To provide for Indian trust modernization, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on 

A BILL

To provide for Indian trust modernization, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Indian Trust Modernization Act of 2017”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

Sec. 101. Reaffirmation of policy.
Sec. 102. Liability.
SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to reaffirm the basic scope of the Federal trust responsibilities to Indians to provide better direction to each Federal agency that affects Indians; and

(2) to augment consultation between the Federal Government and Indian tribes and interagency coordination for, and development, review, and improvement of, Federal policies and programs that affect Indians.

SEC. 3. DEFINITIONS.

In this Act:

(1) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(2) INDIAN TRUST ASSET.—The term “Indian trust asset” means land, natural resources, money, or other assets or rights held—
(A) by the United States in trust for the benefit of one or more Indian tribes or individual Indians; or

(B) by one or more Indian tribes or individual Indians in fee subject to restrictions against alienation under Federal law.

**TITLE I—RECOGNITION OF TRUST RESPONSIBILITY**

**SEC. 101. REAFFIRMATION OF POLICY.**

The proper discharge of the fiduciary responsibilities of the United States to Indian tribes and individual Indians includes without limitation the following trust duties:

(1) Skill, care, and loyalty.

(2) To promote the best interests of Indian beneficiaries.

(3) To protect, preserve, and make productive Indian trust assets and treaty and similarly recognized rights.

(4) To promote the self-determination of Indian tribes for governmental authority and economic development.

(5) To confirm that Indian tribes that manage Indian trust assets protect and prudently manage those Indian trust assets.
(6) To provide quality education, housing, health care, public safety, and governmental services for Indians.

(7) To consult meaningfully in advance with Indian tribes in developing policies or carrying out actions that may affect Indian tribes, individual Indians, or Indian trust assets.

(8) To account for and timely identify, collect, deposit, invest, and distribute income from Indian trust assets.

(9) To provide adequate staffing, supervision, and training for Indian trust asset management and administration.

(10) To work with Indian tribes and individual Indian beneficiaries to avoid or resolve, to the maximum extent practicable, conflicts in a manner that protects Indian trust assets and treaty and similarly recognized rights.

(11) To make, retain, and timely furnish to beneficial owners information regarding Indian trust asset management and administration.

SEC. 102. CONSTRUCTION.

(a) Effect.—Nothing in this title independently diminishes, increases, creates, or otherwise affects the liabil-
ity of the United States. Any ambiguities in this title shall be resolved in favor of Indian tribes.

(b) Minimum Standards.—This title provides the minimum standards for the proper discharge of any duty—

(1) relating to an Indian trust asset; and

(2) established by Federal law.

**TITLE II—NATIONAL COUNCIL ON INDIAN OPPORTUNITY**

**SEC. 201. ESTABLISHMENT.**

(a) Establishment.—There is established within the Executive Office of the President the National Council on Indian Opportunity (referred to in this title as the “Council”) for the purposes of—

(1) providing more coordinated, effective, and meaningful Federal consultation with Indian tribes;

(2) improving the coordination of Federal programs in relation to Indians and the use of resources available to tribal communities; and

(3) improving the formation, review, and development of Federal budgets, policies, practices, and programs with tribal implications.

(b) Membership.—

(1) Composition.—The Council shall be composed of the following members:
(A) The Vice President.

(B) Twelve tribal representative members, who shall be appointed by the President in accordance with the following requirements:

   (i) Each tribal representative member shall be a member of, and an elected or appointed executive or legislative leader of, an Indian tribe.

   (ii) Each tribal representative member shall be nominated by Indian tribes in one of the 12 regions of the Bureau of Indian Affairs, who shall represent the Indian tribes and individual Indians in that respective region.

   (iii) The tribal representative members shall have collective experience or expertise in each of the following areas:

       (I) Federal law and policy relating to Indian tribes and individual Indians.

       (II) Federal agency operations and budgets.

       (III) Trust fund and investment management.
(IV) Fiduciary asset management.

(V) Management of Indian trust assets.

(VI) Ownership of a beneficial interest in an Indian trust allotment.

(VII) Ownership of a beneficial interest in an individual Indian money account.

(VIII) Contracts and compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.).

(iv) Each tribal representative member shall have experience or expertise in not fewer than 2 of the areas described in subclauses (I) through (VIII) of clause (iii).

(v) No tribal representative member shall be an employee of the Federal Government during the term of the member on the Council.

(C) The heads of the following executive departments, agencies, and offices:

(i) The Department of Agriculture.
(ii) The Department of Commerce.

(iii) The Department of Defense.

(iv) The Department of Education.

(v) The Department of Energy.

(vi) The Department of Health and Human Services.


(viii) The Department of Housing and Urban Development.

(ix) The Department of the Interior.

