



MEMORANDUM

June 10, 2016

TO: TRUST REFORM CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***Senate approves HR 812, the Indian Trust Asset Reform Act, by Unanimous Consent. Next Stop: the White House***

Today the Senate approved by unanimous consent H.R. 812, the “Indian Trust Asset Reform Act”, clearing the measure for the White House for signature.

We reported on the House Natural Resources Committee’s approval of an amended version of the bill in our memo of February 9, 2016. The full House followed with approval of the amended bill on February 24, 2016, and sent to the Senate which has now also approved it.

Overview of H.R.812

H.R. 812 authorizes a demonstration project for tribes to voluntarily negotiate with the Secretary of the Interior (“Secretary”) to manage their trust assets in keeping with relevant federal treaties, statutes, and court decisions. The bill is divided into three Titles. Title I reaffirms the responsibility of the United States to Indian tribes and sets forth congressional findings recognizing the federal trust responsibility. Title II authorizes a demonstration project for tribes to voluntarily negotiate with the Secretary to manage their trust assets in keeping with relevant federal treaties, statutes, and executive orders. Title III authorizes the Secretary to create a new position of Under Secretary for Indian Affairs (“Under Secretary”) within the Department of the Interior to oversee the transition of Office of the Special Trustee’s functions to other federal entities.

Section-by-Section

Title I – Recognition of Trust Responsibility

Sec. 101. Findings. Sets forth congressional findings regarding the United States’ fiduciary responsibilities to Indians and Indian tribes. The bill focuses on the federal-tribal relationship as established through treaties, statutes, and historical relations,

which creates unique fiduciary responsibilities for the United States to protect and support Indians and Indian tribes.

Sec. 102. Reaffirmation of Policy. Reaffirms that the responsibility of the United States to Indian tribes includes a duty to promote tribal self-determination regarding governmental authority and economic development.

Title II – Indian Trust Asset Management Demonstration Project

Sec. 201. Short Title. States that that this title may be referred to as the “Indian Trust Asset Management Demonstration Project Act of 2016.”

Sec. 202. Definitions. Provides definitions for Title II. “Indian Tribe” is defined according to the definition found in the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450(b)).

Sec. 203. Establishment of demonstration project; selection of participating Indian tribes. Directs the Secretary of the Interior to establish and carry out an Indian trust asset management demonstration project. Provides that Indian tribes must submit a written application to participate in the project, subject to Secretarial approval. The demonstration project will remain in effect for ten (10) years after enactment but may be extended at the Secretary’s discretion.

Sec. 204. Indian trust asset management plan. Provides that an Indian tribe must submit a proposed Indian trust asset management plan after the Secretary approves their written application to participate in the project. Section 204(a)(3) authorizes the Secretary to provide any technical assistance and information, including budgetary information, that an Indian tribe determines is necessary for the preparation of a proposed trust asset management plan. The Secretary may not approve a proposed plan unless it is consistent with federal treaties, statutes, and executive court orders applicable to the trust assets or their management. The Secretary must approve or disapprove a proposed plan within one hundred-twenty (120) days of submission.

Sec. 205. Forest Land Management and Surface Leasing Activities. Provides that land subject to a surface leasing transaction be held either in trust by the United States for the benefit of an Indian tribe or in fee by an Indian tribe, subject to restrictions against alienation under federal law.

Section 205 also authorizes the Secretary to approve proposed plans that include or incorporate by reference tribal surface leasing or forest land management regulations that, if approved as an element of a trust asset management project, would allow tribes to conduct such activities under tribal regulation without separately obtaining Secretarial approval.

Sec. 206. Effect of Title. Provides that nothing in Title II or in a proposed trust asset management plan will affect: (i) The liability of the United States or an Indian tribe participating in a project; (ii) The application of any treaty, statute, or executive order applicable to the trust assets or their management; (iii) The authority of an Indian tribe to enter into and carry out agreements under the Indian Self-Determination and Education Assistance Act and associated regulations (25 U.S.C. 450 et seq.); and (iv) The United States's trust responsibility to Indians and Indian tribes. Provides that an Indian tribe may submit a separate approval request to the Secretary for tribal regulations governing forest land management activities if the tribe does not submit or intend to submit an Indian trust asset management plan.

Title III – Improving Efficiency and Streamlining Processes

Sec. 301. Purpose. States that the purpose of Title III is to ensure a more efficient and streamlined administration of Secretarial duties with respect to providing services and programs to Indians and Indian tribes.

Sec. 302. Definitions. Provides definitions for Title III.

Sec. 303. Under Secretary for Indian Affairs. Authorizes the Secretary to exercise his/her discretion in establishing the position of Under Secretary for Indian Affairs within the Department of the Interior. Among the Under Secretary's designated duties would be the requirement that the Under Secretary coordinate with the Special Trustee for American Indians in order to ensure the orderly transitions of Special Trustee functions to one or more appropriate federal entities. The Under Secretary would also coordinate Bureau of Indian Affairs policies with other offices within the Department of the Interior and provide for regular consultation with Indians and Indian tribes that own interests in trust resources and trust fund accounts.

Sec. 304. Office of Special Trustee for American Indians. Directs the Secretary to prepare a report, in consultation with Indian tribes, within one year of enactment that includes a transition plan for the Office of the Special Trustee (OST) to terminate within two years of the date of the report, unless the Secretary determines that an orderly transition cannot be accomplished within that timeframe. If the Secretary determines that more time is needed to complete the transition, he/she must submit an explanatory report and suggest alternative transition date for congressional approval. Section 304 does not authorize the Secretary to implement or undertake the transition plan.

Sec. 305. Appraisals and Valuations. Requires the Secretary, in consultation with Indian tribes, to ensure that appraisals and valuations of Indian trust property are administered by a single entity within the Department of the Interior within eighteen (18) months of enactment. Requires that the Secretary establish minimum qualifications for persons to prepare appraisals and valuations of Indian trust property that, when satisfied,

will be considered final for purposes of effectuating the applicable transaction without the need for any additional Secretarial review or approval.

Sec. 306. Cost Savings. Provides that the Secretary identify any resulting cost savings from any function or activity that OST will not have to operate or carry out as a result of any transfer of functions or personnel under Title III and provide this information to the Tribal-Interior Budget Council (TIBC) or other appropriate advisory committee. The TBIC or other advisory committee may provide recommendations within ninety (90) days of receiving such information on how any cost savings should be reallocated, incorporated into future budget requests, or appropriated.

Conclusion

For inquiries regarding Indian Trust Asset Reform Act please contact Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745).