

109TH CONGRESS
1ST SESSION

S. 1481

To amend the Indian Land Consolidation Act to provide for probate reform.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2005

Mr. MCCAIN introduced the following bill; which was read twice, considered,
read the third time, and passed

A BILL

To amend the Indian Land Consolidation Act to provide
for probate reform.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Land Probate
5 Reform Technical Corrections Act of 2005”.

6 **SEC. 2. PARTITION OF HIGHLY FRACTIONATED INDIAN**
7 **LAND.**

8 Section 205 of the Indian Land Consolidation Act
9 (25 U.S.C. 2204) is amended—

10 (1) by striking subsection (a) and inserting the
11 following:

1 “(a) PURCHASE OF LAND.—

2 “(1) IN GENERAL.—Subject to subsection (b),
3 any Indian tribe may purchase, at not less than fair
4 market value and with the consent of the owners of
5 the interests, part or all of the interests in—

6 “(A) any tract of trust or restricted land
7 within the boundaries of the reservation of the
8 tribe; or

9 “(B) land that is otherwise subject to the
10 jurisdiction of the tribe.

11 “(2) REQUIRED CONSENT.—

12 “(A) IN GENERAL.—The Indian tribe may
13 purchase all interests in a tract described in
14 paragraph (1) with the consent of the owners of
15 undivided interests equal to at least 50 percent
16 of the undivided interest in the tract.

17 “(B) INTEREST OWNED BY TRIBE.—Inter-
18 ests owned by an Indian tribe in a tract may
19 be included in the computation of the percent-
20 age of ownership of the undivided interests in
21 that tract for purposes of determining whether
22 the consent requirement under subparagraph
23 (A) has been met.”;

24 (2) by redesignating subsection (d) as sub-
25 section (c); and

1 (3) in subsection (c) (as redesignated by para-
2 graph (2))—

3 (A) in paragraph (2)—

4 (i) in subparagraph (G)(ii)(I), by
5 striking “a higher valuation of the land”
6 and inserting “a value of the land that is
7 equal to or greater than that of the earlier
8 appraisal”; and

9 (ii) in subparagraph (I)(iii)—

10 (I) in subclause (III), by insert-
11 ing “(if any)” after “this section”;
12 and

13 (II) in subclause (IV)—

14 (aa) in item (aa), by striking
15 “less” and inserting “more”; and

16 (bb) in item (bb), by strik-
17 ing “to implement this section”
18 and inserting “under paragraph
19 (5)”; and

20 (B) in paragraph (5), in the second sen-
21 tence, by striking “shall” and inserting “may”.

22 **SEC. 3. TRIBAL PROBATE CODES.**

23 Section 206 of the Indian Land Consolidation Act
24 (25 U.S.C. 2205) is amended—

1 (1) in subsection (b)(3), by striking subpara-
 2 graph (A) and inserting the following:

3 “(A) the date that is 1 year after the date
 4 on which the Secretary makes the certification
 5 required under section 8(a)(4) of the American
 6 Indian Probate Reform Act of 2004 (25 U.S.C.
 7 2201 note; Public Law 108–374); or”; and

8 (2) in subsection (c)—

9 (A) in paragraph (1)(A), by striking “sec-
 10 tion” and all that follows through “the Indian
 11 tribe” and inserting “section 207(b)(2)(A)(ii),
 12 the Indian tribe”; and

13 (B) in paragraph (2)(A)(i)(II)(bb), by in-
 14 serting “in writing” after “agrees”.

15 **SEC. 4. DESCENT AND DISTRIBUTION.**

16 (a) IN GENERAL.—Section 207 of the Indian Land
 17 Consolidation Act (25 U.S.C. 2206) is amended—

18 (1) by redesignating subsections (h) through (p)
 19 as subsections (g) through (o), respectively;

20 (2) in subsection (g) (as redesignated by para-
 21 graph (1))—

22 (A) in paragraph (2)—

23 (i) by inserting “specifically” after
 24 “pertains”; and

1 (ii) by striking subparagraph (B) and
2 inserting the following:

