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SENATE

{ REPORT  
109-67

### MAKING TECHNICAL CORRECTIONS TO LAWS RELATING TO NATIVE AMERICANS, AND FOR OTHER PURPOSES

MAY 12, 2005.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 536]

The Committee on Indian Affairs, to which was referred the bill (S. 536) to make technical corrections to laws relating to Native Americans, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill (as amended) do pass.

#### PURPOSE

The purpose of S. 536 is to address miscellaneous provisions related to Indians or Indian tribes in one bill, obviating the need for the introduction and enactment of separate smaller bills. S. 536 contains twelve provisions, including amendments to statutes relating to particular Indian tribes, and modifications to certain programs related to Native Americans.

#### BACKGROUND

The Native American Omnibus Act of 2005 contains separate provisions dealing with a variety of topics including the Indian Financing Act of 1974, the Indian Arts and Crafts Act, The Act of June 7, 1924 (also known as the Indian Pueblo Act), Border Preparedness on Indian Lands Pilot Project, Native American Programs Act of 1974, and Colorado River Indian Reservation Boundary Correction Act. The bill also provides technical amendments to provisions relating to particular Indian tribes and to general laws relating to Native American programs. A more detailed explanation of each provision is included in the section-by-section analysis included in this report.

## LEGISLATIVE HISTORY

The Native American Omnibus Act of 2005 (S. 536) was introduced on March 7, 2005, by Senator McCain and was referred to the Committee on Indian Affairs. On March 9, 2005, the Committee on Indian Affairs convened a business meeting to consider S. 536 and other measures that had been referred to it, and on that date the Committee favorably reported the bill.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On March 9, 2005, the Committee on Indian Affairs, in an open session, adopted S. 536 by voice vote and ordered the bill reported favorably to the Senate.

## SECTION-BY-SECTION ANALYSIS OF S. 536

*Section 1. Short title: Table of Contents*

Section 1 provides the short title of the Act as the Native American Omnibus Act of 2005 and provides a Table of Contents for the bill.

*Section 2. Definition of Secretary*

Section 2 defines the term “Secretary” to mean the Secretary of the Interior.

## Title I—Technical Amendments to Laws Relating to Native Americans

## SUBTITLE A—GENERAL PROVISIONS

*Section 101. Indian Financing Act amendments*

Section 101 amends the Indian Financing Act of 1974 (Pub. L. 93–262) to clarify that non-profit tribal entities are eligible for the Bureau of Indian Affairs (BIA) Loan Guaranty Program. In addition, because the BIA is fast reaching its \$500 million limit on the amount of loans it can have outstanding, this section will increase that number to \$1.5 billion. Finally, this section makes Community Development Finance Institutions (CDFIs) eligible as lenders for the BIA Loan Guaranty program.

*Section 102. Indian Tribal Justice Technical and Legal Assistance*

Section 102 extends the authorization for appropriations contained in section 106 of the Indian Tribal Justice Technical and Legal Assistance Act (Pub. L. 106–559, 25 U.S.C. 3666, 3681(d)) through fiscal year 2010. This section authorizes appropriations for civil and criminal legal assistance grants to Indian legal services programs.

*Section 103. Tribal Justice systems*

Section 103 re-authorizes section 201 of the Indian Tribal Justice Act (Pub. L. 106–559, 25 U.S.C. 3621) through fiscal year 2010. This section authorizes appropriations for Indian tribal court grants.

*Section 104. Indian Pueblo Land Act amendments*

Section 104 amends the Act of June 7, 1924 (43 Stat. 636, chapter 331) also known as the Indian Pueblo Lands Act of 1924, to clarify the uncertainty and potential law enforcement problems resulting from a Federal district court decision in the case of the *United States v. Gutierrez*<sup>1</sup> No. CR 00-375 LH (D.N.M. Dec. 1, 2000).

*Section 105. Prairie Island land conveyance*

Section 105 authorizes the transfer of lands now held by the United States Army Corps of Engineers to the Department of the Interior to be held in trust for the benefit of the Prairie Island Indian Community in Red Wing, Minnesota. The transfer will have no effect on the tax status of the lands, nor will the Prairie Island Indian Community be permitted to develop commercial or gaming facilities on the land. The U.S. government's existing flowage easements will be maintained.

*Section 106. Binding arbitration for Gila River Indian Community Reservation contracts*

Section 106 amends Act of August 9, 1955, (Pub. L. 86-326) to allow binding arbitration clauses to be included in all contracts, including leases, that affect tribally-owned land within the Gila River Indian Community reservation. All leases including subleases, master leases and tenant leases would be included under this provision. The tribe intends to conform to standard leasing terms to attract potential tenants to the reservation.

*Section 107. Puyallup Indian Tribes Land claims settlement amendments*

Section 107 provides for the expansion of the Port of Tacoma's shipping terminal and other port facilities, the Port Commission of Tacoma, Washington and the Puyallup Tribal Council executed a cooperative economic development agreement for the expansion of the Port of Tacoma. Under the terms of the agreement, the Tribe is required to relocate its gaming operations from its current location to another location within the Puyallup reservation boundaries. Section 11 authorizes the Federal government to take into trust on behalf of the Puyallup tribe 2 parcels within the Puyallup reservation. The Washington State Congressional delegation, the

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<sup>1</sup>The Gutierrez decision created uncertainty and the potential for a void in criminal jurisdiction on Pueblo lands. The proposed amendment to the Indian Pueblo Lands Act makes clear that the Pueblos have jurisdiction, as part of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or of another Federally-recognized Indian tribe, or by any other Indian-owned entity committed anywhere within the exterior boundaries of any grant to a Pueblo from a prior sovereign, as confirmed by Congress or the Court of Private Lands Claims.

The legislation also makes clear that the United States has jurisdiction over any offense within these grants described in chapter 53 of title 18, United States Code, committed by or against a member of any federally recognized Indian tribe or any Indian-owned entity, or that involves any Indian property or interest. Finally, the legislation makes clear that the State of New Mexico shall have jurisdiction over any offense within these grants committed by a person who is not a member of a Federally-recognized Indian tribe, provided that the offense is not subject to the jurisdiction of the United States.

Nothing in this amendment is intended to diminish the scope of Pueblo Civil jurisdiction within the exterior boundaries of Pueblo grants, which is defined by Federal and Tribal laws and court decisions. The decision overturned precedent regarding the jurisdictional status of the lands within the boundaries of New Mexico Pueblo land grants and resulted in creating a potential void in criminal jurisdiction. Section 5 provides a clarification of the Pueblos regarding criminal jurisdiction on New Mexico Pueblo lands.

State of Washington, the Cities of Tacoma, Fife, and Puyallup support the transfer.

*Section 108. Definition of Native American*

The Native American Graves Protection and Repatriation Act (NAGPRA) (Pub. L. 101-601) is amended in section 2(9), by inserting the words 'or was' after the words 'that is'. This change is intended to clarify that in the context of repatriations, the term 'Native American' refers to a member of a tribe, a people, or a culture that is or was indigenous to the United States.

*Section 109. Fallon Paiute Shoshone Tribes Settlement*

Section 109 amends the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (Pub. L. 101-618, 104 Stat. 3289) to adjust the spending rule set forth in that Act for the Tribe's Settlement Fund. The Settlement Fund was fully appropriated in 1995 and currently contains \$43 million. Section 106 would authorize expenditure of 6% of the average market value of the Settlement Fund over the preceding three years. Current authorization to temporarily spend 20% of the Funds principal would be eliminated.

*Section 110. Washoe Tribe of Nevada and California land conveyance*

The Washoe Tribe Lake Tahoe Access Act (P.L. 108-67) intended to take into trust 24.3 acres of land near Lake Tahoe for the benefit of the Washoe Tribe. Almost 150 years after the Washoe people were forcibly removed from Lake Tahoe, this legislation sought to restore to the Tribes a place that is central to their existence and to which they have essential cultural connections. Section 110 will correct a small, but very important, error in the land description included in the original legislation. This change does not affect the number of acres conveyed to the Tribe.

*Section 111. Indian arts and crafts*

Enforcing the criminal law that prohibits the sale of Indian arts and crafts misrepresented as an Indian product is often stalled by the other responsibilities of the FBI including investigating terrorism activity and violent crimes on Indian lands. Section 111 supplements the existing federal investigative authority by authorizing other federal investigative bodies, such as the BIA, in addition to the FBI, to investigate these offenses.

*Section 112. Colorado River Indian Reservation boundary correction*

Section 112 corrects the south boundary of the Reservation by reestablishing the boundary as it was delineated in the original 1875 survey. The restoration does not include 840 acres of land owned by the State of Arizona. The bill provides that no water rights issues are affected and existing rights, including mining claims and public recreational access subject to reasonable tribal rules are protected.

