Public Law 106–462
106th Congress

An Act

To reduce the fractionated ownership of Indian lands, and for other purposes.

Nov. 7, 2000
[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".

Indian Land Consolidation Act Amendments of 2000.
25 USC 2201 note.

TITLE I—INDIAN LAND CONSOLIDATION

SEC. 101. FINDINGS.

25 USC 2201 note.

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 owner's 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 undivided 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 often 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 the application of section 207

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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 the 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 a matter of 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.

25 USC 2201 note.

SEC. 102. 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.

25 USC 2201 note.

SEC. 103. 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, or any person who has been found to meet the definition of 'Indian' under a provision of Federal law if the Secretary determines that using such law's definition of Indian is consistent with the purposes of this Act;";

(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— 25 USC 2204.

(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: 25 USC 2205.

"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 102 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.—

Deadline.

"(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 102 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 102 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.—

Deadline.

"(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 102 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(g)(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 apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

"(B) AMENDMENTS TO TRIBAL PROBATE CODES.—With respect to an amendment to a tribal probate code referred to in subparagraph (A), that amendment shall apply only to the estate of a decedent who dies on or after the effective date of the amendment.

"(5) REPEALS.—The repeal of a tribal probate code shall—

"(A) not become effective earlier than the date that is 180 days after the Secretary receives notice of the repeal; and

Effective date.

"(B) apply only to the estate of a decedent who dies on or after the effective date of the repeal.

"(c) AUTHORITY AVAILABLE TO INDIAN TRIBES.—

"(1) IN GENERAL.—If the owner of an interest in trust or restricted land devises an interest in such land to a non-Indian under section 207(a)(6)(A), the Indian tribe that exercises jurisdiction over the parcel of land involved may acquire such interest by paying to the Secretary the fair market value of such interest, as determined by the Secretary on the date of the decedent's death. The Secretary shall transfer such payment to the devisee.

"(2) LIMITATION.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to an interest in trust or restricted land if, while the decedent's estate is pending before the Secretary, the non-Indian devisee renounces the interest in favor of an Indian person.

"(B) RESERVATION OF LIFE ESTATE.—A non-Indian devisee described in subparagraph (A) or a non-Indian devisee described in section 207(a)(6)(B), may retain a life estate in the interest involved, including a life estate to the revenue produced from the interest. The amount of any payment required under paragraph (1) shall be reduced to reflect the value of any life estate reserved by a non-Indian devisee under this subparagraph.

"(3) PAYMENTS.—With respect to payments by an Indian tribe under paragraph (1), the Secretary shall—

"(A) upon the request of the tribe, allow a reasonable period of time, not to exceed 2 years, for the tribe to make payments of amounts due pursuant to paragraph (1); or

"(B) recognize alternative agreed upon exchanges of consideration or extended payment terms between the non-Indian devisee described in paragraph (1) and the tribe in satisfaction of the payment under paragraph (1).

"(d) USE OF PROPOSED FINDINGS BY TRIBAL JUSTICE SYSTEMS.—

"(1) TRIBAL JUSTICE SYSTEM DEFINED.—In this subsection, the term 'tribal justice system' has the meaning given that term in section 3 of the Indian Tribal Justice Act (25 U.S.C. 3602).

"(2) REGULATIONS.—The Secretary by regulation may provide for the use of findings of fact and conclusions of law, as rendered by a tribal justice system, as proposed findings of fact and conclusions of law in the adjudication of probate proceedings by the Department of the Interior.";

(4) by striking section 207 and inserting the following: 25 USC 2206.

"SEC. 207. DESCENT AND DISTRIBUTION.

"(a) TESTAMENTARY DISPOSITION.—

"(1) IN GENERAL.—Interests in trust or restricted land may be devised only to—

"(A) the decedent's Indian spouse or any other Indian person; or

"(B) the Indian tribe with jurisdiction over the land so devised.

"(2) LIFE ESTATE.—Any devise of an interest in trust or restricted land to a non-Indian shall create a life estate with respect to such interest.

"(3) REMAINDER.—

"(A) IN GENERAL.—Except where the remainder from the life estate referred to in paragraph (2) is devised to an Indian, such remainder shall descend to the decedent's Indian spouse or Indian heirs of the first or second degree pursuant to the applicable law of intestate succession.

