



## House Passes Tribal Trust Asset Reform Bill

By **Daniel Wilson**

Law360, Washington (February 24, 2016, 7:18 PM ET) -- The U.S. House of Representatives unanimously passed a bill Wednesday to open a potential path for Native American tribes to manage their assets held in federal trust, with the bill's backers pointing to purported mismanagement by the U.S. Department of the Interior.

H.R. 812, the Indian Trust Asset Reform Act, passed by a voice vote. The bill would establish a pilot program allowing tribes to negotiate with the DOI to manage their own trust assets and also makes moves toward potentially dissolving the Office of the Special Trustee for American Indians, or OST.

Federal mismanagement of Native American assets held in trust, illustrated by recent lawsuits that have led to **expensive settlements**, has hurt tribes' abilities to address issues such as "abject poverty" and attempts to promote economic development, the bill's main sponsor Rep. Mike Simpson, R-Idaho, said on the House floor Wednesday. Capable tribes should be allowed the chance to "effectively and efficiently" manage these assets, he argued.

"The federal government has a trust responsibility to meet its commitments to Indian Country," Simpson said. "Yet in many cases, federal agencies hinder rather than help tribes provide for their members."

Under the trust system, certain tribal assets are held in trust for the benefit of Native American tribes by the federal government as the result of various treaties, federal laws and executive orders. Many tribes have shown over a period of years that they are able to do a better job managing their assets than a federal agency, but have wrongly been denied the opportunity to manage land held in trust, according to the bill's sponsors.

As such, the Reform Act would establish a pilot program allowing tribes to apply to the DOI to voluntarily manage trust assets, by submitting a plan that outlines the relevant assets, planned management objectives and activities — such as agriculture or business development — and expected management costs.

Plans need to meet all specified criteria, comply with relevant laws and treaties and the costs of the plan would not exceed available trust management funds, although plans which do not receive a response within 120 days would be automatically approved. Tribes turned down by the DOI would get 90 days to submit a revised plan and could challenge further disapproval in court.

Approved tribes would then be given at least 10 years to carry out their demonstration

project, with the agency authorized to extend that period at its discretion and with tribes also allowed to terminate their participation, effective at the start of the following financial year.

And the bill would require the DOI to study dissolving the OST and potentially putting its functions into its other constituent agencies, with Simpson arguing Wednesday the office had bloated beyond its original role of managing trust assets and is inefficient, among other issues.

According to congressional testimony delivered on behalf of the National Congress of American Indians in a 2014 congressional hearing to discuss a previous version of the bill, the federal trust developed from a "paternalistic" system where tribes were considered to lack the competence to manage assets that are ostensibly theirs.

But lawmakers began to make efforts toward allowing tribal self-determination in the early 1970s, at the direction of President Richard Nixon, culminating in the 1975 Indian Self-Determination and Education Assistance Act, according to a House Natural Resources Committee report accompanying the Reform Act.

That 1975 bill authorized tribes to deliver federal benefits and services through agreements with the federal government, and several subsequent laws have also made further strides toward allowing tribes to manage their trust assets, the committee report claimed.

But tribal lands continue to be held in trust by the DOI, and are sometimes either underutilized or mismanaged as a result, according to the Reform Act's sponsors. This not only harms tribes, who often have no useful response open to them, but also opens up taxpayers to potential liability, they claimed.

The Senate equivalent to the bill, S. 383, also titled the Indian Trust Asset Reform Act, was **approved by** the Senate Indian Affairs Committee in July and currently awaits a final vote.

--Editing by Edrienne Su.