*Section 113. Native American Programs Act of 1974*

Section 113 reauthorizes the Native American Programs Act of 1974. Administered by the Administration for Native Americans in

the Department of Health and Human Services, the Native American Programs Act provides grants to tribes for social and economic development projects; projects related to the preservation and vitality of Native languages; projects to strengthen tribal environmental regulatory enhancement; and establishes the Inter-Departmental Council of Native American Affairs.

*Section 114. Research and educational activities*

Section 114 amends the Native Hawaiian Education Act to include research and education activities relating to Native Hawaiian law.

SUBTITLE B—INDIAN EDUCATION PROVISIONS

*Section 121. Definition of Indian student count*

Section 121 amends the Perkins Vocational and Technical Education Act to provide a definition of “Indian student count” which uses a credit hour-based formula (rather than full-time equivalent), and to require a student count to be made each semester (both the Fall and Spring semesters), rather than once per year. These changes to student count for tribally-controlled postsecondary vocational and technical institutions are modeled on the Indian student count provisions of the Tribally Controlled Colleges or Universities Assistance Act.

*Section 122. Native Nations leadership, management, and policy*

Section 122 authorizes funding for leadership training, strategic and organizational development, and research and policy analysis to assist American Indian nations to achieve effective self-governance and sustainable economic development. This provision renews authorized funding for Native Nations Institute programs for a period of 10 years, beginning in fiscal year 2007.

SUBTITLE C—BORDER PREPAREDNESS

*Section 132. Border preparedness on Indian lands*

Section 132 authorizes the Secretary of Homeland Security, to establish a pilot program to enhance an Indian tribe’s response to border activity. It authorizes the Secretary to establish the selection criteria for participation in the program including the tribes’ proximity to the border and the extent to which border crossing activity impacts tribal resources. This program will enhance tribal first responder capabilities, provides aid for aerial and ground surveillance technologies, and facilitates coordination and cooperation with federal, state, local and tribal governments in protecting the border.

Title II—Other Amendments to Laws Relating to Native Americans

SUBTITLE A—INDIAN LAND LEASING

*Section 201. Authorization of 99-year leases*

Section 201 amends Title 25 U.S.C. Section 415 to provide that leases of restricted lands held by the Confederated Tribes on the Umatilla Indian Reservation, Muckleshoot Indian Reservation, Prairie Band Potawatomi Nation, Fallon Paiute Shoshone Tribes,

Yurok Tribe, and the Hopland Band of Pomo Indians of the Hopland Rancheria may be of terms not to exceed 99 years.

*Section 202. Certification of rental proceeds*

This section provides that any revenues accrued from renting lands acquired under the Farmers Home Administration Direct Loan Account, 25 U.S.C. 488, shall be considered the rental value of that land and considered the appraisal value of that land.

SUBTITLE B—NAVAJO HEALTH CONTRACTING

*Section 211. Navajo health contracting*

Section 211 authorizes the Navajo Health Foundation/Sage Memorial Hospital on the Navajo Reservation to be considered a tribal contractor under the Indian Self-Determination and Education Assistance Act for the purposes of section 102(d) and subsections 9(k) and (o) of section 105 of that Act, allowing the hospital to obtain the benefits of coverage under the Federal Tort Claims Act and secure VA drug discounts.

SUBTITLE C—PROBATE TECHNICAL CORRECTION

*Section 221. Probate reform*

Section 221 amends sections 205, 206 and 207 of the Indian Land Consolidation Act (25 U.S.C. §§ 2204, 2205 and 2206) (“ILCA”), as amended by the American Indian Probate Reform Act of 2004 (“AIPRA”), by correcting provisions relating to non-testamentary disposition, partition of highly fractionated Indian land, and Tribal probate codes. These amendments include amendments to subsection (h)(2) of section 207 of the ILCA (25 U.S.C. § 2206) which are intended to clarify the original intent of the American Probate Reform Act of 2004 to the effect that nothing in the ILCA affects the application of special laws that pertain or relate in any way to the trust or restricted allotments, or interests therein, of specific Indian tribes. Some lands of specific Indian tribes were allotted under special statutes that applied only to those specifically identified tribes (i.e., identified in the statute). Similarly, in other instances, Congress enacted tribal-specific or reservation-specific statutes applicable to the inheritance or devise of trust or restricted allotments or interests in trust or restricted allotments. The limited purpose of the amendment to section 207(h)(2) of ILCA set forth in Section 221 is to clarify any potential ambiguity in the AIPRA, the intent of which was that no provision of ILCA would in any way supercede, replace, interfere or otherwise affect the application of any such special laws. If these special laws are to be amended, they should be addressed on a case by case basis, and not by way of a law of general application like the AIPRA.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 536 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, April 29, 2005.

Hon. JOHN MCCAIN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 536, the Native American Omnibus Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mike Waters.

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 536—Native American Omnibus Act of 2005*

Summary: S. 536 would make a number of changes and technical corrections to current laws concerning Native Americans. The bill would extend the authorization of appropriations for Indian tribal courts and other judicial systems, for the Native American Programs Act of 1974, and for the Morris K. Udall Scholarship and Excellence in Environmental Policy Foundation. It also would authorize a pilot program to enhance border preparedness on Indian lands. CBO estimates that implementing S. 536 would cost \$7 million in 2006 and \$405 million over the 2006–2010 period, assuming appropriation of the amounts CBO estimates would be necessary.

S. 536 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Several provisions would benefit Indian tribes.

Estimated cost to the Federal government: The estimated budgetary impact of S. 536 is shown in the following table. The cost of this legislation would fall within budget functions 450 (community and regional development), 500 (education, training, employment and social services), and 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Indian Programs Reauthorized by S. 536:						
Authorization Level <sup>1</sup> .....	54	58	58	0	0	0
Estimated Outlays .....	53	98	73	10	2	0
Proposed Changes:						
Technical and Legal Assistance for Tribal Justice:						
Estimated Authorization Level .....	0	8	8	8	9	9
Estimated Outlays .....	0	2	4	6	7	8
Tribal Justice Systems:						
Authorization Level .....	0	0	0	58	58	58
Estimated Outlays .....	0	0	0	52	58	58
Native American Programs Act of 1974:						
Estimated Authorization Level .....	0	50	51	52	53	54
Estimated Outlays .....	0	5	38	49	51	53
Morris K. Udall Scholarship:						
Authorization Level .....	0	0	3	3	4	4
Estimated Outlays .....	0	0	3	3	4	4

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
Subtotal: Proposed Changes:						
Estimated Authorization Level .....	0	58	62	121	124	125
Estimated Outlays .....	0	7	45	110	120	125
Total Spending Under S. 536:						
Estimated Authorization Level .....	54	116	120	121	124	125
Estimated Outlays .....	53	105	118	120	122	123

<sup>1</sup> The 2005 amount reflects appropriations provided in that year. The amounts for 2006 and 2007 are the existing authorizations for programs reauthorized by S. 536.

Basis of estimate: For this estimate, CBO assumes that S. 536 will be enacted during 2005 and that the necessary amounts will be appropriated for each fiscal year.

Technical and Legal Assistance for Tribal Justice. Section 102 would authorize the appropriation of such sums as may be necessary for fiscal years 2006 through 2010 to the Department of Justice to provide grants to support tribal courts and legal assistance programs. In 2005, a total of \$8 million was appropriated for these programs. CBO estimates that continuing this program at that level and adjusting for anticipated inflation over the 2006–2010 period would cost \$27 million.

Tribal Justice Systems. Section 103 would authorize the appropriation of \$58 million a year over the 2008–2010 period for the Department of the Interior to provide grants to Indian tribes to support tribal justice systems and for the administrative expenses of the Office of Tribal Justice Support. These grants could be used to hire judicial personnel, provide technical assistance and training, offer victim assistance, acquire law library materials, or for similar purposes. CBO estimates that implementing this provision would cost \$168 million over the 2008–2010 period, assuming the appropriation of the specified amounts.

Native American Programs Act of 1974. Section 113 would reauthorize several programs created under the Native American Programs Act of 1974. CBO estimates that implementing this section would cost \$195 million over the 2006–2010 period.

S. 536 would reauthorize an Interior Department program that provides matching grants to tribal governments to help them plan, design, and implement efforts to improve environmental quality on tribal lands. The bill would authorize the appropriation of \$8 million a year over the 2006–2010 period for that grant program to train tribal employees, develop tribal laws on environmental quality, and enforce and monitor those laws. Assuming appropriation of the authorized amounts, CBO estimates that this provision would cost \$30 million over the five-year period.