"(B) DESCENT OF INTERESTS.—If a decedent described in subparagraph (A) has no Indian heirs of the first or second degree, the remainder interest described in such subparagraph shall descend to any of the decedent's collateral heirs of the first or second degree, pursuant to the applicable laws of intestate succession, if on the date of the decedent's death, such heirs were a co-owner of an interest in the parcel of trust or restricted land involved.

"(C) DEFINITION.—For purposes of this section, the term 'collateral heirs of the first or second degree' means the brothers, sisters, aunts, uncles, nieces, nephews, and first cousins, of a decedent.

"(4) DESCENT TO TRIBE.—If the remainder interest described in paragraph (3)(A) does not descend to an Indian heir or heirs it shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to paragraph (5).

"(5) ACQUISITION OF INTEREST BY INDIAN CO-OWNERS.—An Indian co-owner of a parcel of trust or restricted land may prevent the descent of an interest in Indian land to an Indian tribe under paragraph (4) by paying into the decedent's estate the fair market value of the interest in such land. If more than 1 Indian co-owner offers to pay for such an interest, the highest bidder shall obtain the interest. If payment is not received before the close of the probate of the decedent's estate, the interest shall descend to the tribe that exercises jurisdiction over the parcel.

"(6) SPECIAL RULE.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), an owner of trust or restricted land who does not have an Indian spouse, Indian lineal descendant, an Indian heir of the first or second degree, or an Indian collateral heir of the first or second degree, may devise his or her interests in such land to any of the decedent's heirs of the first or second degree or collateral heirs of the first or second degree.

"(B) ACQUISITION OF INTEREST BY TRIBE.—An Indian tribe that exercises jurisdiction over an interest in trust or restricted land described in subparagraph (A) may acquire any interest devised to a non-Indian as provided for in section 206(c).

"(b) INTESTATE SUCCESSION.—

"(1) IN GENERAL.—An interest in trust or restricted land shall pass by intestate succession only to a decedent's spouse or heirs of the first or second degree, pursuant to the applicable law of intestate succession.

"(2) LIFE ESTATE.—Notwithstanding paragraph (1), with respect to land described in such paragraph, a non-Indian spouse or non-Indian heirs of the first or second degree shall only receive a life estate in such land.

"(3) DESCENT OF INTERESTS.—If a decedent described in paragraph (1) has no Indian heirs of the first or second degree, the remainder interest from the life estate referred to in paragraph (2) shall descend to any of the decedent's collateral Indian heirs of the first or second degree, pursuant to the applicable laws of intestate succession, if on the date of the decedent's death, such heirs were a co-owner of an interest in the parcel of trust or restricted land involved.

"(4) DESCENT TO TRIBE.—If the remainder interest described in paragraph (3) does not descend to an Indian heir or heirs it shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to paragraph (5).

"(5) ACQUISITION OF INTEREST BY INDIAN CO-OWNERS.—An Indian co-owner of a parcel of trust or restricted land may prevent the descent of an interest in such land for which there is no heir of the first or second degree by paying into the decedent's estate the fair market value of the interest in such land. If more than 1 Indian co-owner makes an offer to pay for such an interest, the highest bidder shall obtain the interest. If no such offer is made, the interest shall descend to the Indian tribe that exercises jurisdiction over the parcel of land involved.

"(c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.—

"(1) TESTATE.—If a testator devises interests in the same parcel of trust or restricted lands to more than 1 person, in the absence of express language in the devise to the contrary, the devise shall be presumed to create joint tenancy with the right of survivorship in the land involved.

"(2) INTESTATE.—

"(A) IN GENERAL.—Any interest in trust or restricted land that—

"(i) passes by intestate succession to more than 1 person, including a remainder interest under subsection (a) or (b) of section 207; and

"(ii) that constitutes 5 percent or more of the undivided interest in a parcel of trust or restricted land;

shall be held as tenancy in common.

"(B) LIMITED INTEREST.—Any interest in trust or restricted land that—

"(i) passes by intestate succession to more than 1 person, including a remainder interest under subsection (a) or (b) of section 207; and

"(ii) that constitutes less than 5 percent of the undivided interest in a parcel of trust or restricted land;

shall be held by such heirs with the right of survivorship.

"(3) EFFECTIVE DATE.—

"(A) IN GENERAL.—This subsection (other than subparagraph (B)) shall become effective on the later of—

"(i) the date referred to in subsection (g)(5); or

"(ii) the date that is six months after the date on which the Secretary makes the certification required under subparagraph (B).