3 “(B) the allotted land (or any interest re-
4 lating to such land) of 1 or more specific Indian
5 tribes expressly identified in Federal law, in-
6 cluding any of the Federal laws governing the
7 probate or determination of heirs associated
8 with, or otherwise relating to, the land, interest
9 in land, or other interests or assets that are
10 owned by individuals in—

11 “(i) Five Civilized Tribes restricted
12 fee status; or

13 “(ii) Osage Tribe restricted fee sta-
14 tus.”; and

15 (B) by adding at the end the following:

16 “(3) EFFECT OF SUBSECTION.—Except to the
17 extent that this Act otherwise affects the application
18 of a Federal law described in paragraph (2), nothing
19 in this subsection limits the application of this Act
20 to trust or restricted land, interests in such land, or
21 any other trust or restricted interests or assets.”;

22 (3) in subsection (h) (as redesignated by para-
23 graph (1))—

24 (A) in paragraph (6), by striking “(25
25 U.S.C. 2205)”;

1 (B) in paragraph (7), by inserting “in
2 trust or restricted status” after “testator”;

3 (4) in subsection (j) (as redesignated by para-
4 graph (1))—

5 (A) in paragraph (2)(A)—

6 (i) in clause (ii)(I), by striking “the
7 date of enactment of this subparagraph”
8 and inserting “the date that is 1 year after
9 the date on which the Secretary publishes
10 a notice of certification under section
11 8(a)(4) of the American Indian Probate
12 Reform Act of 2004 (25 U.S.C. 2201 note;
13 Public Law 108–374)”;

14 (ii) in clause (iii), by striking “the
15 provisions of section 207(a)(2)(A)” and in-
16 serting “subsection (a)(2)(A)”;

17 (B) in paragraph (8)(D), by striking “the
18 provisions of section 207(a)(2)(D) (25 U.S.C.
19 2206(a)(2)(D))” and inserting “subsection
20 (a)(2)(D)”;

21 (C) in paragraph (9)(C)—

22 (i) by striking “section 207(e) (25
23 U.S.C. 2206(e))” and inserting “sub-
24 section (e)”;

1 (ii) by striking “section 207(p) (25
2 U.S.C. 2206(p))” and inserting “sub-
3 section (o)”;

4 (5) in subsection (o) (as redesignated by para-
5 graph (1))—

6 (A) in paragraph (2)—

7 (i) in the matter preceding subpara-
8 graph (A), by striking “section
9 207(a)(2)(A) or (D)” and inserting “sub-
10 paragraph (A) or (D) of subsection
11 (a)(2)”;

12 (ii) in subparagraph (A), by striking
13 “section 207(b)(1)(A)” and inserting “sub-
14 section (b)(1)(A)”;

15 (B) in paragraph (3)(B), by striking “sec-
16 tion 207(a)(2)(A) or (D)” and inserting “sub-
17 paragraph (A) or (D) of subsection (a)(2)”;

18 (C) in paragraph (6)—

19 (i) in the first sentence, by striking
20 “Proceeds” and inserting the following:

21 “(A) IN GENERAL.—Proceeds”; and

22 (ii) by striking the second sentence
23 and inserting the following:

24 “(B) HOLDING IN TRUST.—Proceeds de-
25 scribed in subparagraph (A) shall be deposited

1 and held in an account as trust personalty if
2 the interest sold would otherwise pass to—

3 “(i) the heir, by intestate succession
4 under subsection (a); or

5 “(ii) the devisee in trust or restricted
6 status under subsection (b)(1).”.

7 (b) NONTESTAMENTARY DISPOSITION.—Section
8 207(a)(2)(D)(iv)(I)(aa) of the Indian Land Consolidation
9 Act (25 U.S.C. 2206(a)(2)(D)(iv)(I)(aa)) is amended—

10 (1) by striking “clause (iii)” and inserting “this
11 subparagraph”; and

12 (2) in subitem (BB), by striking “any co-
13 owner” and inserting “not more than 1 co-owner”.

14 (c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.—
15 Section 207(c) of the Indian Land Consolidation Act (25
16 U.S.C. 2206(c)) is amended by striking the subsection
17 heading and inserting the following:

18 “(c) JOINT TENANCY; RIGHT OF SURVIVOR-
19 SHIP.—”.