The bill also would authorize the appropriation of such sums as necessary for projects, training, and services that support at-risk youth, and elderly or disabled Native Americans. These funds also could be used for economic development and to support the use of native languages. About \$42 million was allocated to these activities in 2005. CBO estimates that continuing the program at that level, adjusted for anticipated inflation, would cost \$165 million over the 2006–2010 period.

Morris K. Udall Scholarship. Section 122 of the bill would amend and extend the authorization for the Morris K. Udall Scholarship and Excellence Foundation, which provides management and lead-

ership training for Native American and Alaskan Native health care and policy professionals. These training activities are currently authorized through 2005. Funding for 2005 totaled approximately \$1 million. The bill would authorize appropriations of \$2.5 million for each of the years 2007 and 2008, \$4.0 million for each of the years 2009 and 2010, and \$13.5 million per year from 2011 through 2016. We estimate that this provision would cost \$2.5 million in 2007 (the first year of the extended authorization). Outlays over the 2006–2010 period would total \$13 million.

Border Preparedness on Indian Lands. Section 132 would authorize the appropriation of such sums as may be necessary over the 2006–2008 period to the Department of Homeland Security (DHS) to provide funds to Indian tribes near U.S. borders. The funds would help the tribes to improve their capacity to handle security incidents and threats along U.S. borders and to coordinate with federal agencies. The assistance could include surveillance technologies, communications equipment, and personnel training. Based upon information obtained from DHS, CBO estimates that implementing this provision would cost less than \$500,000 a year.

Intergovernmental and private-sector impact: S. 536 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Several provisions would benefit Indian tribes.

Estimate prepared by: Federal Costs: Kathleen FitzGerald—Native American Programs Act, Deborah Kalcevic—Morris K. Udall Foundation, Mark Grabowicz—Indian Tribal Justice Technical and Legal Assistance, Mike Waters—Tribal Justice Systems and Border Preparedness; impact on state, local, and Tribal governments: Marjorie Miller, Impact on the private sector: Selena Caldera.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 536 will reduce regulatory or paperwork requirements and impacts.

#### EXECUTIVE COMMUNICATION

The Committee has received an official communication from the Administration on the provisions of S. 536.

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, May 10, 2005.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 536, a bill “to make technical corrections to laws relating to Native Americans, and for other purposes.” We support the enactment of S. 536 as ordered reported by the Senate Committee on Indian Affairs on March 9, 2005. However,

the Department suggests the following amendments be made to the bill.

#### SECTION 101. INDIAN FINANCING ACT AMENDMENTS

Section 101 of the bill would amend the Indian Financing Act of 1974 with the intent of expediting the implementation of a secondary market for loans guaranteed under the Bureau of Indian Affairs Loan Guaranty Program. We request the following amendment be made to this section which will allow Indian and non-Indian lenders to loan money to Indian-owned businesses. This will allow the Bureau of Indian Affairs (BIA) to provide financial assistance to a broader number of American Indians and Alaska Natives.

We suggest that Section 101(d) be amended to read:

(d) LOANS INELIGIBLE FOR GUARANTY OR INSURANCE.—Section 206 of the Indian Financing Act of 1974 (25 U.S.C. 1486) is amended by inserting “(not including an eligible Community Development Finance Institution)” after “Government”.

The Administration has some additional concerns regarding compensation of secondary market fiscal agents and funding for the cost of administering the secondary market, which we look forward to discussing with the Committee.

#### SECTION 104. INDIAN PUEBLO LAND ACT AMENDMENTS

Section 104 provides for the Indian Pueblo Land Act amendments to clarify criminal jurisdiction with the exterior boundaries of the Pueblo owned land grants. Criminal jurisdiction within the Pueblo grants has long been a problem for many of the Pueblos, the counties and cities in which they are located, and the U.S. Attorney’s office. We support the legislative attempt to clarify the jurisdictional issues. However, we suggest sections 20(b) and (c) be amended because it does not precisely track the allocation of jurisdiction applicable in Indian country generally under the Indian Civil Rights Act (ICRA). The ICRA recognizes the inherent jurisdiction of tribes over any person who is an “Indian.” This definition would ensure that Pueblo would have jurisdiction over certain persons who are not enrolled members of a tribe, such as minor children who have not yet been enrolled as a member.

In subsection (b) by adding a “,” after Pueblo and by striking “of another Indian tribe” and inserting in lieu thereof “non-member Indian”.

In subsection (d) by striking “a member of an Indian tribe” and inserting in lieu thereof “an Indian”.

#### SECTION 105. PRAIRIE ISLAND LAND CONVEYANCE

Section 105 would take land including all improvements, cultural resources, and sites on the land, into trust for the Prairie Island Indian Community. We suggest striking the words “all improvements” from Sec. 105(a) so it reads as follows:

(a) IN GENERAL.—The Secretary of the Army shall convey all right, title, and interest of the United States in and to the land described in subsection (b), including cultural resources, and sites on the land, subject to the flowage and sloughing easement described in subsection (d) and to the

conditions stated in subsection (t), to the Secretary, to be—

\* \* \*

The Department feels this change is necessary to address any uncertainty about the Government having a fiduciary obligation to repair and maintain any acquired improvements.

In addition, section 105 would require a boundary survey to be conducted no later than 5 years after the date of conveyance. The boundary survey should be required prior to the conveyance, to avoid any disputes or the need for corrections after the conveyance has occurred.

#### SECTION 106. BINDING ARBITRATION FOR GILA RIVER INDIAN COMMUNITY RESERVATION CONTRACTS

This section would provide the Gila River Indian Community the authority to enter into binding arbitration agreements for any lease or contract the tribe may enter into affecting the tribe's land. We want to make it clear that it is our view that this section would not require the United States to enter into binding arbitration or waive the sovereign immunity of the United States.

#### SECTION 111. INDIAN ARTS AND CRAFTS

The Department requests that the amendments to the Indian Arts and Crafts Act (Act) include a provision authorizing the Indian Arts and Craft Board (Board) to recommend the Secretary impose administrative fines for violations of the Act. Administrative fines would be imposed for those violations that would not otherwise be serious enough to warrant a full civil or criminal action being pursued by the United States Attorney General. Many other federal agencies, including those within the Department, have the authority to levy administrative fines. Granting the Board similar authority would allow it to take action in meritorious cases for which the Attorney General is unlikely to devote resources.

In addition, the Department requests that any amounts recovered as a result of an administrative fine or civil action, after making reimbursements contemplated in this section, be paid to the Indian Arts and Crafts Board for statutorily mandated nonenforcement activities such as trademark protection and the promotion of authentic Indian Arts and Crafts.

The Department supports extending investigative authority to other federal law enforcement agencies. To facilitate the usefulness of that, we suggest the Committee clarify a potential jurisdictional issue that may arise. Specifically, BIA law enforcement may not investigate outside of Indian country. When off reservation, the Officer may only "observe" a violation rather than continue his investigation without contacting the appropriate federal enforcement agency, in most cases the FBI. The investigating officer should be granted the authority to be able to cross jurisdictions for the express purpose of enforcing the Indian Arts and Crafts Act. For example, BIA law enforcement officers should be granted the authority to specifically investigate violations of the Indian Arts and Crafts Act outside of Indian country. The Department will work with the Department of Justice on this expansion of jurisdictional authority.

Section 111(b)(7) states in part that the Department shall promulgate regulations which includes a definition of “Indian product” and “examples of each Indian product”. The regulations currently provide such a list. Therefore, this provision should be deleted. However if this provision remains, the phrase “examples of each Indian product” should be amended to “examples of Indian products” so that the published list does not become an exclusive list that courts interpret as precluding action for items that may not be specifically included on the list. In addition, the Department is concerned that the amended definitions do not include a definition for “product of a particular Indian tribe or Indian arts and crafts organization.” Excluding products of a particular Indian tribe or Indian arts and crafts organization could potentially remove the right of a tribe to protect their cultural heritage by using their tribal name in the description of a particular art or craft work for which their Tribe specializes in or is particularly known for.

The Department requests an additional conforming amendment be made to the Indian Arts and Crafts Act. The trademark provision, section 102 of the Act, permits the Board to register any trademark owned by the Government in the U.S. Patent and Trademark Office (USPTO) without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge. The Act, however, does not permit the board to register trademarks owned by individual Indian artists, artisans, tribes, and businesses for arts and crafts marketing purposes. Under the Lanham Act, the party registering the trademark must also own the mark. Therefore, if the Board attempted to register a trademark owned, for example, by a Navajo tribal arts and crafts enterprise, the application would be denied. Therefore, the word “government” should be struck in order to allow the Board to act as an agent and file without charge trademark registration applications with the USPTO for trademarks that are owned by an individual Indian, Indian tribe, or Indian arts and crafts organization.

