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2d Session }

SENATE

{ REPORT
110-504

AMENDING CERTAIN LAWS RELATING TO NATIVE AMERICANS, AND FOR OTHER PURPOSES

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 5680]

The Committee on Indian Affairs, to which was referred the bill (H.R. 5680) to amend certain laws relating to Native Americans, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 5680, as ordered to be reported, is to amend certain laws relating to Native Americans, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 5680, as ordered to be reported, is comprised of nine distinct measures that seek to resolve issues affecting certain Native Americans and Alaska Natives.

COLORADO RIVER INDIAN TRIBES

Section 2 provides that the Secretary may make, subject to any subsequent appropriations acts, an annual disbursement of no less than \$200,000 and not to exceed \$350,000 to the Colorado River Indian Tribes. The Tribes are required to use funds disbursed under this section to fund an Office of the Colorado River Indian Tribes Reservation Energy Development.

The Bureau of Indian Affairs (BIA) currently operates a hydroelectric facility on the Tribes' Reservation. The Tribes would like to assume some of the oversight, management, and administrative functions of the administration of the hydroelectric facility and re-

lated infrastructure. The Tribes anticipate that any expenditures under this bill would be used to establish an Office of the Colorado River Indian Tribes Reservation Energy Development that could provide oversight of the hydroelectric facility on the Reservation. The Tribes also anticipate that any expenditures under this bill could be offset by the cost savings of eliminating similar oversight that has until now been performed by the BIA.

GILA RIVER INDIAN COMMUNITY CONTRACTS

In 2005, Congress enacted language to the leasing provisions of 25 U.S.C. § 415(f) on behalf of the Gila River Indian Community which authorized the Community to include binding arbitration clauses in any contract, including a lease, affecting land within the Gila River Indian Community Reservation. The Gila River Indian Community has adopted standard provisions in its commercial agreements which provide for arbitration should any dispute arise relating thereto. These provisions typically provide that the agreement to arbitrate may be enforced in either Federal or Tribal Court. In addition to the existing authority for “leases,” this legislation would make clear that the Community is authorized to include binding arbitration clauses in “construction contracts.” The Community believes that this legislation would encourage business development on the Gila River Reservation by providing prospective developers certainty and predictability as they pertain to the mechanism for resolving potential contractual disputes.

LAND AND INTERESTS OF SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS OF MICHIGAN

In 1993, the Sault Ste. Marie Tribe purchased 16 acres of private land in the city of St. Ignace, Michigan and operated a motel on the property for several years. The Tribe donated this fee simple land to the Mackinac Straits Hospital Authority (MSH) for the purpose of constructing a new hospital in 2005. The new hospital construction is backed by a \$35 million loan guarantee from the U.S. Department of Agriculture (USDA).

As part of the loan guarantee, the USDA requires title insurance coverage. However, the title insurance company has questions about the donation of lands held in fee simple by the Tribe. USDA is holding up the loan guarantee until the title insurance company agrees to the coverage. This provision will address the title company’s concern by making clear the Tribe’s right to convey the land for the hospital in 2005 was legal. The title insurance can then be acquired and the USDA loan guarantee secured.

The title insurance company’s questions arise from the Indian Non-Intercourse Act, 25 U.S.C. Sec. 177, which prohibits the sale, grant or lease of land from any Indian nation without the consent of the federal government. The title insurance company will not issue coverage until either the Bureau of Indian Affairs (BIA) commits in writing that they will not enforce the Indian Non-Intercourse Act or Congress approves the land transfer through legislation. Current Administration policy is that the Non-Intercourse Act does not grant the Secretary of the Interior the authority to approve private (fee) land sales without direct authorization from Congress. With this legislation Congress authorizes the land transaction.

