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Indian Trust Asset Reform Act (Public Law 114-178; 130 Stat. 432)

TITLE II—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT

SEC. 201. SHORT TITLE.

This title may be cited as the “Indian Trust Asset Management Demonstration Project Act of 2016”.

SEC. 202. DEFINITIONS.

In this title:

[(1) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).]

(1) INDIAN TRIBE.— The term ‘Indian tribe’ means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community identified, including parenthetically, on the list published by the Secretary pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

(2) PROJECT.—The term “Project” means the Indian trust asset management demonstration project established under section 203(a).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) TRIBAL ORGANIZATION.—

(A) IN GENERAL.— The term “tribal organization” means any legally established organization of Indians which is controlled, sanctioned, or chartered by the governing body of an Indian Tribe or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(B) MULTIPLE TRIBES.— In any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

[SEC. 203. ESTABLISHMENT OF DEMONSTRATION PROJECT; SELECTION OF PARTICIPATING INDIAN TRIBES.]

(a) IN GENERAL.—The Secretary shall establish and carry out an Indian trust asset management demonstration project, in accordance with this title.

(b) SELECTION OF PARTICIPATING INDIAN TRIBES.—

(1) IN GENERAL.—An Indian tribe shall be eligible to participate in the project if—

(A) the Indian tribe submits to the Secretary an application under subsection (c); and

(B) the Secretary approves the application of the Indian tribe.

(2) NOTICE.—

(A) IN GENERAL.—The Secretary shall provide a written notice to each Indian tribe approved to participate in the project.

(B) CONTENTS.—A notice under subparagraph (A) shall include—

(i) a statement that the application of the Indian tribe has been approved by the Secretary; and

(ii) a requirement that the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with section 204.

(c) APPLICATION.—

(1) IN GENERAL.—To be eligible to participate in the project, an Indian tribe shall submit to the Secretary a written application in accordance with paragraph (2).

(2) REQUIREMENTS.—The Secretary shall consider an application under this subsection only if the application—

(A) includes a copy of a resolution or other appropriate action by the governing body of the Indian tribe, as determined by the Secretary, in support of or authorizing the application;

(B) is received by the Secretary after the date of enactment of this Act; and

(C) states that the Indian tribe is requesting to participate in the project.

(d) DURATION.—The project—

(1) shall remain in effect for a period of 10 years after the date of enactment of this Act; but

(2) may be extended at the discretion of the Secretary.]

SEC. 203. INDIAN TRUST ASSET MANAGEMENT PROJECT.

(a) IN GENERAL.— The Secretary shall carry out an Indian trust asset management project in accordance with this title.

(b) PARTICIPATION.—

(1) IN GENERAL.— To participate in the project, an Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan as described in section 204 of this title, and a copy of a resolution or other appropriate action by the governing body of the Indian tribe in support of or authorizing the submission.

(2) TRIBAL ORGANIZATIONS.— A tribal organization may participate in the Project on behalf of an Indian tribe if the tribal organization—

(A) submits a proposed Indian trust asset management plan that identifies the Indian tribe, the trust assets of which are included in the plan;

(B) submits a copy of a resolution or other appropriate action by the governing body of the Indian tribe that is the owner of the trust assets included in the Indian trust asset management plan that supports or authorizes the tribal organization to carry out the plan; and

(C) complies with the other provisions of this title.

SEC. 204. INDIAN TRUST ASSET MANAGEMENT PLAN.

(a) PROPOSED PLAN.—

[(1) SUBMISSION.—After the date on which an Indian tribe receives a notice from the Secretary under section 203(b)(2), the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with paragraph (2).]

[(2) 1] CONTENTS.—A proposed Indian trust asset management plan shall include provisions that—

(A) identify the trust assets that will be subject to the plan;

(B) establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian tribe;

(C) allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;

(D) if the Indian tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets—

(i) identify the functions or activities that are being or will be performed by the Indian tribe under the contracts, compacts, or other agreements under that Act, which **[may include] may include, but are not limited to,** any of the surface leasing or forest land management activities authorized by the proposed plan pursuant to section 205(b); and

(ii) describe the practices and procedures that the Indian tribe will follow;

(E) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan;

(F) include a process for the Indian tribe and the Federal agencies affected by the trust asset management plan to conduct evaluations to ensure that trust assets are being managed in accordance with the plan; and

(G) identify any Federal regulations that will be superseded by the **[plan] plan,** **including regulations administered by the head of another Federal department or agency.**

(3) 2 TECHNICAL ASSISTANCE AND INFORMATION.—On receipt of a written request from an Indian tribe, the Secretary shall provide to the Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a proposed plan.