Finally, the Department of Justice advises that there may be constitutional concerns with section 111(b), which would amend section 6 of the Act by defining the term “Indian tribe” to include “an Indian group that has been formally recognized as an Indian tribe by . . . (i) a State legislature; (ii) a State commission; or (iii) another similar organization vested with State legislative tribal recognition authority.” Section 111 (c) would add the same definition to 18 U.S.C. 1159(c). Under the Constitution, only the federal government has authority to recognize Indian tribes. *See, e.g., McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164, 172 n.7 (1973) (source of Federal authority over Indian matters “derives from Federal responsibility for regulating commerce with Indian tribes and for treaty making”). In the absence of such federal recognition, the term “Indian tribe” might be viewed as a racial classification subject to strict scrutiny under *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995), rather than the more deferential review accorded to classifications based on membership in a federally recognized Indian tribe under *Morton v. Mancari*, 417 U.S. 535 (1974). The part of this definition relating to recognition by state entities should be deleted.

## SECTION 114. RESEARCH AND EDUCATIONAL ACTIVITIES

Section 114 would add an additional authorized use of funds (research and educational activities relating to Native Hawaiian law) to the Education for Native Hawaiians program, which is administered by the Department of Education. The Department of Education objects to this amendment. The purpose of the program should continue to be to strengthen educational programs and services for Native Hawaiians (pre-K through postsecondary), in order to raise the educational achievement of that population. This additional authorized activity, research on Native Hawaiian law, would be for a different purpose and thus has the potential to dilute the impact of the program. Moreover, the Department of Education has already received earmarked funding, through the fiscal year 2005 omnibus appropriations act, to establish a center of education in Native Hawaiian law at the University of Hawaii. The proposed amendment to allow for the support of research and education in Native Hawaiian law would, in other words, be enacted after the appropriation of funding for such research and education (and most likely after the Department of Education has made a grant for the new center). Therefore, this provision is unnecessary.

## SECTION 121. DEFINITION OF INDIAN STUDENT COUNT

Section 121 amends the definition of “Indian student count” used in the formula by which the Department of Education calculates awards to tribally-controlled postsecondary vocational and technical institutions under the Carl D. Perkins Vocational and Technical Education Act. Education has advised that it is developing the Indian student count data needed to calculate the FY 2005 awards, and is concerned that if the definitional changes were to go into effect in FY 2005, they would likely delay the FY 2005 grants. In order to prevent any disruption of the award of these grants, Education recommends that section 121 be amended to clarify that its definition changes would take effect beginning in FY 2006.

## SECTION 122. NATIVE NATIONS LEADERSHIP, MANAGEMENT, AND POLICY

Section 122 would amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602). The Department of Justice advises that there may be constitutional concerns with the amendment to the Morris K. Udall Scholarship Act of 1992, 20 U.S.C. 5605(a)(1). The amendment to subparagraph (C) would permit awards to members of state-recognized tribes. As stated above, Department of Justice is concerned that this may be viewed as a racial classification subject to strict scrutiny under *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 235 (1995), rather than the more deferential review accorded to classifications based on membership in a federally recognized Indian tribe under *Morton v. Mancari*, 417 U.S. 535 (1974). Therefore, the Department of Justice recommends that Section 122(c)(C)(iii) be deleted.

## SECTION 132. BORDER PREPAREDNESS ON INDIAN LAND

Section 132 would amend Subtitle D of Title IV of the Homeland Security Act of 2002 (6 U.S.C. 251 et seq.) by adding a new Section

447 entitled “Border Preparedness Pilot Program on Indian Land.” The Department of the Interior supports the amendments outlined in the new Section 447. By specifically including Indian tribes, it enhances their ability to protect the border integrity of the United States. However, the Department of Homeland Security recommends the following amendments:

Proposed section 447(a)(2): The Department of Homeland Security believes that the proposed definition of Indian tribe would preclude the participation of Alaska Native organizations. Therefore, the Department of Homeland Security recommends amending the definition to read as follows:

(2) INDIAN TRIBE.—The term “Indian tribe” means all Indian entities listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–l).

Proposed Section 447(b) and (c)(1): The Department of Homeland Security conducts preparedness programs, such as the proposed pilot program, through its Office of Domestic Preparedness. To ensure that the tribes are treated equitably and provided access to the full range of preparedness programs, the Department of Homeland Security recommends that the matter preceding paragraph (1) of subsection (b) be amended by striking “Under Secretary for Board and Transportation Security” and inserting “Office of Domestic Preparedness”. The Department of Homeland Security recommends that a similar amendment be made to proposed section (c)(I).

Finally, to clarify jurisdiction, the Department of Homeland Security recommends that proposed section 447 be amended by redesignating proposed subsection (e) as proposed subsection (f); and after proposed subsection (d), by inserting the following new subsection:

“(e) LIMITATION.—Nothing in this section shall be construed as a grant of statutory authority to an Indian tribe, tribal organization, or tribal government to exercise any authority vested in the Secretary of Homeland Security or enforce any customs, immigration, or maritime law.”

## Title II—Other Amendments to Laws Relating to Native Americans

### SECTION 211. NAVAJO HEALTH CONTRACTING

Section 211 would require that the Navajo Health Foundation/Sage Memorial Hospital at Ganado, AZ, be considered a tribal contractor under the Indian Self-Determination and Education Assistance Act (ISDEAA) for purposes of extending Federal Tort Claims Act (FTCA) coverage to contract employees, to provide access to the Federal sources of supply, and to make patient records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

If enacted, this section would allow Navajo Nation Health Foundation (NHF) access to these services and benefits. This access to benefits and services would continue until such time as the NHF’s current funding is adjusted by Congress to allow them to fully negotiate a contract under ISDEAA. This provision would establish a

precedent for tribes/tribal organizations seeking to negotiate an ISDEAA contract to seek legislative authorization to select certain provisions in the ISDEAA that would be applied to them until such time as they are able to complete all requirements required in the ISDEAA.

The Department of Health and Human Services is concerned that this provision circumvents the contracting requirements of the ISDEAA and selectively makes provisions applicable to the Navajo Health Foundation. In addition, the Department of Justice is concerned with selectively extending FTCA coverage to entities that do not meet the full set of requirements under the ISDEAA. For these reasons, the Department of Health and Human Services and Department of Justice recommend that section 211 be deleted.

#### SECTION 221. PROBATE REFORM

The Department recommends some additional amendments be made to the American Indian Probate Reform Act (AIPRA). We recommend adding a new subsection (g) to 6 section 221 that would delete the paragraph in AIPRA regarding Family Cemetery Plots. The Department does not hold or manage any cemetery plots in trust status. Therefore, they would not be subject to the Department's probate procedures. Family cemetery plot probate issues fall outside the jurisdiction of the federal government.

“(g) RULE OF CONSTRUCTION.—Subsection (i) of Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by section 3(d) of the American Indian Probate Reform Act of 2004 (Public Law 108–374) is amended by striking paragraph (7).”.

In addition, we request the following technical amendments be included in this section:

Under Partition of highly fractionated Indian lands, section 2204(d)(2)(I)(iii)(IV)(aa) should be amended by striking “less” and inserting in lieu thereof “more”.

Under Descent and distribution, estate planning—

- section 2206(f)(2)(A) should be amended by striking “advise”
- section 2206(f)(2)(B) should be amended by striking “among” and inserting in lieu thereof “as authorized by the Secretary for”

general rules governing probate, section 2206(k)(2)(A)(ii)(I) should be amended by striking “date of enactment” and inserting in lieu thereof “effective date”.

#### *Additional Amendments*

The Department also suggests additional amendments be added to S. 536. We recommend the following two amendments to the Shivwits Water Rights Settlement and the Individuals with Disabilities Education Act be added to the end of Title II. We also recommend two new titles be added to the bill that would provide a technical correction to address the decisions in *Youpee v. Babbitt* and *DuMarce v. Norton* and give the Secretary the authority to address unclaimed property.

## SUBTITLE D—SHIVWITS WATER RIGHTS SETTLEMENT

Section 10 of P.L. 106–263 authorizes a water rights and habitat acquisition program for the Santa Clara and Virgin Rivers as a safety net to address environmental consequences of the water settlement agreement that may not have been evident at the time of enactment. Congress appropriated the \$3.0 million authorized to be appropriated by Section 10. When the Department attempted to implement the provision in Section 10, which was intended to maintain the \$3.0 million in an interest bearing account, the Treasury Department advised that the language in Section 10 was insufficient for this purpose. Based on guidance from Treasury Department, the proposed technical amendment was developed to correct the deficiency in the original statutory language.