"(B) CERTIFICATION.—Upon a determination by the Secretary that the Department of the Interior has the capacity, including policies and procedures, to track and manage interests in trust or restricted land held with the right of survivorship, the Secretary shall certify such determination and publish such certification in the Federal Register.

"(d) DESCENT OF OFF-RESERVATION LANDS.—

"(1) INDIAN RESERVATION DEFINED.—For purposes of this subsection, the term 'Indian reservation' includes lands located within—

Oklahoma.

"(A)(i) Oklahoma; and

"(ii) the boundaries of an Indian tribe's former reservation (as defined and determined by the Secretary);

"(B) the boundaries of any Indian tribe's current or former reservation; or

"(C) any area where the Secretary is required to provide special assistance or consideration of a tribe's acquisition of land or interests in land.

"(2) DESCENT.—Except in the State of California, upon the death of an individual holding an interest in trust or restricted lands that are located outside the boundaries of an Indian reservation and that are not subject to the jurisdiction of any Indian tribe, that interest shall descend either—

"(A) by testate or intestate succession in trust to an Indian; or

"(B) in fee status to any other devises or heirs.

"(e) APPROVAL OF AGREEMENTS.—The official authorized to adjudicate the probate of trust or restricted lands shall have the authority to approve agreements between a decedent's heirs and devisees to consolidate interests in trust or restricted lands. The agreements referred to in the preceding sentence may include trust or restricted lands that are not a part of the decedent's estate that is the subject of the probate. The Secretary may promulgate regulations for the implementation of this subsection.

"(f) ESTATE PLANNING ASSISTANCE.—

"(1) IN GENERAL.—The Secretary shall provide estate planning assistance in accordance with this subsection, to the extent amounts are appropriated for such purpose.

"(2) REQUIREMENTS.—The estate planning assistance provided under paragraph (1) shall be designed to—

"(A) inform, advise, and assist Indian landowners with respect to estate planning in order to facilitate the transfer of trust or restricted lands to a devisee or devisees selected by the landowners; and

"(B) assist Indian landowners in accessing information pursuant to section 217(e).

"(3) CONTRACTS.—In carrying out this section, the Secretary may enter into contracts with entities that have expertise in Indian estate planning and tribal probate codes.

"(g) NOTIFICATION TO INDIAN TRIBES AND OWNERS OF TRUST OR RESTRICTED LANDS.—

Deadline.
Notification.

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Indian Land Consolidation Act Amendments of 2000, the Secretary shall notify Indian tribes and owners

of trust or restricted lands of the amendments made by the Indian Land Consolidation Act Amendments of 2000.

"(2) SPECIFICATIONS.—The notice required under paragraph (1) shall be designed to inform Indian owners of trust or restricted land of—

"(A) the effect of this Act, with emphasis on the effect of the provisions of this section, on the testate disposition and intestate descent of their interests in trust or restricted land; and

"(B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice.

"(3) REQUIREMENTS.—The Secretary shall provide the notice required under paragraph (1)—

"(A) by direct mail for those Indians with interests in trust and restricted lands for which the Secretary has an address for the interest holder;

"(B) through the Federal Register;

"(C) through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed at an Indian audience; and

"(D) through any other means determined appropriate by the Secretary.

"(4) CERTIFICATION.—After providing notice under this subsection, the Secretary shall certify that the requirements of this subsection have been met and shall publish notice of such certification in the Federal Register.

Notification. Federal Register, publication.

"(5) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of an individual who dies prior to the day that is 365 days after the Secretary makes the certification required under paragraph (4).";

(5) in section 208, by striking "section 206" and inserting "subsections (a) and (b) of section 206"; and

25 USC 2207.

(6) by adding at the end the following:

"SEC. 213. PILOT PROGRAM FOR THE ACQUISITION OF FRACTIONAL INTERESTS.

25 USC 2212.

"(a) ACQUISITION BY SECRETARY.—

"(1) IN GENERAL.—The Secretary may acquire, at the discretion of the Secretary and with the consent of the owner, and at fair market value, any fractional interest in trust or restricted lands.

"(2) AUTHORITY OF SECRETARY.—

"(A) IN GENERAL.—The Secretary shall have the authority to acquire interests in trust or restricted lands under this section during the 3-year period beginning on the date of certification that is referred to in section 207(g)(5).