(b) APPROVAL AND DISAPPROVAL OF PROPOSED PLANS.—

(1) APPROVAL.—

(A) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe submits a proposed Indian trust asset management plan under subsection (a), the Secretary shall approve or disapprove the proposed plan.

(B) REQUIREMENTS FOR DISAPPROVAL.—The Secretary shall approve a proposed plan unless the Secretary determines that—

(i) the proposed plan fails to address a requirement under subsection **[(a)(2)] (a)(1)**;

(ii) the proposed plan includes 1 or more provisions that are inconsistent with subsection (c); or

(iii) the cost of implementing the proposed plan exceeds the amount of funding available for the management of trust assets that would be subject to the proposed plan.

(2) ACTION ON DISAPPROVAL.—

(A) NOTICE.—If the Secretary disapproves a proposed plan under paragraph (1)(B), the Secretary shall provide to the Indian tribe a written notice of the disapproval, including any reason why the proposed plan was disapproved.

(B) ACTION BY TRIBES.—If a proposed plan is disapproved under paragraph (1)(B), the Indian tribe may resubmit an amended proposed plan by not later than 90 days after the date on which the Indian tribe receives the notice under subparagraph (A).

(3) FAILURE TO APPROVE OR DISAPPROVE.—If the Secretary fails to approve or disapprove a proposed plan in accordance with paragraph (1), the plan shall be considered to be approved.

(4) JUDICIAL REVIEW.—An Indian tribe may seek judicial review of a determination of the Secretary under this subsection in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”), if—

(A) the Secretary disapproves the proposed plan of the Indian tribe under paragraph (1); and

(B) the Indian tribe has exhausted all other administrative remedies available to the Indian tribe.

(c) APPLICABLE LAWS.—Subject to section 205, an Indian trust asset management plan, and any activity carried out under the plan, shall not be approved unless the proposed plan is consistent with any treaties, statutes, and Executive orders that are applicable to the trust assets, or the management of the trust assets, identified in the plan.

(d) AMENDMENT OF APPROVED PLAN.—

(1) IN GENERAL.— An Indian tribe, or a tribal organization participating in an Indian trust asset management plan on behalf of an Indian tribe under section 203(b)(2) of this title, may propose amendments to the Indian trust asset management plan that the Secretary has approved or that is otherwise in effect pursuant to this title; and

(2) APPLICABLE PROVISIONS.— The Secretary shall review any proposal by an Indian tribe, or a tribal organization administering an Indian trust asset management plan pursuant to section 203(b)(2), using the criteria set forth in subsections (b) and (c) of this section.

(d) e) TERMINATION OF PLAN.—

(1) IN GENERAL.—An Indian tribe may terminate an Indian trust asset management plan on any date after the date on which a proposed Indian trust asset management plan is approved by providing to the Secretary—

(A) a notice of the intent of the Indian tribe to terminate the plan; and

(B) a resolution of the governing body of the Indian tribe authorizing the termination of the plan.

(2) EFFECTIVE DATE.—A termination of an Indian trust asset management plan under paragraph (1) takes effect on October 1 of the first fiscal year following the date on which a notice is provided to the Secretary under paragraph (1)(A).

(f) ELIGIBILITY FOR FUNDING.— An Indian tribe operating under an approved Indian trust asset management plan shall continue to be eligible for, and shall not be disqualified from receiving, Federal funding to support the Indian tribe’s activities under an approved Indian trust asset management plan, in the same manner and subject to the same considerations as Indian tribes without an Indian trust asset management plan.

SEC. 205. FOREST LAND MANAGEMENT AND SURFACE LEASING ACTIVITIES.

(a) DEFINITIONS.—In this section:

(1) FOREST LAND MANAGEMENT ACTIVITY.—The term “forest land management activity” means any activity described in section 304(4) of the National Indian Forest Resources Management Act (25 U.S.C. 3103(4)).