Section 10 of the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act of August 18, 2000, Public Law 106–263 (114 Stat. 737), is amended by:

(1) Deleting the second sentence in subsection 10(f) (114 Stat. 744) which reads: “The Secretary is authorized to deposit and maintain this appropriation in an interest bearing account, said interest to be used for the purposes of this section.”

(2) Adding the following subsection 10(g):

“(g) ESTABLISHMENT OF ACQUISITION FUND.—There is established in the Treasury of the United States a fund to be known as the Santa Clara Water Rights and Habitat Acquisition Fund (hereinafter called the “Acquisition Fund”). The Secretary shall deposit into the Acquisition Fund the funds appropriated pursuant to subsection (f). The Acquisition Fund principal and any income thereon shall be managed in accordance with this section 10.”

(3) Adding the following subsection 10(h):

“(h) INVESTMENT OF ACQUISITION FUND.—The Secretary of the Interior may request the Secretary of the Treasury to invest such portion of the Acquisition Fund as is not, in the Secretary of the Interior’s judgment, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities with maturities suitable to the needs of the fund, as determined by the Secretary of the Interior, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.”

SUBTITLE E—INDIVIDUALS WITH DISABILITIES EDUCATION  
IMPROVEMENT ACT

Section 611(e)(1)(A) of, the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 108–446, the Individuals with Disabilities Education Improvement Act of 2004 allows states and outlying areas to reserve money for state administrative purposes, but omitted language allowing the Secretary of the Interior to reserve money for state administrative purposes. While arguably the Department of Education can permit this use of funds in regulations, the support for this use would be more clearly supported if it were included in the statute. The suggested addition to section 611(e)(1)(A) provided below, would clarify that the Sec-

retary of the Interior is not barred from reserving a portion of the Special Education, Part B dollars, for administrative costs, similar to all states and outlying areas that also receive these dollars.

In addition, section 611(h)(1)(A), now imposes statutory deadlines as to when the Department of the Interior is to distribute the IDEA Part B dollars they receive. This provision is unlike any requirement imposed on any state or outlying area. This provision requires the Secretary of the Interior to distribute these dollars without first determining what the need is at each school, or without looking first to the dollars appropriated to the Department of the Interior for special education services. Therefore, the Department of the Interior will no longer be able to use the individual need of each student as the basis for the distribution of the Part B dollars or ensure that funding given to the schools is being used properly. Therefore, the Department recommends the deletion of section 611(h)(1)(A)(i) and (ii), which would allow the Secretary of the Interior to distribute IDEA Part B dollars based on student need and removes the distribution dates.

Section 611 of the Individuals with Disabilities Education Act is amended by:

(1) Adding subsection (iii) to section 611(e)(1)(A):

“(iii) The Secretary of the Interior may reserve for each fiscal year not more than 5 percent of the amount the Department of the Interior receives under (h)(1)(A) for the fiscal year or \$800,000 (adjusted in accordance with subparagraph B), whichever is greater.”.

(2) Deleting in section 611(h)(1)(A) the following sentence: “Of the amounts described in the preceding sentence—(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and (ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year”.

#### *Youpee and Sisseton-Wahpeton*

A new title should be added to S. 536 that would provide a technical correction to address the decisions in *Youpee v. Babbitt* and *DuMarce v. Norton*. The United States Supreme Court in *Youpee* held the escheat provision of the Indian Land Consolidation Act as unconstitutional. In *DuMarce*, the District Court for the District of South Dakota found unconstitutional a statute under which any interest of less than two and a half acres would automatically escheat to the Sisseton Wahpeton Sioux Tribe. As a result of these two decisions, the Department is faced with having to revest interests that escheated under both statutes back to the rightful heir. We request that a new title be added declaring that any interest that escheated pursuant to these Acts be vested in the tribe to which they escheated unless they have been revested in the name of the heirs of the allottee by the Secretary since the escheatment. The provision should provide that the escheat of those interests to the tribes involved a taking by the United States and should provide compensation to the heirs of those escheated interests.

#### *Unclaimed Property*

Under state law, a state may sell or auction off certain personal property that has not been claimed by an owner within a certain amount of time, usually within 5 years. This is not the case with

inactive Individual Indian Money accounts or real property interests. Often times the whereabouts of account owners are unknown to the Department because account holders do not respond to our requests for address information and our repeated attempts to locate them have been unsuccessful. This may be because the small amount in their account does not make such effort worthwhile. However, the Department must account for every interest regardless of size and we do not have the authority to stop administering accounts where whereabouts of the owner are unknown. We must have the authority to close these small accounts and restore economic value to the assets if the owner does not claim their interest within a certain amount of time. If the owner does not come forward, the revenue generated from the interest should be held in a general holding account against which claims could be made in the future if the owner's whereabouts become known or used to further the fractionation program.

#### *Conclusion*

The Department looks forward to working with the Committee on addressing the above issues. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

MATT EAMES,  
*Director, Office of Congressional and Legislative Affairs.*

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 536 will result in the following changes in existing law, (existing law proposed to be omitted is enclosed in black brackets and the new language to be added in italic, existing law in which no change is proposed is shown in roman):

#### **Indian Financing Act Amendments**

(Pub. L. 93-262)

25 U.S.C. 1481

Section 201 of Public Law 93-262 is amended as follows:

#### **[SEC. 201. In order ] SEC. 201. LOAN GUARANTIES AND INSURANCE.**

(a) *IN GENERAL.*—*In order* to provide access to private money sources which otherwise would not be available, **[the Secretary is authorized (a) to guarantee]** *the Secretary may—*

(1) *guarantee*; not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual **[Indians; and (b) in lieu of such guaranty, to insure]** *Indians; or*

(2) *to insure*; loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan.

(b) *ELIGIBLE BORROWERS.*—*The Secretary may guarantee or insure loans under subsection (a) to both for profit and nonprofit borrowers.*

25 U.S.C. 1484

Section 204 of the Indian Financing Act of 1974 is amended as follows:

**[SEC. 204.] SEC. 204. LOAN APPROVAL.**

25 U.S.C. 1486

Section 206 of the Indian Financing Act of 1974 is amended as follows: SEC. 206. Loans made by any agency or instrumentality of the Federal Government, or by an organization of Indians from funds borrowed from the United States, and loans the interest on which is not included in gross income for the purposes of chapter 1 of the **[Internal Revenue Code of 1954, as amended,]** *Internal Revenue Code of 1936 (except loans made by certified Community Development Finance Institutions)* shall not be eligible for guaranty or insurance hereunder.

25 U.S.C. 1497(B)

Section 217(b) of the Indian Financing Act of 1974 is amended as follows:

The Secretary may use the fund for the purpose of fulfilling the obligations with respect to loans or surety bonds guaranteed or insured under this title, but the aggregate of such loans or surety bonds which are insured or guaranteed by the Secretary shall be limited to **[\$500,000,000]** *\$1,500,000,000*.

### **Indian Tribal Justice Technical and Legal Assistance**

(Pub. L. 106–559)

25 U.S.C. 3666

Section 106 of the Indian Tribal Justice Technical and Legal Assistance Act is amended as follows:

For purposes of carrying out the activities under this subchapter, there are authorized to be appropriated such sums as are necessary for fiscal years **[2000]** *2004* through **[2004]** *2010*.

25 U.S.C. 3681(d)

Section 201(d) of the Indian Tribal Justice Technical and Legal Assistance Act is amended as follows:

For purposes of carrying out the activities under this section, there are authorized to be appropriated such sums as are necessary for fiscal years **[2000]** *2004* through **[2004]** *2010*.

### Indian Tribal Justice Systems

(Pub. L. 106–559)

25 U.S.C. 3621(a)(b)(c)(d)

Section 201 of the Indian Tribal Justice Act are amended as follows:

(a) There is authorized to be appropriated to carry out the provisions of sections 3611 and 3612 of this title, \$7,000,000 for each of the fiscal years 2000 through **[2007]** 2010. None of the funds provided under this subsection may be used for the administrative expenses of the office.

(b) There is authorized to be appropriated to carry out the provisions of section 3613 of this title \$50,000,000 for each of the fiscal years 2000 through **[2007]** 2010.

(c) There is authorized to be appropriated, for the administrative expenses of the Office, \$500,000 for each of the fiscal years 2000 through **[2007]** 2010.

(d) There is authorized to be appropriated, for the administrative expenses of tribal judicial conferences, \$500,000 for each of the fiscal years 2000 through **[2007]** 2010.