"(B) REQUIRED REPORT.—Prior to expiration of the authority provided for in subparagraph (A), the Secretary shall submit the report required under section 218 concerning whether the program to acquire fractional interests should be extended or altered to make resources available to Indian tribes and individual Indian landowners.

"(3) INTERESTS HELD IN TRUST.—Subject to section 214, the Secretary shall immediately hold interests acquired under

this Act in trust for the recognized tribal government that exercises jurisdiction over the land involved.

"(b) REQUIREMENTS.—In implementing subsection (a), the Secretary—

"(1) shall promote the policies provided for in section 102 of the Indian Land Consolidation Act Amendments of 2000;

"(2) may give priority to the acquisition of fractional interests representing 2 percent or less of a parcel of trust or restricted land, especially those interests that would have escheated to a tribe but for the Supreme Court's decision in Babbitt v. Youpee (117 S Ct. 727 (1997));

"(3) to the extent practicable—

"(A) shall consult with the tribal government that exercises jurisdiction over the land involved in determining which tracts to acquire on a reservation;

"(B) shall coordinate the acquisition activities with the acquisition program of the tribal government that exercises jurisdiction over the land involved, including a tribal land consolidation plan approved pursuant to section 204; and

"(C) may enter into agreements (such agreements will not be subject to the provisions of the Indian Self-Determination and Education Assistance Act of 1974) with the tribal government that exercises jurisdiction over the land involved or a subordinate entity of the tribal government to carry out some or all of the Secretary's land acquisition program; and

"(4) shall minimize the administrative costs associated with the land acquisition program.

"(c) SALE OF INTEREST TO INDIAN LANDOWNERS.—

"(1) CONVEYANCE AT REQUEST.—

"(A) IN GENERAL.—At the request of any Indian who owns at least 5 percent of the undivided interest in a parcel of trust or restricted land, the Secretary shall convey an interest acquired under this section to the Indian landowner upon payment by the Indian landowner of the amount paid for the interest by the Secretary.

"(B) LIMITATION.—With respect to a conveyance under this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

"(2) MULTIPLE OWNERS.—If more than one Indian owner requests an interest under paragraph (1), the Secretary shall convey the interest to the Indian owner who owns the largest percentage of the undivided interest in the parcel of trust or restricted land involved.

"(3) LIMITATION.—If an Indian tribe that has jurisdiction over a parcel of trust or restricted land owns 10 percent or more of the undivided interests in a parcel of such land, such interest may only be acquired under paragraph (1) with the consent of such Indian tribe.

25 USC 2213.

"SEC. 214. ADMINISTRATION OF ACQUIRED FRACTIONAL INTERESTS, DISPOSITION OF PROCEEDS.

"(a) IN GENERAL.—Subject to the conditions described in subsection (b)(1), an Indian tribe receiving a fractional interest under section 213 may, as a tenant in common with the other owners of the trust or restricted lands, lease the interest, sell the resources,

consent to the granting of rights-of-way, or engage in any other transaction affecting the trust or restricted land authorized by law.

"(b) CONDITIONS.—

"(1) IN GENERAL.—The conditions described in this paragraph are as follows:

"(A) Until the purchase price paid by the Secretary for an interest referred to in subsection (a) has been recovered, or until the Secretary makes any of the findings under paragraph (2)(A), any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary.

"(B) Subject to subparagraph (C), the Secretary shall deposit any revenue derived under subparagraph (A) into the Acquisition Fund created under section 216.

"(C) The Secretary shall deposit any revenue that is paid under subparagraph (A) that is in excess of the purchase price of the fractional interest involved to the credit of the Indian tribe that receives the fractional interest under section 213 and the tribe shall have access to such funds in the same manner as other funds paid to the Secretary for the use of lands held in trust for the tribe.

"(D) Notwithstanding any other provision of law, including section 16 of the Act of June 18, 1934 (commonly referred to as the 'Indian Reorganization Act') (48 Stat. 987, chapter 576; 25 U.S.C. 476), with respect to any interest acquired by the Secretary under section 213, the Secretary may approve a transaction covered under this section on behalf of a tribe until—

"(i) the Secretary makes any of the findings under paragraph (2)(A); or

"(ii) an amount equal to the purchase price of that interest has been paid into the Acquisition Fund created under section 216.