20 (d) ESTATE PLANNING ASSISTANCE.—Section
21 207(f)(3) of the Indian Land Consolidation Act (25
22 U.S.C. 2206(f)(3)) is amended in the matter preceding
23 subparagraph (A) by inserting “, including noncompetitive
24 grants,” after “grants”.

1 **SEC. 5. FRACTIONAL INTEREST ACQUISITION PROGRAM.**

2 Section 213 of the Indian Land Consolidation Act
3 (25 U.S.C. 2212) is amended—

4 (1) by striking the section heading and insert-
5 ing the following:

6 **“SEC. 213. FRACTIONAL INTEREST ACQUISITION PRO-**
7 **GRAM.”;**

8 and

9 (2) in subsection (a)(1), by striking “(25
10 U.S.C. 2206(p))”.

11 **SEC. 6. ESTABLISHING FAIR MARKET VALUE.**

12 Section 215 of the Indian Land Consolidation Act
13 (25 U.S.C. 2214) is amended by striking the last sentence
14 and inserting the following: “Such a system may govern
15 the amounts offered for the purchase of interests in trust
16 or restricted land under this Act.”.

17 **SEC. 7. LAND OWNERSHIP INFORMATION.**

18 Section 217(e) of the Indian Land Consolidation Act
19 (25 U.S.C. 2216(e)) is amended by striking “be made
20 available to” and inserting “be made available to—”.

21 **SEC. 8. CONFORMING AMENDMENTS.**

22 (a) PROBATE REFORM.—The American Indian Pro-
23 bate Reform Act of 2004 (25 U.S.C. 2201 note; Public
24 Law 108–374) is amended—

25 (1) in section 4, by striking “(as amended by
26 section 6(a)(2))”; and

1 (2) in section 9, by striking “section
2 205(d)(2)(I)(i)” and inserting “section
3 205(c)(2)(I)(i) of the Indian Land Consolidation Act
4 (25 U.S.C. 2204(c)(2)(I)(i))”.

5 (b) TRANSFER AND EXCHANGE OF LAND.—Section
6 4 of the Act of June 18, 1934 (25 U.S.C. 464) is amended
7 to read as follows:

8 **“SEC. 4. TRANSFER AND EXCHANGE OF RESTRICTED IN-**
9 **DIAN LAND AND SHARES OF INDIAN TRIBES**
10 **AND CORPORATIONS.**

11 “(a) APPROVAL.—Except as provided in this section,
12 no sale, devise, gift, exchange, or other transfer of re-
13 stricted Indian land or shares in the assets of an Indian
14 tribe or corporation organized under this Act shall be
15 made or approved.

16 “(b) TRANSFER TO INDIAN TRIBE.—

17 “(1) IN GENERAL.—Land or shares described
18 in subsection (a) may be sold, devised, or otherwise
19 transferred to the Indian tribe on the reservation of
20 which the land is located, or in the corporation of
21 which the shares are held or were derived (or a suc-
22 cessor of such a corporation), with the approval of
23 the Secretary of the Interior.

24 “(2) DESCENT AND DEVISE.—Land and shares
25 transferred under paragraph (1) shall descend or be

1 devised to any member of the Indian tribe or cor-
2 poration (or an heir of such a member) in accord-
3 ance with the Indian Land Consolidation Act (25
4 U.S.C. 2201 et seq.), including a tribal probate code
5 approved under that Act (including regulations).

6 “(c) VOLUNTARY EXCHANGES.—The Secretary of the
7 Interior may authorize a voluntary exchange of land or
8 shares described in subsection (a) that the Secretary de-
9 termines to be of equal value if the Secretary determines
10 that the exchange is—

11 “(1) expedient;

12 “(2) beneficial for, or compatible with, achiev-
13 ing proper consolidation of Indian land; and

14 “(3) for the benefit of cooperative organiza-
15 tions.”.

16 **SEC. 9. EFFECTIVE DATE.**

17 The amendments made by this Act shall be effective
18 as if included in the American Indian Probate Reform Act
19 of 2004 (25 U.S.C. 2201 note; Public Law 108–374).

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