(2) FOREST MANAGEMENT PLAN.— The term “forest management plan” has the meaning given the term in Section 304 of the National Indian Forest Resources Management Act of 1990 (25 U.S.C. 3103).

(2) 3) INTERESTED PARTY.—The term “interested party” means an Indian or non-Indian individual, entity, or government the interests of which could be adversely affected by a tribal trust land leasing decision made by an applicable Indian tribe.

(3) 4) SURFACE LEASING TRANSACTION.—The term “surface leasing transaction” means a residential, business, agricultural, or wind or solar resource lease of land the title to which is held—

(A) in trust by the United States for the benefit of an Indian tribe; or

(B) in fee by an Indian tribe, subject to restrictions against alienation under Federal law.

(5) TRUST ASSETS.— The term “trust assets” means—

(A) trust lands, natural resources, trust funds, or other assets held by the Federal Government in trust for Indian tribes and individual Indians; or

(B) any resource that is, or has previously been, included in an integrated resources management plan or other management plan approved by the Secretary.

(b) **APPROVAL BY SECRETARY.**—The Secretary may approve an Indian trust asset management plan that includes a provision authorizing the Indian tribe to enter into, approve, and [carry out a surface leasing transaction or forest land management activity without approval of the Secretary, regardless of whether the surface leasing transaction or forest land management activity would require] carry out any transaction or activity related to management of that Indian tribe’s trust assets, including, but not limited to, a surface leasing transaction, adoption or amendment of a forest management plan, or forest land management activity without approval of the Secretary, regardless of whether the trust asset management transaction or activity would require such an approval under otherwise applicable law (including regulations), if—

(1) the resolution or other action of the governing body of the Indian tribe referred to in section 203(c)(2)(A) expressly authorizes the inclusion of the provision in the Indian trust asset management plan; and

(2) the Indian tribe has adopted regulations expressly incorporated by reference into the Indian trust asset management plan that—

(A) with respect to a surface leasing transaction—

(i) have been approved by the Secretary pursuant to subsection (h)(4) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(h)(4)); or

(ii) have not yet been approved by the Secretary in accordance with clause (i), but that the Secretary determines at or prior to the time of approval under this paragraph meet the requirements of subsection (h)(3) of the first section of that Act (25 U.S.C. 415(h)(3)); or

(B) [with respect to forest] with respect to forest management plans and forest land management activities, the Secretary determines—

(i) are consistent with the regulations of the Secretary adopted under the National Indian Forest Resources Management Act (25 U.S.C. 3101 et seq.); and

(ii) provide for an environmental review process that includes—

(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

(II) a process consistent with the regulations referred to in clause (i) for ensuring that—

(aa) [the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed] interested parties are informed of, and have a reasonable opportunity to comment on a proposed forest management plan, and any significant environmental impacts of a proposed forest land management activity identified by the Indian tribe; and

(bb) the Indian tribe provides responses to relevant and substantive [public comments] comments from interested parties on any such impacts before the Indian tribe approves the [forest land] forest management plan or forest land management activity.

[(c) TYPES OF TRANSACTIONS.—

(1) IN GENERAL.—At the discretion of the Indian tribe, an Indian trust asset management plan may authorize the Indian tribe to carry out a surface leasing transaction, a forest land management activity, or both.

(2) SELECTION OF SPECIFIC TRANSACTIONS AND ACTIVITIES.—
At the discretion of the Indian tribe, the Indian tribe may include in the integrated resource management plan any 1 or more of the transactions and activities authorized to be included in the plan under subsection (b).]

(c) TYPES OF TRANSACTIONS.— At the discretion of the applicable Indian tribe, an Indian trust asset management plan may authorize the Indian tribe to manage any and all of that Indian tribe's trust assets, and undertake any transactions and activities related thereto, including but not limited to adopting or amending a forest management plan, carrying out a surface leasing transaction, and carrying out a forest land management activity, and the Secretary shall defer to any such discretionary trust asset management decision by the Indian tribe to the extent such decision is consistent with both the Indian trust asset management plan and this section.

(d) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary may provide technical assistance, on request of an Indian tribe, for development of a regulatory environmental review process required under subsection (b)(2)(B)(ii).