MORONGO TRIBE LEASE EXTENSION

The Morongo Band of Mission Indians' Reservation is located on approximately 36,000 acres of land, bisected by the east-west I-10 corridor near Banning, California. In 2002, the tribe began a program to develop an industrial park using parcels of land south of Interstate 10. To date, the Band has been successful in securing a long-term lease agreement with the Nestle Company and one of its subsidiary units, Arrowhead Water, for the production and bottling of water for personal consumption. However, the Band believes it necessary to have the ability to enter into lease agreements for periods longer than their current authorized term of 25 years in order to attract additional tenants and diversify their economy. The Band believes that it must seek similar authority in order to remain competitive.

COW CREEK BAND LEASING AUTHORITY

The Cow Creek Band has been actively investing in local infrastructure and economic development with the goals of diversifying their economy and assisting in shaping and recreating the local economy. The Band is interested in attracting outside businesses and capital to their under-developed commercial and industrial areas near I-5 in southwestern Oregon. However, during previous business negotiations, the Band's currently authorized 25-year lease term has been a limiting factor. Many businesses have been reluctant to make large investments when there is no guarantee that they could operate their business beyond 25 years. Most other tribes located in Oregon have the authority to enter into 99-year leases, and the Band believes they are at a disadvantage.

NEW SETTLEMENT COMMON STOCK ISSUED TO DESCENDANTS, LEFT-OUTS AND ELDERS

Pursuant to the Alaska Native Claims Settlement Act (ANCSA), Alaska Natives born on or before December 18, 1971, were enrolled to one of thirteen Regional Corporations as shareholders, and to the village, urban and group corporations in which they lived or to which they had an historical, cultural, and familial tie (collectively "Alaska Native Corporations").

In 1988, ANCSA was amended to allow Alaska Native Corporations to authorize the issuance of shares of settlement common stock, with or without consideration, to descendants of the original shareholders born after December 18, 1971, missed enrollees, and Elders.

Shares issued pursuant to this enabling authority can be subjected to a variety of terms, conditions and restrictions as may be specified in an amendment to the corporation's Article of Incorporation or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment enacted in 1988 enumerated, without limitation, a few such terms, conditions and restrictions which might be considered in issuing such stock. In response to requests from Alaska Native Corporations for specific congressional sanction of two additional terms, conditions and restrictions that can be placed in this stock, this amendment to ANCSA expressly authorizes corporations to limit or eliminate the voting rights of the shares and to prohibit

the transfer of these shares by inter vivos gift. This provision is not in any way intended to limit the terms, conditions and restrictions which have been or may in the future be placed on these shares under the authority granted by the 1988 amendments to the ANCSA.

This section was revised by the Manager's Amendment to eliminate certain changes to ANCSA governing the transfer and alienation of Settlement Common Stock which were determined to be redundant.

ADMISSIONS POLICY

Section 8 codifies a December 5, 2006, en banc decision by the United States Court of Appeals for the Ninth Circuit that a private school can maintain its admissions policy. The school provides all of its services to its students through a private trust.

This section was added by the Manager's Amendment.

INDIAN LAND CONSOLIDATION ACT

The American Indian Probate Reform Act (AIPRA) was enacted on October 27, 2004. AIPRA amended the Indian Land Consolidation Act (ILCA) by creating a uniform probate code applicable to individual Indian trust and restricted lands subject to certain exceptions set forth in the Act.

One important goal of AIPRA was to assure that the interest of an intestate decedent Indian in permanent improvements attached to a tract of trust or restricted land that was also in the estate of the decedent would descend to the same heir or heirs who inherited the underlying trust or restricted land. The approach under current law is to define the term "land" in the ILCA definition section (25 U.S.C. § 2201) in such a way that "land" includes permanent improvements for this purpose. This approach has led to some uncertainty as to the treatment of permanent improvements in the Probate Code and calls for a more direct approach to dealing with this kind of property.

Accordingly, section 9 of the bill would address this matter of permanent improvements by providing that (1) for intestate disposition, a decedent's interest in permanent improvements attached to trust or restricted land that is included in the decedent's estate descends to the same heir or heirs who inherit the underlying land, and (2) for testate disposition, establishing a presumption that a devise of trust or restricted land in a will includes any interest of the testator in permanent improvements attached to that land, absent express language to the contrary in the will.