### Indian Pueblo Land Act Amendments

(43 Stat. 636, Chapter 331)

The Act of June 7, 1924, also known as the Indian Pueblo Land Act is amended as follows:

At the end of 43 Stat. 636 insert the following:

#### **SEC. 20. CRIMINAL JURISDICTION.**

(a) *IN GENERAL.*—*Except as otherwise provided by Congress, jurisdiction over offenses committed anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian tribe of New Mexico, shall be provided in this section.*

(b) *JURISDICTION OF THE PUEBLO.*—*The Pueblo has jurisdiction, as an act of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or of another Indian tribe, or by any other Indian-owned entity.*

(c) *JURISDICTION OF THE UNITED STATES.*—*The United States has jurisdiction over any offense described in chapter 53 of title 18, United States Code, committed by or against a member of any Indian tribe or any Indian-owned entity, or that involves any Indian property or interest.*

(d) *JURISDICTION OF THE STATE OF NEW MEXICO.*—*The State of New Mexico shall have jurisdiction over any offense committed by a person who is not a member of an Indian tribe, which offense is not subject to the jurisdiction of the United States.*

### Gila River Indian Community Mandatory Binding Arbitration

25 U.S.C. 415(f)

Section (f) of the Act of August 5, 1955 is amended as follows:

(f) [Any lease entered into under the Act of August 9, 1955 (69 Stat. 539), as amended, or any contract entered into under section 2103 of the Revised Statutes 925 U.S.C. 81), as amended, affecting land] *Any contract, including a lease, affecting land within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such lease or contract. [Such leases or contracts entered into pursuant to such Acts] Such contracts shall be considered within the meaning of ‘commerce’ as defined and subject to the provisions of section 1 of Title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by Title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of Title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of Title 28.*

### **Definition of Native American**

25 U.S.C. 3001(9)

25 U.S.C. 3001(9) is amended as follows:

(9) “Native American” means of, or relating to, a tribe, people, or culture that is *or was* indigenous to *any geographic area that is now located within the boundaries of the United States.*

### **Fallon Paiute-Shoshone Tribe Settlement**

(P.L. 101–618)

104 Stat. 3289

Section 102(C) of the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (104 Stat. 3289) is amended as follows:

(C)(1) [The income of the Fund may be obligated and expended only for the following purposes:] *Notwithstanding any conflicting provision in the original Fund plan during Fund fiscal year 2004 and during each subsequent Fund fiscal year, 6 percent of the average quarterly market value of the Fund during the immediately preceding 3 Fund fiscal years (referred to in this title as “Annual 6 percent Amount”), plus any unexpended and unobligated portion of the Annual 6 percent Amount from any of the 3 immediately preceding Fund fiscal years that are subsequent to Fund fiscal year 2003, less any negative income that may accrue on that portion, may be expended or obligated only for the following purposes:*

(a) Tribal economic development, including development of long-term profit-making opportunities for the Fallon Paiute-Shoshone Tribe (hereinafter referred to in the Act as “Tribes”) and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as “Reservation”) not including lands added to the Reservation pursuant to the provisions of Public Law 95–337, 92 Stat. 455;

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States.

(g) *Fees and expenses incurred in connection with the investment of the Fund, for investment management, investment consulting, custodianship, and other transactional services or matters.*

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

[(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.] (4) *No monies from the Fund other than the amounts authorized under paragraphs (1) and (3) may be expended or obligated for any purpose.*

(5) *Notwithstanding any conflicting provision in the original Fund plan, during Fund fiscal year 2004 and during each subsequent Fund fiscal year, not more than 20 percent of the Annual 6 percent Amount for the Fund fiscal year (referred to in this title as the 'Annual 1.2 percent Amount') may be expended or obligated under paragraph (1)(c) for per capita distributions to tribal members, except that during each Fund fiscal year subsequent to Fund fiscal year 2004, any unexpended and unobligated portion of the Annual 1.2 percent Amount from any of the 3 immediately preceding Fund fiscal years that are subsequent to Fund fiscal year 2003, less any negative income that may accrue on that portion, may also be expended or obligated for such per capita payments.*

(D) The Tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section. *Notwithstanding any conflicting provision in the original Fund plan, the Fallon Business Council, in consultation with the Secretary, shall promptly amend the original Fund plan for the purposes of conforming the Fund plan to this title and making non-substantive updates, improvements, or corrections to the original Fund plan.*

(E) Upon the request of the Tribes, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F)(1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to

the Secretary. The plan shall set forth the manner in which such monies will be managed, administered, and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use its best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93–134, 87 Stat. 468, as amended by section 4 of Public Law 97–458, 96 Stat. 2513, 25 U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

104 Stat. 3293

Section 107 of the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 is amended as follows:

For the purposes of this title, and for no other purpose—

(A) the term “Fallon Paiute Shoshone Tribal Settlement Fund” or “Fund” means the Fund established under section 102(A) of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this title;

[(B) the term “income” means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income;] (B) the term “Fund fiscal year” means a fiscal year of the fund (as defined in the Fund plan);

[(C) the term “rincipal” means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(3) of this Act;] (C) the term “Fund plan” means the plan established under section 102(F), including the original Fund plan (the “Plan for Investment, Management, Administration and Expenditure dated December 20, 1991”) and all amendments of the Fund plan under subsection (D) or (F)(1) of section 102;

(D) the term “income” means the total net return from the investment of the Fund, consisting of all interest, dividends, realized and unrealized gains and losses, and other earnings, less all related fees and expenses incurred for investment management, investment consulting, custodianship and transactional services or matters;

(E) the term “principal” means the total amount appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B);

[(D)] (F) the term “Reservation” means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95–337, 92 Stat. 457;

[(E)] (G) the term “Secretary” means the Secretary of the Department of the Interior;

[(F)] (H) the term “tribal members” means the enrolled members of the Fallon Paiute Shoshone Tribes; and

[(G)] (I) the term “tribes” means the Fallon Paiute-Shoshone Tribe.

### **Washoe Tribes of Nevada and California Land Conveyance**

Pub. L. 108–67

117 Stat. 880

Section 2 of Public Law 108–67 is amended as follows:

Subject to valid existing rights, the easement reserved under section 3, and the condition stated in section 4, the Secretary of Agriculture shall convey to the Secretary of the Interior, in trust for the Tribe, for no consideration, all right, title, and interest in [the parcel of land comprising approximately 24.3 acres, located within the Lake Tahoe Basin Management Unit north of Skunk Harbor, Nevada, and more particularly described as Mount Diablo Meridian, T15N, R18E, section 27, lot 3.] *a portion of Lots 3 and 4, as shown on the United States and Encumbrance Map revised January 10, 1991, for the Toiyabe National Forest, Ranger District Carson –1, located in the S ½ of NW ¼ and N ½ of SW ¼ of the SE ¼ of sec. 27, T. 15N, R. 18E, Mt. Diablo Base and Meridian, comprising 24.3 acres.*

### **Indian Arts and Crafts**

25 U.S.C. 305(d)

Section 5 of the Act of August 27, 1935 is amended as follows:

**[SEC. 5. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS; COMPLAINTS; RECOMMENDATIONS] SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.**

(a) *DEFINITION OF FEDERAL LAW ENFORCEMENT OFFICER.*—*In this section, the term “Federal law enforcement officer” has the meaning given the term in section 115(c) of title 18, United States Code.*

(b) *CRIMINAL PROCEEDINGS.*—

(1) *REFERRAL.*—*On receiving a complaint of a violation of section 1159 of title 18, United States Code, the Board may refer the complaint to any Federal law enforcement officer for appropriate investigation.*

(2) *FINDINGS.*—*The findings of an investigation under paragraph (1) shall be submitted to—*

(A) *the Attorney General; and*

(B) the Board.

(3) *RECOMMENDATIONS.*—On receiving the findings of an investigation in accordance with paragraph (2), the Board may—

(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of that title; and

(B) provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines appropriate.

(c) *CIVIL ACTIONS.*—In lieu of, or in addition to, any criminal proceedings under subsection (a), the Board may recommend that the Attorney General initiate a civil action pursuant to section 6.

Section 6 of the Act of August 27, 1935 is amended as follows:

**§ 305e. Cause of action for misrepresentation of Indian produced goods and products**

(a) *DEFINITIONS.*—In this section:

(1) *INDIAN.*—The term “Indian” means an individual that—

(A) is a member of an Indian tribe; or

(B) is certified as an Indian artisan by an Indian tribe.

(2) *INDIAN PRODUCT.*—The term “Indian product” has the meaning given the term in any regulation promulgated by the Secretary.

(3) *INDIAN TRIBE.*—

(A) *IN GENERAL.*—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)).

