prepared Statement on H.R. 409, the Indian Trust Asset Reform Act, before the Sub. Cmte. on Indian and Alaska Native Affairs, May 2014.

² See [Natural Resources Committee Memo on H.R. 812](#)

and insights of the Indian people.”³ He would later add, “In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we suggest a policy in which the Federal government and the Indian community play complementary roles.”⁴

Subsequently, Congress enacted the Indian Self-Determination and Education Assistance Act of 1975. This legislation authorized tribes to deliver federal services and benefits to their members under negotiated contracts, compacts, or annual funding agreements with the government. In addition, Congress has enacted a number of laws designed to increase the opportunity for tribes to manage their assets.

While tribes over the last 40 years have increased their capacity to administer federal funds and services, their lands continue to be held in trust by the Secretary, an arrangement that is often a hindrance to Indian prosperity.⁵ Some statutes require the Secretary of the Interior to perform comprehensive control over an Indian asset in a manner that exposes taxpayers to enormous liabilities when the Secretary mismanages it.⁶ In these cases, the Secretary’s primary concern is risk avoidance, which may benefit the taxpayer but not the tribe. Other statutes authorize the Secretary to perform merely basic administrative duties for Indians with no enforceable fiduciary standards.⁷ Accordingly, an Indian trust asset could be underutilized or even mismanaged with no meaningful remedy available to the beneficial owner of that asset.

According to the Committee, H.R. 812 would allow tribes to have more control over their assets and, in many instances tribes have continuously showed they are simply able to do a better job managing their assets than the federal government.

COST

The Congressional Budget Office [estimates](#) that any net change in federal costs—which would be subject to appropriation—would be insignificant in any given year. Enacting H.R. 812 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

STAFF CONTACT

For questions or further information please contact [Robert Goad](#) with the House Republican Policy Committee by email or at 6-1831.

³ *Id.*

⁴ See Public Papers of the Presidents of the United States: Richard Nixon, 1970, pp. 564-567, 576-76.

⁵ [Natural Resources Committee Memo on H.R. 812](#)

⁶ *Id.*

⁷ *Id.*