Section 9, among other things, would also: (1) clarify that the 5% threshold applicable to non-consensual purchase of small interests is measured against the decedent's interest in the land immediately preceding death rather than the interest descending to a particular heir; (2) simplify the purchase option at probate and limit the eligible purchasers in non-consensual probate purchases of very small interests to the Secretary and, where the interest would be passing by intestate succession to a non-member, the Indian tribe; and (3) clarify that the "Owner-Managed Interests" section of ILCA (25 U.S.C. 2220) is applicable to sole owners as well as co-owners.

This section was added by the Manager's Amendment.

SUMMARY OF THE AMENDMENTS

At its September 23, 2008 business meeting, the Committee adopted a Managers Amendment to H.R. 5680. The Manager's Amendment revises section 7 and adds sections 8 and 9. The amendments are explained in the section above.

SECTION-BY-SECTION ANALYSIS OF H.R. 5680 AS AMENDED

Sec. 1. Table of contents

Section 1 lists the table of contents of the bill.

Sec. 2. Colorado River Indian Tribes

Section 2 allows the Secretary of the Interior to make an annual disbursement to the Colorado River Indian Tribes, subject to amounts provided in subsequent appropriations Acts. Funds disbursed under this section shall be used to fund the Office of the Colorado River Indian Tribes Reservation Energy Development. In each year, the funds shall not be less than \$200,000 and not to exceed \$350,000.

Sec. 3. Gila River Indian Community contracts

Section 3 clarifies that construction contracts are included in those to which the Gila River Indian Community is authorized to enter into agreements for binding arbitration.

Sec. 4. Land and interests of the Sault Ste. Marie Tribe of Chippewa Indians of Michigan

Section 4 clarifies the right of the Sault Ste. Marie Tribe of Chippewa Indians of Michigan to transfer land owned by the Tribe in fee simple status.

Sec. 5. Morongo Band of Mission Indians lease extension

Section 5 amends the Indian Long-Term Leasing Act, 25 U.S.C. 415(a), to authorize the Morongo Band of Mission Indians to lease lands held in trust for up to 50 years. Currently, the Indian Long-Term Leasing Act authorizes tribes to enter into 25-year leases, with the option to renew for an additional 25 years.

Sec. 6. Cow Creek Band of Umpqua Tribe of Indians leasing authority

Section 6 amends the Indian Long-Term Leasing Act, 25 U.S.C. 415(a), to authorize the Cow Creek Band of Umpqua Indians to lease lands held in trust for up to 99 years. Currently, the Indian Long-Term Leasing Act authorizes tribes to enter into 25-year leases, with the option to renew for an additional 25 years.

Sec. 7. New settlement common stock issued to descendants, left-outs, and elders

Section 7 would amend the Alaska Native Claims Settlement Act to expressly authorize Alaska Native Corporations to limit or eliminate the voting rights of settlement common stock shares issued to descendants of the original shareholders born after December 18, 1971, missed enrollees, and Elders and to prohibit the transfer of these shares by inter vivos gift.

Sec. 8. Admissions policy

Section 8 codifies that a private school can maintain its admission's policy as upheld by case number 04–15044 of the United States Court of Appeals for the Ninth Circuit (December 5, 2006). The effective date of this section is December 5, 2006.

Sec. 9. Indian Land Consolidation Act

Section 9 would amend various provisions of the Indian Land Consolidation Act (ILCA). Section 9(a) would amend the definitions section of ILCA (25 U.S.C. 2201) by making technical and clarifying changes to the definition of 'trust or restricted lands' and to the definition of 'land' (insofar as it pertains to permanent improvements).