(B) *INCLUSION.*—The term “Indian tribe” includes an Indian group that has been formally recognized as an Indian tribe by—

(i) a State legislature;

(ii) a State commission; or

(iii) another similar organization vested with State legislative tribal recognition authority.

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

**[(a)] (b) INJUNCTIVE OR OTHER EQUITABLE RELIEF; DAMAGES.**—

A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

(1) obtain injunctive or other equitable relief; and

(2) recover the greater of—

(A) treble damages; or

(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1,000 for each day on which the offer or display for sale or sale continues.

For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

**[(b)] (c) PUNITIVE DAMAGES; ATTORNEY’S FEE.**—In addition to the relief specified in subsection (a), the court may award punitive

damages and the costs of [suit] *the civil action* and a reasonable attorney's fee.

**[(c) PERSONS WHO MAY INITIATE CIVIL ACTIONS.—**

(1) A civil action under subsection (a) may be commenced—

(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization;

(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization; or

(C) by an Indian arts and crafts organization on behalf of itself, or by an Indian on behalf of himself or herself.

(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered—

(i) the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

(ii) the amount for the costs of investigation awarded pursuant to subsection (b) and reimburse the Board the amount of such costs incurred as a direct result of Board activities in the suit; and

(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).

**(d) DEFINITIONS.—As used in this section—**

(1) the term “Indian” means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) subject to subsection (f), the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

(3) the term “Indian tribe” means—

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

(4) the term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes.】

**(d) PERSONS WHO MAY INITIATE CIVIL ACTIONS.—**

(1) *IN GENERAL.*—A civil action under subsection (b) may be initiated by—

(A) the Attorney General, at the request of the Secretary acting on behalf of—

- (i) an Indian tribe;
- (ii) an Indian; or
- (iii) an Indian arts and crafts organization;

(B) an Indian tribe, acting on behalf of—

- (i) the tribe;
- (ii) a member of that tribe; or
- (iii) an Indian arts and crafts organization;

(C) an Indian;

(D) an Indian arts and craft organization;

(2) *DISPOSITION OF AMOUNTS RECOVERED*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

(B) *EXCEPTIONS.*—In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—

(i) the amount of the cost of the civil action and reasonable attorney's fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

(ii) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

[(e) *IN THE EVENT THAT*] (e) *SAVINGS PROVISION.*—If any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

[(f) *REGULATIONS.*—Not later than 180 days after the date of enactment of the Indian Arts and Crafts Enforcement Act of 2000 [enacted Nov. 9, 2000], the Board shall promulgate regulations to include in the definition of the term “Indian product” specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act [25 U.S.C. §§305 et seq.].]

(f) *REGULATIONS.*—Not later than 180 days after the enactment of the Native American Omnibus Act of 2005, the Board shall promulgate regulations to include in the definition of the term “Indian product” examples of each Indian product to provide guidance and notice to Indian artisans, suppliers of the artisans, and consumers of Indian arts and crafts.

Section 1159 ( c) of title 18, United States Code is amended as follows:

(c) As used in this section—

(1) the term “Indian” means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning

given such term in regulations which may be promulgated by the Secretary of the Interior;

[(3) the term “Indian tribe” means—

[(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

[(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and]

(3) the term “Indian tribe”—

(A) has the meaning given the term in section 4 of the *Indian Self-Determination and Education Assistance Act* (25 U.S.C. 450b); and

(B) includes an Indian group that has been formally recognized as an Indian tribe by—

(i) a State legislature;

(ii) a State commission; or

(iii) another similar organization vested with State legislative tribal recognition authority; and

(4) the term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes.

## **Native American Programs Act of 1974**

### **Title 42. The Public Health and Welfare**

#### **CHAPTER 34—ECONOMIC OPPORTUNITY PROGRAM**

##### **Sec. 2991b–2(d) Intra-Departmental Council on Native American Affairs**

(1) [There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner shall be the chairperson of such Council and shall advise the Secretary on all matters affecting Native Americans that involve the Department. The Director of the Indian Health Service shall serve as vice chairperson of the Council.] *There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.*

##### **Sec. 2992d. AUTHORIZATION OF APPROPRIATIONS**

[(a) There are authorized to be appropriated for the purpose of carrying out the provisions of this subchapter (other than sections 2991b(d), 2991b–1, 2991b–3 of this title, subsection (e) of this section, and any other provision of this subchapter for which there is an express authorization of appropriations), such sums as may be necessary for each of fiscal years 1999, 2000, 2001, and 2002.]

(a) *IN GENERAL.—There are authorized to be appropriated—*

(1) *to carry out section 803(d), \$8,000,000 for each of fiscal years 2006 through 2010; and*

(2) *to carry out provisions of this title other than section 803(d) and any other provision having an express authorization*

*of appropriations, such sums as are necessary for each of fiscal years 2006 through 2010.*

[(b) Not less than 90 per centum of the funds made available to carry out the provisions of this subchapter (other than sections 2991b(d), 2991b–1, 2991b–3, 2991c of this title, subsection (e) of this section, and any other provision of this subchapter for which there is an express authorization of appropriations) for a fiscal year shall be expended to carry out section 2991b(a) of this title for such fiscal year.]

(b) *LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).*

[(c) There is authorized to be appropriated \$8,000,000 for each of fiscal years 1999, 2000, 2001, and 2002, for the purpose of carrying out the provisions of section 2991b(d) of this title.]

[(d)] (c) (1) For fiscal year 1994, there are authorized to be appropriated such sums as may be necessary for the purpose of—

(A) establishing demonstration projects to conduct research related to Native American studies and Indian policy development; and

(B) continuing the development of a detailed plan, based in part on the results of the projects, for the establishment of a National Center for Native American Studies and Indian Policy Development.

(2) Such a plan shall be delivered to the Congress not later than 30 days after September 30, 1992.

[(e) There are authorized to be appropriated to carry out section 2991b–3 of this title such sums as maybe necessary for each of fiscal years 1999, 2000, 2001, and 2002.]

#### **Sec. 2992–1. [Annual report]**

##### **SEC. 811A. REPORTS.**

[The Secretary shall, not later than January 31 of each year] *Every 5 years, the Secretary shall* prepare and transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives [an annual report] *a report* on the social and economic conditions of American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives, together with such recommendations to Congress as the Secretary considers to be appropriate.

### **Research and Educational Activities**

#### **20 U.S.C. 7515**

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended by the following:

(J) research and data collection activities to determine the educational status and needs of Native Hawaiian children and adults;

(K) *research and educational activities relating to Native Hawaiian law;*

[(K)] (L) other research and evaluation activities related to programs carried out under this part; and

[(L)] (M) other activities, consistent with the purposes of this part, to meet the educational needs of Native Hawaiian children and adults.

### Definition of Indian Student Count

20 U.S.C. 2327

Section 117(h) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2327(h)) is amended by the following:

[(2) INDIAN STUDENT COUNT.—The term “Indian student count” means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational and technical institution, determined as follows:

[(A) REGISTRATIONS.—The registrations of Indian students as in effect on October 1 of each year.

[(B) SUMMER TERM.—Credits or clock hours toward a certificate earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

[(C) ADMISSION CRITERIA.—Credits or clock hours toward a certificate earned in classes during a summer term shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student’s ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student’s aptitude to successfully complete the course in which the student has enrolled. No credit earned by such student for purposes of obtaining a secondary school degree or its recognized equivalent shall be counted toward the computation of the Indian student count.

[(D) DETERMINATION OF HOURS.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational and technical institution shall be included in determining the sum of all credit or clock hours.

[(E) CONTINUING EDUCATION.—Credits or clock hours earned in a continuing education program shall be converted to the basis that is in accordance with the institution’s system for providing credit for participation in such programs.]