"(2) EXCEPTION.—Paragraph (1)(A) shall not apply to any revenue derived from an interest in a parcel of land acquired by the Secretary under section 213 after—

"(A) the Secretary makes a finding that—

"(i) the costs of administering the interest will equal or exceed the projected revenues for the parcel involved;

"(ii) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel to generate revenue that equals the purchase price paid for the interest; or

"(iii) a subsequent decrease in the value of land or commodities associated with the land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time; or

"(B) an amount equal to the purchase price of that interest in land has been paid into the Acquisition Fund created under section 216.

"(c) TRIBE NOT TREATED AS PARTY TO LEASE; NO EFFECT ON TRIBAL SOVEREIGNTY, IMMUNITY.—

"(1) IN GENERAL.—Paragraph (2) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

"(2) APPLICATION OF LEASE.—The lease or agreement described in paragraph (1) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

25 USC 2214.

"SEC. 215. ESTABLISHING FAIR MARKET VALUE.

"For purposes of this Act, the Secretary may develop a system for establishing the fair market value of various types of lands and improvements. Such a system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such system may govern the amounts offered for the purchase of interests in trust or restricted lands under section 213.

25 USC 2215.

"SEC. 216. ACQUISITION FUND.

"(a) IN GENERAL.—The Secretary shall establish an Acquisition Fund to—

"(1) disburse appropriations authorized to accomplish the purposes of section 213; and

"(2) collect all revenues received from the lease, permit, or sale of resources from interests in trust or restricted lands transferred to Indian tribes by the Secretary under section 213 or paid by Indian landowners under section 213(c).

"(b) DEPOSITS; USE.—

"(1) IN GENERAL.—Subject to paragraph (2), all proceeds from leases, permits, or resource sales derived from an interest in trust or restricted lands described in subsection (a)(2) shall—

"(A) be deposited in the Acquisition Fund; and

"(B) as specified in advance in appropriations Acts, be available for the purpose of acquiring additional fractional interests in trust or restricted lands.

"(2) MAXIMUM DEPOSITS OF PROCEEDS.—With respect to the deposit of proceeds derived from an interest under paragraph (1), the aggregate amount deposited under that paragraph shall not exceed the purchase price of that interest under section 213.

25 USC 2216.

"SEC. 217. TRUST AND RESTRICTED LAND TRANSACTIONS.

"(a) POLICY.—It is the policy of the United States to encourage and assist the consolidation of land ownership through transactions—

"(1) involving individual Indians;

"(2) between Indians and the tribal government that exercises jurisdiction over the land; or

"(3) between individuals who own an interest in trust and restricted land who wish to convey that interest to an Indian or the tribal government that exercises jurisdiction over the parcel of land involved;

in a manner consistent with the policy of maintaining the trust status of allotted lands. Nothing in this section shall be construed to apply to or to authorize the sale of trust or restricted lands to a person who is not an Indian.

"(b) SALES, EXCHANGES AND GIFT DEEDS BETWEEN INDIANS AND BETWEEN INDIANS AND INDIAN TRIBES.—

"(1) IN GENERAL.—

"(A) ESTIMATE OF VALUE.—Notwithstanding any other provision of law and only after the Indian selling, exchanging, or conveying by gift deed for no or nominal consideration an interest in land, has been provided with an estimate of the value of the interest of the Indian pursuant to this section—

"(i) the sale or exchange or conveyance of an interest in trust or restricted land may be made for an amount that is less than the fair market value of that interest; and

"(ii) the approval of a transaction that is in compliance with this section shall not constitute a breach of trust by the Secretary.

"(B) WAIVER OF REQUIREMENT.—The requirement for an estimate of value under subparagraph (A) may be waived in writing by an Indian selling, exchanging, or conveying by gift deed for no or nominal consideration an interest in land with an Indian person who is the owner's spouse, brother, sister, lineal ancestor of Indian blood, lineal descendant, or collateral heir.

"(2) LIMITATION.—For a period of 5 years after the Secretary approves a conveyance pursuant to this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

"(c) ACQUISITION OF INTEREST BY SECRETARY.—An Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on the date of enactment of the Indian Land Consolidation Act Amendments of 2000 and located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.

"(d) STATUS OF LANDS.—The sale, exchange, or conveyance by gift deed for no or nominal consideration of an interest in trust or restricted land under this section shall not affect the status of that land as trust or restricted land.