(x) The Department of Justice.

(xi) The Department of Labor.

(xii) The Department of State.

(xiii) The Department of the Treasury.

(xiv) The Department of Transportation.

(xv) The Department of Veterans Affairs.

(xvi) The Environmental Protection Agency.

(xvii) The Small Business Administration.
(xviii) The Social Security Administration.

(xix) The Domestic Policy Council.

(xx) The Council of Economic Advisors.


(xxii) The Office of Management and Budget.

(xxiii) The [Assistant to the President for--Office of?] Intergovernmental Affairs.

(xxiv) The Office of Cabinet Affairs.

(xxv) The [White House Office of Public Engagement and Intergovernmental Affairs--NOTE: Upon the inauguration of President Donald Trump was this disbanded and split into two separate offices: the Office of Intergovernmental Affairs and the Office of Public Liaison? Should this be the Office of the Public Liaison instead?].

(xxvi) Such other executive departments, agencies, and offices as the Chairperson may, from time to time, designate.
(2) APPOINTMENTS.—The tribal representative members of the Council shall be appointed not later than 120 days after the date of enactment of this Act.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) IN GENERAL.—Each tribal representative member described in subsection (b)(1)(B) shall be appointed for a term of 2 years, except that 1 of the members first appointed from each region of the Bureau of Indian Affairs shall be appointed for a term of 1 year.

(2) MULTIPLE TERMS.—A tribal representative member described in subsection (b)(1)(B) may serve multiple terms, provided that the member receives the nomination and appointment for each successive term in the same manner as the initial term.

(3) REMOVAL.—A tribal representative member described in subsection (b)(1)(B)—

(A) shall be removed from the Council automatically when that member no longer serves in the capacity as a tribal leader; and

(B) may be removed from the Council by the President for wrongdoing.

(4) VACANCIES.—
(A) In General.—Any vacancy in the Council shall not affect the powers and duties of the Council.

(B) Tribal Representative Members.—A vacancy of a tribal representative member described in subsection (b)(1)(B) shall be filled in the same manner as the original appointment.

(d) Initial Meeting.—Not later than 180 days after the date of enactment of this Act, the Council shall hold the initial meeting to establish procedures for the conduct of business, including meetings, notices, and hearings.

(e) Meetings and Procedures.—

(1) Chairperson.—The Vice President shall serve as Chairperson of the Council and preside over meetings of the Council.

(2) Meetings.—The Council shall meet not less than 4 times per year, including once per year in conjunction with an annual meeting of tribal leaders and senior Federal officials, to discuss Federal Indian country policy priorities.

(3) Additional Meetings.—The Chairperson may convene the Council at such times and places as the Chairperson determines are appropriate.
(4) MEETING ATTENDANCE.—The Chairperson may invite such other individuals to attend or present at meetings of the Council as the Chairperson determines is appropriate.

(5) QUORUM.—

(A) IN GENERAL.—A majority of the members of the Council shall constitute a quorum, which shall be required for the Council to convene and take official action.

(B) EXCEPTION TO QUORUM.—The Chairperson may call and authorize the holding of a hearing without a quorum described in subparagraph (A), provided that not less than 1 executive member described in subsection (b)(1)(C) is present at the hearing.

(f) DECISIONMAKING.—

(1) IN GENERAL.—To the maximum extent practicable, the Council shall make decisions by general concurrence or consensus.

(2) MAJORITY VOTE.—The Council shall make decisions by a majority vote of members present at the meeting if the Council cannot reach a general concurrence or consensus described in paragraph (1).
SEC. 202. DUTIES.

(a) IN GENERAL.—The Council shall—

(1) advise and make recommendations to the President on the formation, review, development, implementation, and improvement of Federal budgets, policies, practices, priorities, and programs with tribal implications to best fulfill Federal trust responsibilities to Indians;

(2) coordinate more effective and efficient Federal communication with Indian tribes regarding matters with tribal implications;

(3) coordinate Federal engagement with Indian tribes and individual Indian stakeholders regarding issues important to Indians;

(4) assist Federal departments and agencies with policies and standards to guide the performance of Federal trust responsibilities to Indians;

(5) review proposed Federal legislation, regulations, and policies that relate to, or may have a material effect on, Indian tribes, Indian trust assets, or Federal trust responsibilities regarding Indians;

(6) periodically review the Constitution of the United States and Federal treaties, statutes, regulations, Executive orders, and judicial decisions that materially affect Indians or Indian trust assets and related Federal policies, practices, procedures, con-
trols, lines of authority, or organizational structures;
and

(7) review any Federal activity, conduct, or plan carried out after the date of enactment of this Act that would violate Federal trust responsibilities to Indians.

