

INDIAN LAND CONSOLIDATION ACT
AMENDMENTS OF 1999

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 714, S. 1586.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1586) to reduce the fractionated ownership of Indian Lands, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment: [Strike out all after the enacting clause and insert the part printed in *italic*]

S. 1586

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Land Consolidation Act Amendments of 2000".

SEC. 2. FINDINGS.

Congress finds that—

(1) *in the 1800's and early 1900's, the United States sought to assimilate Indian people into the surrounding non-Indian culture by allotting tribal lands to individual members of Indian tribes;*

(2) *as a result of the allotment Acts and related Federal policies, over 90,000,000 acres of land have passed from tribal ownership;*

(3) *many trust allotments were taken out of trust status, often without their owners consent;*

(4) *without restrictions on alienation, allotment owners were subject to exploitation and their allotments were often sold or disposed of without any tangible or enduring benefit to their owners;*

(5) *the trust periods for trust allotments have been extended indefinitely;*

(6) *because of the inheritance provisions in the original treaties or allotment Acts, the ownership of many of the trust allotments that have remained in trust status has become fractionated into hundreds or thousands of interests, many of which represent 2 percent or less of the total interests;*

(7) *Congress has authorized the acquisition of lands in trust for individual Indians, and many of those lands have also become fractionated by subsequent inheritance;*

(8) *the acquisitions referred to in paragraph (7) continue to be made;*

(9) *the fractional interests described in this section provide little or no return to the beneficial owners of those interests and the administrative costs borne by the United States for those interests are inordinately high;*

(10) *in Babbitt v. Youpee (117 S Ct. 727 (1997)), the United States Supreme Court found that the application of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) to the facts presented in that case to be unconstitutional, forcing the Department of the Interior to address the status of thousands of undivided interests in trust and restricted lands;*

(11)(A) *on February 19, 1999, the Secretary of Interior issued a Secretarial Order which officially reopened the probate of all estates where an interest in land was ordered to escheat to an Indian tribe pursuant to section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206); and*

(B) *the Secretarial Order also directed appropriate officials of the Bureau of Indian Affairs to distribute such interests "to the rightful heirs*

and beneficiaries without regard to 25 U.S.C. 2206";

(12) *in the absence of comprehensive remedial legislation, the number of the fractional interests will continue to grow exponentially;*

(13) *the problem of the fractionation of Indian lands described in this section is the result of a policy of the Federal Government, cannot be solved by Indian tribes, and requires a solution under Federal law.*

(14) *any devise or inheritance of an interest in trust or restricted Indian lands is based on Federal law; and*

(15) *consistent with the Federal policy of tribal self-determination, the Federal Government should encourage the recognized tribal government that exercises jurisdiction over a reservation to establish a tribal probate code for that reservation.*

SEC. 3. DECLARATION OF POLICY.

It is the policy of the United States—

(1) *to prevent the further fractionation of trust allotments made to Indians;*

(2) *to consolidate fractional interests and ownership of those interests into usable parcels;*

(3) *to consolidate fractional interests in a manner that enhances tribal sovereignty;*

(4) *to promote tribal self-sufficiency and self-determination; and*

(5) *to reverse the effects of the allotment policy on Indian tribes.*

SEC. 4. AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT.

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended—

(1) *in section 202—*

(A) *in paragraph (1), by striking "(1) 'tribe'" and inserting "(1) 'Indian tribe' or 'tribe'";*

(B) *by striking paragraph (2) and inserting the following:*

"(2) 'Indian' means any person who is a member of any Indian tribe or is eligible to become a member of any Indian tribe at the time of the distribution of the assets of a decedent's estate;"

(C) *by striking "and" at the end of paragraph (3);*

(D) *by striking the period at the end of paragraph (4) and inserting "; and"; and*

(E) *by adding at the end the following:*

"(5) 'heirs of the first or second degree' means parents, children, grandchildren, grandparents, brothers and sisters of a decedent;"

(2) *in section 205—*

(A) *in the matter preceding paragraph (1)—*

(i) *by striking "Any Indian" and inserting*

"(a) IN GENERAL.—Subject to subsection (b), any Indian";