Section 9(c) would amend the Indian Probate Code of ILCA (25 U.S.C. 2206), by, among other things—

(1) providing for intestate and testamentary treatment of permanent improvements attached to individual Indian trust or restricted land under section 207 of ILCA;

(2) providing a tribal “opt-out” of the current rule in the Probate Code against devising Indian Reorganization Act (IRA) reservation lands to non-Indians by allowing the tribe to pass a resolution requesting the Secretary of the Interior to follow the rule otherwise applicable to non-IRA reservations (which allows such devises);

(3) simplifying the process relating to the purchase option at probate by allowing the heir or surviving spouse to choose which of the eligible bidders may purchase the interest, without holding an auction;

(4) clarifying that the 5% threshold applicable to the non-consensual purchase of small interests during probate is to be measured against the decedent's interest in the land immediately before death as opposed to the interest passing to a particular heir; and

(5) limiting the eligible purchasers in non-consensual probate purchases of very small interests to the Secretary, and, where the interest would be passing by intestate succession to a non-member, the Indian tribe.

Section 9(e) would amend the “Owner-Managed Interests” section of ILCA (25 U.S.C. 2220) to clarify that that section is applicable to sole owners in addition to co-owners.

Section 9(f) provides that (1) the amendments made to the testamentary disposition section of ILCA by this bill will not apply to any will that was executed before the date that is one year after the date of enactment of this Act, and (2) the amendments made to the small undivided interests section of ILCA by this bill shall not apply to or affect any sale of such interests that was completed before the date of enactment of this bill.

LEGISLATIVE HISTORY

H.R. 5680 was introduced by Representative Grijalva (D–AZ) on April 2, 2008. The House Committee on Natural Resources held a hearing on April 9, 2008. The Department of the Interior testified at this hearing. A number of changes were made to the bill in response to the Department's testimony.

On May 15, 2008, the House Committee on Natural Resources ordered the bill reported by unanimous consent. On June 18, 2008, the House of Representatives passed the bill by a voice vote.

On June 19, 2008, H.R. 5680 was received in the Senate and referred to the Committee on Indian Affairs. On September 23, 2008, the Committee held an open business meeting to consider H.R. 5680 as well as other legislation. A Managers Amendment to H.R. 5680 was offered. The Committee approved H.R. 5680, as amended, by voice vote.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

At an open business meeting held September 23, 2008, the Committee on Indian Affairs, by a voice vote, adopted H.R. 5680, with an amendment and ordered the bill favorably reported to the Senate, with the recommendation that the Senate do pass H.R. 5680 as reported.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 5680, as prepared by the Congressional Budget Office (CBO), is set forth below.

CBO estimates that this bill will have no significant impact on the federal budget. Passage of H.R. 5680 would increase direct spending by roughly \$300,000 annually but would not affect revenues.

H.R. 5680—A bill to amend certain laws relating to Native Americans, and for other purposes

H.R. 5680 would amend various laws concerning Native Americans. CBO estimates that implementing this legislation would have no significant impact on the federal budget. Enacting H.R. 5680 would increase direct spending by roughly \$300,000 annually but would not affect revenues.

H.R. 5680 contains no intergovernmental or private-sector mandates as defined in the Unfunded Reform Mandates Act and would impose no costs on state, local, or tribal governments. The provisions would benefit several Indian tribes.

The bill would authorize the Secretary of the Interior to make payments of between \$200,000 and \$350,000 annually to the reservation of Colorado River Indian Tribes for a new local energy department. The payments would be made from receipts earned from the sale of electricity generated by the federally owned Colorado River power system on that reservation.

Under current law, such receipts from electricity sales—an estimated \$10 million a year—may be used without further appropriation to operate and maintain generating facilities, transmission lines, and other infrastructure. Under the bill, receipts collected in excess of amounts needed for those purposes would be available, also without further appropriation, for payments to the tribe. Assuming that receipts will be available for the new energy department, CBO estimates that the additional direct spending under the bill would total around \$300,000 a year.

