

TESTIMONY BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S.1587 and S.1589

"AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT AMENDMENTS"

SEPTEMBER 22, 1999
SUBMITTED BY THE INTERTRIBAL MONITORING ASSOCIATION
ON INDIAN TRUST FUNDS (ITMA)

ITMA appreciates the opportunity to submit testimony on the recently introduced S. 1587 and S.1589, the "American Indian Trust Fund Management Reform Act Amendments". We also would like to express our appreciation to the Committee for its deep commitment to the issue of Indian trust reform and for the enormous amount of time, effort, thought and urgency the Committee has devoted to this critical issue.

We would like to thank and commend Chairman Campbell for the two bills he introduced last week proposing to amend the 1994 American Indian Trust Fund Management Reform Act. We have not had an opportunity to consult with the ITMA board of directors or the 38 tribes that constitute the membership of ITMA on the proposed legislation. As a result, at this point we are able to provide only initial and very general comments. However, it is clear the bills constitute a major step forward in addressing the concerns ITMA, GAO and other outside witnesses have expressed regarding the trust reform effort and the future management of the trust programs. They offer exciting and creative new approaches to these concerns.

We recognize the importance of obtaining legislation this session of the 106th Congress, before the Department of the Interior has expended the millions of dollars Congress likely will be appropriating for trust reform in FY 2000. We will therefore complete the consultation with our membership as quickly as possible. At the end of this testimony, we have proposed an expedited process, in conjunction with Committee staff, to enable our membership to obtain a better understanding of the bills and then to jointly work with the Committee for their enactment before the end of this session of Congress.

ITMA was extremely pleased to see that the statements in support of the introduction of S.1587 and S.1589, as well as the "Purposes" sections of those bills, reflected the same concerns that ITMA and Indian leaders from throughout the country have been expressing over the past few years. For example;

-- the Department's refusal to even consider reforms that would allow at least some trust management functions to be performed by entities outside of the Interior Department.

-- the importance of having the tribal and Indian customers shape the future directions of Indian trust management, rather than permitting the Department to design a future based primarily on the Department's needs, not the needs of the trust beneficiaries.

-- the fact that the Department compromised the 1994 Indian Trust Fund Reform Act by undermining the Special Trustee, such that the reform effort is being carried out without a responsible official within the Department with trust expertise and independence, even though every outside expert says that such expertise and independence must be present for that reform effort to succeed.

-- the Indian and tribal account holders' lack of confidence in a reform effort being carried out by the same entities that have been managing the failed system and thus are the ones who are responsible for the mismanagement that now exists.

-- the need for private contractors, under independent control, to carry out as much of the reform effort as possible.

-- the need for the Interior Department trust systems to be regulated by an outside regulatory body, in the same manner as every private financial institution is so regulated.

There are many more. It is reassuring to us that the sponsors of these two bills and the tribal and individual Indian trust beneficiaries share common goals and objectives for the future of trust management. With such common goals, coupled with a dose of political reality, it should not be difficult for us to agree on the best solutions to those problems. This is in sharp contrast to the Interior Department, which is proceeding on a course it developed without consultation with the trust beneficiaries, and is rushing ahead undeterred by the fact that those whose lands and money are at stake, "the customers," have vehemently and consistently opposed the Department's course.

In its previous testimony before this Committee, ITMA proposed its proposed approaches for addressing these problems. Most importantly, it was ITMA's position that there is a need to go back to the proposals that were first on the table when the 1994 Indian Management Trust Fund Reform Act was being considered by Congress. The original proposal was for the Special Trustee to be independent of the Secretary of the Interior. Congress was forced to accept the compromise that became the actual Trust Fund Reform Act when Secretary Babbitt threatened a presidential veto if the Special Trustee were given the level of independence desired by Congress and ITMA. Five years of experience operating under that compromise has demonstrated that the compromise is not workable. An agency cannot be reformed from inside, ITMA has therefore proposed legislation that would remove the responsibility for designing and implementing the reform effort from the Department and place it in a bank regulatory agency, where there is a better understanding of what is entailed when someone takes on the responsibilities of a trustee.

ITMA has also proposed various components that would be included in the kind of comprehensive reinvention of trust management called for in S.1589. For example ITMA has endorsed the concept of S.739, which would outsource the management of the investment of trust funds to private financial institutions, with a preference to Indian-owned institutions, in order to get the trust funds working in Indian country. However, ITMA has not had the resources to conduct the kind of comprehensive review of all of the possible options, as is called for in S.1589. Nor has it had the resources to engage in the comprehensive dialogue with Indian country that is also called for in S.1589.

Chairman Campbell has now proposed several alternative approaches for achieving the same goals and objectives. As indicated they present creative and fresh new ideas. However, as also indicated above, ITMA has not had an opportunity to consult with its board of directors or members to enable us to comment specifically on the bills. In addition, we have not had an opportunity to explore with the authors of the bill their reasons for including various provisions or how they envisage the various pieces working together. For example, we need to understand how the two Special Trustees that would be in place would work together and how would the existing Special Trustee's advisory board relate, if at all, to the Commission. We would also like to explore such questions as whether there are ways to meld these new approaches with some of ITMA's and whether there are ways to bring the new entities proposed by our various approaches into a single unified entity.

This will require an intensive and expedited effort. We therefore propose to call an ITMA board and tribal leaders meeting here in Washington as soon as possible --hopefully within the next ten days. We request that Committee staff participate in that meeting to help us better understand the bills and, if we identify shortcomings in the bills, for us to work jointly to revise and improve the legislation. Since we already agree on goals and objectives, and since we all recognize the political realities involved in trying to enact legislation at this late date in a session, it should not be that difficult to produce a final product that we can all work to get enacted by the end of this session. If the Department is willing to play a constructive role, we also invite its representatives to participate. After ten years of polarization, it is time for all of the stakeholders to work together on solutions.

Conclusion

As indicated at the beginning of our testimony, ITMA appreciates that enormous effort the Committee is making to address the issues confronting Indian trust management. We look forward to working with you in the coming weeks to finalize the legislation and achieve its enactment this year.

Thank you.