"(e) LAND OWNERSHIP INFORMATION.—Notwithstanding any other provision of law, the names and mailing addresses of the Indian owners of trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual, or of any interest in trust or restricted lands, shall, upon written request, be made available to—

"(1) other Indian owners of interests in trust or restricted lands within the same reservation;

"(2) the tribe that exercises jurisdiction over the land where the parcel is located or any person who is eligible for membership in that tribe; and

"(3) prospective applicants for the leasing, use, or consolidation of such trust or restricted land or the interest in trust or restricted lands.

"(f) NOTICE TO INDIAN TRIBE.—After the expiration of the limitation period provided for in subsection (b)(2) and prior to considering an Indian application to terminate the trust status or to remove the restrictions on alienation from trust or restricted land sold, exchanged or otherwise conveyed under this section, the Indian tribe that exercises jurisdiction over the parcel of such land shall be notified of the application and given the opportunity to match the purchase price that has been offered for the trust or restricted land involved.

25 USC 2217.

"SEC. 218. REPORTS TO CONGRESS.

"(a) IN GENERAL.—Prior to expiration of the authority provided for in section 213(a)(2)(A), the Secretary, after consultation with Indian tribes and other interested parties, shall submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that indicates, for the period covered by the report—

"(1) the number of fractional interests in trust or restricted lands acquired; and

"(2) the impact of the resulting reduction in the number of such fractional interests on the financial and realty recordkeeping systems of the Bureau of Indian Affairs.

"(b) REPORT.—The reports described in subsection (a) and section 213(a) shall contain findings as to whether the program under this Act to acquire fractional interests in trust or restricted lands should be extended and whether such program should be altered to make resources available to Indian tribes and individual Indian landowners.

25 USC 2218.

"SEC. 219. APPROVAL OF LEASES, RIGHTS-OF-WAY, AND SALES OF NATURAL RESOURCES.

"(a) APPROVAL BY THE SECRETARY.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may approve any lease or agreement that affects individually owned allotted land or any other land held in trust or restricted status by the Secretary on behalf of an Indian, if—

"(A) the owners of not less than the applicable percentage (determined under subsection (b)) of the undivided interest in the allotted land that is covered by the lease or agreement consent in writing to the lease or agreement; and

"(B) the Secretary determines that approving the lease or agreement is in the best interest of the owners of the undivided interest in the allotted land.

"(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to apply to leases involving coal or uranium.

"(3) DEFINITION.—In this section, the term 'allotted land' includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians.

"(b) APPLICABLE PERCENTAGE.—

"(1) PERCENTAGE INTEREST.—The applicable percentage referred to in subsection (a)(1) shall be determined as follows:

"(A) If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 100 percent.

"(B) If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent.

"(C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent.

"(D) If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land.

"(2) DETERMINATION OF OWNERS.—

"(A) IN GENERAL.—For purposes of this subsection, in determining the number of owners of, and their interests in, the undivided interest in the allotted land with respect to a lease or agreement, the Secretary shall make such determination based on the records of the Department of the Interior that identify the owners of such lands and their interests and the number of owners of such land on the date on which the lease or agreement involved is submitted to the Secretary under this section.

"(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to authorize the Secretary to treat an Indian tribe as the owner of an interest in allotted land that did not escheat to the tribe pursuant to section 207 as a result of the Supreme Court's decision in Babbitt v. Youpee (117 S Ct. 727 (1997)).

"(c) AUTHORITY OF SECRETARY TO SIGN LEASE OR AGREEMENT ON BEHALF OF CERTAIN OWNERS.—The Secretary may give written consent to a lease or agreement under subsection (a)—

"(1) on behalf of the individual Indian owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

"(2) on behalf of any heir or devisee referred to in paragraph (1) if the heir or devisee has been determined but cannot be located

"(d) EFFECT OF APPROVAL.—

"(1) APPLICATION TO ALL PARTIES.—

"(A) IN GENERAL.—Subject to paragraph (2), a lease or agreement approved by the Secretary under subsection (a) shall be binding on the parties described in subparagraph (B), to the same extent as if all of the owners of the undivided interest in allotted land covered under the lease or agreement consented to the lease or agreement.