(2) INDIAN STUDENT COUNT.—

(A) IN GENERAL.—*The term “Indian student count” means a number equal to the total number of Indian students enrolled in each tribally-controlled postsecondary vocational and technical institution, as determined in accordance with subparagraph (B).*

(B) DETERMINATION.—

(i) ENROLLMENT.—*For each academic year, the Indian student count shall be determined on the basis of*

*the enrollments of Indian students as in effect at the conclusion of—*

*(I) in the case of the fall term, the third week of the fall term; and*

*(II) in the case of the spring term, the third week of the spring term.*

*(ii) CALCULATION.—For each academic year, the Indian student count for a tribally-controlled postsecondary vocational and technical institution shall be the quotient obtained by dividing—*

*(I) the sum of the credit-hours of all Indian students enrolled in the tribally-controlled postsecondary vocational and technical institution (as determined under clause (i)); divided by*

*(II) 12.*

*(iii) SUMMER TERM.—Any credit earned in a class offered during a summer term shall be counted in the determination of the Indian student count for the succeeding fall term.*

*(iv) STUDENTS WITHOUT SECONDARY SCHOOL DEGREES.—*

*(I) IN GENERAL.—A credit earned at a tribally-controlled postsecondary vocational and technical institution by any Indian student that has not obtained a secondary school degree (or the recognized equivalent of such a degree) shall be counted toward the determination of the Indian student count if the institution at which the student is enrolled has established criteria for the admission of the student on the basis of the ability of the student to benefit from the education or training of the institution.*

*(II) PRESUMPTION.—The institution shall be presumed to have established the criteria described in subclause (I) if the admission procedures for the institution include counseling or testing that measures the aptitude of a student to successfully complete a course in which the student is enrolled.*

*(III) CREDITS TOWARD SECONDARY SCHOOL DEGREE.—No credit earned by an Indian student for the purpose of obtaining a secondary school degree (or the recognized equivalent of such a degree) shall be counted toward the determination of the Indian student count under this clause.*

*(v) CONTINUING EDUCATION PROGRAMS.—Any credit earned by an Indian student in a continuing education program of a tribally-controlled postsecondary vocational and technical institution shall be included in the determination of the sum of all credit hours of the student if the credit is converted to a credit-hour basis in accordance with the system of the institution for providing credit for participation in the program.*

## Native Nations Leadership, Management, and Policy

20 U.S.C. 5602

(a) **DEFINITIONS.**—Section 4 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602) is amended as follows:

(5) the term “foundation” means the Morris K. Udall scholarship and Excellence in national Environmental Policy Foundation established under section 5603(a) of this title.

(6) *the terms “Indian tribe” and “tribe” have the meaning given the term “Indian tribe” in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);*

**[6]** (7) the term “Institute” means the United States Institute for Environmental Conflict Resolution established pursuant to section 5605(a)(1)(D) of this title;

**[7]** (8) the term “institution of higher education” has the same meaning given to such term by section 1001 of this title;

**[8]** (9) the term “state” means each of the several States, the District of Columbia, Guam, the Virgin Islands, American Samoa, the commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federal States of Micronesia, and the Republic of Palau (until the Compact of Free Association is ratified) and

**[9]** (10) the term “Trust Fund” means the Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund established in section 5606 of this title.

(b) **AUTHORITY OF FOUNDATION.**—SECTION 7(A)(1) OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL AND NATIVE AMERICAN PUBLIC POLICY ACT OF 1992 (20 U.S.C. 5605(A)(1)) IS AMENDED AS FOLLOWS:

**[(C) The Foundation may award scholarships, fellowships, internships and grants to eligible individuals in accordance with the provisions of this chapter for study in fields related to the environment and Native American and Alaska Native health care and tribal public policy. Such scholarships, fellowships, internships and grants shall be awarded to eligible individuals who meet the minimum criteria established by the Foundations.]**

**(C) FIELDS OF STUDY.**—

(i) *IN GENERAL.*—*The Foundation may award scholarships, fellowships, internships, and grants to eligible individuals in accordance with this Act for study in fields relating to the environment and Native American and Alaska Native health care and tribal policy.*

(ii) *MINIMUM CRITERIA.*—*A scholarship, fellowship, internship, or grant awarded under this section shall be awarded to an eligible individual that meets the minimum criteria established by the Foundation.*

(iii) *STATE-RECOGNIZED TRIBES, BANDS, NATIONS AND GROUPS.*—*Notwithstanding the definition of “Indian tribe” under section 4, the Foundation make an award under this section to an individual that is a member of a Native American tribe, band, nation, or other organized group or community that is recognized by a State.*

(c) **AUTHORIZATION OF APPROPRIATIONS.**—Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5609) is amended as follows:

[(c) Training of professionals in health care and public policy there is authorized to be appropriated to carry out section 5604(7) of this title \$12,300,000 for the 5-fiscal year period beginning with the fiscal year in which this subsection is enacted.】

(c) **TRAINING IN TRIBAL LEADERSHIP, MANAGEMENT, AND POLICY.**—

(1) **IN GENERAL.**—*There is authorized to be appropriated to carry out section 6(7)—*

(A) \$2,500,000 for each of fiscal years 2007 and 2008;

(B) \$4,000,000 for each of fiscal years 2009 and 2010;

and

(C) \$13,500,000 for each of fiscal years 2011 through 2016.

(2) **LIMITATIONS.**—*An appropriation made pursuant to this subsection shall not be subject to section 7(c).*

### **Border Preparedness on Indian Land**

6 U.S.C. 251

Subtitle D of title IV of the Homeland Security Act of 2002 (6 U.S.C. 251 et seq.) is amended by adding at the end the following:

#### **SEC. 447. BORDER PREPAREDNESS PILOT PROGRAM ON INDIAN LAND.**

(a) **DEFINITIONS.**—*In this section:*

(1) **INDIAN LAND.**—*The term “Indian land” means—*

(A) *all land within the boundaries of any Indian reservation; and*

(B) *any land the title to which is—*

(i) *held in trust by the United States for the benefit of an Indian tribe or individual; or*

(ii) *held by any Indian tribe or individual—*

(I) *subject to a restriction by the United States against alienation; and*

(II) *over which an Indian tribe exercises governmental authority.*

(2) **INDIAN TRIBE.**—*The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community that is recognized by the Secretary as—*

(A) *eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and*

(B) *possessing powers of self-government.*

(3) **TRIBAL GOVERNMENT.**—*The term “tribal government” means the governing body of an Indian tribe.*

(b) **PURPOSE.**—*The purpose of this section is to require the Secretary, acting through the Under Secretary for Border and Transportation Security, to establish a pilot program for tribal governments on Indian land located on or near the border of the United States with Canada or Mexico in order to—*

(1) *facilitate the coordination of the response of an Indian tribe to a threat to the security of an international border of the*

*United States with the responses of Federal, State, and local governments;*

*(2) enhance the capability of an Indian tribe as a first to an illegal crossing of an immigrant over an international border of the United States; and*

*(3) provide assistance to Indian tribes in the use by the tribes of effective aerial and ground surveillance technologies, integrated communication systems and equipment, and personnel training.*

*(c) PILOT PROGRAM—*

*(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, acting through the Undersecretary for Border and Transportation Security, shall provide funds and other assistance to tribal governments in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).*

*(2) USE OF FUNDS AND ASSISTANCE.—*

*(A) IN GENERAL.—A tribal government shall use any funds or assistance provided under paragraph (1) consistent with the purposes of this section.*

*(B) ADMINISTRATION BY TRIBAL GOVERNMENTS.—A tribal government that receives any funds or assistance under paragraph (1) shall administer the funds or assistance in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).*

*(3) SELECTION CRITERIA.—In selecting a tribal government to receive funds or assistance under paragraph (1), the Secretary may take into consideration—*

*(A) the distance between the Indian land in the jurisdiction of the tribal government and an international border of the United States;*

*(B) the extent to which a border enforcement effort effects the resources of the Indian tribe; and*

*(C) the interests of the Indian tribe.*

*(d) REPORTS.—*

*(1) TRIBAL GOVERNMENTS.—*

*(A) IN GENERAL.—Not later than 1 year after receiving funds or assistance under subsection (c), a tribal government shall submit to the Secretary a report in a manner and containing such information as the Secretary may require.*

*(B) INCLUSION.—A report under subparagraph (A) shall include a description of—*

*(i) any funds or assistance received by the Tribal government under this section;*

*(ii) the use of the funds or assistance by the tribal government; and*

*(iii) any obstacle encountered by the tribal government in administering the funds or assistance.*

*(2) SECRETARY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to a report describing—*

*(A) the information contained in the reports under paragraph (1);*

(B) *the degree of success of the Secretary in implementing the pilot program; and*

(C) *any recommendation, including a legislative recommendation, of the Secretary relating to the pilot program.*

(e) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be such sums as are necessary to carry out this section for each of fiscal years 2006 through 2008.*

### **Authorization of 99-year Leases**

25 U.S.C. 415(a)

(a) *AUTHORIZED PURPOSES; TERM; APPROVAL BY SECRETARY.—Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with the operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the ‘Santa Ana Pueblo Spanish Grant’) the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Reservation of the Confederate Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d’Alene Indian Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai-Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising the Moses Allotment Numbered 10, Helen County, Washington, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederate Tribes of the Umatilla Reservation, lands held in trust for the Fallon Paiute Shoshone Tribes, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Prairie Band of Potawatomi Nation, lands held in trust for the pueblo of Santa Clara, land held in trust for the Yurok Tribe, land held in trust for the Hopland*

*Band of Pomo Indians of the Hopland Rancheria*, lands held in trust for the Confederated Tribes of the Coville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.