(ii) *by striking the colon and inserting the following: ". Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met.";*

(iii) *by striking ": Provided, That—" and inserting the following:*

"(b) CONDITIONS APPLICABLE TO PURCHASE.—Subsection (a) applies on the condition that—";

(B) *in paragraph (2)—*

(i) *by striking "If," and inserting "if"; and*

(ii) *by adding "and" at the end; and*

(C) *by striking paragraph (3) and inserting the following:*

"(3) the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 204.";

(3) *by striking section 206 and inserting the following:*

"SEC. 206. TRIBAL PROBATE CODES; ACQUISITIONS OF FRACTIONAL INTERESTS BY TRIBES.

"(a) TRIBAL PROBATE CODES.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any Indian tribe may adopt a tribal probate code to govern descent and distribution of trust or restricted lands that are—

"(A) located within that Indian tribe's reservation; or

"(B) otherwise subject to the jurisdiction of that Indian tribe.

"(2) POSSIBLE INCLUSIONS.—A tribal probate code referred to in paragraph (1) may include—

"(A) rules of intestate succession; and

"(B) other tribal probate code provisions that are consistent with Federal law and that promote the policies set forth in section 3 of the Indian Land Consolidation Act Amendments of 2000.

"(3) LIMITATIONS.—The Secretary shall not approve a tribal probate code if such code prevents an Indian person from inheriting an interest in an allotment that was originally allotted to his or her lineal ancestor.

"(b) SECRETARIAL APPROVAL.—

"(1) IN GENERAL.—Any tribal probate code enacted under subsection (a), and any amendment to such a tribal probate code, shall be subject to the approval of the Secretary.

"(2) REVIEW AND APPROVAL.—

"(A) IN GENERAL.—Each Indian tribe that adopts a tribal probate code under subsection (a) shall submit that code to the Secretary for review. Not later than 180 days after a tribal probate code is submitted to the Secretary under this paragraph, the Secretary shall review and approve or disapprove that tribal probate code.

"(B) CONSEQUENCE OF FAILURES TO APPROVE OR DISAPPROVE A TRIBAL PROBATE CODE.—If the Secretary fails to approve or disapprove a tribal probate code submitted for review under subparagraph (A) by the date specified in that subparagraph, the tribal probate code shall be deemed to have been approved by the Secretary, but only to the extent that the tribal probate code is consistent with Federal law and promotes the policies set forth in section 3 of the Indian Land Consolidation Act Amendments of 2000.

"(C) CONSISTENCY OF TRIBAL PROBATE CODE WITH ACT.—The Secretary may not approve a tribal probate code, or any amendment to such a code, under this paragraph unless the Secretary determines that the tribal probate code promotes the policies set forth in section 3 of the Indian Land Consolidation Act Amendments of 2000.

"(D) EXPLANATION.—If the Secretary disapproves a tribal probate code, or an amendment to such a code, under this paragraph, the Secretary shall include in the notice of disapproval to the Indian tribe a written explanation of the reasons for the disapproval.

"(E) AMENDMENTS.—

"(i) IN GENERAL.—Each Indian tribe that amends a tribal probate code under this paragraph shall submit the amendment to the Secretary for review and approval. Not later than 60 days after receiving an amendment under this subparagraph, the Secretary shall review and approve or disapprove the amendment.

"(ii) CONSEQUENCE OF FAILURE TO APPROVE OR DISAPPROVE AN AMENDMENT.—If the Secretary fails to approve or disapprove an amendment submitted under clause (i), the amendment shall be deemed to have been approved by the Secretary, but only to the extent that the amendment is consistent with Federal law and promotes the policies set forth in section 3 of the Indian Land Consolidation Act of 2000.

"(3) EFFECTIVE DATES.—A tribal probate code approved under paragraph (2) shall become effective on the later of—

"(A) the date specified in section 207(f)(5); or

"(B) 180 days after the date of approval.

"(4) LIMITATIONS.—

"(A) TRIBAL PROBATE CODES.—Each tribal probate code enacted under subsection (a) shall