(2) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—The technical assistance to be provided by the Secretary pursuant to paragraph (1) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, contracts, grants, or agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(e) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding subsection (b), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency, rather than any tribal environmental review process under this section.

(f) DOCUMENTATION.—If an Indian tribe [executes a surface leasing transaction or forest land management activity, pursuant to tribal regulations] undertakes an activity or transaction related to a trust asset, pursuant to the Indian tribe's trust asset management plan and tribal regulations under subsection (b)(2), the Indian tribe shall provide to the Secretary

(1) a copy of [the surface leasing transaction or forest land management activity documents] activity or transaction documents, including any amendments to, or renewals of, the applicable transaction; and

(2) in the case of tribal regulations, [a surface leasing transaction, or forest land management activities] or an activity or transaction related to a trust asset that allow payments to be made directly to the Indian tribe, documentation of the payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States under subsection (g).

(g) TRUST RESPONSIBILITY.—

(1) IN GENERAL.—The United States shall not be liable for losses sustained—

(A) by an Indian tribe as a result of [the execution of any forest land management activity] any activity or transaction related to a trust asset and undertaken by the Indian tribe pursuant to tribal regulations under subsection (b); or

(B) by any party to a lease executed pursuant to tribal regulations under subsection (b).

(2) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to Indian tribes under Federal law (including regulations), the Secretary may, on reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under this section.

(h) COMPLIANCE.—

(1) IN GENERAL.—An interested party, after exhausting any applicable tribal remedies, may submit to the Secretary a petition, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of an applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

(2) VIOLATIONS.—If the Secretary determines under paragraph (1) that a violation of tribal regulations has occurred, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust land.

(3) DOCUMENTATION.—If the Secretary determines under paragraph (1) that a violation of tribal regulations has occurred and a remedy is necessary, the Secretary shall—

(A) make a written determination with respect to the regulations that have been violated;

(B) provide to the applicable Indian tribe a written notice of the alleged violation, together with the written determination; and

(C) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of the trust asset transaction approval responsibilities, provide to the applicable Indian tribe—

(i) a hearing on the record; and

(ii) a reasonable opportunity to cure the alleged violation.

SEC. 206. EFFECT OF TITLE.

(a) LIABILITY.—Subject to section 205 and this section, nothing in this title or an Indian trust asset management plan approved under section 204 shall independently diminish, increase, create, or otherwise affect the liability of the United States or an Indian tribe participating in the project for any loss resulting from the management of an Indian trust asset under an Indian trust asset management plan.

(b) DEVIATION FROM STANDARD PRACTICES.—The United States shall not be liable to any party (including any Indian tribe) for any term of, or any loss resulting from the terms of, an Indian trust asset management plan that provides for management of a trust asset at a less-stringent standard than the Secretary would otherwise require or adhere to in absence of an Indian trust asset management plan.

(c) EFFECT OF TERMINATION OF PLAN.—Subsection (b) applies to losses resulting from a transaction or activity described in that subsection even if the Indian trust asset management plan is terminated under section 204(d) or rescinded under section 205(h).

(d) EFFECT ON OTHER LAWS.—

(1) IN GENERAL.—Except as provided in sections 204 and 205 and subsection (e), nothing in this title amends or otherwise affects the application of any treaty, statute, regulation, or Executive order that is applicable to Indian trust assets or the management or administration of Indian trust assets.

(2) INDIAN SELF-DETERMINATION ACT.—Nothing in this title limits or otherwise affects the authority of an Indian tribe, including an Indian tribe participating in the project, to enter into and carry out a contract, compact, or other agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (including regulations).

(e) SEPARATE APPROVAL.—An Indian tribe may submit to the Secretary tribal regulations described in section 205(b) governing forest land management activities for review and approval under this title if the Indian tribe does not submit or intend to submit an Indian trust asset management plan.

[(f) TRUST RESPONSIBILITY.—Nothing in this title enhances, diminishes, or otherwise affects the trust responsibility of the United States to Indian tribes or individual Indians.]

(f) TRUST RESPONSIBILITY.— Nothing in this title enhances, diminishes, or otherwise affects the trust responsibility of the United States to Indian tribes.