Other sections of the bill would have no significant impact on the federal budget. Those sections would:

- Authorize the Secretary to take lands into trust for the Miccosukee Tribe of Indians of Florida;
- Allow certain tribes to lease lands held in trust for more than 25-year terms; and
- Permit the Sault Ste. Marie Tribe of Chippewa Indians of Michigan to lease, transfer, or convey, without the approval of the Secretary, any interest in land not held in trust by the United States.

The CBO staff contact for this estimate is Leigh Angres. The estimate was approved by Theresa Gullo, Deputy 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 evaluate the regulatory paperwork impact that would be incurred in implementing this legislation. The Committee has concluded that enactment of H.R. 5680 will create only de minimis regulatory or paperwork burdens.

EXECUTIVE COMMUNICATION

The Committee has not received an official communication from the Administration of the bill as amended.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 9, 1955

AN ACT To authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) 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 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 reservation of the Confederated Tribes of the Warm Springs

Reservation of Oregon, *and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians*, the Moapa Indian reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the reservation of the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute 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 Reservations, 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 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 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, 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 Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, lands held in trust for the Cherokee Nation of Oklahoma, lands held in trust for the Fallon Paiute Shoshone Tribes, 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 Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville 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 held in trust for the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California, which may be for a term not to exceed 50 years*, and except leases of land for grazing purposes which may be for a term not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes 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.

* * * * *

(f) A contract, including a [lease, affecting] *lease or construction contract, affecting* land within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such contract. Such contracts shall be considered within the meaning of ‘commerce’ as defined and subject to the provisions of section 1 of title 9, United States Code. 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, United States Code, 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, United States Code.

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ALASKA NATIVE CLAIMS SETTLEMENT ACT

43 U.S.C. 1606

SEC. 7. REGIONAL CORPORATIONS.

* * * * *

(g)(1) SETTLEMENT COMMON STOCK.—

(A) * * *

(B)(i) * * *

* * * * *

[(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.]

(iii) CONDITIONS ON CERTAIN STOCK—

(I) *IN GENERAL.*—An amendment under clause (i) may provide that Settlement Common Stock issued to a Native pursuant to the amendment (or stock issued in exchange for that Settlement Common Stock pursuant to subsection (h)(3) or section 29(c)(3)(D)) shall be subject to 1 or more of the conditions described in subclause (II).

(II) *CONDITIONS.*—A condition referred to in subclause (I) is a condition that—

(aa) *the stock described in that subclause shall be deemed to be canceled on the death of the Native to whom the stock is issued, and no compensation for the cancellation shall be paid to the estate of the deceased Native or any person holding the stock;*

*(bb) the stock shall carry limited or no voting rights;
and
(cc) the stock shall not be transferred by gift under
subsection (h)(1)(C)(iii).*

* * * * *

INDIAN LAND CONSOLIDATION ACT

25 U.S.C. 2201

Section 202 of the Indian Land Consolidation Act is amended as follows:

SEC. 2201. DEFINITIONS.

* * * * *

(4)(i) “trust or restricted lands” means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and [“trust or restricted interest in land” or](ii) “*trust or restricted interest in land*” or “trust or restricted interest in a parcel of land” means [an interest in land, title to which] *an interest in land, the title to which interest* is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.

* * * * *

[(7) “land” means any real property, and includes within its meaning for purposes of this chapter improvements permanently affixed to real property;](7) *the term ‘land’ means any real property;*

25 U.S.C. 2204(c)(2)(D)(i)

Section 205(c)(2)(D)(i) of the Indian Land Consolidation Act is amended as follows:

(III) the owners (including parents of minor owners and legal guardians of incompetent owners) of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner’s total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of \$1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by *the* Secretary unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

25 U.S.C. 2206

Section 207 of the Indian Land Consolidation Act is amended as follows:

(a)(2)(D) **INTESTATE DESCENT OF SMALL FRACTIONAL INTERESTS IN LAND.**—

(i) GENERAL RULE.—Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with clauses (ii) through [(iv)](v). * * *

(iv) * * *

(II) the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of [decedent] *descent* set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if—
* * *

[(v) RULE OF CONSTRUCTION.—This subparagraph shall not be construed to limit a person's right to devise any trust or restricted interest by way of a valid will in accordance with subsection (b) of this section.]