"(B) DESCRIPTION OF PARTIES.—The parties referred to in subparagraph (A) are—

"(i) the owners of the undivided interest in the allotted land covered under the lease or agreement referred to in such subparagraph; and

"(ii) all other parties to the lease or agreement.

"(2) TRIBE NOT TREATED AS PARTY TO LEASE; NO EFFECT ON TRIBAL SOVEREIGNTY, IMMUNITY.—

"(A) IN GENERAL.—Subparagraph (B) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

"(B) APPLICATION OF LEASE.—The lease or agreement described in subparagraph (A) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

"(e) DISTRIBUTION OF PROCEEDS.—

"(1) IN GENERAL.—The proceeds derived from a lease or agreement that is approved by the Secretary under subsection (a) shall be distributed to all owners of undivided interest in the allotted land covered under the lease or agreement.

"(2) DETERMINATION OF AMOUNTS DISTRIBUTED.—The amount of the proceeds under paragraph (1) that are distributed to each owner under that paragraph shall be determined in accordance with the portion of the undivided interest in the allotted land covered under the lease or agreement that is owned by that owner.

"(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to amend or modify the provisions of Public Law 105–188 (25 U.S.C. 396 note), the American Indian Agricultural Resources Management Act (25 U.S.C. 3701 et seq.), title II of the Indian Land Consolidation Act Amendments of 2000, or any other Act that provides specific standards for the percentage of ownership interest that must approve a lease or agreement on a specified reservation.

25 USC 2219.

"SEC. 220. APPLICATION TO ALASKA.

"(a) FINDINGS.—Congress finds that—

"(1) numerous academic and governmental organizations have studied the nature and extent of fractionated ownership of Indian land outside of Alaska and have proposed solutions to this problem; and

"(2) despite these studies, there has not been a comparable effort to analyze the problem, if any, of fractionated ownership in Alaska.

"(b) APPLICATION OF ACT TO ALASKA.—Except as provided in this section, this Act shall not apply to land located within Alaska.

"(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to constitute a ratification of any determination by any agency, instrumentality, or court of the United States that may support the assertion of tribal jurisdiction over allotment lands or interests in such land in Alaska.".

25 USC 2206 note.

SEC. 104. JUDICIAL REVIEW.

Notwithstanding section 207(g)(5) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(5)), after the Secretary of the Interior provides the certification required under section 207(g)(4) of such Act, the owner of an interest in trust or restricted land may bring an administrative action to challenge the application of such section 207 to the devise or descent of his or her interest or interests in trust or restricted lands, and may seek judicial review of the final decision of the Secretary of the Interior with respect to such challenge.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS. 25 USC 2201 note.

There are authorized to be appropriated not to exceed $8,000,000 for fiscal year 2001 and each subsequent fiscal year to carry out the provisions of this title (and the amendments made by this title) that are not otherwise funded under the authority provided for in any other provision of Federal law.

SEC. 106. CONFORMING AMENDMENTS.

(a) PATENTS HELD IN TRUST.—The Act of February 8, 1887 (24 Stat. 388) is amended—

(1) by repealing sections 1, 2, and 3 (25 U.S.C. 331, 332, and 333); and

(2) in the second proviso of section 5 (25 U.S.C. 348)—

(A) by striking "and partition"; and

(B) by striking "except" and inserting "except as provided by the Indian Land Consolidation Act or a tribal probate code approved under such Act and except".

(b) ASCERTAINMENT OF HEIRS AND DISPOSAL OF ALLOTMENTS.—The Act of June 25, 1910 (36 Stat. 855) is amended—

(1) in the first sentence of section 1 (25 U.S.C. 372), by striking "under" and inserting "under the Indian Land Consolidation Act or a tribal probate code approved under such Act and pursuant to"; and

(2) in the first sentence of section 2 (25 U.S.C. 373), by striking "with regulations" and inserting "with the Indian Land Consolidation Act or a tribal probate code approved under such Act and regulations".

(c) TRANSFER OF LANDS.—Section 4 of the Act of June 18, 1934 (25 U.S.C. 464) is amended by striking "member or:" and inserting "member or, except as provided by the Indian Land Consolidation Act,".

TITLE II—LEASES OF NAVAJO INDIAN ALLOTTED LANDS

SEC. 201. LEASES OF NAVAJO INDIAN ALLOTTED LANDS. 25 USC 396 note.