(b) REPORTS AND RECOMMENDATIONS.—After conducting any assistance or review under subsection (a), the Council may submit to the President or the head of the applicable executive department, agency, or office, a report including a statement of relevant facts and any recommendations for changes.

(c) BIENNIAL REPORT.—Not later than 2 years after the date on which the Council holds the initial meeting described in section 201(d), and on the first day of each Congress that begins after that date, the Council shall submit to the President, the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives a report describing the activities of the Council during the preceding 2 years, including—

(1) a description and the results of any assistance or review conducted under subsection (a); and

(2) a description of any report or recommendation submitted under subsection (b).
(d) TRIBAL COORDINATION.—Each tribal representative member of the Council described in section 201(b)(1)(B) shall—

(1) receive and coordinate input from Indian tribes and individual Indians from within the region of the member; and

(2) provide reports within the region of the member describing the activities of the Council.

(e) REGULATIONS.—The Council may promulgate regulations to provide for the administration of this title, including the avoidance or resolution of conflicts between the trust duties of the United States to Indian tribes or individual Indians and other Federal interests.

(f) RECORDS.—The Council shall—

(1) enter all decisions, recommendations, and regulations in the records of the Council; and

(2) gather, keep, compile, and publish, in a convenient form, records and data as may be necessary to ensure the proper administration of this section.

SEC. 203. POWERS.

(a) HEARINGS.—The Council may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Council considers appropriate to carry out this title.

(b) FEDERAL AGENCY COORDINATION.—
(1) In General.—Each executive department, agency, and office shall assist the Council in carrying out this title and shall bear its own expense for participating in the Council.

(2) Delegation.—Each Federal executive member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions regarding the Council.

(3) Information.—The Council may secure directly from any Federal department, agency, or office such information as the Council considers necessary to carry out this title.

(c) Assistance.—The Council may—

(1) provide assistance and make reviews and reports to any Federal department, agency or office; and

(2) request and obtain information or assistance voluntarily provided by any—

(A) tribal, State, or local government department, agency, or office; or

(B) private entity.

(d) Postal Services.—The Council may use the United States mails in the same manner and under the
same conditions as other departments and agencies of the Federal Government.

(c) Gifts.—The Council may accept, use, and dispose of gifts or donations of services or property.

SEC. 204. PERSONNEL MATTERS.

(a) Member Status.—A tribal representative member described in section 201(b)(1)(B) shall not be considered or classified as an officer or employee of the Federal Government based on membership in the Council.

(b) Compensation of Members.—

(1) In General.—A member of the Council who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Council.

(2) Federal Members.—A member of the Council who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.
(c) **TRAVEL EXPENSES.**—A member of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of services for the Council.

(d) **STAFF.**—

(1) **EXECUTIVE DIRECTOR.**—The Chairperson shall appoint an Executive Director of the Council (referred to in this section as the “Executive Director”), who shall be subject to confirmation by the Council.

(2) **PERSONNEL.**—The Executive Director may appoint and terminate officers and such other additional personnel as may be necessary to enable the Council to perform the duties of the Council—

(A) in accordance with the Indian preference laws (as defined in section 2(e) of Public Law 96–135 (25 U.S.C. 5117(e))); and

(B) without regard to the civil service laws.

(3) **COMPENSATION.**—The Executive Director may fix the compensation of personnel appointed pursuant to paragraph (2) without regard to chapter 51 and subchapter III of chapter 53 of title 5,
United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the Executive Director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(e) Detail of Government Employees.—

(1) In general.—Except as provided in paragraph (2), on approval of the Executive Director, any Federal Government employee may be detailed to the Council—

(A) without reimbursement; and

(B) without interruption or loss of civil service status or privilege.

(2) Employees of certain federal agencies.—Notwithstanding paragraph (1), the Office of Management and Budget, the Department of the Interior, and the Department of Justice shall each detail to the Council 1 or more employees. An official within the Office of Management and Budget shall be designated to provide guidance to the Council regarding legislative, budgetary, and regulatory issues.

(f) Procurement of temporary and intermittent services.—The Chairperson may procure temporary and intermittent services under section 3109(b) of
title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(g) FUNDING; SUPPORT.—

(1) FUNDING.—Out of any unobligated amounts available to the Secretary of the Interior and the Attorney General, respectively, the Secretary of the Interior and the Attorney General shall each make available to the Council to carry out this title $2,000,000.

(2) SUPPORT.—The Director of the Office of Management and Budget, the Secretary of the Interior, and the Attorney General shall provide to the Council administrative support—

(A) to the extent permitted by law; and

(B) using unobligated amounts available to the Director of the Office of Management and Budget, the Secretary of the Interior, and the Attorney General, respectively.

SEC. 205. FACA EXEMPTION.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council or activities of the Council.