(v) EFFECT OF SUBPARAGRAPH.—*Nothing in this subparagraph limits the right of any person to devise any trust or restricted interest pursuant to a valid will in accordance with subsection (b).* * * *

* * * * *

(a) NONTESTAMENTARY DISPOSITION.—

* * * * *

(6) *INTESTATE DESCENT OF PERMANENT IMPROVEMENTS.*—

(A) *DEFINITION OF COVERED PERMANENT IMPROVEMENT.*—*In this paragraph, the term “covered permanent improvement” means a permanent improvement (including an interest in such an improvement) that is—*

- (i) included in the estate of a decedent; and*
- (ii) attached to a parcel of trust or restricted land that is also, in whole or in part, included in the estate of that decedent.*

(B) *RULE OF DESCENT.*—*Except as otherwise provided in a tribal probate code approved under section 206 or a consolidation agreement approved under subsection (j)(9), a covered permanent improvement in the estate of a decedent shall—*

- (i) descend to each eligible heir to whom the trust or restricted interest in land in the estate descends pursuant to this subsection; or*
- (ii) pass to the recipient of the trust or restricted interest in land in the estate pursuant to a renunciation under subsection (j)(8).*

(C) *APPLICATION AND EFFECT.*—*The provisions of this paragraph apply to a covered permanent improvement—*

- (i) even though that covered permanent improvement is not held in trust; and*

(ii) *without altering or otherwise affecting the non-trust status of such a covered permanent improvement.*

* * * * *

(b)(2) DEVISE OF TRUST OR RESTRICTED LAND AS A LIFE ESTATE OR IN FEE.—

(B) INDIAN REORGANIZATION ACT LANDS.—

【Any interest】(i) *IN GENERAL.*—*Subject to clauses (ii) and (iii), any interest in trust or restricted land that is subject to section 464 of this title, may be devised only in accordance with—*

【(i)】(I) *that section;*

【(ii)】(II) *subparagraph (A)(i); or*

【(iii)】(III) *paragraph (1)(A)【;】.*

(ii) *EXCEPTION.*—

(I) *IN GENERAL.*—*Notwithstanding clause (i), in any case in which a resolution, law or other duly adopted enactment of the Indian tribe with jurisdiction over the land of which as interest described in clause (i) is a part requests the Secretary to apply subparagraph (A)(ii) to devises of trust or restricted land under the jurisdiction of the Indian tribe, the interest may be devised in fee in accordance with subparagraph (A)(ii).*

(II) *EFFECT.*—*Subclause (I) shall apply with respect to a devise of a trust or restricted interest in land by any decedent who dies on or after the date on which the applicable Indian tribe adopts the resolution, law, or other enactment described in subclause (I), regardless of the date on which the devise is made.*

(III) *NOTICE OF REQUEST.*—*An Indian tribe shall provide to the Secretary a copy of any resolution, law, or other enactment of the Indian tribe that requests the Secretary to apply subparagraph (A)(ii) to devises of trust or restricted land under the jurisdiction of the Indian tribe.*

【provided that nothing】(iii) *EFFECT.*—*Except as provided in clause (ii), nothing in this section or in section 464 of this title, shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 464 of this title to any person as a fee interest under subparagraph (A)(ii).*

* * * * *

(h) RULES OF INTERPRETATION.—

(1) CONSTRUCTION THAT WILL PASSES ALL PROPERTY.—

【A will】(A) *IN GENERAL.*—*A will shall be construed to apply to all trust and restricted land and trust personalty which the testator owned at his death, including any such land or personalty acquired after the execution of his will.*

(B) *PERMANENT IMPROVEMENTS.*—*Except as otherwise expressly provided in the will, a devise of a trust or restricted interest in a parcel of land shall be presumed to include the interest of the testator in any permanent improvements attached to the parcel of land.*

(C) *APPLICATION AND EFFECT.*—*The provisions of this paragraph apply to a covered permanent improvement—*

(i) even though that covered permanent improvement is not held in trust; and

(ii) without altering or otherwise affecting the non-trust status of such a covered permanent improvement.