(a) DEFINITIONS.—In this section:

(1) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) INDIVIDUALLY OWNED NAVAJO INDIAN ALLOTTED LAND.—The term "individually owned Navajo Indian allotted land" means Navajo Indian allotted land that is owned in whole or in part by 1 or more individuals.

(3) NAVAJO INDIAN.—The term "Navajo Indian" means a member of the Navajo Nation.

(4) NAVAJO INDIAN ALLOTTED LAND.—The term "Navajo Indian allotted land" means a single parcel of land that—

(A) is located within the jurisdiction of the Navajo Nation; and

(B)(i) is held in trust or restricted status by the United States for the benefit of Navajo Indians or members of another Indian tribe; and

(ii) was—

(I) allotted to a Navajo Indian; or

(II) taken into trust or restricted status by the United States for a Navajo Indian.

(5) OWNER.—The term "owner" means, in the case of any interest in land described in paragraph (4)(B)(i), the beneficial owner of the interest.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(b) APPROVAL BY THE SECRETARY.—

(1) IN GENERAL.—The Secretary may approve an oil or gas lease or agreement that affects individually owned Navajo Indian allotted land, if—

(A) the owners of not less than the applicable percentage (determined under paragraph (2)) of the undivided interest in the Navajo Indian allotted land that is covered by the oil or gas lease or agreement consent in writing to the lease or agreement; and

(B) the Secretary determines that approving the lease or agreement is in the best interest of the owners of the undivided interest in the Navajo Indian allotted land.

(2) PERCENTAGE INTEREST.—The applicable percentage referred to in paragraph (1)(A) shall be determined as follows:

(A) If there are 10 or fewer owners of the undivided interest in the Navajo Indian allotted land, the applicable percentage shall be 100 percent.

(B) If there are more than 10 such owners, but fewer than 51 such owners, the applicable percentage shall be 80 percent.

(C) If there are 51 or more such owners, the applicable percentage shall be 60 percent.

(3) AUTHORITY OF SECRETARY TO SIGN LEASE OR AGREEMENT ON BEHALF OF CERTAIN OWNERS.—The Secretary may give written consent to an oil or gas lease or agreement under paragraph (1) on behalf of an individual Indian owner if—

(A) the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

(B) the heirs or devisees referred to in subparagraph (A) have been determined, but 1 or more of the heirs or devisees cannot be located.

(4) EFFECT OF APPROVAL.—

(A) APPLICATION TO ALL PARTIES.—

(i) IN GENERAL.—Subject to subparagraph (B), an oil or gas lease or agreement approved by the Secretary under paragraph (1) shall be binding on the parties described in clause (ii), to the same extent as if all of the owners of the undivided interest in Navajo Indian allotted land covered under the lease or agreement consented to the lease or agreement.

(ii) DESCRIPTION OF PARTIES.—The parties referred to in clause (i) are—

(I) the owners of the undivided interest in the Navajo Indian allotted land covered under the lease or agreement referred to in clause (i); and

(II) all other parties to the lease or agreement.

(B) EFFECT ON INDIAN TRIBE.—If—

(i) an Indian tribe is the owner of a portion of an undivided interest in Navajo Indian allotted land; and

(ii) an oil or gas lease or agreement under paragraph (1) is otherwise applicable to such portion by reason of this subsection even though the Indian tribe did not consent to the lease or agreement,

then the lease or agreement shall apply to such portion of the undivided interest (including entitlement of the Indian tribe to payment under the lease or agreement), but the Indian tribe shall not be treated as a party to the lease or agreement and nothing in this subsection (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

(5) DISTRIBUTION OF PROCEEDS.—

(A) IN GENERAL.—The proceeds derived from an oil or gas lease or agreement that is approved by the Secretary under paragraph (1) shall be distributed to all owners of the undivided interest in the Navajo Indian allotted land covered under the lease or agreement.

(B) DETERMINATION OF AMOUNTS DISTRIBUTED.—The amount of the proceeds under subparagraph (A) distributed to each owner under that subparagraph shall be determined in accordance with the portion of the undivided interest in the Navajo Indian allotted land covered under the lease or agreement that is owned by that owner.

Approved November 7, 2000.

LEGISLATIVE HISTORY—S. 1586:

SENATE REPORTS: No. 106–361 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 146 (2000):
July 26, considered and passed Senate.
Oct. 23, considered and passed House.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 36 (2000):
Nov. 11, Presidential statement.