* * * *

(i)(4) JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGEEES.—

* * * *

(C) Notwithstanding any other provision of this subsection, the decedent's trust or restricted [interest land] *interest in land* or trust personalty that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

* * * *

(j)(2)(A) SPOUSES.—

* * * *

(ii) EXCEPTION.—Clause (i) shall not apply to a trust or restricted [interest land] *interest in land* where—

* * * *

(k) NOTIFICATION TO LANDOWNERS.—After receiving a written request by any owner of a trust or restricted interest in land, the Secretary shall provide to such landowner the following information with respect to each tract of trust or restricted land in which the landowner has an interest:

* * * *

(o) PURCHASE OPTION AT PROBATE.—

* * * *

[(3) REQUEST TO PURCHASE; AUCTION; CONSENT REQUIREMENTS.—No sale](3) *REQUEST TO PURCHASE; CONSENT REQUIREMENTS; MULTIPLE REQUESTS TO PURCHASE.*—

(A) *IN GENERAL.*—*No sale* of an interest in probate shall occur under this subsection unless—

[(A)](i) an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and

[(B)](ii) except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate under subparagraph (A) or (D) of subsection (a)(2) of this section consent to the sale.

[(If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as deter-

mined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.】

(B) *MULTIPLE REQUESTS TO PURCHASE.*—*Except for interest purchased pursuant to paragraph (5), if the Secretary receives a request with respect to an interest from more than 1 eligible purchaser under paragraph (2), the Secretary shall sell the interest to the eligible purchaser that is selected by the applicable heir, devisee, or surviving spouse.*

(4) APPRAISAL AND NOTICE.—Prior to the sale of an interest pursuant to this subsection, the Secretary shall—

(A) appraise the interest at its fair market value in accordance with this chapter; and

(B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection【; and】.

【(C) if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold—

(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; and

(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing.】

(5) SMALL UNDIVIDED INTERESTS IN INDIAN LANDS.—

(A) IN GENERAL.—Subject to subparagraph (B), the consent of a person who is an heir or surviving spouse otherwise required under 【paragraph (3)(B)】*paragraph (3)(A)(ii)* shall not be required for the 【auction and】 sale of an interest at probate under this subsection if—

(i) the interest is passing by intestate succession; 【and】

(ii) prior to the 【auction】*sale* the Secretary determines in the probate proceeding that the 【interest passing to such heir represents】, *at the time of death of the applicable decedent, the interest of the decedent in the land represented less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary's records as of the time the determination is made【.】; and*

(iii)*(I) the Secretary is purchasing the interest under the program authorized under section 213(a)(1); or*

(II) after receiving a notice under paragraph (4)(B), the Indian tribe with jurisdiction over the interest is proposing to purchase the interest from an heir or surviving spouse who is not residing on the property in accordance with clause (i), and who is not a member, and is not eligible to become a member, of that Indian tribe.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the consent of such heir *or surviving spouse* shall be required for the sale at probate of the ~~【heir's interest】~~ *interest of the heir or surviving spouse* if, at the time of the decedent's death, the heir *or surviving spouse* was residing on the parcel of land of which the interest to be sold was a part.

25 U.S.C. 2212(a)

Section 213(a) of the Indian Land Consolidation Act is amended as follows:

(1) IN GENERAL.—The Secretary may acquire, at the discretion of the Secretary and with the consent of the owner, or from an heir during probate in accordance with ~~【section 207(p)】~~*section 207(o)* of this title and at fair market value, any fractional interest in trust or restricted lands.

25 U.S.C. 2220

Section 221 of the Indian Land Consolidation Act is amended as follows:

(a) PURPOSE.—The purpose of this section is to provide a means for the *owner or* co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

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